

**Report of the Law Committee of the National People's Congress  
Concerning Revisions to  
The Labor Contract Law of the People's Republic of China (Draft)**

To: Standing Committee of the NPC:

The Labor Contract Law (Draft) (hereinafter referred to as “**Draft**”) was deliberated firstly at the 19<sup>th</sup> meeting of the Standing Committee of the NPC. According to the decision of the Chairmen's Meeting, we published the complete Draft to solicit publicly the comments thereon. From March 20<sup>th</sup> to April 20<sup>th</sup>, we totally received 191,849 documents regarding the comments on the Draft over the Internet, and in the newspapers and periodicals or by letters. The Law Committee and the Legislative Committee sorted out and studied conscientiously the comments submitted by the public. In addition, the Legislative Committee distributed the Draft to relevant departments of each province (region and municipality) to solicit the comments thereon. The Law Committee, the Financial and Economic Committee and the Legislative Affairs Committee jointly held a symposium to solicit the comments on the Draft from relevant departments of the Central Government, some NPC deputies, employers, employees and experts. The Law Committee and the Legislative Affairs Committee also dispatched successively some persons to Beijing, Guangdong, Zhejiang, Shandong, Jiangsu, Jilin to make investigation and research to solicit comments on the Draft. On December 11<sup>th</sup>, the Law Committee convened a meeting at which the Draft was deliberated article by article according to the deliberated comments of the members of the Standing Committee and all other comments in the presence of the responsible persons from the Legislative Office Affairs of the State Council, the Ministry of Labor and Social Security and All-China Federation of Trade Unions and other persons from the Financial and Economic Affairs Committee. On December 19<sup>th</sup>, the Law Committee convened a meeting to deliberate the Draft again. We hereby report on revision of the main issues of the 1<sup>st</sup> version of the Draft as follows:

**1. Application Scope**

Article 2 of the 1<sup>st</sup> version of the Draft provides: “This Law shall be applicable to any establishment of labor relationship by and between and any conclusion and performance of labor contracts by and between enterprises, individual economic organizations and privately-owned non-enterprise entities and employees.” “The State authorities, institutions, social bodies and the employees establishing labor relationship therewith shall be governed by this Law.” In soliciting opinions, it is held in many comments that the appointment contracts made by and between

institutions under the appointment system and employees also present a labor relationship between both parties. At present, except for civil servants governed by the Civil Servants Law and other work personnel administered with reference thereto, the employees signing employment contracts with institutions shall not be governed by the provisions of the Labor Law because of the authority division among administrative departments, so there is no law or regulation applicable to the employees in case of any dispute arising between them and institutions, which is not helpful to protect the legal rights and interests of the employees. Therefore, it is suggested that such employees should also be included into the applicable scope of the Labor Contract Law. Upon study in conjunction with the Legislative Affairs Office of the State Council, the Ministry of Labor and Social Security and All-China Federation of Trade Unions, the Law Committee proposes to revise Paragraph 2 of Article 2 of the Draft as follows: “Except for the civil servants governed by the Civil Servants Law and the work personnel administered with reference thereto, if any state authority, institution, social body establishes a labor relationship with an employee, the conclusion, performance, modification, rescission and termination of the labor contract between both parties shall be governed by this Law.” (See Paragraph 2 of Article 2 of the 2<sup>nd</sup> deliberated version of the Draft). Also, in view of the specialty of such labor contract and under the actual conditions of the authority division among departments, we also suggest to add one provision to “the Supplementary Rules”, which provides: “If there is any other provisions of the State Council applicable to the labor contracts under the appointment system implemented by institutions as provided in Paragraph 2 of Article 2 of this Law, the provisions of the State Council shall apply; the personnel administrative department of the State Council shall be responsible for supervising and administering implementation of its labor contract system.” (See Article 94 of the 2<sup>nd</sup> deliberated version of the Draft)

## **2. Enterprise Rules**

Paragraph 2 of Article 5 of the 1<sup>st</sup> version of the Draft provides: “The rules and policies of any employer bearing on the vital interests of its employees shall be discussed and adopted at its trade union, staffs’ congress or staffs’ representatives’ congress, or made by equal negotiation.” Some members of the Standing Committee hold that any employer shall not only formulate its rules and policies with involvement by its employees, but also consult with its employees on its decision as to any major matters directly bearing on the vital interests of its employees. Other members also hold that many contents of the rules and policies of an employer should be decided independently by it, and it is either not practicable to implement the provision of the Draft (i.e. the enterprises rules shall be discussed and adopted at the trade union staffs’ congress or the staffs representatives’ congress), which is also inconsistent with the provisions of other relevant laws. Upon study in conjunction with the Legislative Affairs Office of the State Council, the

Ministry of Labor and Social Security and All-China Federation of Trade Unions, the Law Committee proposes to revise the provision as follows: “In formulating, revising or deciding on the rules and policies and major matters bearing on the vital interests of its employees such as labor compensation, work hours, rest and leave, labor safety and health, insurance and benefit, staff’ training, labor discipline and quota management, any employer shall refer the same to its staffs’ representatives’ congress or all staffs, which shall raise proposals and comments in relation thereto after discussion, and consult with its trade union or its staffs’ representatives on and determine the same.” “In the course of implementation of the rules and policies of an employer, if the trade union or the staffs believes there is any improper provision in the rules and policies, they shall have the right to raise the same to the employer, who shall revise and improve the same through consultation.” (See Paragraphs 2 and 3 and Article 4 of the 2<sup>nd</sup> deliberated version of the Draft). Also, the chapter “Legal Responsibilities” provides: “If any provision of the rules and policies of an Employer is not in compliance with any laws, regulations and provisions, the provision shall be ineffective, and the labor administrative authority shall impose a warning upon it, and order it to make corrections; the employer shall be responsible for indemnifying any of its employees against any damage to him/her arising there from.” (See Article 79 of the 2<sup>nd</sup> deliberated version of the Draft)

### **3. Conclusion of Written Labor Contract**

Paragraph 3 of Article 9 of the 1<sup>st</sup> version of the Draft provides: “If there exists a labor relationship between an employer and any of its employees, but the employer does not sign any labor contract with the employee in writing, the employer shall be deemed to have signed a non-fixed term labor contract with the employee, and the supplemental procedures for concluding the written labor contract shall be completed timely with an exception that the employee has any other intent manifestation.” Some members of the Standing Committee hold that it is not practicable to implement the provision (i.e. any failure to conclude the written labor contract shall be deemed as a conclusion of the non-fixed term labor contract), which is either not always helpful to the employee in practice. Some members propose that the problem of any failure to conclude the written labor contract shall be resolved by system design to guide both parties to conclude the written labor contract under actual conditions and with more practicability. Upon study in conjunction with the Legislative Affairs Office of the State Council, the Ministry of Labor and Social Security and All-China Federation of Trade Unions, the Law Committee proposes to revise the Draft as follows: (1) Any employer shall establish a labor relationship with any of its employees from the date of employment. To establish a labor relationship, the employment formalities shall be completed, and the written labor contract shall be concluded. (See Paragraph 1 of Article 7 and Article 8 of the 2<sup>nd</sup> deliberated version of the Draft) (2) If there

exists a labor relationship between an employer and any of its employees, but the employer does not sign the written labor contract with the employee, the written labor contract shall be signed within one month from the date of employment. (See Paragraph 2 of Article 7 of the 2<sup>nd</sup> deliberated version of the Draft) (3) If an employer does not sign any written labor contract with any of its employees at the same time of following the employment formalities, the newly employed employee shall be treated under the standards provided in the collective contract of the employer or in its industry; if there is no collective contract, the employer shall give the employee the same compensation for the same position. (See Article 9 of the 2<sup>nd</sup> deliberated version of the Draft) (4) If an employer fails to conclude the written labor contract with any of its employees up to one month from the date of following the employment formalities, it shall pay the employee the salary which is two times the compensation corresponding to the labor service rendered by the employee. Article 82 of the 2<sup>nd</sup> deliberated version of the Draft provides for corresponding legal responsibilities.

#### **4. Probation Period**

Article 13 of the 1<sup>st</sup> version of the Draft: “A probation period may be agreed upon if the term of the labor contract is three or more months. The probation period shall be included in the term of the labor contract. The probation period for any non-technical position shall not exceed one month; and the probation period for any senior professional technical position shall not exceed six months.” Some members of the Standing Committee hold that as there are comparatively acute situations in practice, where the interests of employees are damaged, such as employer’s abusing the probation period, forcing down the salaries occurring during the probation period and rescinding arbitrarily the labor contract during the probation period, the Labor Contract Law shall have strict provisions therefor. It is not practicable to implement the provision (i.e. the probation period is set by the technical content of a position), so it is suggested that the probation period be set by the term of the labor Contract. Upon study in conjunction with the Legislative Affairs Office of the State Council, the Ministry of Labor and Social Security and All-China Federation of Trade Unions, the Law Committee proposes to revise the Draft as follows: (1) If the term of a labor contract is less than one year, the probation period shall not exceed one month; if the term of the labor contract is between one year and three years, the probation period shall not exceed two months; the probation period for a three or more years’ fixed term labor contract or non-fixed term labor contract shall not exceed six months. If a labor contract only stipulates the probation period or the term of the labor contract is the same as the probation period, then the provision on the probation period shall be ineffective, and the probation period shall be the term of the labor contract. (See Paragraphs 1 and 3 of Article 20 of the 2<sup>nd</sup> deliberated version of the Draft) (2) The salary occurring during the probation period shall not be less than the minimum

salary for the same position or than eighty percent of the salary agreed upon in the labor contract. (See Article 21 of the 2<sup>nd</sup> deliberated version of the Draft) (3) During the probation period, no employer may rescind any labor contract with an exception that there is proof proving that the employee does not meet the employment conditions. If an employer rescinds a labor contract during the probation period, it shall explain to the employee the reasons therefor. (See Article 22 of the 2<sup>nd</sup> deliberated version of the Draft) Relevant legal responsibilities are also provided.

## **5. Tendency to Form Short Term contracts**

At present, the problem of the tendency to form short term contracts is very acute, damages the interests of employees and is not beneficial to establish stable labor relationships. Some members of the Standing Committee hold that the Labor Contract Law shall value and provide against the problem of the tendency to form the short-term contract. Upon study in conjunction with the Legislative Affairs Office of the State Council, the Ministry of Labor and Social Security and All-China Federation of Trade Unions, the Law Committee proposes to add the following provisions: (1) signing non-fixed term contracts is encouraged; if any employee claims renew of his/her labor contract under any of the following conditions, the non-fixed labor contract shall be signed: (i) when the labor contract is to be renewed, the employee has been working consecutively with the employer for full ten or more years; (ii) when the employer implements the labor contracts system for the first time or the labor contract is signed for restructuring of the state-owned enterprise, the employee has been working with the employer for full ten or more years or his/her work time prior to his/her legal retirement age is within ten years; (iii) the fixed term labor contract is to be renewed after signed consecutively for two times. (See Article 14 of the 2<sup>nd</sup> deliberated version of the Draft) (2) If an employer fails to sign any non fixed term labor contract with any of its employees in violation of the provisions of this Law, it shall, when rescinding or terminating the labor contract, pay the employee an indemnity equal to two times the economic compensation provided in this Law. (See Article 86 of the 2<sup>nd</sup> deliberated version of the Draft)

## **6. Service Period**

Article 15 of the 1<sup>st</sup> version of the Draft provides: “If an Employer provides any of its employees with a training fee, which is used for a full-time professional technical training to him/her lasting for six (6) or more months, it and the employee may agree upon a service period and the penalty payable by the employee to the employer in case of any breach by the employee; provided,

however, the maximum amount of the penalty must not exceed the training fee attributable to the remaining part of the service period that the service has not been rendered.” Some members of the Standing Committee hold that the threshold of only the six or more months’ full-time professional technical training, for which the service period may be agreed upon, is too high. Some members of the Standing Committee propose that a corresponding increase in the salary of such employee during the service period should be ensured. Upon study in conjunction with the Legislative Affairs Office of the State Council, the Ministry of Labor and Social Security and All-China Federation of Trade Unions, the Law Committee proposes to revise the Draft as follows: (1) If an Employer provides any of its employees with a training fee, which is used for a full-time professional technical training or professional training to him/her lasting one or more months, it may agree upon a service period with the employee. If the employee breaches any of the provisions regarding the service period, it shall pay a penalty to the employer thereunder. (2) The agreed amount of the penalty for breaching any of the provisions regarding the service period shall not exceed the training fee provided by the employer. In case of any breach, the penalty to be paid by the employee shall not exceed the training fee attributable to the remaining part of the service period that the service has not been rendered. (3) If the service period agreed upon by the employer and the employee is comparatively long, the employer shall raise the labor compensation of the employee during the service period according to the compensation adjustment mechanism. (See Article 23 of the 2<sup>nd</sup> deliberated version of the Draft)

## **7. Non-competition**

Article 16 of the 1<sup>st</sup> version of the Draft provides “An employer may agree upon non-competition, in the labor contract, with any of its employee who knows its trade secrets.” “The non-competition scope shall be limited to the geographical region within which any actual competition against the employee’s Employer may be formed.” “If an employer agrees with any of its employees upon non-competition, it shall also agree with the employee upon the non-competition economic compensation payable to the employee, which shall not be less than the annual salary incomes of the employee during his/her employment with the employer. Any employee breaching any of the non-competition provisions shall pay a penalty to the employer; provided, however, the maximum penalty shall not be more than three (3) times the economic compensation.” Some members of the Standing Committee hold that the provisions regarding non-competition shall strike a balance between protecting the legal interests of the employers and restricting the employment rights of employees, so the applicable scope of such provisions should not be overly broad, and only senior managers and senior technicians shall be governed mainly by such provisions. Such matters as the economic compensation and breaching penalty shall be agreed upon by both parties. Upon study in conjunction with the Legislative Affairs

Office of the State Council, the Ministry of Labor and Social Security and All-China Federation of Trade Unions, the Law Committee proposes to revise the Draft as follows: “With respect to an employee under a duty to keep confidential the trade secret of his/her employer, his/her employer may make with the employee the non-competition provisions in the labor contract or the confidentiality agreement, under which the employer shall pay the employee the economic compensation on a monthly basis after the rescission or termination of the labor contract. If the employee breaches any of the non-competition provisions, he/she shall pay a penalty to the employer as agreed in the labor contract or confidentiality agreement (See Paragraph 2 of Article 24 of the 2<sup>nd</sup> deliberated version of the Draft) (2) The persons under the non-competition provisions shall be limited to senior managers and senior technicians of the employer and other persons with knowledge of the trade secrets of the employer. The scope, geographical region and period of the non-competition shall be agreed upon by the employer and the employee, and any of the provisions regarding non-competition shall not be in compliance with the provisions of relevant laws and regulations. (3) The time limit of non-competition shall not be more than two years. (See Article 25 of the 2<sup>nd</sup> deliberated version of the Draft). It needs to be explained here that any person infringing upon any trade secret shall take legal responsibilities under the provisions of relevant laws, and not be restricted by the two years’ non-competition provision.

## **8. Delay in Payment of Salaries and Social Insurance Premiums**

In soliciting comments on the Labor Contract Law, the salaries and social insurance premiums are the two issues to which employees made strongest reactions. It is held in many comments that, in practice, many employers find excuses not to hand out salaries as scheduled, and some employers also force employees to do overtime work, but fail to pay overtime payments, so the Labor Contract Law shall provide against the problems. Some employees propose that the Labor Contract Law shall provide for social insurance premiums issues. Upon study in conjunction with the Legislative Affairs Office of the State Council, the Ministry of Labor and Social Security and All-China Federation of Trade Unions, the Law Committee proposes to add the following provisions: (1) Any employer shall hand out labor compensations fully as scheduled under the provisions of the State and the provisions and terms of labor contracts. If an employer delays in hand-out of or fails to hand out fully any salary of any employee, the employee may apply to the local people’s court for the payment order; if the employer refuses to implement the payment order, the local people’s court may enforce the same legally. (See Article 31 of the 2<sup>nd</sup> deliberated version of the Draft) (2) The Draft provides for relevant legal responsibilities to be taken by any employer who delays in hand-out of any salary. (See Paragraph 1 of Article 85 of the 2<sup>nd</sup> deliberated version of the Draft) (3) The State will take measures to realize gradually the

nationwide flow of the basic pension insurance individual accounts together with employees. (See Article 48 of the 2<sup>nd</sup> deliberated version of the Draft)

## **9. Economic Layoffs**

Article 33 of the 1<sup>st</sup> version of the Draft provides: “If the objective conditions taken as the basis for conclusion of the labor contract have greatly changed so that the labor contract can no longer be carried out, and fifty or more persons need to be laid off, the employer shall be responsible for explaining the situation to its trade union or all of its staffs and reach a consensus with its trade union or staffs’ representatives through negotiation. In deciding to lay off employees, the employer shall first retain the employees who have been working with it for a comparatively long time, who have signed with it comparatively long fixed-term labor contracts, and who signed with it non-fixed term labor contracts.” Some members of the Standing Committee hold that as many employees are involved in an economic lay-off, the Labor Contract Law should provide expressly for the situations of any economic layoff, which shall be consistent with those of the Labor Law in terms of layoff procedures, so as to prevent employers from carrying out arbitrarily any economic layoff. Upon study in conjunction with the Legislative Affairs Office of the State Council, the Ministry of Labor and Social Security and All-China Federation of Trade Unions, the Law Committee proposes to revise the Draft as follows: (1) In the event of any circumstances set forth below causing failure of performance of a labor contract, under which condition a laying off at least 20 employees or over 10% of the total employees will be needed, the Employer shall be responsible for explaining the situation to the trade union or all of its staffs 30 days prior to the layoff. The Employer can lay off employees after communications with the trade union or all of its staffs for their opinion and report to the local labor administrative authority: (i) where it is to be consolidated under the provisions of the bankruptcy law; (ii) where it runs into difficulties in production and management; (iii) where it is to be relocated to prevent from pollution; (iv) where any other objective conditions taken as the basis for conclusion of the labor contract have greatly changed so that the labor contract can no longer be carried out. (2) When laying off employees, the Employer shall offer on a preferential basis to keep employees: (1) who have been maintaining a relatively longer term of service with the Employer; (2) who have entered into a comparatively long fixed term labor contracts with the Employer; (3) who have signed non-fixed term labor contracts; (4) whose families do not have any other employed persons, but have aged persons and minors. (See Article 41 of the 2<sup>nd</sup> deliberated version of the Draft)

## **10. Collective Contracts**

Paragraph 2 of Article 7 of the 1<sup>st</sup> version of the Draft: “Trade unions or staffs representatives shall have the right to sign, by equal negotiation, with employers the collective contracts with respect to such matters as labor compensation, work hours, rest and leave, labor safety and health and insurance and benefit.” Some members of the Standing Committee hold that collective contracts are of significance to protect employees’ interests. Although the Draft provides for the collective contracts, the provisions in relation thereto in the Draft are scattered overly and not specific enough. They propose to provide for collective contracts by a special chapter. Upon study in conjunction with the Legislative Affairs Office of the State Council, the Ministry of Labor and Social Security and All-China Federation of Trade Unions, the Law Committee proposes to provide, under the relevant provisions of the Labor Law and the Trade Union Law, for the collective contract, by a special chapter, as follows: (1) Any employer shall sign, after equal negotiation, the collective contract with its staffs, as one party, with respect to the such matters as labor compensation, work hours, rest and leave, labor safety and health, insurance and benefit. The draft of the collective contract shall be discussed and adopted at the staffs’ representatives’ congress or by all of its staffs. The collective contract shall be signed by its trade union representing the staffs, as one party, and the employer; if the trade union of the employer has not been formed, the representatives elected by employees shall sign the collective contract with the employer. (See Article 50 of the 2<sup>nd</sup> deliberated version of the Draft) (2) Within the area at or under the country level, trade union organizations of industries such as construction, mining, food and beverage services can sign industrial collective contracts with the representatives of employers. Industrial collective contracts shall be binding upon Employers and employees in all the local industries concerned. (See Article 52 of the 2<sup>nd</sup> deliberated version of the Draft) (3) Any employer and its staffs, as one party, may sign a special collective contract with respect to such matters as labor safety and health and salaries adjustment system. (See Article 53 of the 2<sup>nd</sup> deliberated version of the Draft) (4) The standards, such as labor conditions and labor compensation, of any collective contract shall be more favorable than the minimum standards stipulated by the local people’s government; the standards, such as labor conditions and labor compensation, of any labor contract shall be not less favorable than the standards stipulated by the collective contract. (See Article 53 of the 2<sup>nd</sup> deliberated version of the Draft) (5) If an employer breaches the collective contract, and infringes upon the interests of its staffs and employees, its trade union may require the employer to take legal responsibilities; if a dispute arises in performance of the collective contract, and can not be settled through consultation, its trade union may apply for arbitration or institute legal proceedings legally. (See Article 55 of the 2<sup>nd</sup> deliberated version of the Draft)

## **11. Labor Dispatch**

Article 22 of the 1<sup>st</sup> version of the Draft provides: “Any employer employing employees in the form of labor dispatch shall deposit a reserve of no less than RMB 5000 Yuan to the designated bank account for each dispatched employee.” Article 40 provides: “If an employee is dispatched to and works with the accepting entity for one full year and the accepting entity wishes to continue to use the employee, then the labor contract concluded by and between the labor service agency and the employees shall be terminated, and the accepting entity shall sign another labor contract with the employee.” Some members of the Standing Committee hold that, at present, Chinese labor dispatch market grows up rapidly, but is comparatively disordered, and the interests of employees are often infringed. So the labor dispatch needs to be regulated urgently, and they propose to provide for labor dispatch by a special chapter. Some members of the Standing Committee also hold that the reserve requirement will impose a burden on the labor service agencies, but have no direct bearing upon protecting the interests of employees, and lead to such problems as transferring the reserve to the employees or the labor accepting entities. So they propose to delete the reserve requirement of the Draft. Some members of the Standing Committee also hold that the above provision of the Draft (i.e. if an employee is dispatched to and works with the accepting entity for one full year and the accepting entity wishes to continue to use the employee, then the accepting entity shall sign a labor contract with the employee) is overly strict, and difficult to implement in practice, and so propose to revise the said provision. Upon study in conjunction with the Legislative Affairs Office of the State Council, the Ministry of Labor and Social Security and All-China Federation of Trade Unions, and after soliciting the comments on the revising proposal from some labor service agencies and labor accepting entities, the Law Committee proposes to provide, by a special chapter, for labor dispatch as follows, by firstly clarifying legally the obligations and rights of the three parties, labor service agencies, employers and dispatched employees: (1) Labor service agencies means the employers mentioned in this Law, and shall perform all obligations of employers to employees. Labor service agencies shall sign two or more years fixed term labor contracts with dispatched employees. (See Article 57 of the 2<sup>nd</sup> deliberated version of the Draft) (2) The entities accepting to use employees by labor dispatch shall perform the following obligations: (i) to carry out the labor standards of the State, and provide corresponding labor conditions and protection; (ii) to inform the dispatched employees of the work requirements and labor compensation; (iii) to make payments for overtime work and hand out performance bonus, and provide the benefits in relation to each position; (iv) to carry out training of the on-the-job dispatched employees, which is necessary to their respective position; and (v) if an employee is used consecutively, the normal salaries adjustment system shall be established. (See Article 61 of the 2<sup>nd</sup> deliberated version of the Draft) (3) To dispatch employees, the labor service agency shall sign a labor dispatch agreement with the labor accepting entity. Any labor accepting entity shall determine the

dispatch period under the actual needs of each position with the labor service agency, and shall not divide any consecutive employee-using period to sign several short-term labor dispatch agreements. (See Article 58 of the 2<sup>nd</sup> deliberated version of the Draft) (4) Any labor service agency shall be obligated to inform any dispatched employee of the contents of the labor dispatch agreement. No labor service agency may pocket any labor compensation paid by any labor accepting entity to dispatched employees under the labor dispatch agreements. (See Article 59 of the 2<sup>nd</sup> deliberated version of the Draft) (5) Dispatched employees shall have the right to enjoy the same compensation for the same position and participate in or organize a trade union to protect their legal interests. (See Articles 62 and 63 of the 2<sup>nd</sup> deliberated version of the Draft) (6) Any dispatched employee may rescind legally his/her labor contract with his/her labor service agency. (See Article 64 of the 2<sup>nd</sup> deliberated version of the Draft) (7) Labor dispatch shall be generally implemented for provisional, auxiliary or substitutive positions. (See Article 65 of the 2<sup>nd</sup> deliberated version of the Draft) (8) Any labor accepting entity shall be prohibited to establish any labor dispatch company on its own, which dispatches employees to itself or its subordinate entities. (See Article 66 of the 2<sup>nd</sup> deliberated version of the Draft)

In addition, we also made a wording revision of the Draft.

As the 2<sup>nd</sup> deliberated version of the Draft has been revised by the above comments, the Law Committee hereby suggests the Standing Committee to deliberate the Draft continuously at the meeting.

We request you to deliberate whether the 2<sup>nd</sup> deliberated version of the Draft and the above comments are proper.

Law Committee of the National People's Congress

December 24<sup>th</sup>, 2006

**The People's Republic of China Labor contract Law (Draft)**

(2<sup>nd</sup> deliberated version)

**Table of Contents**

Chapter I	General Provisions
Chapter II	Conclusion of Labor contracts
Chapter III	Performance and Modification of Labor contracts
Chapter IV	Rescission and Termination of Labor contracts
Chapter V	Special Provisions
Subchapter I	Collective Contracts
Subchapter II	Labor Dispatch Contracts
Subchapter III	Other Employments
Chapter VI	Supervision and Inspection
Chapter VII	Legal Responsibilities
Chapter VIII	Supplemental Provisions

## **Chapter I    General Provisions**

**Article 1**     This Law is formulated under the Labor Law with a view to regulating any conclusion, performance, modification, rescission and termination of labor contracts by employers and employees, establishing and developing harmonious and stable labor relationships and protecting the legal interests of employees.

**Article 2**     This Law shall be applicable to any establishment of labor relationships by and between and any conclusion, performance, modification, rescission and termination of labor contracts by and between enterprises, individual economic organizations and privately-owned non-enterprise entities (hereinafter referred to as “**Employer**” or “**Employers**”) and employees within the territory of the PRC.

Except for the civil servants governed by the Civil Servants Law and other work personnel administered with reference thereto, if any state authority, institution, social body establishes a labor relationship with an employee, the conclusion, performance, modification, rescission and termination of the labor contract between both parties shall be governed by this Law.

**Article 3**     In concluding a labor contract, any Employer and any of its employees shall observe the principles of legality, fairness, equity and voluntariness, unanimous consultation and good faith.

The labor contract shall have legal binding upon legal signature, and the Employer and the employee must perform all of the obligations under the labor contract.

**Article 4**     An employer shall establish and improve legally labor rules and policies to ensure that any of its employees may enjoy labor rights and perform labor obligations.

In formulating, revising or deciding on the rules and policies and major matters bearing on the vital interests of its employees such as labor compensation, work hours, rest and leave, labor safety and health, insurance and benefit, staffs’ training, labor discipline and quota management, any Employer shall refer the same to the staffs’ representatives’ congress or all staffs, which shall raise the proposals and comments in relation thereto after discussion, and then consult with its trade union or staff’s representatives on and determine the same.

In the course of implementation of the rules and policies of an Employer, if its trade union or staffs believes there is any improper provision in the rules and policies, they shall have the right to raise the same to it, who shall revise and improve the same through consultation.

The rules and policies of any Employer bearing directly on the vital interests of its employees shall be published within it, or distributed to its employees.

**Article 5**     The labor administrative authorities of the people’s government at and above the country level shall, in conjunction with trade unions and Employers’ representatives, establish and improve the three parties’ system coordinating labor relationships, study and resolve jointly major questions in relation to labor relationships, and urge Employers and trade unions’ organizations or staff s’ representatives to establish the collective consultation system.

**Article 6** Trade unions' organizations shall assist and guide employees to conclude and perform labor contracts legally with Employers and protect the legal interests of employees.

## **Chapter II Conclusion of Labor contracts**

**Article 7** Any Employer shall establish a labor relationship with any of its employees from the date of employment. To establish a labor relationship, the employment formalities shall be completed, and the written labor contract shall be concluded.

If there exists a labor relationship between an Employer and any of its employees, but the Employer does not sign the written labor contract with the employee, the written labor contract shall be signed within one month from the date of employment.

**Article 8** Any Employer employing employees shall form the employees' register, and hand out the work certificates to all of its employees.

**Article 9** If an Employer does not sign a written labor contract with any of its employees at the same time of following the employment formalities so that the treatments to the employee are unclear, the newly employed employee shall be treated under the standards provided in the collective contract of the Employer or in its industry; if there is no collective contract, the Employer shall give to the employee the same compensation for the same position.

**Article 10** In concluding any labor contract, any Employer shall inform any of its employees of work items, work conditions, work location, occupational harm, safety and production conditions, labor compensation and other conditions in direct relation to the labor contract that the employee wishes to know about; the Employer shall have the right to know about the basic conditions of the employee in direct relation to the labor contract, and the employee shall explain the same according to facts.

**Article 11** In hiring any employee, any Employer shall not require the employee to provide security or collect any cash or property from the employee in the name of security, nor retain the I.D card or any other certificate of the employee.

**Article 12** The terms of labor contracts are divided into three categories: the fixed term, the non-fixed term and the term subject to completion of a work assignment.

**Article 13** Fixed-term labor contract means a labor contract in which the Employer and any of its employees agree upon the time of terminating the contract.

After reaching a consensus, any Employer and any of its employees may sign a fixed term labor contract.

**Article 14** Non-fixed labor contract means a labor contract in which the Employer and any of its employees agree that there is no time of terminating the contract.

After reaching a consensus, any Employer and any of its employees may sign a non-fixed term labor contract. If an employee claims renewal of his/her labor contract under any of the following conditions, the non-fixed labor contract shall be signed:

(i) when the labor contract is to be renewed, the employee has been working consecutively with the Employer for full ten or more years;

(ii) when the Employer implements the labor contracts system for the first time or the labor contract is signed for restructuring of the state-owned enterprise, the employee has been working with the Employer for full ten or more years or his/her work time prior to his/her legal retirement age is within ten years; or

(iii) the fixed term labor contract is to be renewed after signed consecutively for two times.

**Article 15** Labor contract with a term subject to completion of a work assignment means a labor contract in which the Employer and any of its employees agree upon the condition for terminating the contract subject to completion of some work assignment.

If there are any of the following conditions, any Employer and any of its employees may sign a labor contract with a term subject to completion of a work assignment:

(i) the term of the labor contract is subject to completion of a single work assignment;

(ii) the labor contract is concluded to complete a contracted assignment by project contracting;

(iii) the labor contract is concluded to use the employee temporarily for seasonal reasons;

(iv) any other labor contract in which both parties agree upon the term subject to completion of a work assignment.

**Article 16** Any Employer shall provide the text of any labor contract.

After the Employer and any of its employees reach a consensus and sign or seal the labor contract, the labor contract shall become effective.

If the Employer and the employee sign the labor contract prior to employment, the labor contract shall become effective from the date of employment.

The Employer and the employee shall hold one copy of the labor contract respectively.

**Article 17** Any labor contract shall have the following terms and conditions:

(i) the name, domicile and legal representative of the Employer;

- (ii) the name, address, I.D card of the employee;
- (iii) the term and terminating conditions of the labor contract;
- (iv) work items and work location;
- (v) work hours and rest and leave;
- (vi) labor compensation;
- (vii) social insurances;
- (viii) labor protection and labor conditions;
- (ix) other matters that shall be included in the labor contract under the provisions of laws and regulations.

In addition to the necessary terms and conditions provided in the preceding paragraph, the Employer and the employee may also agree, through consultation, upon such matters as probation period, training, keeping confidential trade secrets, supplementary insurances and benefits treatment.

**Article 18** If a dispute arises from any unclear term or condition of a labor contract such as labor compensation or conditions, the Employer and the employee may re-agree upon the same. If both parties fail to agree upon the unclear term or condition, the provisions of the collective contract shall apply; if the collective contract does not provide for the same, the relevant provisions of the State shall apply.

**Article 19** No labor contract is permitted to contain any term or provision under which the Employer relieves itself from any responsibility and excludes any of the employee's rights.

**Article 20** If the term of a labor contract is less than one year, the probation period shall not exceed one month; if the term of the labor contract is between one year and three years, the probation period shall not exceed two months; the probation period for an three or more years' fixed term labor contract or non-fixed term labor contract shall not exceed six months.

The same Employer shall set only one probation period with the same employee.

If a labor contract only stipulates the probation period or the term of the labor contract is the same as the probation period, then the provision on the probation period shall be ineffective, and the probation period shall be the term of the labor contract.

**Article 21** The salary of any employee occurring during the probation period shall not be less than the minimum salary for the same position or than eighty percent of the salary agreed upon in the labor contract.

**Article 22** During the probation period, no Employer may rescind any labor contract with an exception that there is proof proving that the employee does not meet the employment conditions.

If an Employer rescinds a labor contract during the probation period, it shall explain to the employee the reasons therefor.

**Article 23** If an Employer provides any of its employees with a training fee, which is used for his/her full-time professional technical training or professional training of one or more months, it may agree upon the service period with the employee. If the employee breaches any of the provisions regarding the service period, it shall pay a penalty to the Employer thereunder. The agreed amount of the penalty for breaching any of the provisions regarding the service period shall not exceed the training fee provided by the Employer. In case of any breach, the penalty to be paid by the employee shall not exceed the training fee attributable to the remaining part of the service period that the service has not been rendered.

If the service period agreed upon by the Employer and the employee is comparatively long, the Employer shall raise the labor compensation of the employee during the service period according to the compensation adjustment mechanism.

**Article 24** Any Employer may agree, in the labor contract, with any of its employees upon the matters in relation to keeping confidential its trade secrets.

With respect to an employee under a duty to keep confidential the trade secrets of his/her Employer, his/her Employer may make with the employee the non-competition provisions in the labor contract or the confidentiality agreement, under which the Employer shall pay the employee the economic compensation on a monthly basis within the non-competition period after rescission or termination of the labor contract. If the employee breaches any of the terms or provisions regarding non-competition, he/she shall pay a penalty to his/her Employer thereunder.

**Article 25** The persons under the non-competition terms or provisions shall be limited to senior managers and senior technicians of any Employer and other persons with knowledge of its trade secrets. The scope, geographical region and period of non-competition shall be agreed upon by the Employer and the employee, and any of the terms or provisions regarding non-competition shall not be in incompliance with the provisions of relevant laws and regulations.

After rescission or termination of the labor contract, the period, on which any of the above persons is prohibited to work with any other Employer, who is in competition with the Employer and produce or operate the products or business similar to those of the Employer, or to open a business on himself or herself and produce or operate the similar products or business in competition with those of the Employer, shall not be more than two years.

**Article 26** Except under the situations provided in Article 23 or 24 hereof, no Employer may agree with any of its employees upon any penalty to be borne by the employee.

**Article 27** Any of the following labor contracts shall be wholly or partially invalid:

- (i) it violates any of the provisions of relevant laws and administrative regulations;
- (ii) the Employer concludes the labor contract by fraud or coercion; or

(iii) the Employer relieves itself from any of its responsibilities or excludes any of employees' rights.

**Article 28** If a labor contract is held to be partially invalid, but the validity of the remaining part thereof is not affected, then the remaining part thereof shall remain to be valid.

**Article 29** If a labor contract is held to be invalid, but the employee has provided labor services, the Employer shall pay the employee his/her labor compensation. The amount of his/her compensation shall be determined by that payable by the Employer to other employees for the similar position; if there is no similar position in the Employer, such amount shall be determined by the salary guiding price on the labor market published by the people's government of the city divided districts in the place where the Employer is located.

### **Chapter III Performance and Modification of Labor contracts**

**Article 30** Any Employer and any of its employees shall perform fully their respective obligations under the labor contract. Any employee shall perform actually by himself/herself the work agreed upon in his/her labor contract.

**Article 31** Any Employer shall hand out labor compensations fully as scheduled under the provisions of the State and the provisions and terms of labor contracts.

If an Employer delays in hand-out of or fails to hand out fully any salary of any employee, the employee may apply to the local people's court for the payment order; if the Employer refuses to implement the payment order, the local people's court may enforce the same legally.

**Article 32** Any Employer shall carry out strictly the labor quotas standards, and shall not force any of its employees to do overtime work in a disguised way. If an Employer arranges for any of its employees to do overtime work, it shall pay the employee the overtime payments under the relevant provisions of the State.

**Article 33** Any employee shall have the right to disobey any forcing order by any manager of his/her Employer to carry out operation at risk in violation rules, which shall not be deemed as a breach of his/her labor contract, and have the right to criticize, impeach or charge his/her Employer for any labor conditions doing harm to life safety and personal health.

**Article 34** If there is any change to such matters of an Employer as its name, legal representative, main responsible persons or investors, registration and filings, the performance of its labor contracts shall not be affected.

**Article 35** If an employer is involved in any consolidation or division or other conditions, the original labor contracts shall remain to be valid, and continue to be performed by another Employer who inherits all of its rights and obligations.

**Article 36** After reaching a consensus, any Employer and any of its employees may change the matters agreed upon the labor contract. However, if any other law or regulations provides otherwise, the provisions of the law or regulations shall prefer.

#### **Chapter IV Rescission and Termination of Labor contract**

**Article 37** A labor contract can be terminated upon unanimous agreement between the Employer and employee as parties thereto.

**Article 38** An employee can terminate the labor contract by written notice to the Employer thirty (30) days in advance, also, employee shall be entitled to notify the Employer termination of the labor contract between them at any time during the probationary period of such employee.

The employee can notify the Employer to terminate the labor contract between them at any time after occurrence of any circumstance set forth below:

- (1) The Employer fails to provide qualified conditions for work or safe production as agreed in the labor contract;
- (2) The Employer fails to make timely payment of any compensation in full amount;
- (3) The Employer fails to pay the social insurance premium for any employees in accordance with law;
- (4) The rules and regulations of the Employer causes damage to the interest of any employee by violation of relevant laws and regulations of the state;
- (5) The Employer forces an employee to sign a labor contract against his true will by making use of the precarious situation such employee is in;
- (6) any other condition provided by the state laws and administrative regulations.

Employees shall be entitled to terminate their labor contract immediately without prior notice to the Employer where the Employer forces the employees to work by means of violence, threaten or illegal restrictions of personal freedom, or instructs, demands the employees to conduct risky work in violation of relevant rules, which has endangered the employees' personal safety.

**Article 39** The Employer can terminate the labor contract if an employee commits to any acts set forth below:

- (1) The employee is proven to be incompetent for employment during the probation period;

(2) The employee seriously violates the regulations and rules of the Employer, by which the labor contract shall be terminated;

(3) The employee commits serious derelict in his performance of duties or practices graft, causing severe damage to the interest of the Employer;

(4) The employee is concurrently involved in any other labor relation with any other Employer, causing severe effect on the performance of his/her own duties and refuses to make correction as required by the Employer.

(5) The employee is pursued for any criminal liability in accordance with law.

**Article 40** A labor contract can be terminated by the Employer subject to a written notice thirty (30) days in advance or the extra payment of one (1) month salary to the employee upon occurrence of any of the circumstances set forth below:

(1) Where the employee has suffered from illness or non-work-related injury and is not able to perform the original job upon the conclusion of medical treatment, and a mutual agreement on changing jobs cannot be made between the Employer and the employee;

(2) The employee is incompetent in the job and remains so after receiving training or being transferred to another post;

(3) Where a major change in the objective circumstances under which the labor contract was made has rendered such Contract incapable of being carried out, and the parties thereto failed to reach an agreement on the amendment or suspension of such Contract after negotiation.

**Article 41** In the event of any circumstances set forth below causing failure of performance of a labor contract, under which condition a laying off at least 20 employees or over 10% of the total employees will be needed, the Employer shall be responsible for explaining the situation to the trade union or all of its staffs 30 days prior to the layoff. The Employer can lay off employees after communications with the trade union or all of its staffs for their opinion and report to the local labor administrative authority:

(i) where it is to be consolidated under the provisions of the bankruptcy law;

(ii) where it runs into difficulties in production and management;

(iii) where it is to be relocated to prevent from pollution;

(iv) where any other objective conditions taken as the basis for conclusion of the labor contract have greatly changed so that the labor contract can no longer be carried out.

When laying off employees, the Employer shall offer on a preferential basis to keep employees:

(1) who have been maintaining a relatively longer term of service with the

Employer;

- (2) who have entered into a comparatively long fixed term labor contracts with the Employer;
- (3) who have signed non-fixed term labor contracts;
- (4) whose families do not have any other employed persons, but have aged persons and minors.

If the Employer recruits new workers within six (6) months after a labor layoff, it shall recruit the former laid-off employees on a preferential basis.

**Article 42** Employers shall not be allowed to terminate labor contracts pursuant to Articles 40 and 41 of this Law under any of the following circumstances on the part of their employees:

- (1) Where an employee who engages in any work that may result in occupational diseases is not given proper occupational health check before leaving for work, or is regarded as one suspected patient of certain occupational disease who shall be under period of diagnosis or medical observation;
- (2) Where an employee suffers from an occupational disease or work-related injury and is confirmed to have lost or partially lost capacity to work;
- (3) Where an employee is undergoing the required period of medical treatment for an illness or injury;
- (4) Where a female employee is pregnant, in confinement or nursing;
- (5) Where an employee has been working for the Employer for a period of fifteen (15) and the remaining term before his/her statutory retirement is less than five (5) years;
- (6) Other circumstances stipulated by laws and administrative regulations.

**Article 43** An Employer shall notify the trade union in advance the reason\’s for any unilateral termination of a labor contract. The trade union shall have the right to give opinion if it considers the Employer’s decision is improper and require for correction by the Employer of its default by violation of any laws, administrative regulations or the provisions of the labor contract. The Employer shall consider the trade union’s opinion and notify the trade union in writing of any solutions in regard thereto.

**Article 44** A labor contract shall be terminated under occurrence of any of the following circumstances:

- (1) the labor contract has expired or any condition for termination of the same has occurred;

(2) the employee has started to enjoy basic retirement pension in accordance with law;

(3) the employee died or is declared by the people's court in jurisdiction of his/her death or disappearance;

(4) the Employer has ceased its business or been dissolved;

(5) the Employer is announced bankruptcy, subject to deregistration or required to shut down in accordance with law;

(6) any other circumstances stipulated by laws and administrative regulations.

**Article 45** Where a labor contract expires or any condition for termination of the same has occurred, subject to the occurrence of any circumstances under Article 42 hereof, such labor contract shall be extended before termination until elimination of such circumstance\

**Article 46** In the event of any circumstances set forth below, the Employer shall provide economic compensation to the employee in accordance with the statutory standards provided by the State Council:

(1) where the employee terminates the labor contract under Sub-clauses (2), (3) Article 38 hereof;

(2) where the Employer terminates the labor contract under Article 40 hereof;

(3) where the Employer terminates the labor contract under Sub-clause (1), Article 41 hereof;

(4) where, subject to any motion made by the Employer to an employee for termination of their labor contract, a unanimous agreement thereon is reached after consultation;

(5) where a fixed-term labor contract shall be terminated under Sub-clause (1), Article 44 hereof, except for any circumstance under which the Employer refuses to reduce any terms and conditions agreed hereunder causing disagreement of the employee in renewal of the labor contract;

(6) where the labor contract shall be terminated under Sub-clauses (4) and (5), Article 44 hereof.

**Article 47** An Employer shall continue to fulfill the labor contract upon request of the employee if the Employer rescinded or terminated the labor contract in violation of this Law; otherwise the Employer shall indemnify the employee in an amount equal to twice of the economic compensation provided in Article 46 hereof if the employee does not request for continuous fulfillment of the labor contract, or if the labor contract is no longer suitable for further performance. The labor contract shall be terminated after the Employer pays off the indemnification.

**Article 48** The State will take measures to gradually realize the nationwide flow of the basic pension insurance individual accounts together with employees.

**Article 49** The Employer shall go through procedures to transfer any personal archives and the social insurance of the employee within seven (7) days after the date of rescission or termination of their labor contract, and shall provide a notice of such rescission or termination for the employee who needs to handle unemployment registration.

The employee shall go through procedures for handing over work subject to the mutual agreement with the Employer and in compliance with the principle of faithfulness and honesty. Payment of any economic compensation payable by the Employer to the employee shall be made at the time such employee has finished to hand over his/her work.

The Employer shall be responsible for maintaining the labor contract rescinded or terminated for at least six (6) months in case of possible inspection.

## **Chapter V Special Requirements**

### **Section 1 Collective Contracts**

**Article 50** An Employer shall sign, after equal negotiation, the collective contract with its staffs, as one party, with respect to such matters as labor compensation, working hours, rest and leave, labor safety and health, insurance and benefit. The draft of the collective contract shall be discussed and adopted at the staffs' representatives' congress or by all of its staffs.

The collective contract shall be signed by its trade union representing the staffs, as one party, and the employer; if no trade union of the Employer has yet been formed, the representatives elected by the employees shall sign the collective contract with the Employer.

**Article 51** Collective contracts shall be submitted to the relevant labor administrative authority after execution thereof and shall come into effect thereafter if the labor administrative authority fails to propose any opposition within fifteen (15) days after its receipt of such collective contracts.

Signed collective contracts shall be binding upon both Employers and employees as parties thereto.

**Article 52** Within the area at or under the country level, trade union organizations of industries such as construction, mining, food and beverage services can sign industrial collective contracts with the representatives of Employers. Industrial collective contracts shall be binding upon Employers and employees in all the local industries concerned.

**Article 53** Any Employer and its staffs, as one party, may sign a special collective contract with respect to such matters as labor safety and health and salaries adjustment system.

**Article 54** The standards, such as labor conditions and labor compensation, of any collective contract shall be more favorable than the minimum standards stipulated by the local people's government; the standards, such as labor conditions and labor compensation, of any labor contract shall be not less favorable than the standards stipulated by the collective contract.

**Article 55** If an Employer breaches the collective contract and infringes upon the interests of its staffs and employees, its trade union may require the Employer to take legal responsibilities; if a dispute arises in performance of the collective contract, and can not be settled through consultation, its trade union may apply for arbitration or institute legal proceedings legally.

## **Section 2 Labor Service Contracts**

**Article 56** A labor service agency dispatching needed laborers shall be established in accordance with the provisions of the PRC Company Law with its registered capital no less than Renminbi Five Hundred Thousand Yuan (RMB500,000).

**Article 57** Labor service agencies shall refer to the Employers as defined in Article 2 of this Law, who shall perform all employer obligations to employees. The labor contracts between the labor service agencies and their dispatched employees shall provide, in addition to matters as set forth in Article 17 hereof, the relevant labor accepting entities for which the dispatched employees shall serve, as well as the service term, position and any other information in regard to their employment.

**Article 58** To dispatch employees, the labor service agency shall sign a labor dispatch agreement with the labor accepting entity, which shall explicitly provides the number of personnel needed, their positions, service term, allowance and compensation, the amount and payment method of their social insurance premium and liabilities for breach of contract.

A labor accepting entity shall determine the dispatch period under the actual needs of each position with the labor service agency, and shall not divide any consecutive employee-using period to sign several short-term labor dispatch agreements.

**Article 59** Any labor service agency shall be obligated to inform any dispatched employee of the contents of the labor dispatch agreement.

No labor service agency shall be allowed to deduct and retain any labor compensation paid to dispatched employees by any labor accepting entity under the labor dispatch agreements.

**Article 60** Where a labor service agency provides any laborer to work as employee outside the area where it is located, the work conditions and compensation such employee entitled to shall be provided in accordance with the local standards applied in the area where such agency is located.

**Article 61** The entities accepting to use employees by labor dispatch shall perform the following obligations:

(i) to carry out the labor standards of the State, and provide corresponding labor conditions and protection;

(ii) to inform the dispatched employees of the work requirements and labor compensation;

(iii) to make payments for overtime work and hand out performance bonus, and provide the benefits in relation to each position;

(iv) to carry out training of the on-the-job dispatched employees necessary to their respective position; and

(v) if an employee is employed on a consecutive basis, the normal salaries adjustment system shall be applied.

**Article 62** Dispatched employees taking the same or similar positions shall be entitled to equal compensations. If no reference to any other employee at a similar or the same position can be taken, the Employer shall determine the compensation payable to such dispatched employees in accordance with the labor market salaries provided by the local people's government at municipal level of the area where the Employer is located.

**Article 63** Dispatched employees shall be entitled to participate in or organize to establish trade union within the entities of either the labor service agencies or their Employer in order to protect their legal rights and interests.

**Article 64** A dispatched employee can legally terminate his/her labor contract with his/her labor service agency in accordance with the provision of Article 38 of this Law.

In the event of occurrence of any circumstance provided in Article 39 hereof on the part of a dispatched employee, the labor accepting entity can return such person to the original labor service agency; the labor service agency can then terminate the labor contract with such employee in accordance with the relevant provisions hereof.

**Article 65** Labor dispatch shall be generally implemented for provisional, auxiliary or substitutive positions. Positions of specific needs shall be determined by the relevant labor administrative authorities under the State Council.

**Article 66** No labor accepting entity shall be allowed to establish any labor dispatch company in its own name in order for dispatching employees to the entity or any subsidiaries of its own.

### **Section 3 Other Forms of Employment**

**Article 67** The non-full time employment shall mean that the compensation of an employee is mainly calculated by his/her working hours, with his/her average working time incurred for providing services to the same Employer is no more than four (4) hours a day and an accumulative period of twenty four (24) hours a week to the maximum.

**Article 68** A non-full time employee can be hired through oral agreement.

A non-full time employee can enter into labor contract with one or more Employers; provided that no labor contract such employee signs later shall affect or impair any rights and obligations provided in the labor contract he/she has previously signed.

**Article 69** No probationary period shall be applied for non-full time employment.

**Article 70** Either party to a non-full time employment can notify the other party at any time for termination of the employment without economic compensation.

**Article 71** The time period for settlement of any labor compensation payable to a non-full time employee must not be longer than fifteen (15) days.

**Article 72** Where an individual contractor is approved to recruit laborers, the individual or organization issuing a tender-invitation shall apply the provisions applicable to the Employers hereunder. The labor accepting entity shall apply the provisions of Section 2, Chapter V hereunder in regard to labor accepting entities. In case of any losses and/or damages caused to such employees by recruitment in violation of any provisions of this Law, the tender-inviting individual or organization and the labor accepting entity shall then undertake joint and severe liabilities in connection thereto.

## **Chapter VI Supervision and Inspection**

**Article 73** The labor administrative authority under the State Council shall be responsible for the supervision and administration over implementation of the system of labor contracts.

Labor administrative authorities under the local people's governments above the county level shall be responsible for the supervision and inspection over the implementation of the system of labor contracts.

During their supervision and inspection over the implementation of the system of labor contracts, labor administrative authorities under the local people's governments above the county level shall pay attention to opinions from the trade unions, Employers and authorities in charge of the relevant industries.

**Article 74** Labor administrative authorities under the people's governments above the county level shall conduct supervision and inspection over the implementation of the system of labor contracts as follows in accordance with law:

- (1) formulation by Employers of their rules and regulations;
- (2) recruitment of employees and handling employment formalities by Employers;
- (3) provision and submission of labor contracts by Employers;

- (4) conclusion and termination of labor contracts by and between Employers and their employees;
- (5) compliance by the labor service agencies and the labor force accepting entities of relevant provisions;
- (6) compliance by Employers of regulations governing working hours, rest days and vacation;
- (7) payment by Employers of labor remuneration as stipulated in labor contracts and implementation of the standards for minimum salaries;
- (8) participation of Employers in various kinds of social insurance and payment of social insurance premium;
- (9) other matters requiring labor protection and inspection as stipulated by laws and regulations.

**Article 75** In carrying out supervision and inspection, labor administrative authorities under the local people's governments above the county level shall have the right to examine and inspect materials in connection with labor contracts or collective contracts, and to conduct onsite inspection of work premises. Employers and their employees shall report the situation and provide materials in a truthful manner.

The personnel of labor administrative authorities shall present their identification certificates during performance of their supervision and inspection duties in order to enforce the law in accordance with law and in a civilized way.

**Article 76** Authorities of local people's governments above the county level in charge of supervision and management of construction, public health and safe production shall, within their respective scope of authority, conduct supervision and inspection over Employers with regard to their compliance with the system of labor contracts.

**Article 77** Trade unions shall protect the lawful rights and interests of employees according to law, supervise the Employers in their compliance with the system of labor contracts or collective contracts. Where the Employers violate any laws and regulations on labor protection and the provisions of any labor contracts or collective contracts, the trade unions shall be entitled to raise their opinion or request for reviewing and adjudication, and shall provide support and assistance in accordance with law to employees who apply for arbitration or file lawsuits.

**Article 78** All organizations or individuals shall have the right to report any violation of this Law. Labor administrative authorities under the people's governments at county level shall verify and handle the case, in a timely manner, and give rewards to those who make contributions by reporting the violation.

## **Chapter VII Legal Liabilities**

**Article 79** If any provision of the rules and policies of an Employer is not in compliance with the laws, regulations and provisions, the provision shall be ineffective, and the labor administrative authority shall impose a warning upon it, and order it to make corrections; the employer shall be responsible for indemnifying any of its employees against any damage to him/her arising there from.

**Article 80** If an Employer recruits and hires any employees without handling proper employment formalities, the relevant labor administrative authority shall then order the Employer to correct such default and impose a fine payment upon the Employer in an amount equal to RMB500 per employee.

**Article 81** If a labor contract provided by an Employer does not set forth the prerequisite provisions required for incorporation therein under this Law, the relevant labor administrative authority shall order correction of such default by the Employer and the Employer shall be liable for compensation of the loss thus have caused to its employees.

**Article 82** If an Employer fails to conclude the written labor contract with any of its employees up to one month from the date of following the employment formalities, it shall pay the employee the salary which is two times the compensation corresponding to the labor service rendered by the employee.

**Article 83** If an Employer reaches an agreement with its employees regarding the probation period in violation with this Law, such period as agreed upon shall be null and void. The relevant labor administrative authority shall then order the Employer to correct such default in accordance with this Law. If any probation period as agreed upon in violation of the law has been implemented, the Employer shall pay compensation to the employees concerned for such probation period based on their monthly salaries.

**Article 84** If an Employer requires from an employee any guarantee, money and/or property or detains his/her identity card or other belongs in violation of this Law, the relevant labor administrative authority shall order the Employer to return the same to the employee and impose a fine payment upon the Employer in an amount ranging from RMB500 up to RMB2,000 per employee. The Employer shall be liable for compensation of any losses caused to the employee/s due to such misconduct.

An Employer shall be punished under the previous provision for detaining the personal archives or other belongings of an employee who has terminated the labor contract in accordance with law.

**Article 85** If an Employer commits any of the following acts, the relevant labor administrative authority shall order payment by such Employer of the labor remuneration, overtime fees or economic compensation for termination or rescission of the labor contract within the time limit as required. If the labor remuneration is made at any rate lower than the local minimum salaries, payment of the insufficient portion shall be made. If no payment of such insufficient portion is made within the time limit as required, the authority shall order the

Employer to pay the employee concerned an additional compensation at the rate ranging from 50% up to 100% of the amount due and payable.

(1) An Employer fails to pay the employee concerned any labor remuneration as agreed in the labor contract or under this Law;

(2) An Employer pays the employee concerned salaries at the rate lower than the local minimum salaries;

(3) An Employer fails to pay any overtime fee to the employee;

(4) An Employer fails to pay the employee concerned economic compensation in accordance with this Law when the labor contract is terminated or rescinded.

If an Employer enters into a labor contract with its employees by taking advantage of their difficulties, or by means of fraud or coercion, the relevant labor administrative authority shall impose a fine payment upon the Employer ranging from RMB2,000 up to RMB20,000. The Employer shall be liable for compensation of any losses caused to the employees due to such misconduct.

**Article 86** If an Employer fails to enter into any non-fixed term labor contract in violation of this Law, the Employer shall indemnify its employee by payment of damages equal to twice the economic compensation provided in Article 46 hereof at the time of termination or rescission of the labor contract.

**Article 87** If an Employer commits any of the following acts, which has constituted a crime, it shall be subject to criminal liabilities in accordance with law. Where such act is in violation of any requirements on the public security control, administrative punishment shall then be imposed on such Employer in accordance with. The:

(1) The Employer forces its employees to work by means of violence, coercion or illegal restriction of personal freedom;

(2) The Employer instructs or forces its employees to work under dangerous circumstances in violation of the rules, which jeopardizes personal safety of its employees;

(3) The Employer insults, gives physical punishment to, beats up, conducts illegal searching of or detains any of its employees.

**Article 88** Where an Employer fails to issue any written certificate to an employee certifying the rescission or termination of the labor contract as required under paragraph one of Article 49 hereof, the relevant labor administrative authority shall order the Employer to correct its default and the Employer shall be liable for compensation of any losses thus has caused to the employee.

**Article 89** If an Employer recruits and employs an employee who has not terminated or dissolved the labor contract with his/her former Employer, causing losses thereto, the successive Employer shall be liable for compensation in accordance with law.

**Article 90** An employee shall be liable for compensating his/her Employer for the economic losses caused to the Employer due to his/her termination of the labor contract in violation of this Law or any provisions on confidentiality or prohibition of competition as agreed therein.

**Article 91** If a labor service agency is in violation of this Law, the relevant labor administrative authority shall order for correction of the default within the time limit as required. Where the situation is serious, a fine payment at a rate ranging from RMB1,000 up to RMB5,000 per employee shall be imposed on the agency, together with the punishment of revocation of its business license by the relevant authority in charge of administration of industry and commerce . If the rights and interests of an employee assigned by the labor service agency is impaired, such agency and the labor force accepting entity shall be jointly and severely liable for compensation of the employee.

**Article 92** In the event that an entity engaging in business without a business license is punished in accordance with law, such entity shall be liable for payment of labor remuneration to the employees for their services rendered.

**Article 93** Where any labor administrative authorities or other related authorities in charge and their personnel exercise their authority in violation of the law and thus infringe the lawful rights and interests of any Employers or employees, they shall be liable for compensation in accordance with law. Administrative penalties shall be imposed on officials-in-charge and other personnel who are directly responsible for their misconducts in accordance with law. Where the acts of such officials and/or personnel constitute any crime/s, they shall be subject to criminal liabilities.

### **Chapter VIII Supplementary Provisions**

**Article 94** If there is any other provisions of the State Council applicable to the labor contracts under the appointment system implemented by institutions as provided in Paragraph 2 of Article 2 of this Law, the provisions of the State Council shall apply; the personnel administrative department of the State Council shall be responsible for supervising and administering implementation of its labor contract system.

**Article 95** Matters with respect to any labor relations established by any representative offices of foreign enterprises residing in China with their employees by conclusion, performance, change, termination and rescission of labor contracts within the territory of China shall be handled by reference to this Law.

**Article 96** This Law shall come into effect for implementation from this \_\_\_\_ day of \_\_\_\_\_.