Labor Contract Law of the People's Republic of China (2012 Amendment)

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中华人民共和国劳动合同法

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Chapter I General Provisions

第一章　总则

Article 1 This Law is formulated for the purposes of improving the labor contractual system, clarifying the rights and obligations of both parties of labor contracts, protecting the legitimate rights and interests of employees, and establishing and developing a harmonious and stable employment relationship.

第一条　【立法宗旨】为了完善劳动合同制度，明确劳动合同双方当事人的权利和义务，保护劳动者的合法权益，构建和发展和谐稳定的劳动关系，制定本法。

Article 2 This Law shall apply to the establishment of employment relationship between employees and enterprises, individual economic organizations, private non-enterprise entities, or other organizations (hereafter referred to as

第二条　【适用范围】中华人民共和国境内的企业、个体经济组织、民办非企业单位等组织（以下称用人单位）与

employers), and to the formation, fulfillment, change, dissolution, or termination of labor contracts.

劳动者建立劳动关系，订立、履行、变更、解除或者终止劳动合同，适用本法。

The state organs, public institutions, social organizations, and their employees among them there is an employment relationship shall observe this Law in the formation, fulfillment, change, dissolution, or termination of their labor contracts.

国家机关、事业单位、社会团体和与其建立劳动关系的劳动者，订立、履行、变更、解除或者终止劳动合同，依照本法执行。

Article 3 The principle of lawfulness, fairness, equality, free will, negotiation for agreement and good faith shall be observed in the formation of a labor contract.

第三条　【基本原则】订立劳动合同，应当遵循合法、公平、平等自愿、协商一致、诚实信用的原则。

A labor contract concluded according to the law shall have a binding force. The employer and the employee shall perform the obligations as stipulated in the labor contract.

依法订立的劳动合同具有约束力，用人单位与劳动者应当履行劳动合同约定的义务。

Article 4 An employer shall establish a sound system of employment rules so as to ensure that its employees enjoy the labor rights and perform the employment obligations.

第四条　【规章制度】用人单位应当依法建立和完善劳动规章制度，保障劳动者享有劳动权利、履行劳动义务。

Where an employer formulates, amends or decides rules or important events concerning the remuneration, working time, break, vacation, work safety and sanitation, insurance and welfare, training of employees, labor discipline, or management of production quota, which are directly related to the interests of the employees, such rules or important events

用人单位在制定、修改或者决定有关劳动报酬、工作时间、休息休假、劳动安全卫生、保险福利、职工培训、劳动纪律以及劳动定额管理等直接涉及劳动者切身利益的规章制度或者重大事项时，应当经职工代表大会或者全体职工讨论，提出方案和意见，与工会或者职工代表平等协商确定。

shall be discussed at the meeting of employees' representatives or the general meeting of all employees, and the employer shall also put forward proposals and opinions to the employees and negotiate with the labor union or the employees' representatives on a equal basis to reach agreements on these rules or events.

During the process of execution of a rule or decision about an important event, if the labor union or the employees deems it improper, they may require the employer to amend or improve it through negotiations.

在规章制度和重大事项决定实施过程中，工会或者职工认为不适当的，有权向用人单位提出，通过协商予以修改完善。

The employer shall make an announcement of the rules and important events which are directly related to the interests of the employees or inform the employees of these rules or events.

用人单位应当将直接涉及劳动者切身利益的规章制度和重大事项决定公示，或者告知劳动者。

Article 5 The labor administrative department of the people's government at the county level or above shall, together with the labor union and the representatives of the enterprise, establish a sound three-party mechanism to coordinate employment relationship and shall jointly seek to solve the major problems related to employment relations.

第五条　【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，建立健全协调劳动关系三方机制，共同研究解决有关劳动关系的重大问题。

Article 6 The labor union shall assist and direct the employees when they conclude with the employers and fulfill labor contracts and establish a collective negotiation

第六条　【集体协商机制】工会应当帮助、指导劳动者与用人单位依法订立和履行劳动合同，并与用人单位建立集体协商机制，维护劳动者的合法权益。

mechanism with the employers so as to maintain the lawful rights and interests of the employees.

Chapter II Formation of Labor Contracts

第二章　劳动合同的订立

Article 7 An employer establishes an employment relationship with an employee from the date when the employer puts the employee to work. The employer shall prepare a roster of employees for inspection.

第七条　【劳动关系的建立】用人单位自用工之日起即与劳动者建立劳动关系。用人单位应当建立职工名册备查。

Article 8 When an employer hires an employee, it shall faithfully inform him of the work contents, conditions and location, occupational harm, work safety state, remuneration, and other information which the employee requires to be informed. The employer has the right to know the basic information of the employer which is directly related to the labor contract and the employee shall faithfully provide such information.

第八条　【用人单位的告知义务和劳动者的说明义务】用人单位招用劳动者时，应当如实告知劳动者工作内容、工作条件、工作地点、职业危害、安全生产状况、劳动报酬，以及劳动者要求了解的其他情况；用人单位有权了解劳动者与劳动合同直接相关的基本情况，劳动者应当如实说明。

Article 9 When an employer hires an employee, it shall not detain his identity card or other certificates, nor require him to provide a guaranty or collect money or property from him under any other excuse.

第九条　【用人单位不得扣押劳动者证件和要求提供担保】用人单位招用劳动者，不得扣押劳动者的居民身份证和其他证件，不得要求劳动者提供担保或者以其他名义向劳动者收取财物。

Article 10 A written labor contract shall be concluded in the establishment of an employment relationship.

第十条　【订立书面劳动合同】建立劳动关系，应当订立书面劳动合同。

Where an employment relationship has already been established with an employee but no written labor contract has been entered simultaneously, a written labor contract shall be concluded within one month from the date when the employee begins to work.

已建立劳动关系，未同时订立书面劳动合同的，应当自用工之日起一个月内订立书面劳动合同。

Where an employer and an employee conclude a labor contract prior to the employment, the employment relationship is established from the date when the employee begins to work.

用人单位与劳动者在用工前订立劳动合同的，劳动关系自用工之日起建立。

Article 11 Where an employer fails to conclude a written labor contract when the employer put his employee to work, if the remuneration stipulated between the employer and the employee is not clear, the remuneration to the new employee shall conform to the provisions of the collective contract. If there is no collective contract or if there is no such stipulation in the collective contract, the principle of equal pay for equal work shall be observed.

第十一条　【未订立书面劳动合同时劳动报酬不明确的解决】用人单位未在用工的同时订立书面劳动合同，与劳动者约定的劳动报酬不明确的，新招用的劳动者的劳动报酬按照集体合同规定的标准执行；没有集体合同或者集体合同未规定的，实行同工同酬。

Article 12 Labor contracts are classified into fix-term labor contracts, labor contracts without a fixed term, and the labor contracts that set the completion of specific tasks as the term to end contracts.

第十二条　【劳动合同的种类】劳动合同分为固定期限劳动合同、无固定期限劳动合同和以完成一定工作任务为期限的劳动合同。

Article 13 A fixed-term labor contract refers to a labor contract in which the employer and the employee stipulate the time of termination of the contract.

第十三条　【固定期限劳动合同】固定期限劳动合同，是指用人单位与劳动者约定合同终止时间的劳动合同。

The employer and the employee may conclude a fixed-term labor contract upon negotiation.

用人单位与劳动者协商一致，可以订立固定期限劳动合同。

Article 14 A labor contract without a fixed term refers to a labor contract in which the employer and the employee stipulate no certain time to end the contract.

第十四条　【无固定期限劳动合同】无固定期限劳动合同，是指用人单位与劳动者约定无确定终止时间的劳动合同。

An employer and an employee may, through negotiations, conclude a labor contract without a fixed term. Under any of the following circumstances, if the employee proposes or agrees to renew or conclude a labor contract, a labor contract without a fixed term shall be concluded unless the employee proposes to conclude a fixed-term labor contract:

用人单位与劳动者协商一致，可以订立无固定期限劳动合同。有下列情形之一，劳动者提出或者同意续订、订立劳动合同的，除劳动者提出订立固定期限劳动合同外，应当订立无固定期限劳动合同：

1. The employee has already worked for the employer for 10 full years consecutively;

（一）劳动者在该用人单位连续工作满十年的；

2. When the employer initially adopts the labor contract system or when a state-owned enterprise re-concludes the labor contract due to restructuring, the employee has already worked for this employer for 10 full years consecutively and he attains to the age which is less than 10 years up to the statutory retirement age; or

（二）用人单位初次实行劳动合同制度或者国有企业改制重新订立劳动合同时，劳动者在该用人单位连续工作满十年且距法定退休年龄不足十年的；

3. The labor contract is to be renewed after two fixed-term labor contracts have been concluded consecutively, and the employee is not under any of the circumstances as mentioned

（三）连续订立二次固定期限劳动合同，且劳动者没有本法第三十九条和第四十条第一项、第二项规定的情形，续订劳动合同的。

in Article 39 and Paragraphs (1) and (2) of Article 40 of this Law.

If the employer fails to sign a written labor contract with an employee after the lapse of one full year from the date when the employee begins to work, it shall be deemed that the employer and the employee have concluded a labor contract without a fixed term.

用人单位自用工之日起满一年不与劳动者订立书面劳动合同的，视为用人单位与劳动者已订立无固定期限劳动合同。

Article 15 A labor contract that sets the completion of a specific task as the term to end the contract refers to the labor contract in which the employer and the employee stipulate that the time period of the contract shall be based on the completion of a specific task.

第十五条　【以完成一定工作任务为期限的劳动合同】以完成一定工作任务为期限的劳动合同，是指用人单位与劳动者约定以某项工作的完成为合同期限的劳动合同。

An employer and an employee may, upon negotiation, conclude a labor contract that sets the completion of a specific task to end the contract.

用人单位与劳动者协商一致，可以订立以完成一定工作任务为期限的劳动合同。

Article 16 A labor contract shall be agreed with by the employer and the employee and shall come into effect after the employer and the employee affix their signatures or seals to the labor contract.

第十六条　【劳动合同的生效】劳动合同由用人单位与劳动者协商一致，并经用人单位与劳动者在劳动合同文本上签字或者盖章生效。

The employer and the employee shall each hold one copy of the labor contract.

劳动合同文本由用人单位和劳动者各执一份。

Article 17 A labor contract shall include the following clauses:

第十七条　【劳动合同的内容】劳动合同应当具备以下条款：

1. The employer's name, domicile, legal representative, or major person-in-charge;

（一）用人单位的名称、住所和法定代表人或者主要负责人；

2. The employee's name, domicile, identity card number, or other valid identity certificate number;

（二）劳动者的姓名、住址和居民身份证或者其他有效身份证件号码；

3. The time limit for the labor contract;

（三）劳动合同期限；

4. The job descriptions and work locations;

（四）工作内容和工作地点；

5. The work hours, break time, and vacations;

（五）工作时间和休息休假；

6. The remunerations;

（六）劳动报酬；

7. The social security;

（七）社会保险；

8. The employment protection, work conditions, and protection against and prevention of occupational harm; and

（八）劳动保护、劳动条件和职业危害防护；

9. Other items that shall be included in the labor contract under any laws or regulations.

（九）法律、法规规定应当纳入劳动合同的其他事项。

Apart from the essential clauses as prescribed in the preceding paragraph, the employer and the employee may, in the labor contract, stipulate the probation time period, training,

劳动合同除前款规定的必备条款外，用人单位与劳动者可以

confidentiality, supplementary insurances, welfares and benefits, and other items.

约定试用期、培训、保守秘密、补充保险和福利待遇等其他事项。

Article 18 If remunerations, work conditions, and other criterions are not expressly stipulated in a labor contract and a dispute is triggered, the employer and the employee may re-negotiate the contract. If no agreement is reached through negotiations, the provisions of the collective contract shall be followed. If there is no collective contract or if there is no such stipulation about the remuneration, the principle of equal pay for equal work shall be observed. If there is no collective contract or if there is no such stipulation about the work conditions and other criterions in the collective contract, the relevant provisions of the state shall be followed.

第十八条　【劳动合同对劳动报酬和劳动条件约定不明确的解决】劳动合同对劳动报酬和劳动条件等标准约定不明确，引发争议的，用人单位与劳动者可以重新协商；协商不成的，适用集体合同规定；没有集体合同或者集体合同未规定劳动报酬的，实行同工同酬；没有集体合同或者集体合同未规定劳动条件等标准的，适用国家有关规定。

Article 19 If the term of a labor contract is not less than 3 months but less than 1 year, the probation period shall not exceed one month. If the term of a labor contract is not less than one year but less than 3 years, the probation period shall not exceed 2 months. For a labor contract with a fixed term of 3 years or more or without a fixed term, the probation term shall not exceed 6 months.

第十九条　【试用期】劳动合同期限三个月以上不满一年的，试用期不得超过一个月；劳动合同期限一年以上不满三年的，试用期不得超过二个月；三年以上固定期限和无固定期限的劳动合同，试用期不得超过六个月。

An employer can only impose one probation time period on an employee.

同一用人单位与同一劳动者只能约定一次试用期。

For a labor contract that sets the completion of a specific task

以完成一定工作任务为期限的劳动合同或者劳动合同期限不满三个月的，不得约定试用期。

as the term to end the contract or with a fixed term of less than 3 months, no probation period may be stipulated.

The probation period shall be included in the term of a labor contract. If a labor contract only provides the term of probation, the probation shall be null and void and the term of the probation shall be treated as the term of the labor contract.

试用期包含在劳动合同期限内。劳动合同仅约定试用期的，试用期不成立，该期限为劳动合同期限。

Article 20 The wage of an employee during the probation period shall not be lower than the minimum wage for the same position of the same employer or lower than 80% of the wage stipulated in the labor contract, nor may it be lower than the minimum wage of the locality where the employer is located.

第二十条　【试用期工资】劳动者在试用期的工资不得低于本单位相同岗位最低档工资或者劳动合同约定工资的百分之八十，并不得低于用人单位所在地的最低工资标准。

Article 21 During the probation period, except when the employee is under any of the circumstances as described in Article 39 and Article 40 (i) and (ii), the employer shall not dissolve the labor contract. If an employer dissolves a labor contract during the probation period, it shall make an explanation.

第二十一条　【试用期内解除劳动合同】在试用期中，除劳动者有本法第三十九条和第四十条第一项、第二项规定的情形外，用人单位不得解除劳动合同。用人单位在试用期解除劳动合同的，应当向劳动者说明理由。

Article 22 Where an employer pays special training expenses for the special technical training of his employees, the employer may enter an agreement with his employees to specify their service time period.

第二十二条　【服务期】用人单位为劳动者提供专项培训费用，对其进行专业技术培训的，可以与该劳动者订立协议，约定服务期。

If an employee violates the stipulation regarding the service time period, he shall pay the employer a penalty for breach of

劳动者违反服务期约定的，应当按照约定向用人单位支付违约金。违约金的数额不得超过用人单位提供的培训费用。用

contract. The amount of penalty for breach of contract shall not exceed the training fees provided by the employer. The penalty for breach of a contract in which the employer requires the employee to pay shall not exceed the training expenses attributable to the service time period that is unfulfilled.

人单位要求劳动者支付的违约金不得超过服务期尚未履行部分所应分摊的培训费用。

The service time period stipulated by the employer and the employee does not affect the promotion of the remuneration of the employee during the probation period under the normal wage adjustment mechanism.

用人单位与劳动者约定服务期的，不影响按照正常的工资调整机制提高劳动者在服务期期间的劳动报酬。

Article 23 An employer may enter an agreement with his employees in the labor contract to require his employees to keep the business secrets and intellectual property of the employer confidential.

第二十三条　【保密义务和竞业限制】用人单位与劳动者可以在劳动合同中约定保守用人单位的商业秘密和与知识产权相关的保密事项。

For an employee who has the obligation of keeping confidential, the employer and the employee may stipulate non-competition clauses in the labor contract or in the confidentiality agreement and come to an agreement that, when the labor contract is dissolved or terminated, the employee shall be given economic compensations within the non-competition period. If the employee violates the stipulation of non-competition, it shall pay the employer a penalty for breaching the contract.

对负有保密义务的劳动者，用人单位可以在劳动合同或者保密协议中与劳动者约定竞业限制条款，并约定在解除或者终止劳动合同后，在竞业限制期限内按月给予劳动者经济补偿。劳动者违反竞业限制约定的，应当按照约定向用人单位支付违约金。

Article 24 The persons who should be subject to non-competition shall be limited to the senior managers, senior

第二十四条　【竞业限制的范围和期限】竞业限制的人员限于用人单位的高级管理人员、高级技术人员和其他负有

technicians, and the other employees, who have the obligation to keep secrets, of employers. The scope, geographical range and time limit for non-competition shall be stipulated by the employer and the employee. The stipulation on non-competition shall not be contrary to any laws or regulations.

保密义务的人员。竞业限制的范围、地域、期限由用人单位与劳动者约定，竞业限制的约定不得违反法律、法规的规定。

After the dissolution or termination of a labor contract, the non-competition period for any of the persons as mentioned in the preceding paragraph to work in any other employer producing or engaging in products of the same category or engaging in business of the same category as this employer shall not exceed two years.

在解除或者终止劳动合同后，前款规定的人员到与本单位生产或者经营同类产品、从事同类业务的有竞争关系的其他用人单位，或者自己开业生产或者经营同类产品、从事同类业务的竞业限制期限，不得超过二年。

Article 25 Except for the circumstances as prescribed in Articles 22 and 23 of this Law, the employer shall not stipulate with the employee that the employee shall pay the penalty for breaching contract.

第二十五条　【违约金】除本法第二十二条和第二十三条规定的情形外，用人单位不得与劳动者约定由劳动者承担违约金。

Article 26 The following labor contracts are invalid or are partially invalid if:

第二十六条　【劳动合同的无效】下列劳动合同无效或者部分无效：

1. a party employs the means of deception or coercion or takes advantage of the other party's difficulties to force the other party to conclude a labor contract or to make an amendment to a labor contract, which is contrary to his will;

（一）以欺诈、胁迫的手段或者乘人之危，使对方在违背真实意思的情况下订立或者变更劳动合同的；

2. an employer disclaims its legal liability or denies the employee's rights; or

（二）用人单位免除自己的法定责任、排除劳动者权利的；

3. the mandatory provisions of laws or administrative regulations are violated.

（三）违反法律、行政法规强制性规定的。

If there is any dispute over the invalidating or partially invalidating of a labor contract, the dispute shall be settled by the labor dispute arbitration institution or by the people's court.

对劳动合同的无效或者部分无效有争议的，由劳动争议仲裁机构或者人民法院确认。

Article 27 The invalidity of any part of a labor contract does not affect the validity of the other parts of the contract. The other parts shall still remain valid.

第二十七条　【劳动合同部分无效】劳动合同部分无效，不影响其他部分效力的，其他部分仍然有效。

Article 28 If a labor contract has been confirmed to be invalid, the employer shall pay remunerations to his employees who have labored for the employer. The amount of remunerations shall be determined by analogy to the remuneration to the employees taking up the same or similar positions of the employer .

第二十八条　【劳动合同无效后劳动报酬的支付】劳动合同被确认无效，劳动者已付出劳动的，用人单位应当向劳动者支付劳动报酬。劳动报酬的数额，参照本单位相同或者相近岗位劳动者的劳动报酬确定。

Chapter III Fulfillment and Change of Labor Contracts

第三章　劳动合同的履行和变更

Article 29 An employer and an employee shall, according to the stipulations of the labor contract, fully perform their respective obligations.

第二十九条　【劳动合同的履行】用人单位与劳动者应当按照劳动合同的约定，全面履行各自的义务。

Article 30 An employer shall, under the contractual stipulations and the provisions of the state, timely pay its employees the full amount of remunerations.

第三十条　【劳动报酬】用人单位应当按照劳动合同约定和国家规定，向劳动者及时足额支付劳动报酬。

Where an employer defers paying or fails to pay the full amount of remunerations, the employees may apply to the local people's court for an order of payment. The people's court shall issue an order of payment according to the law.

用人单位拖欠或者未足额支付劳动报酬的，劳动者可以依法向当地人民法院申请支付令，人民法院应当依法发出支付令。

Article 31 An employer shall strictly execute the criterion on production quota, it shall not force any of its employees to work overtime or make any of his employees to do so in a disguised form. If an employer arranges overtime work, it shall pay its employee for the overtime work according to the relevant provisions of the state.

第三十一条　【加班】用人单位应当严格执行劳动定额标准，不得强迫或者变相强迫劳动者加班。用人单位安排加班的，应当按照国家有关规定向劳动者支付加班费。

Article 32 If an employee refuses to perform the dangerous operations ordered by the manager of his employer who violates the safety regulations or forces the employee to risk his life, the employee shall not be deemed to have violated the labor contract.

第三十二条　【劳动者拒绝违章指挥、强令冒险作业】劳动者拒绝用人单位管理人员违章指挥、强令冒险作业的，不视为违反劳动合同。

An employee may criticize, expose to the authorities, or charge against the employer if the work conditions may endanger his life and health.

劳动者对危害生命安全和身体健康的劳动条件，有权对用人单位提出批评、检举和控告。

Article 33 An employer's change of its name, legal representative, key person-in-charge, or investor shall not affect the fulfillment of the labor contracts.

第三十三条　【用人单位名称、法定代表人等的变更】用人单位变更名称、法定代表人、主要负责人或者投资人等事项，不影响劳动合同的履行。

Article 34 In case of merger or split the original labor contracts of the employer still remain valid. Such labor contracts shall be performed by the new employer who succeeds the rights and obligations of the aforesaid employer.

第三十四条　【用人单位合并或者分立】用人单位发生合并或者分立等情况，原劳动合同继续有效，劳动合同由承继其权利和义务的用人单位继续履行。

Article 35 An employer and an employee may modify the contents stipulated in the labor contract if they so agree upon negotiations. The modifications to the labor contract shall be made in writing.

第三十五条　【劳动合同的变更】用人单位与劳动者协商一致，可以变更劳动合同约定的内容。变更劳动合同，应当采用书面形式。

The employer and the employee shall each hold one copy of the modified labor contract.

变更后的劳动合同文本由用人单位和劳动者各执一份。

Chapter IV Dissolution and Termination of Labor Contracts

第四章　劳动合同的解除和终止

Article 36 An employer and an employee may dissolve the labor contract if they so agree upon negotiations.

第三十六条　【协商解除劳动合同】用人单位与劳动者协商一致，可以解除劳动合同。

Article 37 An employee may dissolve the labor contract if he notifies in writing the employer 30 days in advance. During the probation period, an employee may dissolve the labor contract if he notifies the employer 3 days in advance.

第三十七条　【劳动者提前通知解除劳动合同】劳动者提前三十日以书面形式通知用人单位，可以解除劳动合同。劳动者在试用期内提前三日通知用人单位，可以解除劳动合同。

Article 38 Where an employer is under any of the following circumstances, its employees may dissolve the labor contract:

第三十八条　【劳动者单方解除劳动合同】用人单位有下列情形之一的，劳动者可以解除劳动合同：

1. It fails to provide labor protection or work conditions as stipulated in the labor contract;

（一）未按照劳动合同约定提供劳动保护或者劳动条件的；

2. It fails to timely pay the full amount of remunerations;

（二）未及时足额支付劳动报酬的；

3. It fails to pay social security premiums for the employees;

（三）未依法为劳动者缴纳社会保险费的；

4. The rules and procedures set up by the employer are contrary to any law or regulation and impair the rights and interests of the employees;

（四）用人单位的规章制度违反法律、法规的规定，损害劳动者权益的；

5. The labor contract is invalidated due to the circumstance as mentioned in Article 26 (1) of this Law; or

（五）因本法第二十六条第一款规定的情形致使劳动合同无效的；

6. Any other circumstances prescribed by other laws or administrative regulations that authorize employees to dissolve labor contracts.

（六）法律、行政法规规定劳动者可以解除劳动合同的其他情形。

If an employer forces any employee to work by the means of violence, threat, or illegally restraining personal freedom, or an employer violates the safety regulations to order or forces any employee to perform dangerous operations that endanger the employee's personal life, the employee may immediately dissolve the labor contract without notifying the employer in advance.

用人单位以暴力、威胁或者非法限制人身自由的手段强迫劳动者劳动的，或者用人单位违章指挥、强令冒险作业危及劳动者人身安全的，劳动者可以立即解除劳动合同，不需事先告知用人单位。

Article 39 Where an employee is under any of the following circumstances, his employer may dissolve the labor contract:

第三十九条　【用人单位单方解除劳动合同（过失性辞退）】劳动者有下列情形之一的，用人单位可以解除劳动合同：

1. It is proved that the employee does not meet the recruitment conditions during the probation period;

（一）在试用期间被证明不符合录用条件的；

2. The employee seriously violates the rules and procedures set up by the employer;

（二）严重违反用人单位的规章制度的；

3. The employee causes any severe damage to the employer because he seriously neglects his duties or seeks private benefits;

（三）严重失职，营私舞弊，给用人单位造成重大损害的；

4. The employee simultaneously enters an employment relationship with other employers and thus seriously affects his completion of the tasks of the employer, or the employee refuses to make the ratification after his employer points out the problem;

（四）劳动者同时与其他用人单位建立劳动关系，对完成本单位的工作任务造成严重影响，或者经用人单位提出，拒不改正的；

5. The labor contract is invalidated due to the circumstance as mentioned in Item (1), paragraph 1, Article 26 of this Law; or

（五）因本法第二十六条第一款第一项规定的情形致使劳动合同无效的；

6. The employee is under investigation for criminal liabilities according to law.

（六）被依法追究刑事责任的。

Article 40 Under any of the following circumstances, the employer may dissolve the labor contract if it notifies the employee in writing 30 days in advance or after it pays the employee an extra month's wages:

第四十条　【无过失性辞退】有下列情形之一的，用人单位提前三十日以书面形式通知劳动者本人或者额外支付劳动者一个月工资后，可以解除劳动合同：

1. The employee is sick or is injured for a non-work-related reason and cannot resume his original position after the expiration of the prescribed time period for medical treatment,

（一）劳动者患病或者非因工负伤，在规定的医疗期满后不能从事原工作，也不能从事由用人单位另行安排的工作的；

nor can he assume any other position arranged by the employer;

2. The employee is incompetent to his position or is still so after training or changing his position; or

（二）劳动者不能胜任工作，经过培训或者调整工作岗位，仍不能胜任工作的；

3. The objective situation, on which the conclusion of the labor contract is based, has changed considerably, the labor contract is unable to be performed and no agreement on changing the contents of the labor contract is reached after negotiations between the employer and the employee.

（三）劳动合同订立时所依据的客观情况发生重大变化，致使劳动合同无法履行，经用人单位与劳动者协商，未能就变更劳动合同内容达成协议的。

Article 41 Under any of the following circumstances, if it is necessary to lay off 20 or more employees, or if it is necessary to lay off less than 20 employees but the layoff accounts for 10% of the total number of the employees, the employer shall, 30 days in advance, make an explanation to the labor union or to all its employees. After it has solicited the opinions from the labor union or of the employees, it may lay off the number of employees upon reporting the employee reduction plan to the labor administrative department:

第四十一条　【经济性裁员】有下列情形之一，需要裁减人员二十人以上或者裁减不足二十人但占企业职工总数百分之十以上的，用人单位提前三十日向工会或者全体职工说明情况，听取工会或者职工的意见后，裁减人员方案经向劳动行政部门报告，可以裁减人员：

1. It is under revitalization according to the Enterprise Bankruptcy Law;

（一）依照企业破产法规定进行重整的；

2. It encounters serious difficulties in production and business operation;

（二）生产经营发生严重困难的；

3. The enterprise changes products, makes important technological renovation, or adjusts the methods of its business

（三）企业转产、重大技术革新或者经营方式调整，经变更劳动合同后，仍需裁减人员的；

operation, and it is still necessary to lay off the number of employees after changing the labor contract; or

4. The objective economic situation, on which the labor contract is based, has changed considerably and the employer is unable to perform the labor contract.

（四）其他因劳动合同订立时所依据的客观经济情况发生重大变化，致使劳动合同无法履行的。

The following employees shall be given a priority to be kept when the employer cuts down the number of employees:

裁减人员时，应当优先留用下列人员：

1. Those who have concluded a fixed-term labor contract with a long time period

（一）与本单位订立较长期限的固定期限劳动合同的；

2. Those who have concluded a labor contract without fixed term; and

（二）与本单位订立无固定期限劳动合同的；

3. Those whose family has no other employee and has the aged or minors to support.

（三）家庭无其他就业人员，有需要扶养的老人或者未成年人的。

If the employer intends to hire new employees within 6 months after it cuts down the number of employees according to the first paragraph of this Article, it shall notify the employees cut down and shall, in the equal conditions, give a priority to the employees cut down.

用人单位依照本条第一款规定裁减人员，在六个月内重新招用人员的，应当通知被裁减的人员，并在同等条件下优先招用被裁减的人员。

Article 42 An employer shall not dissolve the labor contract under Articles 40 and 41 of this Law if any of its employee:

第四十二条　【用人单位不得解除劳动合同的情形】劳动者有下列情形之一的，用人单位不得依照本法第四十条、第四十一条的规定解除劳动合同：

1. is engaging in operations exposing him to occupational disease hazards and has not undergone an occupational health check-up before he leaves his position, or is suspected of having an occupational disease and is under diagnosis or medical observation;

（一）从事接触职业病危害作业的劳动者未进行离岗前职业健康检查，或者疑似职业病病人在诊断或者医学观察期间的；

2. has been confirmed as having lost or partially lost his capacity to work due to an occupational disease or a work-related injury during his employment with the employer ;

（二）在本单位患职业病或者因工负伤并被确认丧失或者部分丧失劳动能力的；

3. has contracted an illness or sustained a non-work-related injury and the proscribed time period of medical treatment has not expired;

（三）患病或者非因工负伤，在规定的医疗期内的；

4. is a female who is in her pregnancy, confinement, or nursing period;

（四）女职工在孕期、产期、哺乳期的；

5. has been working for the employer continuously for not less than 15 years and is less than 5 years away from his legal retirement age; or

（五）在本单位连续工作满十五年，且距法定退休年龄不足五年的；

6. finds himself in other circumstances under which an employer shall not dissolve the labor contract as proscribed in laws or administrative regulations

（六）法律、行政法规规定的其他情形。

Article 43 Where an employer unilaterally dissolves a labor contract, it shall notify the labor union of the reasons in advance. If the employer violates any laws, administrative regulation, or stipulations of the labor contract, the labor union has the power to require the employer to make ratification. The

第四十三条　【工会在劳动合同解除中的监督作用】用人单位单方解除劳动合同，应当事先将理由通知工会。用人单位违反法律、行政法规规定或者劳动合同约定的，工会有

employer shall consider the opinions of the labor union and notify the labor union of the relevant result in writing.

权要求用人单位纠正。用人单位应当研究工会的意见，并将处理结果书面通知工会。

Article 44 A labor contract may be terminated under any of the following circumstances:

第四十四条　【劳动合同的终止】有下列情形之一的，劳动合同终止：

1. the term of a labor contract has expired;

（一）劳动合同期满的；

2. the employee has begun to enjoy the basic benefits of his pension;

（二）劳动者开始依法享受基本养老保险待遇的；

3. the employee is deceased, or is declared dead or missing by the people's court;

（三）劳动者死亡，或者被人民法院宣告死亡或者宣告失踪的；

4. the employer is declared bankrupt;

（四）用人单位被依法宣告破产的；

5. the employer's business license is revoked or the employer is ordered to close down its business or to dissolve its business entity, or the employer makes a decision to liquidate its business ahead of the schedule; or

（五）用人单位被吊销营业执照、责令关闭、撤销或者用人单位决定提前解散的；

6. other circumstances proscribed by other laws or administrative regulations.

（六）法律、行政法规规定的其他情形。

Article 45 If a labor contract expires and it is under any of the circumstances as described in Article 42 of this Law, the term of labor contract shall be extended until the disappearance of the relevant circumstance. However, the matters relating to the termination of the labor contract of an employee who has

第四十五条　【劳动合同的逾期终止】劳动合同期满，有本法第四十二条规定情形之一的，劳动合同应当续延至相应的情形消失时终止。但是，本法第四十二条第二项规定丧失或者部分丧失劳动能力劳动者的劳动合同的终止，按照国家有关工伤保险的规定执行。

lost or partially lost his capacity to work as prescribed in Article 42 (ii) of this Law shall be handled according to the pertinent provisions on work-related injury insurance.

Article 46 The employer shall, under any of the following circumstances, pay the employee an economic compensation:

第四十六条　【经济补偿】有下列情形之一的，用人单位应当向劳动者支付经济补偿：

1. The employee dissolves the labor contract in pursuance of Article 38 of this Law;

（一）劳动者依照本法第三十八条规定解除劳动合同的；

2. The employer proposes to dissolve the labor contract, and it reaches an agreement with the employee on the dissolution through negotiations;

（二）用人单位依照本法第三十六条规定向劳动者提出解除劳动合同并与劳动者协商一致解除劳动合同的；

3. The employer dissolves the labor contract according to Article 40 of this Law;

（三）用人单位依照本法第四十条规定解除劳动合同的；

4. The employer dissolves the labor contract according to the first Paragraph of Article 41 of this Law; or

（四）用人单位依照本法第四十一条第一款规定解除劳动合同的；

5.The termination of a fixed-term labor contract according to Article 44 (i) of this Law unless the employee refuses to renew the contract even though the conditions offered by the employer are the same as or better than those stipulated in the current contract;

（五）除用人单位维持或者提高劳动合同约定条件续订劳动合同，劳动者不同意续订的情形外，依照本法第四十四条第一项规定终止固定期限劳动合同的；

6. The labor contract is terminated according to Article 44 (iv) and (v) of this Law; or

（六）依照本法第四十四条第四项、第五项规定终止劳动合同的；

7. Other circumstances as proscribed in other laws and administrative regulations.

（七）法律、行政法规规定的其他情形。

Article 47 An employee shall be given an economic compensation based on the number of years he has worked for the employer and at the rate of one month's wage for each full year he worked. Any period of not less than six months but less than one year shall be counted as one year. The economic compensations payable to an employee for any period of less than six months shall be one-half of his monthly wages.

第四十七条　【经济补偿的计算】经济补偿按劳动者在本单位工作的年限，每满一年支付一个月工资的标准向劳动者支付。六个月以上不满一年的，按一年计算；不满六个月的，向劳动者支付半个月工资的经济补偿。

If the monthly wage of an employee is higher than three times the average monthly wage of employees declared by the people's government at the level of municipality directly under the central government or at the level of a districted city where the employer is located, the rate for the economic compensations to be paid to him shall be three times the average monthly wage of employees and shall be for no more than 12 years of his work.

劳动者月工资高于用人单位所在直辖市、设区的市级人民政府公布的本地区上年度职工月平均工资三倍的，向其支付经济补偿的标准按职工月平均工资三倍的数额支付，向其支付经济补偿的年限最高不超过十二年。

The term of “monthly wage” mentioned in this Article refers to the employee's average monthly wage for the 12 months prior to the dissolution or termination of his labor contract.

本条所称月工资是指劳动者在劳动合同解除或者终止前十二个月的平均工资。

Article 48 If an employer dissolves or terminates a labor contract in violation of this Law but the employee demands the continuous fulfillment of the contract, the employer shall do so. If the employee does not demand the continuous fulfillment

第四十八条　【违法解除或者终止劳动合同的法律后果】用人单位违反本法规定解除或者终止劳动合同，劳动者要求继续履行劳动合同的，用人单位应当继续履行；劳动者

of the contract or if the continuous fulfillment of the labor contract is impossible, the employer shall pay compensation to the employee according to Article 87 of this Law.

不要求继续履行劳动合同或者劳动合同已经不能继续履行的，用人单位应当依照本法第八十七条规定支付赔偿金。

Article 49 The State shall take measures to establish and improve a comprehensive system to ensure that the employees' social security relationship can be transferred from one region to another and can be continued after the transfer.

第四十九条　【社会保险关系跨地区转移接续】国家采取措施，建立健全劳动者社会保险关系跨地区转移接续制度。

Article 50 At the time of dissolution or termination of a labor contract, the employer shall issue a document to prove the dissolution or termination of the labor contract and complete, within 15 days, the procedures for the transfer of the employee's personal file and social security relationship.

第五十条　【劳动合同解除或者终止后双方的义务】用人单位应当在解除或者终止劳动合同时出具解除或者终止劳动合同的证明，并在十五日内为劳动者办理档案和社会保险关系转移手续。

The employee shall complete the procedures for the handover of his work as agreed upon between both parties. If relevant provisions of this Law require the employer to pay an economic compensation, it shall make a payment upon completion of the procedures for the handover of the employee's work.

劳动者应当按照双方约定，办理工作交接。用人单位依照本法有关规定应当向劳动者支付经济补偿的，在办结工作交接时支付。

The employer shall preserve the labor contracts, which have been dissolved or terminated, for not less than two years for reference purposes.

用人单位对已经解除或者终止的劳动合同的文本，至少保存二年备查。

Chapter V Special Provisions

第五章　特别规定

Section 1 Collective Contracts

第一节　集体合同

Article 51 The employees of an enterprise may get together as a party to negotiate with their employer to conclude a collective contract on the matters of remuneration, working hours, breaks, vacations, work safety and hygiene, insurance, benefits, etc. The draft of the collective contract shall be presented to the general assembly of employees or all the employees for discussion and approval.

第五十一条　【集体合同的订立和内容】企业职工一方与用人单位通过平等协商，可以就劳动报酬、工作时间、休息休假、劳动安全卫生、保险福利等事项订立集体合同。集体合同草案应当提交职工代表大会或者全体职工讨论通过。

A collective contract may be concluded by the labor union on behalf of the employees of enterprise with the employer. If the enterprise does not have a labor union yet, the contract may be concluded between the employer and the representatives chosen by the employees under the guidance of the labor union at the next higher level.

集体合同由工会代表企业职工一方与用人单位订立；尚未建立工会的用人单位，由上级工会指导劳动者推举的代表与用人单位订立。

Article 52 The employees of an enterprise as a party may negotiate with the employer to enter specialized collective contracts regarding the issues of the work safety and hygiene, protection of the rights and interests of female employees, the wage adjustment mechanism, etc.

第五十二条　【专项集体合同】企业职工一方与用人单位可以订立劳动安全卫生、女职工权益保护、工资调整机制等专项集体合同。

Article 53 Industrial or regional collective contracts may be concluded between the labor unions and the representatives of enterprises in industries such as construction, mining, catering services, etc. in the regions at or below the county level.

第五十三条　【行业性集体合同、区域性集体合同】在县级以下区域内，建筑业、采矿业、餐饮服务业等行业可以由工会与企业方面代表订立行业性集体合同，或者订立区域性集体合同。

Article 54 After a collective contract has been concluded, it shall be submitted to the labor administrative department. The collective contract shall become effective after the lapse of 15 days from the date of receipt thereof by the labor administrative department, unless the said department raises any objections to the contract.

第五十四条　【集体合同的报送和生效】集体合同订立后，应当报送劳动行政部门；劳动行政部门自收到集体合同文本之日起十五日内未提出异议的，集体合同即行生效。

A collective contract that has been concluded according to law is binding on both the employer and the employees. An industrial or regional collective contract is binding on both the employers and employees in the local industry or the region.

依法订立的集体合同对用人单位和劳动者具有约束力。行业性、区域性集体合同对当地本行业、本区域的用人单位和劳动者具有约束力。

Article 55 The standards for remunerations, working conditions, etc. as stipulated in a collective contract shall not be lower than the minimum criterions as prescribed by the local people's government. The standards for remunerations, working conditions, etc. as stipulated in the labor contract between an employer and an employee shall not be lower than those as specified in the collective contract.

第五十五条　【集体合同中劳动报酬、劳动条件等标准】集体合同中劳动报酬和劳动条件等标准不得低于当地人民政府规定的最低标准；用人单位与劳动者订立的劳动合同中劳动报酬和劳动条件等标准不得低于集体合同规定的标准。

Article 56 If an employer's breach of the collective contract infringes upon the labor rights and interests of the employees, the labor union may, according to law, require the employer to bear the liability. If a dispute arising from the performance of the collective contract is not resolved after negotiations, the labor union may apply for arbitration or lodge a lawsuit in pursuance of law.

第五十六条　【集体合同纠纷和法律救济】用人单位违反集体合同，侵犯职工劳动权益的，工会可以依法要求用人单位承担责任；因履行集体合同发生争议，经协商解决不成的，工会可以依法申请仲裁、提起诉讼。

Section 2 Worker Dispatch Service

第二节　劳务派遣

Article 57 To engage in the labor dispatch business, an entity shall satisfy the following conditions:

第五十七条　【劳务派遣单位的设立】经营劳务派遣业务应当具备下列条件：

1.Its registered capital is not less than two million yuan;

（一）注册资本不得少于人民币二百万元；

2.It has fixed business premises and facilities suitable for businesses;

（二）有与开展业务相适应的固定的经营场所和设施；

3.It has labor dispatch management rules in compliance with the provisions of laws and administrative regulations; and

（三）有符合法律、行政法规规定的劳务派遣管理制度；

4.It satisfies other conditions prescribed by laws and administrative regulations.

（四）法律、行政法规规定的其他条件。

To engage in the labor dispatch business, an entity shall apply to the labor administrative department for administrative licensing in accordance with law; and after obtaining licensing, shall undergo corresponding company registration formalities in accordance with law. No entity or individual may engage in the labor dispatch business without licensing.

经营劳务派遣业务，应当向劳动行政部门依法申请行政许可；经许可的，依法办理相应的公司登记。未经许可，任何单位和个人不得经营劳务派遣业务。

Article 58 Worker dispatch service providers are employers as mentioned in this Law and shall perform an employer's obligations for its employees. The labor contract between a worker dispatch service provider and a worker to be dispatched shall, in addition to the matters specified in Article 17 of this law, specify such matters as the entity to which the worker will be dispatched, the term of dispatch, positions, etc.

第五十八条　【劳务派遣单位、用工单位及劳动者的权利义务】劳务派遣单位是本法所称用人单位，应当履行用人单位对劳动者的义务。劳务派遣单位与被派遣劳动者订立的劳动合同，除应当载明本法第十七条规定的事项外，还应当载明被派遣劳动者的用工单位以及派遣期限、工作岗位等情况。

The labor contracts between a worker dispatch service provider and the workers to be dispatched shall be fixed-term labor contract with a term of not less than two years. The worker dispatch service provider shall pay the remunerations on a monthly basis. During the time period when there is no work for the workers, the worker dispatch service provider shall compensate the workers on monthly basis at the minimum wage prescribed by the people's government of the place where the worker dispatch service provider is located.

劳务派遣单位应当与被派遣劳动者订立二年以上的固定期限劳动合同，按月支付劳动报酬；被派遣劳动者在无工作期间，劳务派遣单位应当按照所在地人民政府规定的最低工资标准，向其按月支付报酬。

Article 59 To dispatch workers, a worker dispatch service provider shall enter into dispatch agreements with the entity that accepts the workers under the dispatch arrangement (hereinafter referred to as the “accepting entity”). The dispatch agreements shall stipulate the positions to which the workers are dispatched, the number of persons to be dispatched, the term of dispatch, the amounts and terms of payments of remunerations and social security premiums, and the liability for breach of agreement.

第五十九条　【劳务派遣协议】劳务派遣单位派遣劳动者应当与接受以劳务派遣形式用工的单位（以下称用工单位）订立劳务派遣协议。劳务派遣协议应当约定派遣岗位和人员数量、派遣期限、劳动报酬和社会保险费的数额与支付方式以及违反协议的责任。

An accepting entity shall decide with the worker service dispatch provider on the term of dispatch based on the actual requirements of the positions, and it shall not dismember a continuous term of labor use into two or more short-term dispatch agreements.

用工单位应当根据工作岗位的实际需要与劳务派遣单位确定派遣期限，不得将连续用工期限分割订立数个短期劳务派遣协议。

Article 60 A worker dispatch service provider shall inform the workers dispatched of the content of the dispatch agreements.

第六十条　【劳务派遣单位的告知义务】劳务派遣单位应当将劳务派遣协议的内容告知被派遣劳动者。

No worker dispatch service provider may skimp any remuneration that an accepting entity pays to the workers according to the dispatch agreement.

劳务派遣单位不得克扣用工单位按照劳务派遣协议支付给被派遣劳动者的劳动报酬。

No worker dispatch service provider or accepting entity may charge any fee against any dispatched worker.

劳务派遣单位和用工单位不得向被派遣劳动者收取费用。

Article 61 If a worker dispatch service provider assigns a worker to an accepting entity in another region, the worker's remuneration and work conditions shall be in line with the relevant standards of the place where the accepting entity is located.

第六十一条　【跨地区派遣劳动者的劳动报酬、劳动条件】劳务派遣单位跨地区派遣劳动者的，被派遣劳动者享有的劳动报酬和劳动条件，按照用工单位所在地的标准执行。

Article 62 An accepting entity shall perform the following obligations:

第六十二条　【用工单位的义务】用工单位应当履行下列义务：

1. To implement state labor standards and provide the corresponding working conditions and labor protection;

（一）执行国家劳动标准，提供相应的劳动条件和劳动保护；

2. To communicate the job requirements and labor compensations for the dispatched workers;

（二）告知被派遣劳动者的工作要求和劳动报酬；

3. To pay overtime remunerations and performance bonuses and provide benefits relevant to the position;

（三）支付加班费、绩效奖金，提供与工作岗位相关的福利待遇；

4. To provide the dispatched employees who assume the positions with required training; and

（四）对在岗被派遣劳动者进行工作岗位所必需的培训；

5. To implement a normal wage adjustment system in the case of continuous dispatch.

（五）连续用工的，实行正常的工资调整机制。

No accepting entity may in turn dispatch the workers to any other employer.

用工单位不得将被派遣劳动者再派遣到其他用人单位。

Article 63 Dispatched workers shall have the right to receive the same pay with that received by the employers' employees for the same work. An employer shall, under the principle of equal pay for equal work, adopt the same methods for the distribution of labor remuneration for the dispatched workers and its employees at the same position. Where the employer has no employee at the same position, it shall determine the remuneration by reference to that paid to employees at the same or similar position at the place where the employer is located.

第六十三条　【被派遣劳动者同工同酬】被派遣劳动者享有与用工单位的劳动者同工同酬的权利。用工单位应当按照同工同酬原则，对被派遣劳动者与本单位同类岗位的劳动者实行相同的劳动报酬分配办法。用工单位无同类岗位劳动者的，参照用工单位所在地相同或者相近岗位劳动者的劳动报酬确定。

The employment contracts concluded between the labor dispatch entity and dispatched workers and the labor dispatch agreement concluded between the labor dispatch entity and the employer shall indicate or stipulate that the labor remuneration

劳务派遣单位与被派遣劳动者订立的劳动合同和与用工单位订立的劳务派遣协议，载明或者约定的向被派遣劳动者支付的劳动报酬应当符合前款规定。

paid to dispatched workers shall comply with the provisions of the preceding paragraph.

Article 64 The workers dispatched have the right to join the labor union of the worker dispatch service provider or of the accepting entity or to organize such unions, so as to protect their own lawful rights and interests.

第六十四条　【被派遣劳动者参加或者组织工会】被派遣劳动者有权在劳务派遣单位或者用工单位依法参加或者组织工会，维护自身的合法权益。

Article 65 A worker dispatched may, according to Articles 36 and 38 of this Law, dissolve the labor contract between him and the worker dispatch service provider.

第六十五条　【劳务派遣中解除劳动合同】被派遣劳动者可以依照本法第三十六条、第三十八条的规定与劳务派遣单位解除劳动合同。

Where a worker dispatched is under any of the circumstances as mentioned in Article 39 and Article 40 (i) and (ii), the accepting entity may return the worker to the worker dispatch service provider, the worker dispatch service provider may dissolve the labor contract with the worker.

被派遣劳动者有本法第三十九条和第四十条第一项、第二项规定情形的，用工单位可以将劳动者退回劳务派遣单位，劳务派遣单位依照本法有关规定，可以与劳动者解除劳动合同。

Article 66 Employment under employment contracts is the basic form of enterprises' employing workers in China. Labor dispatch is a supplementary form and shall exclusively apply to provisional, auxiliary or substitutive positions.

第六十六条　【劳务派遣的适用岗位】劳动合同用工是我国的企业基本用工形式。劳务派遣用工是补充形式，只能在临时性、辅助性或者替代性的工作岗位上实施。

'Provisional position' as prescribed in the preceding paragraph means a position that exists for less than six months; 'auxiliary position' means a non-major business position providing services to main business positions; and 'substitutive position' means a position that may be held by any other employee on a

前款规定的临时性工作岗位是指存续时间不超过六个月的岗位；辅助性工作岗位是指为主营业务岗位提供服务的非主营业务岗位；替代性工作岗位是指用工单位的劳动者因脱产学

substitutive basis during a certain period of time when the employee of the employer who originally holds the position is unable to work because such employee is undergoing full-time training, on vacation or for any other reason.

习、休假等原因无法工作的一定期间内，可以由其他劳动者替代工作的岗位。

The employer shall strictly control the number of dispatched workers, which shall not exceed a certain proportion of its total employees, and the specific proportion shall be prescribed by the labor administrative department of the State Council.

用工单位应当严格控制劳务派遣用工数量，不得超过其用工总量的一定比例，具体比例由国务院劳动行政部门规定。

Article 67 No accepting entity may establish any worker dispatch service to dispatch the workers to itself and to its subsidiaries.

第六十七条　【用人单位不得自设劳务派遣单位】用人单位不得设立劳务派遣单位向本单位或者所属单位派遣劳动者。

Section 3 Part-time Employments

第三节　非全日制用工

Article 68 The “part-time employment” is a form of labor in which the remuneration is mainly calculated on hourly basis, the average working hours of a worker per day shall not exceed 4 hours, and the aggregate working hours per week for the same employer shall not exceed 24 hours.

第六十八条　【非全日制用工的概念】非全日制用工，是指以小时计酬为主，劳动者在同一用人单位一般平均每日工作时间不超过四小时，每周工作时间累计不超过二十四小时的用工形式。

Article 69 Both parties to a part-time employment may reach an oral agreement.

第六十九条　【非全日制用工的劳动合同】非全日制用工双方当事人可以订立口头协议。

A worker who engages in part-time employment may conclude a labor contract with one or more employers, but a labor

从事非全日制用工的劳动者可以与一个或者一个以上用人单

contract concluded subsequently may not prejudice the performance of a labor contract previously concluded.

位订立劳动合同；但是，后订立的劳动合同不得影响先订立的劳动合同的履行。

Article 70 No probation period may be stipulated by both parties for a part-time employment.

第七十条　【非全日制用工不得约定试用期】非全日制用工双方当事人不得约定试用期。

Article 71 Either of the parties to part-time employment may inform the other party of the termination of labor at any time. Upon the termination of a part-time employment, the employer will pay no economic compensation to the employee.

第七十一条　【非全日制用工的终止用工】非全日制用工双方当事人任何一方都可以随时通知对方终止用工。终止用工，用人单位不向劳动者支付经济补偿。

Article 72 The criterions for the calculation of part-time employment on hourly basis shall not be lower than the minimum hourly wage prescribed by the people's government of the place where the employer is located.

第七十二条　【非全日制用工的劳动报酬】非全日制用工小时计酬标准不得低于用人单位所在地人民政府规定的最低小时工资标准。

The maximum remuneration settlement and payment cycle for part-time employment shall not exceed 15 days.

非全日制用工劳动报酬结算支付周期最长不得超过十五日。

Chapter VI Supervision and Inspection

第六章　监督检查

Article 73 The labor administrative department of the State Council shall be responsible for the supervision and inspection of the implementation of the system of labor contracts throughout the country.

第七十三条　【劳动合同制度的监督管理体制】国务院劳动行政部门负责全国劳动合同制度实施的监督管理。

The labor administrative department of the local people's governments at the county level and above shall be responsible for the supervision and inspection of the implementation of the system of labor contracts within their respective administrative areas.

县级以上地方人民政府劳动行政部门负责本行政区域内劳动合同制度实施的监督管理。

During the supervision and inspection of the implementation of the system of labor contracts, the labor administrative departments of the people's governments at the county level and above shall solicit the opinions of the labor unions, enterprise representatives and relevant industrial administrative departments.

县级以上各级人民政府劳动行政部门在劳动合同制度实施的监督管理工作中，应当听取工会、企业方面代表以及有关行业主管部门的意见。

Article 74 The labor administrative department of the local people's government at the county level or above shall exercise supervision and inspection in respect of the implementation of the system of labor contracts:

第七十四条　【劳动行政部门监督检查事项】县级以上地方人民政府劳动行政部门依法对下列实施劳动合同制度的情况进行监督检查：

1. The employers' formulation of rules and regulations directly related to the interests of workers, and the implementation thereof;

（一）用人单位制定直接涉及劳动者切身利益的规章制度及其执行的情况；

2. The formation and dissolution of labor contracts by employers and workers;

（二）用人单位与劳动者订立和解除劳动合同的情况；

3. The compliance with relevant regulations on dispatch by worker dispatch service providers and the accepting entities;

（三）劳务派遣单位和用工单位遵守劳务派遣有关规定的情况；

4.The employers' compliance with provisions of the state on workers' working hours, breaks and vacations;

（四）用人单位遵守国家关于劳动者工作时间和休息休假规定的情况；

5. The employers' payment for remuneration as specified in the labor contracts and compliance with the minimum wage criterions;

（五）用人单位支付劳动合同约定的劳动报酬和执行最低工资标准的情况；

6. The employers' participation in the social security and the payment for social security premiums; and

（六）用人单位参加各项社会保险和缴纳社会保险费的情况；

7. Other labor oversight matters as prescribed by laws and regulations.

（七）法律、法规规定的其他劳动监察事项。

Article 75 During the supervision and inspection process, the labor administrative department of the people's government at the county level or above has the power to consult the materials relevant to the labor contracts and collective contracts and to conduct on-the-spot inspections to the work places. The employers and employees shall faithfully provide pertinent information and materials.

第七十五条　【监督检查措施和依法行政、文明执法】县级以上地方人民政府劳动行政部门实施监督检查时，有权查阅与劳动合同、集体合同有关的材料，有权对劳动场所进行实地检查，用人单位和劳动者都应当如实提供有关情况和材料。

When the functionaries of the labor administrative department conduct an inspection, they shall show their badges, exercise their duties and powers pursuant to laws and enforce the law in a well-disciplined manner.

劳动行政部门的工作人员进行监督检查，应当出示证件，依法行使职权，文明执法。

Article 76 The relevant administrative departments of construction, health, work safety supervision and administration, etc. of the people's governments at the county

第七十六条　【其他有关主管部门的监督管理】县级以上人民政府建设、卫生、安全生产监督管理等有关主管部门

level and above shall, with the scope of their respective functions, supervise and administer the employers' implementation of the system of labor contracts.

在各自职责范围内，对用人单位执行劳动合同制度的情况进行监督管理。

Article 77 For any employer whose lawful rights and interests are impaired, he may require the relevant department to deal with the case, apply for an arbitration, or lodge a lawsuit.

第七十七条　【劳动者权利救济途径】劳动者合法权益受到侵害的，有权要求有关部门依法处理，或者依法申请仲裁、提起诉讼。

Article 78 A labor union shall protect the employees' legitimate rights and interests and supervise the employer's fulfillment of the labor contracts and collective contracts. If the employer violates any law or regulation or breaches any labor contract or collective contract, the labor union may put forward its opinions and require the employer to make ratification. If the employee applies for arbitration or lodges a lawsuit, the labor union shall support and help him in pursuance of law.

第七十八条　【工会监督检查的权利】工会依法维护劳动者的合法权益，对用人单位履行劳动合同、集体合同的情况进行监督。用人单位违反劳动法律、法规和劳动合同、集体合同的，工会有权提出意见或者要求纠正；劳动者申请仲裁、提起诉讼的，工会依法给予支持和帮助。

Article 79 Any organization or individual may report the violations of this law. The labor administrative departments of the people's governments at the county level and above shall timely verify and deal with such violations and shall grant awards to the meritorious persons who report the violations.

第七十九条　【对违法行为的举报】任何组织或者个人对违反本法的行为都有权举报，县级以上人民政府劳动行政部门应当及时核实、处理，并对举报有功人员给予奖励。

Chapter VII Legal Liabilities

第七章　法律责任

Article 80 If the rules and procedure of an employer directly related to the employees' interests is contrary to any laws or regulations, the labor administration department shall order the employer to make ratification and give it a warning. If the rules

第八十条　【规章制度违法的法律责任】用人单位直接涉及劳动者切身利益的规章制度违反法律、法规规定的，由

and procedures cause any damage to the employees, the employer shall bear the liability for compensation.

劳动行政部门责令改正，给予警告；给劳动者造成损害的，应当承担赔偿责任。

Article 81 If the text of a labor contract provided by an employer does not include the mandatory clauses required by this Law or if an employer fails to deliver a copy of the labor contract to its employee, the labor administration department shall order the employer to make ratification. If any damage is caused to the employee, the employer shall bear the liability for compensation.

第八十一条　【缺乏必备条款、不提供劳动合同文本的法律责任】用人单位提供的劳动合同文本未载明本法规定的劳动合同必备条款或者用人单位未将劳动合同文本交付劳动者的，由劳动行政部门责令改正；给劳动者造成损害的，应当承担赔偿责任。

Article 82 If an employer fails to conclude a written labor contract with an employee after the lapse of more than one month but less than one year as of the day when it started using him, it shall pay to the worker his monthly wages at double amount.

第八十二条　【不订立书面劳动合同的法律责任】用人单位自用工之日起超过一个月不满一年未与劳动者订立书面劳动合同的，应当向劳动者每月支付二倍的工资。

If an employer fails, in violation of this Law, to conclude with an employee a labor contract without fixed term, it shall pay to the employee his monthly wage at double amount, starting from the date on which a labor contract without fixed term should have been concluded.

用人单位违反本法规定不与劳动者订立无固定期限劳动合同的，自应当订立无固定期限劳动合同之日起向劳动者每月支付二倍的工资。

Article 83 If an employer stipulates the probation period with an employee to violate this Law, the labor administration department shall order the employer to make ratification. If the illegally stipulated probation has been performed, the employer shall pay compensation to the employee according to the time worked on probation beyond the statutory probation period, at

第八十三条　【违法约定试用期的法律责任】用人单位违反本法规定与劳动者约定试用期的，由劳动行政部门责令改正；违法约定的试用期已经履行的，由用人单位以劳动者试用期满月工资为标准，按已经履行的超过法定试用期的期间向劳动者支付赔偿金。

the rate of the employee's monthly wage following the completion of his probation.

Article 84 Where an employer violates this Law by detaining the resident identity cards or other certificates of the employees, the labor administrative department shall order the employer to return the ID and certificates to the employees within a time limit and shall punish the employer according to the relevant laws.

第八十四条　【扣押劳动者身份等证件的法律责任】用人单位违反本法规定，扣押劳动者居民身份证等证件的，由劳动行政部门责令限期退还劳动者本人，并依照有关法律规定给予处罚。

Where an employer violates this Law by collecting money and property from employees in the name of guaranty or in any other excuses, the labor administrative department shall order the employer to return the said property to the employees within a time limit and fine the employer not less than 500 yuan but not more than 2,000 yuan for each person. If any damage is caused to the employees, the employer shall be liable for compensation.

用人单位违反本法规定，以担保或者其他名义向劳动者收取财物的，由劳动行政部门责令限期退还劳动者本人，并以每人五百元以上二千元以下的标准处以罚款；给劳动者造成损害的，应当承担赔偿责任。

When an employee dissolves or terminates the labor contract in pursuance of law, if the employer retains the archives or other articles of the employees, it shall be punished according to the provisions of the preceding paragraph.

劳动者依法解除或者终止劳动合同，用人单位扣押劳动者档案或者其他物品的，依照前款规定处罚。

Article 85 Where an employing entity is under any of the following circumstances, the labor administrative department shall order it to pay the remunerations, overtime remunerations or economic compensations within a time limit. If the

第八十五条　【未依法支付劳动报酬、经济补偿等的法律责任】用人单位有下列情形之一的，由劳动行政部门责令限期支付劳动报酬、加班费或者经济补偿；劳动报酬低于当地最低工资标准的，应当支付其差额部分；逾期不支付的，

remuneration is lower than the local minimum wage, the employer shall pay the shortfall. If payment is not made within the time limit, the employer shall be ordered to pay an extra compensation to the employee at a rate of not less than 50 percent and not more than 100 percent of the payable amount:

责令用人单位按应付金额百分之五十以上百分之一百以下的标准向劳动者加付赔偿金：

1. Failing to pay an employee his remunerations in full amount and on time as stipulated in the labor contract or prescribed by the state;

（一）未按照劳动合同的约定或者国家规定及时足额支付劳动者劳动报酬的；

2. Paying an employee the wage below the local minimum wage standard;

（二）低于当地最低工资标准支付劳动者工资的；

3. Arranging overtime work without paying overtime remunerations; or

（三）安排加班不支付加班费的；

4. Dissolving or terminating a labor contract without paying the employee the economic compensation under this Law.

（四）解除或者终止劳动合同，未依照本法规定向劳动者支付经济补偿的。

Article 86 Where a labor contract is confirmed invalid under Article 26 of this Law and any damage is caused to the other party, the party at fault shall be liable for compensation.

第八十六条　【订立无效劳动合同的法律责任】劳动合同依照本法第二十六条规定被确认无效，给对方造成损害的，有过错的一方应当承担赔偿责任。

Article 87 If an employer violates this Law by dissolving or terminating the labor contract, it shall pay compensation to the employee at the rate of twice the economic compensations as prescribed in Article 47 of this Law.

第八十七条　【违反解除或者终止劳动合同的法律责任】用人单位违反本法规定解除或者终止劳动合同的，应当依照本法第四十七条规定的经济补偿标准的二倍向劳动者支付赔偿金。

Article 88 Where an employer is under any of the following circumstances, it shall be given an administrative punishment. If any crime is constituted, it shall be subject to criminal liabilities. If any damage is caused to the employee, the employer shall be liable for compensation:

第八十八条　【侵害劳动者人身权益的法律责任】用人单位有下列情形之一的，依法给予行政处罚；构成犯罪的，依法追究刑事责任；给劳动者造成损害的，应当承担赔偿责任：

1. To force the employee to work by violence, threat or illegal limitation of personal freedom;

（一）以暴力、威胁或者非法限制人身自由的手段强迫劳动的；

2. To illegally command or force any employee to perform dangerous operations endangering the employee's life;

（二）违章指挥或者强令冒险作业危及劳动者人身安全的；

3. To insult, corporally punish, beat, illegally search, or restrain any employee; or

（三）侮辱、体罚、殴打、非法搜查或者拘禁劳动者的；

4. To cause damages to the physical or mental health of employees because of poor working conditions or severely polluted environments;

（四）劳动条件恶劣、环境污染严重，给劳动者身心健康造成严重损害的。

Article 89 Where an employer violates this Law by failing to issue to an employee a written certificate for the dissolution or termination of a labor contract, it shall be ordered to make a ratification by the labor administrative department. If any damage is caused to an employee, the employer shall be liable for compensation.

第八十九条　【不出具解除、终止书面证明的法律责任】用人单位违反本法规定未向劳动者出具解除或者终止劳动合同的书面证明，由劳动行政部门责令改正；给劳动者造成损害的，应当承担赔偿责任。

Article 90 Where an employee violates this Law to dissolve the labor contract, or violates the stipulations of the labor contract about the confidentiality obligation or

第九十条　【劳动者的赔偿责任】劳动者违反本法规定解除劳动合同，或者违反劳动合同中约定的保密义务或者竞业限制，给用人单位造成损失的，应当承担赔偿责任。

non-competition, if any loss is caused to the employer, he shall be liable for compensation.

Article 91 Where an employer hires any employee whose labor contract with another employer has not been dissolved or terminated yet, if any loss is caused to the employer mentioned later, the employer first mentioned shall bear joint and several liability of compensation.

第九十一条　【用人单位的连带赔偿责任】用人单位招用与其他用人单位尚未解除或者终止劳动合同的劳动者，给其他用人单位造成损失的，应当承担连带赔偿责任。

Article 92 Where any entity, in violation of the provisions of this Law, engages in the labor dispatch business without licensing, the labor administrative department shall order the violator to cease its violations, confiscate its illegal income, and impose a fine of one up to five times the amount of illegal income; or if there is no illegal income, may impose a fine of not more than 50,000 yuan on the violator.

第九十二条　【劳务派遣单位的法律责任】违反本法规定，未经许可，擅自经营劳务派遣业务的，由劳动行政部门责令停止违法行为，没收违法所得，并处违法所得一倍以上五倍以下的罚款；没有违法所得的，可以处五万元以下的罚款。

Any labor dispatch entity or employer that violates any provision of this Law on labor dispatch shall be ordered by the labor administrative department to make corrections within a prescribed time limit; and if the entity or employer fails to do so within the prescribed time limit, it shall be fined 5,000 yuan up to 10,000 yuan per employee, and for a labor dispatch entity, its license for engaging in the labor dispatch business shall be revoked. Where the employer causes any damage to the dispatched worker, the labor dispatch entity and the employer shall assume joint and several liabilities.

劳务派遣单位、用工单位违反本法有关劳务派遣规定的，由劳动行政部门责令限期改正；逾期不改正的，以每人五千元以上一万元以下的标准处以罚款，对劳务派遣单位，吊销其劳务派遣业务经营许可证。用工单位给被派遣劳动者造成损害的，劳务派遣单位与用工单位承担连带赔偿责任。

Article 93 Where an employer without the lawful business operation qualifications commits any violation or crime, it shall be subject to legal liabilities. If the employees have already worked for the employer, the employer or its capital contributors shall, under the relevant provisions of this Law, pay the employees remunerations, economic compensations or indemnities. If any damage is caused to the employee, it shall be liable for compensation.

第九十三条　【无营业执照经营单位的法律责任】对不具备合法经营资格的用人单位的违法犯罪行为，依法追究法律责任；劳动者已经付出劳动的，该单位或者其出资人应当依照本法有关规定向劳动者支付劳动报酬、经济补偿、赔偿金；给劳动者造成损害的，应当承担赔偿责任。

Article 94 Where an individual as a business operation contractor hires employees in violation of this Law and causes any damage to any employee, the contracting organization and the individual business operation contractor shall be jointly and severally liable for compensation.

第九十四条　【个人承包经营者的连带赔偿责任】个人承包经营违反本法规定招用劳动者，给劳动者造成损害的，发包的组织与个人承包经营者承担连带赔偿责任。

Article 95 If the labor administrative department, or any other relevant administrative department, or any of the functionaries thereof neglects its (his) duties, does not perform the statutory duties, or exercises its (his) duties in violation of law, it (he) shall be liable for compensation. The directly liable person-in-charge and other directly liable persons shall be given an administrative sanction. If any crime is constituted, they shall be subject to criminal liabilities.

第九十五条　【不履行法定职责、违法行使职权的法律责任】劳动行政部门和其他有关主管部门及其工作人员玩忽职守、不履行法定职责，或者违法行使职权，给劳动者或者用人单位造成损害的，应当承担赔偿责任；对直接负责的主管人员和其他直接责任人员，依法给予行政处分；构成犯罪的，依法追究刑事责任。

Chapter VIII Supplementary Provisions

第八章　附则

Article 96 For the formation, performance, modification, dissolution, or termination of a labor contract between a public institution and an employee under the system of employment, if it is otherwise provided for in any law, administrative

第九十六条　【事业单位聘用制劳动合同的法律适用】事业单位与实行聘用制的工作人员订立、履行、变更、解除

regulation or by the State Council, the latter shall be followed. If there is no such provision, the relevant provisions of this Law shall be observed.

或者终止劳动合同，法律、行政法规或者国务院另有规定的，依照其规定；未作规定的，依照本法有关规定执行。

Article 97 Labor contracts concluded before the implementation of this Law and continue to exist on the implementation date of this Law shall continue to be performed. For the purposes of Item (3) of the second Paragraph of Article 14 of this Law, the number of consecutive times on which a fixed-term labor contract is concluded shall be counted from the first renewal of such contract to occur after the implementation of this Law.

第九十七条　【过渡性条款】本法施行前已依法订立且在本法施行之日存续的劳动合同，继续履行；本法第十四条第二款第三项规定连续订立固定期限劳动合同的次数，自本法施行后续订固定期限劳动合同时开始计算。

If an employment relationship was established prior to the implementation of this Law without the conclusion of a written labor contract, such contract shall be concluded within one month from the date when this Law becomes effective.

本法施行前已建立劳动关系，尚未订立书面劳动合同的，应当自本法施行之日起一个月内订立。

If a labor contract existing on the implementation date of this Law is dissolved or terminated after the implementation of this Law and, according to Article 46 of this Law, an economic compensation is payable, the number of years for which the economic compensation is payable shall be counted from the implementation date of this Law. If, under relevant effective regulations prior to the implementation of this Law, the employee is entitled to the economic compensation from the employer in respect of a period prior to the implementation of

本法施行之日存续的劳动合同在本法施行后解除或者终止，依照本法第四十六条规定应当支付经济补偿的，经济补偿年限自本法施行之日起计算；本法施行前按照当时有关规定，用人单位应当向劳动者支付经济补偿的，按照当时有关规定执行。

this Law, the matters shall be handled according to the relevant effective regulations at that time.

Article 98 This Law shall come into force as of January 1, 2008.

第九十八条　【施行时间】本法自2008年1月1日起施行。