

中华人民共和国劳动合同法（2012修正）

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中华人民共和国劳动合同法（2012 修正）

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劳动合同法〉的决定》修正）

Labour Contract Law of the People's Republic of China

(Passed by the 28th Session of the Standing Committee of the
10th National People's Congress on 29 June 2007

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Revised pursuant to the Decision of the Standing Committee of the
National People's Congress on Revision of the Labour Contract
Law of the People's Republic of China to be effective 1 July 2013)

第一章 总则

第一条 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。

第二条 中华人民共和国境内
的企业、个体经济组织、民办非企

CHAPTER 1 — GENERAL PRINCIPLES

Article 1 This Law is formulated for the purposes of refining the
labour contract system, specifying the rights and obligations of the
parties to a labour contract, protecting the legitimate rights and
interests of workers and building and developing harmonious and
stable labour relationships.

Article 2 This Law shall apply to establishment of labour
relationships between enterprises, individual economic
organisations, private non-enterprise entities etc in the People's

业单位等组织（以下称用人单位）与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。

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。

Republic of China (hereinafter referred to as the "employers") and their workers and the conclusion, performance, variation, rescission or termination of labour contracts.

Establishment of labour relationships between State agencies, institutions and social organisations and their workers and conclusion, performance, variation, rescission or termination of labour contracts shall be carried out pursuant to this Law.

第三条 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。

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 3 Conclusion of labour contracts shall comply with the principles of legality, equitableness, fairness, voluntary participation, negotiation and agreement and honesty and trustworthiness.

Labour contracts concluded pursuant to the law shall be legally binding and the employers and the workers shall perform the obligations stipulated in the labour contracts.

第四条 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。

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

Article 4 Employers shall establish and improve upon labour rules and system pursuant to the law to ensure workers' entitlement to labour rights and performance of labour obligations.

When an employer formulates, revises or decides on rules or major matters pertaining to labour remuneration, working hours, rest periods and off days, labour safety and health, insurance and welfare, staff training, labour discipline and labour quota administration etc which directly involves the vital interests of workers, such matters shall be discussed by the employee representatives congress or all staff who shall make proposal and give their opinion and the employer shall carry out equal negotiation with the labour union or employee representatives

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。

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。

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。

before making a decision.

During the decision and implementation of rules and major matters, the labour union or staff shall have the right to raise their concern with the employer on any inappropriate issues and such issues shall be corrected and refined through negotiation.

Employers shall announce decisions on rules and major matters which directly involve the vital interests of workers or notify the workers.

第五条 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。

第六条 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。

Article 5 The labour administrative authorities of People's Governments of county level and above shall, jointly with the labour union and representatives of enterprises, establish a proper tripartite labour relationship coordination mechanism to jointly study and resolve major issues in relation to labour relationships.

Article 6 Labour unions shall assist in and provide guidance for conclusion and performance of labour contracts between workers and employers pursuant to the law and shall establish a collective negotiation mechanism with employers to safeguard the legitimate rights and interests of workers.

第二章 劳动合同的订立

CHAPTER 2 — CONCLUSION OF LABOUR CONTRACTS

第七条 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 7 An employer shall be deemed to have established a labour relationship with a worker with effect from the date of commencement of work. Employers shall establish a register of employees for inspection purpose.

第八条 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 8 When recruiting a worker, the employer shall truthfully notify the worker of the job duties, working conditions, work premises, occupational hazards, work safety and health conditions, labour remuneration and any other information in which the worker is interested to know; an employer shall have the right to ask about basic information of the worker in direct relation to the labour contract, the worker shall answer truthfully.

第九条 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 9 An employer recruiting workers shall not retain the identity card or other certificate of a worker or require a worker to provide guarantee or collect monies from a worker under any pretext.

第十条 建立劳动关系，应当订立书面劳动合同。

Article 10 A written labour contract shall be concluded for the establishment of a labour relationship.

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 a written labour contract is not concluded simultaneously with the establishment of a labour relationship, a written labour contract shall be concluded within one month from the date of commencement of work.

用人单位与劳动者在用工前订

Where an employer and a worker have concluded a labour contract prior to employment, the labour relationship shall be deemed established on the date of commencement of work.

立劳动合同的，劳动关系自用工之日起建立。

第十一条 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。

第十二条 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。

第十三条 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。

用人单位与劳动者协商一致，可以订立固定期限劳动合同。

第十四条 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。

用人单位与劳动者协商一致，

Article 11 Where an employer fails to conclude a written labour contract for employment of a worker or where the labour remuneration agreed with a worker is unclear, the labour remuneration of a newly recruited worker shall be executed pursuant to the standard stipulated in the collective contract; where there is no collective contract or where there is no such provision in the collective contract, the same remuneration shall be paid for the same job position.

Article 12 Labour contracts are divided into fixed-term labour contracts, non-fixed-term labour contracts and labour contracts which expire upon completion of agreed assignments.

Article 13 A fixed-term labour contract shall refer to a labour contract for which the employer and the worker have agreed on the date of termination.

Upon negotiation and consensus between the employer and the worker, a fixed-term labour contract may be concluded.

Article 14 A non-fixed-term labour contract shall refer to a labour contract for which the employer and the worker have agreed that the date of termination is not fixed.

Upon negotiation and consensus between the employer and the worker, a non-fixed-term labour contract may be concluded. Under any of the following circumstances, a worker may propose

可以订立无固定期限劳动合同。有下列情形之一的，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：

（一）劳动者在该用人单位连续工作满十年的；

（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；

（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。

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。

or agree to renewal or conclusion of labour contract; except where a worker proposes for the conclusion of a fixed-term labour contract, a non-fixed-term labour contract shall be concluded:

(1) the worker has worked for the employer for a period of 10 years consecutively;

(2) when the employer first implemented the labour contract system or when a new labour contract is concluded upon restructuring of a State-owned enterprise, the worker has worked for the employer for a period of 10 years consecutively and will attain his/her statutory retirement age in less than 10 years' time; or

(3) where a fixed-term labour contract has been concluded twice consecutively and the worker who does not fall under any of the categories stipulated in Article 39 and item (1) and item (2) of Article 40 renews his/her labour contract.

Where an employer fails to conclude a written contract with a worker after one year has lapsed since the date of commencement of work, the employer and the worker shall be deemed to have concluded a non-fixed-term labour contract.

第十五条 以完成一定工作任务为期限的劳动合同，是指用人单

Article 15 A labour contract which expires upon completion of agreed assignments shall refer to a labour contract between an employer and a worker for which the contract shall terminate upon

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。

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。

completion of certain assignment.

Upon negotiation and consensus between an employer and a worker, a labour contract which expires upon completion of agreed assignments may be concluded.

第十六条 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。

劳动合同文本由用人单位和劳动者各执一份。

Article 16 A labour contract shall be subject to negotiation and consensus between an employer and a worker and shall come into effect upon signing and affixation of seal by the employer and the worker on copies of the labour contract.

The employer and the worker shall each hold a copy of the labour contract.

第十七条 劳动合同应当具备以下条款：

（一）用人单位的名称、住所和法定代表人或者主要负责人；

（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；

（三）劳动合同期限；

（四）工作内容和工作地点；

Article 17 A labour contract shall include the following clauses:

(1) name and address of the employer and the legal representative or key person in charge of the employer;

(2) name, address and identity card number or other valid identity document number of the worker;

(3) term of labour contract;

(4) job duties and work premises;

(5) working hours and rest periods and off days;

(6) labour remuneration;

(7) social security;

(8) labour protection, working conditions and occupational hazard

(五)工作时间和休息休假；

prevention and protection; and

(六)劳动报酬；

(9) any other matters to be included in a labour contract as stipulated by the laws and regulations.

(七) 社会保险；

In addition to the essential clauses of a labour contract stipulated in the preceding paragraph, an employer and a worker may agree on the probationary period, training, confidentiality, supplementary insurance and welfare and incentives etc.

(八) 劳动保护、劳动条件和

职业危害防护；

(九)法律、法规规定应当纳入

劳动合同的其他事项。

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。

第十八条 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 18 Where a labour contract is unclear on the provisions for labour remuneration and working conditions etc and in the event of a dispute, the employer and the worker may re-negotiate; where the negotiation is unsuccessful, the provisions of the collective contract shall apply; where there is no collective contract or where the collective contract has no provision on labour remuneration, the same remuneration shall be paid for the same job position; where there is no collective contract or where the collective contract has no provisions on working conditions etc, the relevant provisions of the State shall apply.

第十九条 劳动合同期限三个

Article 19 Where the term of a labour contract is more than three months but less than one year, the probationary period shall not

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。

同一用人单位与同一劳动者只能约定一次试用期。

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。

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。

第二十条 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。

第二十一条 在试用期中，除劳动者有本法第三十九条和第四十

exceed one month; where the term of a labour contract is more than one year but less than three years, the probationary period shall not exceed two months; for fixed-term contracts of three years and above and non-fixed-term labour contracts, the probationary period shall not exceed six months.

The same employer and the same worker may only agree on probationary period once.

For labour contracts which expire upon completion of agreed assignments or labour contracts with a term of less than three months, no probationary period shall be agreed upon.

The probationary period shall form part of the term of the labour contract. Where a labour contract only stipulates a probationary period, the probationary period is not valid, and the length of the period shall be the term of the labour contract.

Article 20 The wage amount of a worker during his/her probationary period shall not be less than the lowest wage amount for the same job position in the employer's organisation or 80% of the wage amount agreed in the labour contract and shall not be less than the minimum wage standard of the locality of the employer.

Article 21 Except where a worker falls under any of the categories stipulated in Article 39 and item (1) and item (2) of Article 40 during the probationary period, an employer shall not rescind the labour

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。

contract. Where an employer rescinds a labour contract during the probationary period of a worker, it shall explain the reason to the worker.

第二十二条 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。

Article 22 Where an employer bears special training expenses for a worker in providing professional technical training, it may conclude an agreement with the worker to stipulate a period of service.

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。

Where a worker breaches the agreement on period of service, he/she shall pay default penalty to the employer pursuant to the agreement. The amount of default penalty shall not exceed the training expenses borne by the employer. The amount of default penalty demanded by the employer from the worker shall not exceed the amount of training expenses to be amortised over the unperformed period of service.

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。

The agreement between an employer and a worker on a period of service shall not have any impact on the raise of labour remuneration during the period of service pursuant to normal wage increment mechanism.

第二十三条 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

Article 23 An employer and a worker may agree on keeping confidentiality of the employer's commercial secrets and confidential matters in relation to intellectual property in a labour contract.

Where a worker is obliged to keep confidentiality, the employer

的保密事项。

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。

may agree with the worker in a labour contract or confidentiality agreement on a non□competition restrictive covenant and agree that upon the rescission or termination of a labour contract, the employer shall grant the worker economic damages on a monthly basis during the non□competition restrictive covenant period. Where the worker has violated the non□competition restrictive covenant, he/she shall pay a default penalty to the employer pursuant to the agreement.

第二十四条 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。

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 24 Personnel subject to non□competition restrictive covenant shall be limited to the employer's senior management personnel, senior technical personnel and other personnel who are obliged to keep confidentiality. The scope, geographical region and duration of non□competition restrictive covenant shall be agreed between the employer and the worker; non□competition restrictive covenant shall not violate the provisions of laws and regulations.

Upon rescission or termination of a labour contract, the non□competition restrictive covenant period in which the aforesaid stipulated personnel shall not be employed by another employer which engages in production or business in the same type of products or provision of the same type of services as the employer and shall not engage in own production or business in the same type of products or provision of the same type of services as the employer shall not exceed two years.

第二十五条 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 25 Except for the circumstances stipulated in Article 22 and
Article 23, an employer shall not agree with a worker on bearing of
default penalty by the worker.

第二十六条 下列劳动合同无
效或者部分无效：

（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
；

（二）用人单位免除自己的法定
责任、排除劳动者权利的；

（三）违反法律、行政法规强制
性规定的。

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 26 The following labour contracts shall be wholly or
partially invalid:

(1) a labour contract which is concluded or varied by use of
fraudulent or coercive tactics or taking advantage of the
counterparty's unfavourable position to cause the counterparty to
act against the real intention;

(2) where the employer waives its statutory liabilities and exclude
the worker from his/her rights; or

(3) where the mandatory provisions of the laws and administrative
regulations are violated.

A dispute over a wholly or partly invalid labour contract shall be
determined by a labour dispute arbitration agency or a People's
Court.

第二十七条 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 27 The partial invalidity of a labour contract shall not affect
the validity of the other clauses of the contract and such other
clauses shall continue to be valid.

第二十八条 劳动合同被确认

Article 28 Where a labour contract is deemed to be invalid and the
worker has provided labour services, the employer shall pay labour

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。

remuneration to the worker. The amount of labour remuneration shall be determined with reference to the labour remuneration of a worker holding the same or similar position in the employer's organisation.

第 三 章

CHAPTER 3 — PERFORMANCE AND VARIATION OF LABOUR CONTRACTS

劳动合同的履行和变更

第二十九条 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 29 An employer and a worker shall perform their respective obligations fully pursuant to the provisions of the labour contract.

第三十条 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。

Article 30 Employers shall promptly pay labour remuneration to workers in full amount pursuant to the stipulations of the labour contract and the provisions of the State.

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。

Where an employer defaults on payment or fails to promptly pay labour remuneration in full amount, a worker may apply to a People's Court for an order for payment and the People's Court shall issue an order for payment pursuant to the law.

第三十一条 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 31 Employers shall strictly comply with the standard for labour quota and shall not coerce a worker directly or indirectly to work overtime. An employer which requires a worker to work overtime work shall pay the worker overtime wages pursuant to the relevant provisions of the State.

第三十二条 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。

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。

第三十三条 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。

第三十四条 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。

第三十五条 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。

变更后的劳动合同文本由用人单位和劳动者各执一份。

Article 32 Where a worker refuses to comply with any order of the management personnel of the employer which violates the rules or compels the worker to engage in risky work, such refusal shall not be deemed as a breach of the labour contract.

A worker shall have the right to criticise, complain or file a lawsuit against an employer in respect of working conditions which endanger life safety and physical health.

Article 33 The change of name of an employer or change of legal representative or key person in charge or investors etc shall not affect the performance of a labour contract.

Article 34 Where an employer undergoes a merger or division, the original labour contract shall continue to be valid and the succeeding employer which succeeds the rights and obligations of the predecessor employer shall continue to perform the labour contract.

Article 35 Upon negotiation and consensus between an employer and a worker, the contents of a labour contract may be varied. Variation of a labour contract shall be made in writing.

The employer and the worker shall each hold a copy of the varied labour contract.

第四章

劳动合同的解除和终止

CHAPTER 4 — RESCISSION AND TERMINATION OF LABOUR CONTRACTS

第三十六条 用人单位与劳动者协商一致，可以解除劳动合同。

Article 36 Upon negotiation and consensus between an employer and a worker, a labour contract may be rescinded.

第三十七条 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 37 A worker may notify the employer with a 30-day advance notice in writing to rescind his/her labour contract. A worker may notify the employer with a three-day advance notice in writing during his/her probationary period to rescind his/her labour contract.

第三十八条 用人单位有下列情形之一的，劳动者可以解除劳动合同：

Article 38 Under any of the following circumstances, a worker may rescind the labour contract:

（一）未按照劳动合同约定提供劳动保护或者劳动条件的；

(1) where the employer fails to provide labour protection or labour conditions pursuant to the provisions of the labour contract;

（二）未及时足额支付劳动报酬的；

(2) where the employer fails to promptly pay labour remuneration in full amount;

（三）未依法为劳动者缴纳社会保险费的；

(3) where the employer fails to contribute social security premiums for the worker pursuant to the law;

（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；

(4) where the rules and system of the employer violate the provisions of laws and regulations and are prejudicial to the worker's rights and interests;

（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；

(5) where the labour contract is rendered void under any of the circumstances stipulated in the first paragraph of Article 26; or

(6) any other circumstances where the worker may rescind a labour contract as stipulated by the laws and regulations.

Where an employer uses means such as violence, threat or illegal restriction of personal freedom to coerce a worker into provision of labour or where an employer gives orders which violate the rules or force a worker to engage in risk work which endangers the worker's personal safety, the worker may forthwith rescind the

(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。

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。

labour contract and shall not be required to give the employer advance notice thereof.

第三十九条 劳动者有下列情形之一的，用人单位可以解除劳动合同：

(一)在试用期间被证明不符合录用条件的；

(二)严重违反用人单位的规章制度的；

(三)严重失职，营私舞弊，给用人单位造成重大损害的；

(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；

Article 39 Under any of the following circumstances, the employer may rescind the labour contract:

(1) where it is proven during the probationary period that the worker does not satisfy the employment criteria;

(2) where the worker has committed a serious breach of the employer's rules and system;

(3) where the worker is guilty of serious dereliction of duties and corruption and causes the employer to suffer significant damages;

(4) where the worker holds a labour relationship with another employer concurrently which has a severe impact on his/her performance of work tasks assigned by the employer or refuses to make correction as demanded by the employer;

(5) where the labour contract is rendered void under the circumstances stipulated in item (1) of the first paragraph of Article 26; or

(6) where criminal prosecution is instituted against the worker pursuant to the law.

（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；

（六）被依法追究刑事责任的。

第四十条 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：

（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；

（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；

（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 40 Under any of the following circumstances, the employer may rescind the labour contract by giving the worker a written notice 30 days in advance or by making an additional payment of one month's wage to the worker:

(1) where the worker suffers from an illness or a non-work-related injury and is unable to undertake the original job duties or other job duties arranged by the employer following completion of the stipulated medical treatment period;

(2) where the worker cannot perform his/her duties and remains to be incapable of performing the job duties after training or job transfer;

(3) where the objective circumstances for which the conclusion of the labour contract is based upon have undergone significant changes and as a result thereof, the labour contract can no longer be performed and upon negotiation between the employer and the worker, both parties are unable to reach an agreement on variation of the contents of the labour contract.

第四十一条 有下列情形之一的

Article 41 Under any of the following circumstances where an

，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：

（一）依照企业破产法规定进行重整的；

（二）生产经营发生严重困难的；

（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；

（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。

裁减人员时，应当优先留用下列人员：

（一）与本单位订立较长期限的固定期限劳动合同的；

employer needs to retrench 20 or more employees or where the number of employees to be retrenched is less than 20 but comprises 10% or more of the total number of employees of the enterprise, the employer shall explain the situation to the labour union or all staff 30 days in advance and seek the opinion of the labour union or the employees, the employer may carry out the retrenchment exercise upon reporting the retrenchment scheme to the labour administrative authorities:

(1) the employer undergoes restructuring pursuant to the provisions of the Enterprise Bankruptcy Law;

(2) the employer has serious production and business difficulties;

(3) the enterprise undergoes a change of production, significant technological reform or change of mode of operation and upon variation of labour contracts, there is still a need for retrenchment; or

(4) the objective circumstances for which the conclusion of a labour contract is based upon have undergone significant changes and as a result thereof, the labour contract can no longer be performed.

The following personnel shall be given priority to be retained in a retrenchment exercise:

(1) a worker who has entered into a fixed-term labour contract of a longer period with the employer;

(2) a worker who has entered into a non-fixed-term labour contract with the employer; or

(3) a worker whose family members are not employed or who needs to support aged or under-aged family members.

Where an employer which carries out a retrenchment exercise pursuant to the provisions of the first paragraph of this Article is re-hiring employees within six months shall notify the retrenched

(二)与本单位订立无固定期限劳动合同的；

personnel and the retrenched personnel shall be given priority for employment under the same conditions.

(三)家庭无其他就业人员，有需要抚养的老人或者未成年人的。

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。

第四十二条 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：

(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；

(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；

(三)患病或者非因工负伤，在

Article 42 Under any of the following circumstances, the employer shall not rescind a labour contract pursuant to the provisions of Article 40 and Article 41:

(1) where a worker who has engaged in work exposed to occupational hazards has not undergone post-employment occupational health check or during the period where a worker is suspected to have contracted an occupational illness or under medical observation;

(2) where a worker has contracted an occupational illness or suffered a work injury while working for the employer and is confirmed to have lost his/her labour capability wholly or partially;

(3) during the stipulated medical treatment period of a worker suffering from illness or non-work-related injury;

(4) during the pregnancy, maternity leave or breastfeeding period of a female worker;

(5) where a worker has worked for 15 years consecutively with the employer and will attain his/her statutory retirement age in less

规定的医疗期内的；

（四）女职工在孕期、产期、哺乳期的；

（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；

（六）法律、行政法规规定的其他情形。

than five years' time; or

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

第四十三条 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 43 An employer which unilaterally rescinds a labour contract shall notify the labour union of the reason beforehand. Where the employer violates the provisions of laws and regulations or the labour contract, the labour union shall have the right to require the employer to make correction. The employer shall study the opinion of the labour union and notify the labour union in writing of the outcome.

第四十四条 有下列情形之一的，劳动合同终止：

- （一）劳动合同期满的；
- （二）劳动者开始依法享受基本养老保险待遇的；
- （三）劳动者死亡，或者被人民

Article 44 Under any of the following circumstances, a labour contract shall be terminated:

- (1) the labour contract has expired;
- (2) the worker has started exercising his/her basic pension insurance entitlements;
- (3) the worker is dead or declared dead by a People's Court or declared missing;

法院宣告死亡或者宣告失踪的；

（四）用人单位被依法宣告破产的；

（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；

（六）法律、行政法规规定的其他情形。

(4) the employer is declared bankrupt pursuant to the law;

(5) the employer's business licence is revoked, the employer is ordered to close down, the employer is revoked or the employer has decided to dissolve prematurely; or

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

第四十五条 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。

Article 45 Where a labour contract has expired under any of the circumstances stipulated in Article 42, the labour contract shall be extended and be terminated upon extinguishment of the corresponding circumstances. In the event of termination of a labour contract of a worker who has lost his/her labour capability as stipulated in item (2) of Article 42, the case shall be dealt with pursuant to the provisions of the State on work injury insurance.

第四十六条 有下列情形之一的，用人单位应当向劳动者支付经济补偿：

（一）劳动者依照本法第三十八条规定解除劳动合同的；

Article 46 Under any of the following circumstances, the employer shall make economic damages to the worker:

(1) the worker has rescinded the labour contract pursuant to the provisions of Article 38;

(2) the employer has proposed rescission of labour contract to the worker pursuant to the provisions of Article 36 and has negotiated and agreed with the worker on rescission of labour contract;

（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；

（三）用人单位依照本法第四十条规定解除劳动合同的；

（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；

（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；

（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；

（七）法律、行政法规规定的其他情形。

(3) the employer has rescinded the labour contract pursuant to the provisions of Article 40;

(4) the employer has rescinded the labour contract pursuant to the provisions of the first paragraph of Article 41;

(5) except where an employer proposes to renew a labour contract by maintaining or raising the provisions of the labour contract and the worker is not agreeable to the renewal, a fixed-term labour contract shall be terminated pursuant to the provisions of item (1) of Article 44;

(6) the labour contract is terminated pursuant to the provisions of item (4) or item (5) of Article 44; or

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

第四十七条 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

Article 47 Economic damages shall be paid to a worker based on the number of years of service of the worker and based on the standard of one month's wage for each completed year of service. Where the period of service is more than six months but less than

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。

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。

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。

a year, it shall be deemed as a completed year of service; where the period of service is less than six months, the employer shall pay half a month's wage to the worker as economic damages.

Where the monthly wage of a worker is more than three times the local average monthly wage of employees of the preceding year announced by the Municipal People's Government of the centrally□administered municipality or the municipality divided into districts where the employer is located, the economic damages standard for economic damages to be made to the worker shall be based on three times the average monthly wage and the years of service for which economic damages are paid for shall not exceed 12 years.

The monthly wage referred to in this Article shall mean the average wage of a worker over 12 months before the rescission or termination of the labour contract.

第四十八条 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 48 Where an employer rescinds or terminates a labour contract in violation of this Law and the worker requests for performance of the labour contract to be continued, the employer shall continue to perform the labour contract; where the worker does not request for performance of labour contract to be continued or where the performance of labour contract cannot be continued, the employer shall pay compensation pursuant to the provisions of Article 87 of this Law.

第四十九条 国家采取措施，建立健全劳动者社会保险关系跨地

Article 49 The State shall take measures to establish a proper cross□locality transfer and continuation system for workers' social insurance.

区转移接续制度。

第五十条 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。

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。

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。

Article 50 An employer shall show proof of rescission or termination of a labour contract at the time of rescission or termination of the labour contract and shall complete filing and social insurance transfer formalities for the worker within 15 days.

The worker shall complete job handover pursuant to the agreement between both parties. Where the employer is required to pay economic damages to the worker pursuant to the relevant provisions of this Law, the payment shall be made at the completion of job handover.

An employer shall keep copies of rescinded or terminated labour contracts for at least two years for inspection purpose.

第五章 特别规定

CHAPTER 5 — SPECIAL PROVISIONS

第一节 集体合同

SECTION 1 — COLLECTIVE CONTRACTS

第五十一条 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

Article 51 Enterprise employees and their employer may conclude a collective contract on matters such as labour remuneration, working hours, rest periods and off days, work safety and health and insurance and welfare etc through negotiation. A draft collective contract shall be submitted to the employee representatives congress or all staff for discussion and adoption.

A collective contract shall be concluded between the labour union representing the enterprise employees and their employer; for an employer which has not established a labour union, the higher-level labour union shall guide the representatives elected

过。

by the workers to conclude a collective contract with the employer.

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。

第五十二条 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 52 Enterprise employees and their employer may conclude a special collective contract on work safety and health, protection of the rights and interests of female workers, wage adjustment mechanism etc.

第五十三条 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 53 In industries such as building industry, mining and exploration industry and food and beverage industry etc in regions below county level, the labour union and the enterprise representatives shall conclude an industry collective contract or a regional collective contract.

第五十四条 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。

Article 54 Upon conclusion of a collective contract, a copy shall be submitted to the labour administrative authorities; where the labour administrative authorities do not raise any objection within 15 days from receipt of the copy of collective contract, the collective contract shall forthwith come into effect.

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

A collective contract concluded pursuant to the law shall be binding upon the employer and the workers. Industry or regional collective contracts shall be binding upon employers and workers in the industry or region.

区域的用人单位和劳动者具有约束力。

第五十五条 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。

第五十六条 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。

第二节 劳务派遣

第五十七条 经营劳务派遣业务应当具备下列条件：

- （一）注册资本不得少于人民币二百万元；
- （二）有与开展业务相适应的固定的经营场所和设施；

Article 55 The standards for labour remuneration and working conditions etc in a collective contract shall not be lower than the minimum standard stipulated by the local People's Government; the standards for labour remuneration and working conditions etc in a labour contract concluded between an employer and a worker shall not be lower than the standard stipulated in the collective contract.

Article 56 Where an employer violates the collective contract or infringes upon the workers' labour rights and interests, the labour union may, pursuant to the law, require the employer to bear liability; where a dispute arising from performance of a collective contract cannot be resolved through negotiation, the labour union may apply for arbitration or file a lawsuit pursuant to the law.

SECTION 2 — SECONDMENT OF LABOUR

Article 57 Engaging in labour secondment business shall satisfy the following criteria:

- (1) The registered capital is not less than RMB2 million;
- (2) The fixed business premises and facilities correspond to the business;
- (3) The labour secondment management system complies with the provisions of laws and administrative regulations;
- (4) Any other criteria stipulated by laws and administrative

（三）有符合法律、行政法规规定的劳务派遣管理制度；

（四）法律、行政法规规定的其他条件。

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。

regulations.

Engaging in labour secondment business shall apply to the labour administrative authorities for administrative licensing pursuant to the law; upon obtaining administrative licensing, the corresponding company registration formalities shall be completed pursuant to the law. No organisation or individual shall be allowed to engage in labour secondment business without a licence.

第五十八条 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。

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 58 Labour secondment units are employers referred to in this Law and shall perform obligations of an employer towards their workers. A labour contract concluded between a labour secondment unit and a seconded worker shall, in addition to the contents stipulated in Article 17 of this Law, state the name of the secondment employer, the secondment period and job position etc of the worker.

Labour secondment units shall enter into fixed-term labour contracts of two year and above with seconded workers and pay them labour remuneration on a monthly basis; during the period in which a seconded worker is not assigned any work duties, the labour secondment unit shall pay the worker remuneration on a monthly basis pursuant to the minimum wage standard stipulated by the local People's Government.

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第五十九条 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。

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。

第六十条 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。

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。

劳务派遣单位和用工单位不得向被派遣劳动者收取费用。

第六十一条 劳务派遣单位跨

Article 59 A labour secondment unit shall enter into a labour secondment agreement with the secondment employer (hereinafter referred to as the "secondment employer") of seconded workers. A labour secondment agreement shall stipulate the secondment positions and the number of seconded workers, secondment period, amount and payment method of labour remuneration and social insurance premiums and default liability.

A secondment employer shall determine the secondment period with the labour secondment unit according to the actual needs of the job positions and shall not enter into several short-term labour secondment agreements by subdividing the secondment period.

Article 60 Labour secondment units shall notify seconded workers of the contents of the labour secondment agreement.

A labour secondment unit shall not deduct any amount from the labour remuneration paid by the secondment employer to a seconded worker pursuant to the labour secondment agreement.

Labour secondment units and secondment employers shall not collect monies from seconded workers.

Article 61 Where a labour secondment unit undertakes a

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。

cross-locality secondment of workers, the workers' entitlement to labour remuneration and working conditions shall comply with the standards at the location of the secondment employer.

第六十二条 用工单位应当履

行下列义务：

Article 62 A secondment employer shall perform the following obligations:

（一）执行国家劳动标准，提供相应的劳动条件和劳动保护；

(1) implement labour standards of the State and provide the corresponding working conditions and labour protection;

（二）告知被派遣劳动者的工作要求和劳动报酬；

(2) notify a seconded worker of his/her work requirements and labour remuneration;

（三）支付加班费、绩效奖金，提供与工作岗位相关的福利待遇；

(3) pay overtime wage and performance bonus and provide welfare incentives in relation to the job positions;

（四）对在岗被派遣劳动者进行工作岗位所必需的培训；

(4) provide the requisite job training for a seconded worker on the job; and

(5) implement a normal wage adjustment mechanism for consecutive secondment.

（五）连续用工的，实行正常的工资调整机制。

Secondment employers shall not arrange seconded workers to work for another employer on a sub-secondment basis.

用工单位不得将被派遣劳动者再派遣到其他用人单位。

第六十三条 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

Article 63 Seconded workers shall enjoy the right to same remuneration for same job held by the employee of the employer. Employers shall implement the same labour remuneration distribution method for seconded workers and the employer's employees who hold the same job position in the organisation pursuant to the principle of same remuneration for same job.

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。

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。

Where the employer does not have an employee who holds the same job position, the remuneration shall be determined in accordance with the labour remuneration of workers at the employer's locality who hold the same job position or similar job position.

The labour remuneration paid to the seconded worker as stated or agreed in the labour contract concluded between the labour secondment unit and the seconded worker and the labour secondment agreement concluded between the labour secondment unit and the employer shall comply with the provisions of the preceding paragraph.

第六十四条 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 64 Seconded workers shall have the right to participate in or organise a labour union of the labour secondment unit or the secondment employer pursuant to the law and to safeguard their legitimate rights and interests.

第六十五条 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。

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

Article 65 A seconded worker may rescind a labour contract with a labour secondment unit pursuant to the provisions of Article 36 and Article 38.

Where a seconded worker falls under any of the categories stipulated in Article 39 or item (1) or item (2) of Article 40, the secondment employer may send the worker back to the labour secondment unit and the labour secondment unit may, pursuant to the relevant provisions of this Law, rescind the labour contract with the worker.

除劳动合同。

第六十六条 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。

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。

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。

第六十七条 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。

Article 66 Employment by way of labour contract is the basic employment form of enterprises in China. Employment by way of labour secondment is a supplementary form and shall only be implemented for temporary, auxiliary or alternative job positions.

Temporary job positions stipulated in the preceding paragraph shall mean job positions which exist for not more than six months; auxiliary job positions shall mean non-principal business job positions which provide services for principal business job positions; alternative job positions shall mean replacement job positions by other employees arising from the employer's employees going for full-time study or on leave for a certain period of time.

Employers shall strictly control the number of seconded employees which shall not exceed a certain percentage of their total number of employees, the specific percentage shall be stipulated by the labour administrative authorities of the State Council.

Article 67 An employer shall not set up a labour secondment unit to second workers to itself or its subordinating organisations.

第三节 非全日制用工

SECTION 3 — PART-TIME WORKERS

第六十八条 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 68 A part-time worker shall mean a worker who is paid on an hourly basis and who works for an employer for not more than four hours per day on average and whose working hours per week do not exceed 24 hours.

第六十九条 非全日制用工双

方当事人可以订立口头协议。

Article 69 A part-time worker and his/her employer may conclude verbal agreements.

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。

A part-time worker may conclude a labour contract with one or more employers, provided that subsequently concluded labour contracts shall not affect the performance of previously concluded labour contracts.

第七十条 非全日制用工双方

当事人不得约定试用期。

Article 70 A part-time worker and his/her employer shall not agree on a probationary period.

第七十一条 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 71 A part-time worker and his/her employer may, at any time, notify each other of termination of employment. Upon termination of employment, the employer is not required to pay economic damages to the worker.

第七十二条 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。

Article 72 The hourly rate of a part-time worker shall not be lower than the minimum hourly wage standard stipulated by the local People's Government at the locality of the employer.

The settlement and payment cycle for labour remuneration of a part-time worker 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。

第六章 监督检查

第七十三条 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。

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。

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。

第七十四条 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：

（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；

CHAPTER 6 — SUPERVISION AND INSPECTION

Article 73 The labour administrative department of the State Council shall be responsible for supervision and administration of the labour contract system nationwide.

The labour administrative authorities of local People's Governments of county level and above shall be responsible for supervision and administration of the labour contract system within their respective administrative region.

The labour administrative authorities of local People's Governments of county level and above shall, in the process of supervision and administration of the implementation of the labour contract system, seek the opinions of labour unions, enterprise representatives and the relevant industry administration authorities.

Article 74 The labour administrative authorities of local People's Governments of county level and above shall carry out supervision and administration of the following implementation status of the labour contract system:

- (1) the formulation of rules which directly involves the vital interests of workers by employers and the implementation thereof;
- (2) the conclusion and rescission of labour contracts between employers and workers;
- (3) compliance with the relevant provisions on labour secondment

(二)用人单位与劳动者订立和解除劳动合同的情况;	by labour secondment units and secondment employers; (4) compliance with the provisions of the State on working hours, rest period and off days of workers by employers;
(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;	(5) payment by employers of labour remuneration stipulated in labour contracts and execution of minimum wage standard;
(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;	(6) participation by employers in various social insurance schemes and payment of social security premiums; and (7) any other labour surveillance matters stipulated by the laws and regulations.
(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;	
(六)用人单位参加各项社会保险和缴纳社会保险费的情况;	
(七)法律、法规规定的其他劳动监察事项。	

第七十五条 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。

劳动行政部门的工作人员进行

Article 75 The labour administrative authorities of local People's Governments of county level and above shall, when implementing supervision and inspection, have the right to inspect materials related to labour contracts and collective contracts, conduct onsite inspection at work premises; employers and workers shall provide the relevant information and materials truthfully.

Personnel of labour administrative authorities shall show their identity pass when carrying out supervision and inspection and shall exercise their duties and carry out civilised enforcement pursuant to the law.

监督检查，应当出示证件，依法行使职权，文明执法。

第七十六条 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。

第七十七条 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。

第七十八条 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。

第七十九条 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

Article 76 The relevant departments of People's Governments of county level and above responsible for supervision and administration of construction, health and work safety etc shall, pursuant to their respective scope of duties, carry out supervision and administration of implementation of the labour contract system by employers.

Article 77 A worker whose legitimate rights and interests are infringed shall have the right to request the relevant authorities to handle the case pursuant to the law or the right to apply for arbitration or file a lawsuit pursuant to the law.

Article 78 Labour unions shall safeguard the legitimate rights and interests of workers pursuant to the law and supervise the performance of labour contracts and collective contracts by employers. Where an employer violates the labour laws and regulations or a labour contract or collective contract, the labour union shall have the right to give opinion or require rectification; where a worker applies for arbitration or files a lawsuit, the labour union shall provide support and assistance pursuant to the law.

Article 79 Any organisation or individual shall have the right to report any violation of this Law; the labour administrative authorities of People's Governments of county level and above shall promptly investigate and deal with the matter and provide incentives for valid informers.

人员给予奖励。

第七章 法律责任

第八十条 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。

第八十一条 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。

第八十二条 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。

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。

CHAPTER 7 — LEGAL LIABILITY

Article 80 Where the rules formulated by an employer which directly involves the vital interests of workers violate the provisions of laws and regulations, the labour administrative authorities shall order the employer to make correction and give a warning; where a worker suffers damages thereto, the employer shall bear compensation liability.

Article 81 Where the template of a labour contract provided by an employer does not contain the essential clauses of a labour contract stipulated in this Law or where an employer fails to provide a worker with a copy of the labour contract, the labour administrative authorities shall order the employer to make correction; where the worker suffers damages thereto, the employer shall bear compensation liability.

Article 82 Where an employer fails to conclude a labour contract with a worker within the period of more than one month but less than one year from the date of commencement of work, the employer shall pay the worker double wages each month.

Where an employer violates the provisions of this Law in failing to conclude a non□fixed□term labour contract with a worker, the employer shall pay the worker double wages each month with effect from the date of conclusion of non□fixed□term labour contract.

第八十三条 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。

第八十四条 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。

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。

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 83 Where an employer violates the provisions of this Law in agreement with a worker on probationary period, the labour administrative authorities shall order the employer to make correction; where the probationary period agreed in violation of the law has been performed, the employer shall pay compensation to the worker based on the monthly wage of the worker upon expiry of the probationary period for the excess probationary period performed.

Article 84 Where an employer violates the provisions of this Law in retaining the identity card etc of a worker, the labour administrative authorities shall order the employer to return the identity card etc to the worker within a stipulated period and shall mete out punishment pursuant to the relevant provisions of the law.

Where an employer violates the provisions of this Law in collection monies from a worker in the name of guarantee or any other pretext, the labour administrative authorities shall order the employer to return the monies to the worker within a stipulated period, and the employer shall be subject to a fine ranging from RMB500 to RMB2,000 per person; where a worker suffers damages thereto, the employer shall bear compensation liability.

Where an employer retains the files or any other articles of a worker following rescission or termination of a labour contract by the worker pursuant to the law, the employer shall be punished pursuant to the provisions of the preceding paragraph.

第八十五条 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，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：

（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；

（二）低于当地最低工资标准支付劳动者工资的；

（三）安排加班不支付加班费的；

（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。

第八十六条 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 85 Under any of the following circumstances, the labour administrative authorities shall order the employer to pay labour remuneration, overtime wage or economic damages within a stipulated period; where the labour remuneration is lower than the minimum wage standard at the locality, the shortfall shall be paid; where payment is not made within the stipulated period, the employer shall be ordered to pay compensation to the worker based on 50% to 100% of the amount payable:

(1) the employer fails to pay labour remuneration to a worker pursuant to the provisions of the labour contract or fails to promptly pay labour remuneration in full amount pursuant to the provisions of the State;

(2) the employer pays a worker wages below the minimum wage standard at the locality;

(3) the employer does not pay overtime wages for overtime work; or

(4) the employer rescinds or terminates a labour contract but fails to pay economic damages to the worker pursuant to the provisions of this Law.

Article 86 Where a labour contract is deemed invalid pursuant to the provisions of Article 26 and a party suffers damage thereto, the party at fault shall bear compensation liability.

第八十七条 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 87 An employer which violates the provisions of this Law in rescission or termination of a labour contract shall pay compensation to the worker at two times the economic damages stipulated in Article 47.

第八十八条 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：

（一）以暴力、威胁或者非法限制人身自由的手段强迫劳动的；

（二）违章指挥或者强令冒险作业危及劳动者人身安全的；

（三）侮辱、体罚、殴打、非法搜查或者拘禁劳动者的；

（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 88 Under any of the following circumstances, the employer shall be subject to administrative punishment pursuant to the law; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law; where a worker suffers damages, the employer shall bear compensation liability:

(1) the employer uses means such as violence, threat or illegal restriction of personal freedom to coerce a worker into provision of labour;

(2) the employer gives orders which violate the rules or force a worker to engage in risk work which endangers the worker's personal safety;

(3) the worker is subject to humiliation, physical punishment, beating, illegal searches or detention by the employer;

(4) bad working conditions and severe environmental pollution which causes the worker to suffer serious damages to physical and mental health.

第八十九条 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

Article 89 Where an employer violates the provisions of this Law in failing to show written proof of rescission or termination of labour contract to the worker, the labour administrative authorities shall order the employer to make correction; where the worker suffers

政部门责令改正；给劳动者造成损害的，应当承担赔偿责任。

damages thereto, the employer shall bear compensation liability.

第九十条 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。

Article 90 Where a worker violates the provisions of this Law in rescission of labour contract or violates the provisions of a labour contract on confidentiality obligation or non-competition restrictive covenant and causes the employer to suffer damages, the worker shall bear compensation liability.

第九十一条 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 91 Where an employer employs a worker who has not rescinded or terminated his/her labour contract with the existing employer and causes the existing employer to suffer damages, the employer shall bear compensation liability jointly and severally.

第九十二条 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。

Article 92 Persons who violate the provisions of this Law to engage in unauthorised labour secondment business without a licence shall be ordered by the labour administrative authorities to stop the illegal act, illegal income shall be confiscated and a fine ranging from one to five times the amount of illegal income shall be imposed; where there is no illegal income, a fine of not more than RMB50,000 may be imposed.

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

Labour secondment units and employers which violate the provisions of this Law on labour secondment shall be ordered by the labour administrative authorities to make correction within a stipulated period; where correction is not made within the stipulated period, a fine ranging from RMB5,000 to RMB10,000 per person shall be imposed, and the labour secondment business permit of the labour secondment unit shall be revoked. In the event that an employer has caused a seconded worker to suffer damages, the labour secondment unit and the employer shall bear

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。

compensation liability jointly and severally.

第九十三条 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 93 For illegal acts and crimes committed by employers which do not possess legitimate business qualifications, legal liability shall be pursued in accordance with the law; where a worker has provided labour services, the unit or its capital contributory(ies) shall pay labour remuneration, economic damages and compensation to the worker pursuant to the relevant provisions of this Law; and shall bear compensation liability if a worker suffers damages thereto.

第九十四条 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 94 Where an individual contractor violates the provisions of this Law in recruiting workers and the workers suffer damages thereto, the organisation which awards the contract and the individual contractor shall bear compensation liability jointly and severally.

第九十五条 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

Article 95 Labour administrative authorities and the relevant authorities and their personnel that are guilty of dereliction of duties, non-performance of statutory duties or exercise of official powers in violation of law which cause a worker or an employer to suffer damages shall bear compensation liability; person(s) in charge and other directly accountable personnel shall be subject to administrative punishment; where the case constitutes criminal offence, criminal liability shall be pursued in accordance with the law.

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。

第八章 附则

第九十六条 事业单位与实行聘用制的工作人员订立、履行、变更、解除或者终止劳动合同，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。

第九十七条 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。

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。

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

CHAPTER 8 — SUPPLEMENTARY PROVISIONS

Article 96 Where the laws and administrative regulations or the State Council provide otherwise for the conclusion, performance, variation, rescission or termination of labour contracts between institutions with their staff under the existing employment scheme, such provisions shall prevail; where there are no provisions, the relevant provisions of this Law shall prevail.

Article 97 Existing labour contracts concluded pursuant to the law prior to the implementation of this Law and valid as of the date of implementation of this Law shall continue to be performed; the number of instances of consecutive conclusion of fixed-term labour contracts stipulated in item (3) of the 2nd paragraph of Article 14 shall be computed with effect from the renewal of fixed-term labour contracts following the implementation of this Law.

Where a written labour contract has not been concluded for a labour relationship established before the implementation of this Law, a written labour contract shall be concluded within one month from the date of implementation of this Law.

Where a labour contract valid as of the date of implementation of this Law is rescinded or terminated following the implementation of this Law and whereby economic damages shall be paid pursuant to the provisions of Article 46, the duration for economic damages shall commence from the date of implementation of this Law; where an employer is required to pay economic damages to a worker pursuant to the relevant provisions prevailing before the implementation of this Law, such relevant prevailing provisions

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。

shall be complied with.

第九十八条 本法自2008年1月

Article 98 This Law shall be effective 1 January 2008.

1日起施行。



扫一扫，手机阅读更方便