

Labor Dispute Mediation and Arbitration Law of the People's Republic of China

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The Labor Dispute Mediation and Arbitration Law of the People's Republic of China, which was adopted at the 31st meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on December 29, 2007, is hereby promulgated and shall be effective as of May 1, 2008.

《中华人民共和国劳动争议调解仲裁法》已由中华人民共和国第十届全国人民代表大会常务委员会第三十一次会议于2007年12月29日通过，现予公布，自2008年5月1日起施行。

President of the People's Republic of China: Hu Jintao

中华人民共和国主席 胡锦涛

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The Labor Dispute Mediation and Arbitration Law of the
People's Republic of China

中华人民共和国劳动争议调解仲裁法

(Adopted at the 31st meeting of the Standing Committee of the
Tenth National People's Congress of the People's Republic of
China on December 29, 2007)

(2007年12月29日第十届全国人民代表大会常务委员会第三
十一次会议通过)

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Chapter I General Provisions

第一章 总则

Article 1 To impartially and timely settle the labor disputes,
protect the legal rights and interests of the parties, and promote

第一条 【立法目的】为了公正及时解决劳动争议，保
护当事人合法权益，促进劳动关系和谐稳定，制定本法。

the harmonious and stable labor relations, this Law has been formulated.

Article 2 This Law shall apply to the following labor disputes arising between an employer and an employee within the territories of the People's Republic of China:

(1). A dispute arising from the confirmation of a labor relationship;

(2). A dispute arising from the conclusion, performance, modification, rescission or termination of a labor contract;

(3). A dispute arising from the removal or layoff of an employee or the resignation or retirement of an employee;

(4). A dispute arising from the work hours, breaks, vacations, social insurance, benefits, training, or labor safety;

(5). A dispute arising from the labor remunerations, medical expenses for a work-related injury, economic indemnity, compensation, etc.; or

(6). Any other labor dispute as provided for by a law or administrative regulation.

Article 3 A labor dispute shall be settled on the basis of facts and on the principles of legality, fairness, timeliness and emphasis on mediation so as to protect the legal rights and interests of the parties according to law.

第二条 【适用范围】 中华人民共和国境内的用人单位与劳动者发生的下列劳动争议，适用本法：

（一）因确认劳动关系发生的争议；

（二）因订立、履行、变更、解除和终止劳动合同发生的争议；

（三）因除名、辞退和辞职、离职发生的争议；

（四）因工作时间、休息休假、社会保险、福利、培训以及劳动保护发生的争议；

（五）因劳动报酬、工伤医疗费、经济补偿或者赔偿金等发生的争议；

（六）法律、法规规定的其他劳动争议。

第三条 【劳动争议处理的原则】 解决劳动争议，应当根据事实，遵循合法、公正、及时、着重调解的原则，依法保护当事人的合法权益。

Article 4 Where a labor dispute arises, an employee may consult with his or her employer, or request the trade union or a third party to jointly consult with the employer, so as to reach a settlement agreement.

Article 5 Where a labor dispute arises, if a party does not desire a consultation, the parties fail to settle the dispute through consultation, or a party does not execute a reached settlement agreement, any party may apply to a medication organization for mediation; if a party does not desire a medication, the parties fail to settle the dispute through medication, or a party does not execute a reached medication agreement, any party may apply to a labor dispute arbitration commission for arbitration; and a party disagreeing to an arbitral award may bring an action in the people's court except as otherwise provided for by this Law.

Article 6 Where a labor dispute arises, a party shall be responsible for adducing evidence to back up its claims. Where the evidence related to the disputed matter is controlled by an employer, the employer shall provide it; and the employer who fails to provide the evidence shall bear the adverse consequences.

Article 7 Where a labor dispute involves more than ten employees and the employees have a same claim, they may recommend their representatives to participate in the mediation, arbitration, or litigation.

第四条 【劳动争议当事人的协商和解】发生劳动争议，劳动者可以与用人单位协商，也可以请工会或者第三方共同与用人单位协商，达成和解协议。

第五条 【劳动争议处理的基本程序】发生劳动争议，当事人不愿协商、协商不成或者达成和解协议后不履行的，可以向调解组织申请调解；不愿调解、调解不成或者达成调解协议后不履行的，可以向劳动争议仲裁委员会申请仲裁；对仲裁裁决不服的，除本法另有规定的外，可以向人民法院提起诉讼。

第六条 【举证责任】发生劳动争议，当事人对自己提出的主张，有责任提供证据。与争议事项有关的证据属于用人单位掌握管理的，用人单位应当提供；用人单位不提供的，应当承担不利后果。

第七条 【劳动争议处理的代表人制度】发生劳动争议的劳动者一方在十人以上，并有共同请求的，可以推举代表参加调解、仲裁或者诉讼活动。

Article 8 In conjunction with the trade unions and enterprise representatives, the labor administrative authority of the people's government at or above the county level shall establish a tri-party labor mechanism for coordinating the labor relations, and jointly study and address major issues related to labor dispute.

Article 9 Where an employer, in violation of state provisions, delays paying or fails to pay in full the labor remunerations, or delays paying the medical expenses for a work-related injury, economic indemnity, or compensation, an employee may complain about it to the labor administrative authority and the labor administrative authority shall deal with it according to law.

Chapter II Mediation

Article 10 Where a labor dispute arises, a party may apply to any of the following mediation organizations for mediation:

- (1). Labor dispute mediation committee of an enterprise;
- (2). Grassroots people's mediation organization legally established; and
- (3). Organization with the labor dispute mediation function established in a township or neighborhood community.

A labor dispute mediation committee of an enterprise shall

第八条 【劳动争议处理的协调劳动关系三方机制】县级以上人民政府劳动行政部门会同工会和企业方面代表建立协调劳动关系三方机制，共同研究解决劳动争议的重大问题。

第九条 【劳动监察】用人单位违反国家规定，拖欠或者未足额支付劳动报酬，或者拖欠工伤医疗费、经济补偿或者赔偿金的，劳动者可以向劳动行政部门投诉，劳动行政部门应当依法处理。

第二章 调解

第十条 【调解组织】发生劳动争议，当事人可以到下列调解组织申请调解：

- （一）企业劳动争议调解委员会；
- （二）依法设立的基层人民调解组织；
- （三）在乡镇、街道设立的具有劳动争议调解职能的组织。

企业劳动争议调解委员会由职工代表和企业代表组成。职工

comprise the employee representatives and enterprise representatives. The employee representatives shall be members of the trade union or persons recommended by all employees, while the enterprise representatives shall be designated by the person in charge of the enterprise. The chairman of a labor dispute mediation committee of an enterprise shall be a member of the trade union or a person recommended by both parties.

Article 11 A mediator of a labor dispute mediation organization shall be an adult citizen who is fair, decent, connected with the people, and enthusiastic for the mediation work and has a certain level of knowledge of law, policy and culture.

Article 12 A party may apply for a labor dispute mediation in writing or verbally. For a verbal application, a mediation organization shall record, on the spot, the basic information on the applicant, disputed matters for which the party applies for mediation, the reasons for application for mediation, and the time of application for mediation.

Article 13 In labor dispute mediation, the statements of facts and reasons by both parties shall be fully heard and the parties shall be guided patiently by a mediator so as to help them reach an agreement.

Article 14 Where an agreement is reached through mediation, a mediation agreement paper shall be made.

代表由工会成员担任或者由全体职工推举产生，企业代表由企业负责人指定。企业劳动争议调解委员会主任由工会成员或者双方推举的人员担任。

第十一条 【担任调解员的条件】劳动争议调解组织的调解员应当由公道正派、联系群众、热心调解工作，并具有一定法律知识、政策水平和文化水平的成年公民担任。

第十二条 【调解申请】当事人申请劳动争议调解可以书面申请，也可以口头申请。口头申请的，调解组织应当当场记录申请人基本情况、申请调解的争议事项、理由和时间。

第十三条 【调解方式】调解劳动争议，应当充分听取双方当事人对事实和理由的陈述，耐心疏导，帮助其达成协议。

第十四条 【调解协议】经调解达成协议的，应当制作调解协议书。

A mediation agreement paper shall be signed or sealed by both parties, and take effect after the mediator signs it and the seal of the mediation organization is affixed thereon, which shall be binding upon both parties and executed by the parties.

调解协议书由双方当事人签名或者盖章，经调解员签名并加盖调解组织印章后生效，对双方当事人具有约束力，当事人应当履行。

Where a mediation agreement is not reached within 15 days after a labor dispute mediation organization receives a mediation application, a party may apply for arbitration according to law.

自劳动争议调解组织收到调解申请之日起十五日内未达成调解协议的，当事人可以依法申请仲裁。

Article 15 Where after a mediation agreement is reached, one party fails to execute the mediation agreement within the period of time prescribed in the agreement, the other party may apply for arbitration according to law.

第十五条 【申请仲裁】达成调解协议后，一方当事人在协议约定期限内不履行调解协议的，另一方当事人可以依法申请仲裁。

Article 16 Where a mediation agreement is reached on a matter of delayed payment of labor remunerations, medical expenses for a work-related injury, economic indemnity, or compensation, and the employer fails to execute it within the period of time prescribed in the agreement, the employee may apply to the people's court for a payment order based on the mediation agreement and the people's court shall issue a payment order according to law.

第十六条 【支付令】因支付拖欠劳动报酬、工伤医疗费、经济补偿或者赔偿金事项达成调解协议，用人单位在协议约定期限内不履行的，劳动者可以持调解协议书依法向人民法院申请支付令。人民法院应当依法发出支付令。

Chapter III Arbitration

第三章 仲裁

Section I Common Provisions

第一节 一般规定

Article 17 The labor dispute arbitration commissions shall be established on the principles of full planning, reasonable layout, and adaptation to the practical needs. The people's government of a province or autonomous region may decide to establish the arbitration commissions in cities and counties; the people's government of municipality directly under the Central Government may decide to establish them in districts and counties. One or more labor dispute arbitration commissions may also be established in a municipality directly under the Central Government or a city with districts. The labor dispute arbitration commissions shall not be established level by level according to administrative divisions.

Article 18 The labor administrative authority of the State Council shall make arbitration rules according to the relevant provisions of this Law. The labor administrative authorities of provinces, autonomous regions and municipalities directly under the Central Government shall guide the labor dispute arbitration work within their respective administrative regions.

Article 19 A labor dispute arbitration commission shall comprise the representatives of the labor administrative authority, representatives of trade unions and representatives of enterprises. The members of a labor dispute arbitration commission shall be in odd numbers.

A labor dispute arbitration commission shall perform the following functions:

第十七条 【劳动争议仲裁委员会设立】劳动争议仲裁委员会按照统筹规划、合理布局和适应实际需要的原则设立。省、自治区人民政府可以决定在市、县设立；直辖市人民政府可以决定在区、县设立。直辖市、设区的市也可以设立一个或者若干个劳动争议仲裁委员会。劳动争议仲裁委员会不按行政区划层层设立。

第十八条 【制定仲裁规则及指导劳动争议仲裁工作】国务院劳动行政部门依照本法有关规定制定仲裁规则。省、自治区、直辖市人民政府劳动行政部门对本行政区域的劳动争议仲裁工作进行指导。

第十九条 【劳动争议仲裁委员会组成及职责】劳动争议仲裁委员会由劳动行政部门代表、工会代表和企业方面代表组成。劳动争议仲裁委员会组成人员应当是单数。

劳动争议仲裁委员会依法履行下列职责：

- | | |
|---|----------------------|
| (1). Retaining and dismissing full-time or part-time arbitrators; | (一) 聘任、解聘专职或者兼职仲裁员; |
| (2). Accepting and hearing labor dispute cases; | (二) 受理劳动争议案件; |
| (3). Discussing major or difficult labor dispute cases; and | (三) 讨论重大或者疑难的劳动争议案件; |
| (4). Overseeing arbitration activities. | (四) 对仲裁活动进行监督。 |

A labor dispute arbitration commission shall set up a general office to be responsible for the daily work of the labor dispute arbitration commission.

劳动争议仲裁委员会下设办事机构，负责办理劳动争议仲裁委员会的日常工作。

Article 20 A labor dispute arbitration commission shall maintain a panel of arbitrators.

第二十条 【仲裁员资格条件】劳动争议仲裁委员会应当设仲裁员名册。

An arbitrator shall be fair and decent and satisfy any of the following requirements:

仲裁员应当公道正派并符合下列条件之一：

- | | |
|---|-----------------------------------|
| (1). Once serving as a judge; | (一) 曾任审判员的; |
| (2). Engaging in legal research or teaching work with a professional title at or above the medium level; | (二) 从事法律研究、教学工作并具有中级以上职称的; |
| (3). Having knowledge of law and engaging in human resource management or trade union or other professional work for five years; or | (三) 具有法律知识、从事人力资源管理或者工会等专业工作满五年的; |
| (4). Having practiced law as a lawyer for three years. | (四) 律师执业满三年的。 |

Article 21 A labor dispute arbitration commission shall be responsible for the labor disputes occurring within its jurisdiction.

A labor dispute arbitration commission at the place of performance of a labor contract or at the place of residence of an employer shall have jurisdiction of a labor dispute. Where the two parties respectively apply to the labor dispute arbitration commissions at the place of performance of a labor contract and at the place of residence of an employer for arbitration, the labor dispute arbitration commission at the place of performance of a labor contract shall have jurisdiction.

Article 22 An employee and an employer, between which a labor dispute arises, shall be the two parties in a labor dispute arbitration case.

Where a dispute arises between a labor dispatch entity or employer and an employee, the labor dispatch entity and employer shall be the joint party.

Article 23 A third party that has an interest relationship with the results of handling of a labor dispute case may apply for participating in the arbitration activities or be notified by the labor dispute arbitration commission to participate in the arbitration activities.

第二十一条 【仲裁管辖】劳动争议仲裁委员会负责管辖本区域内发生的劳动争议。

劳动争议由劳动合同履行地或者用人单位所在地的劳动争议仲裁委员会管辖。双方当事人分别向劳动合同履行地和用人单位所在地的劳动争议仲裁委员会申请仲裁的，由劳动合同履行地的劳动争议仲裁委员会管辖。

第二十二条 【仲裁案件当事人】发生劳动争议的劳动者和用人单位为劳动争议仲裁案件的双方当事人。

劳务派遣单位或者用工单位与劳动者发生劳动争议的，劳务派遣单位和用工单位为共同当事人。

第二十三条 【仲裁案件第三人】与劳动争议案件的处理结果有利害关系的第三人，可以申请参加仲裁活动或者由劳动争议仲裁委员会通知其参加仲裁活动。

Article 24 A party may appoint an attorney to participate in the arbitration activities. A party who appoints an attorney to participate in the arbitration activities shall submit to the labor dispute arbitration commission a Power of Attorney signed or sealed by the party, and the Power of Attorney shall expressly state the authorized matters and powers.

Article 25 The legal representative of an employee who has lost all or part of his or her capacity of conduct in civil law shall participate in the arbitration activities on behalf of the employee; and where such an employee does not have a legal representative, the labor dispute arbitration commission shall designate a representative for the employee. For a deceased employee, the close relative or attorney of the deceased employee shall participate in the arbitration activities.

Article 26 The labor dispute arbitration shall be conducted openly, except one that shall not be conducted openly as agreed on by the parties or involves a national secret, trade secret or personal privacy.

Section II Application and Acceptance

Article 27 The time limitation period for application for arbitration of a labor dispute shall be one year. The time limitation period for arbitration shall be counted as of the date when a party knows or should know that its right has been violated.

第二十四条 【委托代理】当事人可以委托代理人参加仲裁活动。委托他人参加仲裁活动，应当向劳动争议仲裁委员会提交有委托人签名或者盖章的委托书，委托书应当载明委托事项和权限。

第二十五条 【法定代理和指定代理】丧失或者部分丧失民事行为能力的劳动者，由其法定代理人代为参加仲裁活动；无法定代理人的，由劳动争议仲裁委员会为其指定代理人。劳动者死亡的，由其近亲属或者代理人参加仲裁活动。

第二十六条 【仲裁公开】劳动争议仲裁公开进行，但当事人协议不公开进行或者涉及国家秘密、商业秘密和个人隐私的除外。

第二节 申请和受理

第二十七条 【仲裁时效】劳动争议申请仲裁的时效期间为一年。仲裁时效期间从当事人知道或者应当知道其权利被侵害之日起计算。

The time limitation period prescribed in the preceding paragraph shall be discontinued upon one party's claiming a right against the other party or requesting a right's remedy to the relevant authority or the other party's agreeing to perform an obligation. The time limitation period shall be recounted from the time of the interruption.

Where for a force majeure or any other proper reason a party cannot apply for arbitration within the time limitation period for arbitration prescribed in the first paragraph hereof, the time limitation period for arbitration shall be suspended. The time limitation period for arbitration shall continue being counted at the date when the reason for suspension of the time limitation period disappears.

Where a dispute arises from the delayed payment of labor remunerations during the period of existence of a labor relationship, an employee's application for arbitration shall not be subject to the time limitation period for arbitration prescribed in the first paragraph hereof; but if a labor relationship is terminated, an employee shall apply for arbitration within one year as of the date of termination of the labor relationship.

Article 28 To apply for arbitration, an applicant shall submit a written application for arbitration and copies thereof as per the number of respondents.

前款规定的仲裁时效，因当事人一方向对方当事人主张权利，或者向有关部门请求权利救济，或者对方当事人同意履行义务而中断。从中断时起，仲裁时效期间重新计算。

因不可抗力或者其他正当理由，当事人不能在本条第一款规定的仲裁时效期间申请仲裁的，仲裁时效中止。从中止时效的原因消除之日起，仲裁时效期间继续计算。

劳动关系存续期间因拖欠劳动报酬发生争议的，劳动者申请仲裁不受本条第一款规定的仲裁时效期间的限制；但是，劳动关系终止的，应当自劳动关系终止之日起一年内提出。

第二十八条 【仲裁申请】 申请人申请仲裁应当提交书面仲裁申请，并按照被申请人人数提交副本。

The written application for arbitration shall expressly state the following matters:

(1). Name, gender, age, occupation, work unit and residence of an employee, name and residence of an employer, and names and titles of the legal representative or principal of an employer;

(2). Arbitral claims and supporting facts and reasons; and

(3). Evidence, sources of evidence, and names and residences of witnesses.

Where a party has difficulty in writing an application for arbitration, the party may apply for arbitration verbally, and a labor dispute arbitration commission shall record it in writing and notify the other party.

Article 29 Within five days as of receiving an application for arbitration, the labor dispute arbitration commission, if considering that the requirements for acceptance are satisfied, shall accept the application and notify the applicant; or if considering that the requirements for acceptance are not satisfied, shall notify in writing the applicant of the rejection of the application and explain the reasons. Where a labor dispute arbitration commission decides not to accept an application for arbitration or fails to make a decision before the prescribed time limit, an applicant may bring an action in the people's court for matters on the labor dispute.

仲裁申请书应当载明下列事项:

(一) 劳动者的姓名、性别、年龄、职业、工作单位和住所, 用人单位的名称、住所和法定代表人或者主要负责人的姓名、职务;

(二) 仲裁请求和所根据的事实、理由;

(三) 证据和证据来源、证人姓名和住所。

书写仲裁申请确有困难的, 可以口头申请, 由劳动争议仲裁委员会记入笔录, 并告知对方当事人。

第二十九条 【仲裁申请的受理和不予受理】劳动争议仲裁委员会收到仲裁申请之日起五日内, 认为符合受理条件的, 应当受理, 并通知申请人; 认为不符合受理条件的, 应当书面通知申请人不予受理, 并说明理由。对劳动争议仲裁委员会不予受理或者逾期未作出决定的, 申请人可以就该劳动争议事项向人民法院提起诉讼。

Article 30 Within five days after accepting an application for arbitration, the labor dispute arbitration commission shall serve a copy of the written application for arbitration on a respondent.

Within ten days after receiving a copy of the written application for arbitration, a respondent shall submit a statement of defense to the labor dispute arbitration commission. Within five days after receiving the statement of defense, the labor dispute arbitration commission shall submit a copy of the statement of defense to the applicant. The failure of a respondent to submit a statement of defense shall not affect the conduct of arbitration procedures.

Section III Tribunal Hearing and Awarding

Article 31 The arbitral tribunal system shall be adopted for a labor dispute arbitration commission to decide labor dispute cases. An arbitral tribunal shall comprise three arbitrators, including a chief arbitrator. A simple labor dispute case may be arbitrated by a sole arbitrator.

Article 32 A labor dispute arbitration commission shall notify in writing the parties of information on the composition of an arbitral tribunal within five days after the date of accepting an application for arbitration.

第三十条 【仲裁申请送达与仲裁答辩书的提供】劳动争议仲裁委员会受理仲裁申请后，应当在五日内将仲裁申请书副本送达被申请人。

被申请人收到仲裁申请书副本后，应当在十日内向劳动争议仲裁委员会提交答辩书。劳动争议仲裁委员会收到答辩书后，应当在五日内将答辩书副本送达申请人。被申请人未提交答辩书的，不影响仲裁程序的进行。

第三节 开庭和裁决

第三十一条 【仲裁庭组成】劳动争议仲裁委员会裁决劳动争议案件实行仲裁庭制。仲裁庭由三名仲裁员组成，设首席仲裁员。简单劳动争议案件可以由一名仲裁员独任仲裁。

第三十二条 【书面通知仲裁庭组成情况】劳动争议仲裁委员会应当在受理仲裁申请之日起五日内将仲裁庭的组成情况书面通知当事人。

Article 33 Under any of the following circumstances, an arbitrator shall recuse himself or herself, and a party shall have the right to apply for recusal verbally or in writing:

- (1). Being a party in the case or a close relative of a party or attorney thereof;
- (2). Having an interest relationship with the case;
- (3). Having any other relationship with a party or attorney thereof in the case, which may affect the rendering of a fair award; or
- (4). Meeting in private a party or attorney thereof, or accepting a treat or gift from a party or attorney thereof.

A labor dispute arbitration commission shall timely make a decision on an application for recusal and notify verbally or in writing the party of its decision.

Article 34 Where an arbitrator is under the circumstance of Article 33(4) of this Law, asks for or accepts bribes, practices favoritism for personal gain or renders an award by perverting the law, such an arbitrator shall bear the legal liability according to law. A labor dispute arbitration commission shall dismiss such an arbitrator.

Article 35 An arbitral tribunal shall notify both parties of the date and place of hearing at least five days before a hearing.

第三十三条 【仲裁员回避】仲裁员有下列情形之一的，应当回避，当事人也有权以口头或者书面方式提出回避申请：

- （一）是本案当事人或者当事人、代理人的近亲属的；
- （二）与本案有利害关系的；
- （三）与本案当事人、代理人有其他关系，可能影响公正裁决的；
- （四）私自会见当事人、代理人，或者接受当事人、代理人的请客送礼的。

劳动争议仲裁委员会对回避申请应当及时作出决定，并以口头或者书面方式通知当事人。

第三十四条 【仲裁员的法律责任】仲裁员有本法第三十三条第四项规定情形，或者有索贿受贿、徇私舞弊、枉法裁决行为的，应当依法承担法律责任。劳动争议仲裁委员会应当将其解聘。

第三十五条 【开庭通知与延期开庭】仲裁庭应当在开庭五日前，将开庭日期、地点书面通知双方当事人。当事人

For proper reasons, a party may request the postponement of a hearing at least three days before a hearing. Whether a hearing shall be postponed shall be decided by a labor dispute arbitration commission.

Article 36 Where after receiving a written notice an applicant refuses to participate in a hearing without proper reasons or withdraw in the midst of a hearing without the permit of the arbitral tribunal, the applicant shall be deemed as having dropped the application for arbitration.

Where after receiving a written notice a respondent refuses to participate in a hearing without proper reasons or withdraw in the midst of a hearing without the permit of the arbitral tribunal, an award may be rendered in the absence of the respondent.

Article 37 Where an arbitral tribunal considers that an authentication is necessary for a specialized matter, the arbitral tribunal may delegate the authentication of the specialized matter to an authentication agency as agreed on by the parties; or where the parties do not have or cannot reach an agreement on it, the authentication shall be conducted by an authentication agency designated by the arbitral tribunal.

At the request of a party or as required by an arbitral tribunal, an authentication agency shall send the authenticators to participate in the hearing. With the permit of the arbitral tribunal, the parties may question the authenticators.

有正当理由的，可以在开庭三日前请求延期开庭。是否延期，由劳动争议仲裁委员会决定。

第三十六条 【视为撤回仲裁裁决和缺席裁决】申请人收到书面通知，无正当理由拒不到庭或者未经仲裁庭同意中途退庭的，可以视为撤回仲裁申请。

被申请人收到书面通知，无正当理由拒不到庭或者未经仲裁庭同意中途退庭的，可以缺席裁决。

第三十七条 【鉴定】仲裁庭对专门性问题认为需要鉴定的，可以交由当事人约定的鉴定机构鉴定；当事人没有约定或者无法达成约定的，由仲裁庭指定的鉴定机构鉴定。

根据当事人的请求或者仲裁庭的要求，鉴定机构应当派鉴定人参加开庭。当事人经仲裁庭许可，可以向鉴定人提问。

Article 38 The parties shall have the right to cross-examination and debate in the process of arbitration. At the end of cross-examination or debate, the chief arbitrator or sole arbitrator shall hear the final statements of both parties.

Article 39 The arbitral tribunal shall invoke evidence that is adduced by the parties and has been found to be true as the basis for determining facts.

Where an employee cannot adduce any evidence that is related to an arbitral claim but controlled by an employer, an arbitral tribunal may require the employer to provide it within a specified period of time. An employer that fails to provide it within the specified period of time shall bear the adverse consequences.

Article 40 All arbitral tribunals shall maintain written records of hearings. A party or any other arbitration participant, considering that there is any omission or mistake in the record of its statements, shall have the right to apply for correction. If the record is not corrected, such an application for correction shall be recorded.

The written record shall be signed or sealed by the arbitrators, recorder, parties and other arbitration participants.

第三十八条 【质证、辩论、陈述最后意见】当事人在仲裁过程中有权进行质证和辩论。质证和辩论终结时，首席仲裁员或者独任仲裁员应当征询当事人的最后意见。

第三十九条 【证据及举证责任】当事人提供的证据经查证属实的，仲裁庭应当将其作为认定事实的根据。

劳动者无法提供由用人单位掌握管理的与仲裁请求有关的证据，仲裁庭可以要求用人单位在指定期限内提供。用人单位在指定期限内不提供的，应当承担不利后果。

第四十条 【仲裁庭审笔录】仲裁庭应当将开庭情况记入笔录。当事人和其他仲裁参加人认为对自己陈述的记录有遗漏或者差错的，有权申请补正。如果不予补正，应当记录该申请。

笔录由仲裁员、记录人员、当事人和其他仲裁参加人签名或者盖章。

Article 41 After a party applies for arbitration of a labor dispute, the two parties may reach a settlement on their own. Where a settlement agreement is reached, the application for arbitration may be dropped.

Article 42 Before rendering an award, an arbitral tribunal shall conduct mediation first.

Where an agreement is reached through mediation, an arbitral tribunal shall make a mediation record.

A mediation record shall expressly state the arbitral claims and results of agreement by the parties. A mediation record shall be signed by the arbitrators, on which the seal of the labor dispute arbitration commission shall be affixed, and served on both parties. A mediation record shall take effect after being signed by both parties.

Where mediation fails or one party regrets before a mediation record is served, an arbitral tribunal shall timely render an award.

Article 43 The arbitral tribunal shall render an award for each labor dispute case within 45 days as of the date when an application for arbitration is accepted by a labor dispute arbitration commission. Where a case is complicated and requires an extension of the above prescribed period of time,

第四十一条 【当事人自行和解】当事人申请劳动争议仲裁后，可以自行和解。达成和解协议的，可以撤回仲裁申请。

第四十二条 【仲裁庭调解】仲裁庭在作出裁决前，应当先行调解。

调解达成协议的，仲裁庭应当制作调解书。

调解书应当写明仲裁请求和当事人协议的结果。调解书由仲裁员签名，加盖劳动争议仲裁委员会印章，送达双方当事人。调解书经双方当事人签收后，发生法律效力。

调解不成或者调解书送达前，一方当事人反悔的，仲裁庭应当及时作出裁决。

第四十三条 【仲裁审理时限及先行裁决】仲裁庭裁决劳动争议案件，应当自劳动争议仲裁委员会受理仲裁申请之日起四十五日内结束。案情复杂需要延期的，经劳动争议仲裁委员会主任批准，可以延期并书面通知当事人，但是延长

with the approval of the chairman of a labor dispute arbitration commission, extension may be made and shall be notified in writing to the parties, but the period of extension shall not exceed 15 days. Where an arbitral tribunal fails to render an award before the above or extended period of time, a party may bring an action in the people's court for the labor dispute matters.

期限不得超过十五日。逾期未作出仲裁裁决的，当事人可以就该劳动争议事项向人民法院提起诉讼。

When rendering an award in a labor dispute case, the arbitral tribunal may first render an award on the part of facts that have been ascertained.

仲裁庭裁决劳动争议案件时，其中一部分事实已经清楚，可以就该部分先行裁决。

Article 44 For a case of recovery of the labor remunerations, medical expenses for a work-related injury, economic indemnity, or compensation, upon an application of a party, an arbitral tribunal may render an award of prior execution, and transfer the case to the people's court for execution.

第四十四条 【先予执行】仲裁庭对追索劳动报酬、工伤医疗费、经济补偿或者赔偿金的案件，根据当事人的申请，可以裁决先予执行，移送人民法院执行。

The following requirements shall be satisfied for an arbitral tribunal to render an award of prior execution:

仲裁庭裁决先予执行的，应当符合下列条件：

- (1). The relationships of rights and obligations between the parties are clear; and
- (2) Without prior execution, the living of an applicant will be seriously affected.

- （一）当事人之间权利义务关系明确；
- （二）不先予执行将严重影响申请人的生活。

An employee applying for prior execution may not provide a security.

Article 45 An arbitral award shall be rendered according to the majority opinions of the arbitrators, and the dissenting opinion of a minority arbitrator shall be recorded in writing. Where an arbitral tribunal fails to form the opinions of a majority, the arbitral award shall be rendered according to the opinion of the chief arbitrator.

Article 46 An arbitral award shall expressly state the arbitral claims, disputed facts, reasons for rendering an award, result of rendering an award and date of rendering an award. An arbitral award shall be signed by the arbitrators, on which the seal of the labor dispute arbitration commission shall be affixed. An arbitrator with a dissenting opinion on the award may or may not sign the award.

Article 47 Except as otherwise provided for by this Law, an arbitral award on any of the following labor disputes shall be final, and an arbitral award shall take effect at the date of rendering of the award:

(1). A dispute over the recovery of labor remunerations, medical expenses for a work-related injury, economic indemnity, or compensation, in an amount not exceeding the 12-month local monthly minimum wage level; and

劳动者申请先予执行的，可以不提供担保。

第四十五条 【作出裁决】裁决应当按照多数仲裁员的意见作出，少数仲裁员的不同意见应当记入笔录。仲裁庭不能形成多数意见时，裁决应当按照首席仲裁员的意见作出。

第四十六条 【裁决书】裁决书应当载明仲裁请求、争议事实、裁决理由、裁决结果和裁决日期。裁决书由仲裁员签名，加盖劳动争议仲裁委员会印章。对裁决持不同意见的仲裁员，可以签名，也可以不签名。

第四十七条 【终局裁决】下列劳动争议，除本法另有规定的外，仲裁裁决为终局裁决，裁决书自作出之日起发生法律效力：

（一）追索劳动报酬、工伤医疗费、经济补偿或者赔偿金，不超过当地月最低工资标准十二个月金额的争议；

(2). A dispute over the working hours, breaks and vacations, social insurance, etc., arising from the execution of state labor standards.

Article 48 An employee, who disagrees to an arbitral award as provided for in Article 47 of this Law, may bring an action in the people's court within 15 days after receiving an arbitral award.

Article 49 An employer, who has evidence to prove that an arbitral award as provided for in Article 47 of this Law is rendered under any of the following circumstances, may apply for revocation of the arbitral award to the intermediate people's court at the place of residence of the labor dispute arbitration commission within 30 days after receiving the arbitral award:

(1). An arbitral award is wrong in the application of a law or administrative regulation;

(2). The labor dispute arbitration commission has no jurisdiction;

(3). The legal procedure is violated;

(4). The evidence used to render the arbitral award is forged;

(5). The other party has concealed evidence that is enough to affect the rendering of a fair award; and

(二) 因执行国家的劳动标准在工作时间、休息休假、社会保险等方面发生的争议。

第四十八条 【劳动者提起诉讼】劳动者对本法第四十七条规定的仲裁裁决不服的，可以自收到仲裁裁决书之日起十五日内向人民法院提起诉讼。

第四十九条 【用人单位申请撤销终局裁决】用人单位有证据证明本法第四十七条规定的仲裁裁决有下列情形之一的，可以自收到仲裁裁决书之日起三十日内向劳动争议仲裁委员会所在地的中级人民法院申请撤销裁决：

(一) 适用法律、法规确有错误的；

(二) 劳动争议仲裁委员会无管辖权的；

(三) 违反法定程序的；

(四) 裁决所根据的证据是伪造的；

(五) 对方当事人隐瞒了足以影响公正裁决的证据的；

(6). An arbitrator in arbitrating the case asks for or accepts bribes, practices favoritism for personal gain or renders an award by perverting law.

（六）仲裁员在仲裁该案时有索贿受贿、徇私舞弊、枉法裁决行为的。

After a formed collegiate bench has examined and verified that an arbitral award is under any of the circumstances in the preceding paragraph, the people's court shall rule to revoke the arbitral award.

人民法院经组成合议庭审查核实裁决有前款规定情形之一的，应当裁定撤销。

Where the people's court rules to revoke an arbitral award, a party may bring an action in the people's court for the labor dispute matters within 15 days after receiving a ruling paper.

仲裁裁决被人民法院裁定撤销的，当事人可以自收到裁定书之日起十五日内就该劳动争议事项向人民法院提起诉讼。

Article 50 A party, who disagrees to an arbitral award in any labor dispute case other than one as provided for in Article 47 of this Law, may bring an action in the people's court within 15 days after receiving an arbitral award; and where an action is not brought upon the expiration of the above prescribed period of time, an arbitral award shall take effect.

第五十条 【不服仲裁裁决提起诉讼】当事人对本法第四十七条规定以外的其他劳动争议案件的仲裁裁决不服的，可以自收到仲裁裁决书之日起十五日内向人民法院提起诉讼；期满不起诉的，裁决书发生法律效力。

Article 51 A party shall execute an effective mediation record or arbitral award according to the prescribed period of time. Where one party fails to execute the same before the prescribed period of time, the other party may apply for execution to the people's court according to the relevant provisions of [the Civil Procedure Law](#). The people's court accepting the application shall execute the same according to law.

第五十一条 【生效调解书、裁决书的执行】当事人对发生法律效力的调解书、裁决书，应当依照规定的期限履行。一方当事人逾期不履行的，另一方当事人可以依照[民事诉讼法](#)的有关规定向人民法院申请执行。受理申请的人民法院应当依法执行。

Article 52 This Law shall apply to a labor dispute arising between a public institution that adopts an employment system and a staffer thereof, except as otherwise provided for by a law or administrative regulation or the provisions of the State Council.

Article 53 No any fees shall be charged for the labor dispute arbitration. The funds of a labor dispute arbitration commission shall be secured by the finance authority.

Article 54 This Law shall be effective as of May 1, 2008.

第五十二条 【事业单位劳动争议的处理】 事业单位实行聘用制的工作人员与本单位发生劳动争议的，依照本法执行；法律、行政法规或者国务院另有规定的，依照其规定。

第五十三条 【仲裁不收费】 劳动争议仲裁不收费。劳动争议仲裁委员会的经费由财政予以保障。

第五十四条 【本法生效时间】 本法自2008年5月1日起施行。