

Unofficial Translation Prepared by Baker & McKenzie**LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS**
(Draft After Second Reading)Table of Contents

Chapter 1.	General Provisions	1
Chapter 2.	Conclusion of Employment Contracts	2
Chapter 3.	Performance and Amendment of Employment Contracts.....	6
Chapter 4.	Termination of Employment Contracts.....	7
Chapter 5.	Special Provisions	
	Section 1. Collective Contracts.....	11
	Section 2. Placement Contracts.....	12
	Section 3. Use of Labor in Other Ways.....	13
Chapter 6.	Monitoring Inspections	14
Chapter 7.	Legal Liability.....	15
Chapter 8.	Supplementary Provisions	18

CHAPTER 1. GENERAL PROVISIONS

Article 1. This Law has been formulated pursuant to the Labor Law in order to regulate the conclusion, performance, amendment and termination of employment contracts by employers and workers, to build and develop harmonious and stable employment relationships and to protect the lawful rights and interests of workers.

Article 2. This Law governs the establishment of employment relationships between, and the conclusion, performance, amendment and termination of employment contracts by, enterprises, individual economic organizations and private non-enterprise units in the People's Republic of China ("Employers") on the one hand and workers in the People's Republic of China on the other hand.

Where state authorities, institutions or social organizations establish employment relationships with workers (other than civil servants and those working personnel who are managed with reference to the Civil Servants Law), the conclusion, performance, amendment and termination of the employment contracts between them shall be handled pursuant to this Law.

Article 3. When an employer and a worker conclude an employment contract, they shall abide by the principles of lawfulness, fairness, equality, free will, negotiated consensus and good faith.

An employment contract that is lawfully concluded shall instantly become legally binding, and both the Employer and the worker must perform their respective obligations thereunder.

Article 4. Employers shall establish and improve labor rules and regulations, so as to ensure that workers enjoy their labor rights and perform their labor obligations.

When an Employer formulates, revises or decides on rules and regulations or material matters concerning labor compensation, work hours, rest, leave, work safety and hygiene, insurance, benefits, employee training, work discipline or work quota management, etc. that have a direct bearing on the immediate interests of its workers, the same shall be discussed by the

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employee representative congress or all the employees. The employee representative congress or all the employees, as the case may be, shall put forward a proposal and comments, whereupon the matter shall be determined through consultations with the labor union or employee representatives conducted on a basis of equality.

If, during the implementation of an Employer's rule or regulation, the labor union or an employee is of the opinion that the rule or regulation is inappropriate, it or he is entitled to communicate such opinion to the Employer, and the rule or regulation shall be improved by making amendments after consultations.

An Employer's rules and regulations that have a direct bearing on the immediate interests of the workers shall be announced within its organization or distributed to the workers.

Article 5. The labor administration authorities of People's Governments at the county level and above, together with the labor union at the same level and enterprise representatives, shall establish a comprehensive tri-partite mechanism for the coordination of employment relationships, in order to jointly study and resolve major issues concerning employment relationships and to supervise the establishment of collective bargaining mechanisms by Employers and their labor unions or employee representatives.

Article 6. Labor unions shall assist and guide workers in the conclusion of employment contracts with their Employers and the performance thereof in accordance with the law, and shall safeguard the lawful rights and interests of workers.

CHAPTER 2. CONCLUSION OF EMPLOYMENT CONTRACTS

Article 7. An Employer's employment relationship with a worker is established on the date it starts using the worker. To establish an employment relationship, an Employer and a worker shall carry out the employment procedures and conclude a written employment contract.

In the event that an employment relationship has been established but the Employer and the worker have not concluded a written employment contract, a written employment contract shall be concluded within one month after the date the Employer starts using the worker.

Article 8. When an Employer hires workers, it shall keep a register of the workers hired and issue employee IDs to the workers.

Article 9. In the event that an Employer fails to conclude a written employment contract with a worker when carrying out the employment procedures, and it is not clear what labor compensation was agreed upon with the worker, the labor compensation of the new worker shall be decided pursuant to the rate specified in the enterprise's or industry's collective contract; where there is no collective contract, the Employer shall give the worker equal pay for equal work.

Article 10. When an Employer concludes an employment contract with a worker, it shall truthfully inform him as to the content of the work, the working conditions, the place of work, occupational hazards, production safety conditions, labor compensation and other matters directly relating to the employment contract which the worker wishes to know. The

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Employer has the right to learn from the worker basic information which directly relates to the employment contract, and the worker shall truthfully provide the same.

Article 11. When hiring a worker, an Employer may not require him to provide security or collect property from the worker as collateral, nor may it retain the worker's resident ID card or other papers.

Article 12. The terms of employment contracts are divided into three types: fixed terms, open-ended terms and terms to expire upon completion of a certain job.

Article 13. A "fixed-term employment contract" is an employment contract whose termination date is agreed upon by the Employer and the worker.

An Employer and a worker may conclude a fixed-term employment contract upon reaching a negotiated consensus.

Article 14. An "open-ended employment contract" is an employment contract for which the Employer and the worker have agreed not to stipulate a termination date.

An Employer and a worker may conclude an open-ended employment contract upon reaching a negotiated consensus. If a worker proposes to renew his employment contract in any of the following circumstances, an open-ended employment contract shall be concluded:

- (1) at the time of renewal of the employment contract, the worker has been working for the Employer for a consecutive period of not less than 10 years;
- (2) when his Employer introduces the employment contract system or the state owned enterprise that employs him re-concludes its employment contracts as a result of restructuring, the worker has been working for the Employer for a consecutive period of not less than 10 years or is less than 10 years away from his legal retirement age; or
- (3) the renewal occurs following the conclusion of a fixed-term employment contract on two consecutive occasions.

Article 15. An "employment contract with a term to expire upon completion of a certain job" is an employment contract in which the Employer and the worker have agreed that the completion of a certain job is the condition for termination of the contract.

An Employer and a worker may conclude any of the following employment contracts with a term to expire upon completion of a certain job:

- (1) an employment contract with a term to expire upon completion of a single job;
- (2) an employment contract for completion of a contracted task by means of project contracting;
- (3) an employment contract for temporary employment by reason of a seasonal factor; or
- (4) another employment contract which, as agreed upon by the parties, is to expire upon completion of a certain job.

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Article 16. The text of an employment contract shall be provided by the Employer.

An employment contract shall become effective when the Employer and the worker have reached a negotiated consensus thereon and each of them has signed or sealed the text of such contract.

Where an Employer and a worker conclude an employment contract before the Employer starts using the worker, the employment contract becomes effective on the date the Employer starts using the worker.

The Employer and the worker shall each hold one copy of the employment contract.

Article 17. An employment contract shall specify the following matters:

- (1) the name, domicile and legal representative of the Employer;
- (2) the name, domicile and resident ID card number of the worker;
- (3) the term, or the conditions for the termination, of the employment contract;
- (4) the job description and the place of work;
- (5) working hours, rest and leave;
- (6) labor compensation;
- (7) social insurance;
- (8) labor protection and working conditions; and
- (9) other matters which laws and administrative statutes require to be included in employment contracts.

In addition to the requisite terms mentioned above, an Employer and a worker may agree to stipulate other matters in the employment contract, such as probation period, training, confidentiality of trade secrets, supplementary insurance and benefits, etc.

Article 18. If a dispute arises due to the fact that the rate or standards for labor compensation or working conditions, etc. are not explicitly specified in the employment contract, the Employer and the worker may renegotiate. If the negotiations are unsuccessful, the provisions of the collective contract shall apply. If the collective contract is silent on such matters, the relevant regulations of the state shall apply.

Article 19. It is prohibited to include in an employment contract clauses in which the Employer disclaims its liability or denies the worker his rights.

Article 20. If an employment contract has a term of less than one year, the probation period may not exceed one month; if an employment contract has a term of more than one year and less than three years, the probation period may not exceed two months; and if an

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employment contract has a term of not less than three years or is open-ended, the probation period may not exceed six months.

An Employer may stipulate only one probation period with any given worker.

If an employment contract provides for a probation period only or if the term of the probation period is the same as that of the employment contract, then there is no probation period and the term concerned shall be the term of the employment contract.

Article 21. The wages of a worker on probation may not be less than the lowest wage for the same job or less than 80 percent of the wage agreed upon in the employment contract.

Article 22. An Employer may not terminate an employment contract during the probation period unless there is evidence proving that the worker has failed to meet the employment conditions. If an Employer terminates an employment contract during the probation period, it shall explain the reasons to the worker.

Article 23. If an Employer gives a worker one month or more of off-the-job professional technical training or vocational training at the Employer's expense, it may agree upon a term of service with the worker. If the worker breaches the agreement on the term of service, he shall pay liquidated damages to the Employer as agreed. The measure of the liquidated damages stipulated for breach of the agreement on the term of service may not exceed the training expenses paid by the Employer. In the event of a breach, the liquidated damages paid by the worker may not exceed the portion of the training expenses allocable to the unperformed portion of the term of service.

If the term of service agreed upon by the Employer and the worker is relatively long, the Employer shall raise the labor compensation of the worker during the term of service according to the wage adjustment mechanism.

Article 24. An Employer and a worker may include in their employment contract provisions on matters concerning trade secrets of the Employer.

If a worker has the obligation to maintain the confidentiality of his Employer's trade secrets, the Employer may agree with the worker on competition restriction provisions in the employment contract or confidentiality agreement, and stipulate that the Employer shall pay financial compensation to the worker on a monthly basis during the term of the competition restriction after the termination of the employment contract. If the worker breaches the competition restriction provisions, he shall pay liquidated damages to the Employer as stipulated.

Article 25. The personnel subject to competition restrictions shall be limited to the Employer's senior management, senior technicians and other personnel who have knowledge of trade secrets of the Employer. The scope, territory and term of the competition restrictions shall be agreed upon by the Employer and the worker, and such agreement shall not violate laws and regulations.

The term, counted from the termination of the employment contract, for which a person as mentioned in the preceding paragraph is subject to restrictions in terms of his working for a competing Employer that produces the same type of products or is engaged in the same type

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of business as his current Employer, or in terms of his establishing his own business to produce products or engage in business competing with his current Employer's products or business, shall not exceed two years.

Article 26. With the exception of the circumstances specified in Articles 23 and 24 hereof, an Employer may not stipulate with a worker liquidated damages which the worker is required to bear.

Article 27. An employment contract shall be invalid or partially invalid if:

- (1) the employment contract violates laws or administrative statutes;
- (2) the Employer uses such means as deception or coercion to conclude the employment contract; or
- (3) the Employer disclaims its liability or denies the worker his rights.

The invalidity or partial invalidity of an employment contract shall be confirmed by a labor dispute arbitration institution or a People's Court.

Article 28. If certain provisions of an employment contract are invalid and such invalidity does not affect the validity of the remaining provisions, the remaining provisions shall remain valid.

Article 29. If an employment contract is confirmed as invalid and the worker has already performed labor, the Employer shall pay the worker labor compensation. The amount of labor compensation shall be determined with reference to the labor compensation of workers in the same position with the Employer. If there is no equivalent position with the Employer, the labor compensation shall be determined with reference to the guiding rate for labor market wages published by the municipal-level People's Government of the place where the Employer is located.

CHAPTER 3. PERFORMANCE AND AMENDMENT OF EMPLOYMENT CONTRACTS

Article 30. The Employer and the worker shall each fully perform its/his obligations in accordance with the employment contract. The worker shall actually do the work specified in his employment contract himself.

Article 31. Employers shall pay labor compensation on time and in full in accordance with state regulations and the employment contracts.

If an Employer falls into arrears with the payment of labor compensation or fails to make payment in full, the worker may apply to the local People's Court for an order to pay; if the Employer refuses to comply with the order to pay, the People's Court shall enforce the order according to law.

Article 32. Employers shall strictly implement the work quota standards and may not force workers to work a disguised form of overtime. If an Employer arranges for a worker to work overtime, it shall pay him overtime pay in accordance with the relevant state regulations.

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Article 33. Workers have the right to refuse to perform dangerous operations which are instructed in violation of regulations or peremptorily ordered by management staff of the Employer, and such rejection may not be deemed to constitute a breach of their employment contract. Workers have the right to criticize, report to the authorities, or lodge accusations concerning, working conditions that endanger their lives or health.

Article 34. A change in the name, the legal representative, the main person in charge or investor, or the registered or recorded particulars of an Employer shall not affect the performance of its employment contracts.

Article 35. If an Employer is merged or divided, etc., its existing employment contracts shall remain valid and continue to be performed by the Employer(s) which succeeded to its rights and obligations

Article 36. An Employer and a worker may amend the provisions of their employment contract if they so agree after consultations; however, if laws or regulations provide otherwise, such provisions shall prevail.

When an employment contract is amended, the amended provisions shall be recorded in writing and shall enter into effect once signed or sealed by the Employer and the worker.

CHAPTER 4. TERMINATION OF EMPLOYMENT CONTRACTS

Article 37. An Employer and a worker may terminate their employment contract if they so agree after consultations.

Article 38. A worker may terminate his employment contract upon 30 days' prior written notice to his Employer. During his probation period, a worker may terminate his employment contract by informing his Employer at any time.

In any of the following circumstances, a worker may terminate his employment contract by giving notice to his Employer at any time:

- (1) the Employer fails to provide working conditions in accordance with the employment contract or fails to provide safe production conditions that are compliant with regulations;
- (2) the Employer fails to pay labor compensation in full and on time;
- (3) the Employer fails to pay the social insurance premiums for the worker in accordance with the law;
- (4) the rules and regulations of the Employer violate laws or regulations, thereby harming the worker's rights and interests;
- (5) the Employer took advantage of the worker's difficulties to cause him to conclude the employment contract contrary to his true intent;
- (6) other circumstances specified in laws or administrative statutes.

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If an Employer uses violence, threats or unlawful restriction of personal freedom to compel a worker to work, or if a worker is instructed in violation of rules and regulations or peremptorily ordered by his Employer to perform dangerous operations which threaten his personal safety, the worker may terminate his employment contract forthwith without giving prior notice to the Employer.

Article 39. An Employer may terminate an employment contract if the worker:

- (1) is proved during the probation period not to satisfy the conditions of employment;
- (2) materially breaches the Employer's rules and regulations, and, according to such rules and regulations, the employment contract should be terminated;
- (3) commits serious dereliction of duty or practices graft, causing substantial damage to the Employer's interests;
- (4) has additionally established an employment relationship with another Employer which materially affects the completion of his tasks and he refuses to rectify the matter after the same is brought to his attention by the Employer; or
- (5) has his criminal liability pursued in accordance with the law.

Article 40. An Employer may terminate an employment contract by giving the worker himself 30 days' prior written notice, or one month's wage in lieu of notice, if:

- (1) after the set period of medical care for an illness or non-work related injury, the worker is incapable of engaging in his original work and fails to reach agreement with the Employer on the amendment of his employment contract;
- (2) the worker is proved incompetent and remains incompetent after training or adjustment of his position; or
- (3) a major change in the objective circumstances relied upon at the time of conclusion of the employment contract renders it unperformable and, after consultations, the Employer and worker are unable to reach agreement on amending the employment contract.

Article 41. If any of the following circumstances renders employment contracts unperformable and makes it necessary to reduce the workforce by 20 persons or more or by a number of persons that is less than 20 but accounts for 10 percent or more of the total number of the enterprise's employees, the Employer shall explain the circumstances to its labor union or to all of its employees 30 days in advance, and it may reduce the workforce after considering the opinions of the labor union or the employees and subsequently reporting the workforce reduction plan to the labor administration department:

- (1) restructuring pursuant to the Enterprise Bankruptcy Law;
- (2) serious difficulties in production and/or business operations;
- (3) relocation in order to prevent or control pollution; or

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- (4) another major change in the objective economic circumstances relied upon at the time of conclusion of the employment contracts, rendering them unperformable.

When reducing the workforce, the Employer shall retain with priority workers:

- (1) who have worked for the Employer for a relatively long period of time;
- (2) who have concluded with the Employer fixed-term employment contracts with a relatively long term;
- (3) who have concluded open-ended employment contracts; or
- (4) who are the only ones in their families to be employed and whose families have an elderly person or a minor for whom they need to provide.

If the Employer hires again within six months, it shall give preference to the persons dismissed at the time of the reduction.

Article 42. An Employer may not terminate an employment contract pursuant to Article 40 or Article 41 hereof if the worker:

- (1) is engaged in operations exposing him to occupational hazards and has not undergone a pre-departure occupational health check-up, or is suspected of having contracted an occupational disease and is being diagnosed or under medical observation;
- (2) has been confirmed as having lost or partially lost his capacity to work due to an occupational disease or a work-related injury;
- (3) has contracted an illness or sustained an injury, and the set period of medical care therefor has not expired;
- (4) is a female employee in her pregnancy, confinement or nursing period;
- (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;
- (6) finds himself in other circumstances stipulated in laws or administrative statutes.

Article 43. When an Employer is to terminate an employment contract unilaterally, it shall give the labor union advance notice of the reason therefor. If the labor union believes such termination to be unjustified, it has the right to put forward its opinions. If the Employer violates laws, administrative statutes or the employment contract, the labor union has the right to demand that the Employer rectify the matter. The Employer shall study the labor union's opinions and notify the labor union in writing as to the outcome of its handling of the matter.

Article 44. An employment contract shall terminate if:

- (1) its term expires or a condition for termination specified therein arises;

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- (2) the worker has commenced drawing his basic old age insurance pension in accordance with the law;
- (3) the worker dies, or is declared dead or missing by a People's Court;
- (4) the Employer goes out of business or is dissolved;
- (5) the Employer is declared bankrupt, has its business license revoked or is ordered to close down in accordance with the law; or
- (6) another circumstance specified in laws or administrative statutes arises.

Article 45. If an employment contract expires or a termination condition specified in the contract arises, but any of the circumstances specified in Article 42 hereof applies, the term of the employment contract shall be extended in accordance with the law until the relevant circumstance ceases to exist, at which point the contract shall terminate.

Article 46. In any of the following circumstances, the Employer shall pay the worker severance pay at the rate prescribed by the State Council:

- (1) the employment contract is terminated by the worker pursuant to the second or third paragraph of Article 38 hereof;
- (2) the employment contract is terminated by the Employer pursuant to Article 40 hereof;
- (3) the employment contract is terminated by the Employer pursuant to the first paragraph of Article 41 hereof;
- (4) the employment contract is terminated after such termination was proposed to the worker by the Employer and the parties reached a consensus thereon;
- (5) the employment contract is a fixed-term contract that is terminated pursuant to item (1) of Article 44 hereof, unless the worker does not agree to renew the contract because the Employer does not moderate the conditions stipulated in the current contract; or
- (6) the employment contract terminates pursuant to item (4) or (5) of Article 44 hereof.

Article 47. If an Employer terminates an employment contract in violation of this Law and the worker demands continued performance of such contract, the Employer shall continue performing the same. If the worker does not demand continued performance of the employment contract or if performance of the employment contract has become impossible, the Employer shall pay damages to the worker at twice the rate of the severance pay provided for in Article 46 hereof. The employment contract shall terminate upon the Employer's payment of such damages.

Article 48. The state will take measures to gradually enable workers' personal accounts for basic old-age pension insurance payments to follow the workers throughout the country.

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Article 49. Within seven days from the date of termination of an employment contract, the Employer shall carry out the procedures for the transfer of the worker's file and social insurance and, if the worker needs to carry out unemployment registration, issue a certificate evidencing the termination of the employment contract.

The worker shall carry out in good faith the procedures for the handover of his work as agreed by the parties. If the Employer is required to pay severance pay, it shall pay the same to the worker upon completion of the procedures for the handover of the work.

The Employer shall keep terminated employment contracts on file for not less than six months, for reference purposes.

CHAPTER 5. SPECIAL PROVISIONS

Section 1. Collective Contracts

Article 50. After bargaining on an equal basis, enterprise employees, as one party, and their Employer enter into a collective contract on such matters as labor compensation, working hours, rest, leave, work safety and hygiene, insurance, benefits, etc. The draft of the collective contract shall be presented to the employee representative congress or all the employees for discussion and approval.

A collective contract shall be executed by the labor union, on behalf of the enterprise's employees, and the Employer. If the Employer does not yet have a labor union, it shall execute the collective contract with a representative put forward by the workers.

Article 51. After a collective contract has been executed, it shall be submitted to the labor administration authority. The collective contract shall become effective upon the lapse of 15 days from the date of receipt thereof by the labor administration authority, unless the said authority raises any objections to the contract.

A collective contract that has been entered into in accordance with the law shall be binding on the Employer and the workers.

Article 52. Industry-wide collective contracts may be concluded between the labor union on the one hand and representatives of the enterprises on the other hand in industries such as construction, mining, catering services, etc. within areas below the county level. Industry-wide collective contracts will be binding on Employers and workers throughout the industry in the locality concerned.

Article 53. Enterprise employees, as one party, and their Employer may enter into specialized collective contract addressing labor safety and hygiene, the wage adjustment mechanism, etc.

Article 54. The standards for working conditions, rates for labor compensation, etc. stipulated in a collective contract shall be higher than the minimum standards and rates prescribed by the local People's Government. The standards for working conditions, rates for labor compensation, etc. stipulated in the employment contract between an Employer and a worker may not be lower than those stipulated in the collective contract.

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Article 55. If an Employer's breach of the collective contract infringes upon the labor rights and interests of the employees, the labor union may, in accordance with the law, demand that the Employer assume liability. If a dispute arising from the performance of the collective contract is not resolved following consultations, the labor union may apply for arbitration or institute an action according to law.

Section 2. Placement Contracts

Article 56. Staffing firms shall be established in accordance with the relevant provisions of the Company Law and have registered capital of not less than RMB¥500,000.

Article 57. Staffing firms are Employers as mentioned in Article 2 hereof and shall perform all of an Employer's obligations toward its workers. The employment contract between a staffing firm and a worker to be placed shall, in addition to the matters specified in Article 17 hereof, specify matters such as the unit with which the worker will be placed, the term of his placement, his position, etc.

The employment contracts between staffing firms and the workers to be placed shall be fixed-term employment contracts with a term of not less than two years. Staffing firms shall pay labor compensation on a monthly basis. The labor compensation paid by staffing firms for periods during which there is no work may not be lower than the local minimum wage rate. In the absence of circumstances as specified in Articles 39 and 40 hereof, the employment contracts shall be renewed upon expiration.

Article 58. When placing workers, staffing firms shall enter into staffing agreements with the units with which the worker are placed. The staffing agreements shall specify the job positions in which workers are placed, the number of persons placed, the term of placement, the amounts and methods of payments of labor compensation and social insurance premiums, and the liability for breach of the agreement.

A unit with which a worker is placed shall decide with the staffing firm on the term of placement based on the actual requirements of the job position, and it may not enter into several short-term placement agreements to cover a continuous term of labor use.

Article 59. Staffing firms have the obligation to inform the workers placed of the content of the placement agreements.

Staffing firms may not pocket part of the labor compensation that a unit with which a worker is placed pays to that worker in accordance with the placement agreement.

Staffing firms and the units with which workers are placed may not charge fees from the workers placed.

Article 60. If a staffing firm places a worker with a unit in another region, the worker's working conditions and labor compensation shall be in line with the standards and rates of the region where the said unit is located.

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Article 61. Units with which workers are placed shall perform the following obligations:

- (1) implement state labor standards and provide the corresponding working conditions and labor protection;
- (2) communicate the job requirements and labor compensation of the workers placed;
- (3) pay overtime pay and performance bonuses and provide benefits appropriate for the job positions;
- (4) provide the placed workers who are on the job with the training necessary for their job positions; and
- (5) in case of continuous placement, implement a normal wage adjustment system.

Units with which workers are placed shall use the placed workers in accordance with the placement agreements and may not in turn place the workers with other units that use labor.

Article 62. Placed workers shall have the right to receive equal pay for equal work. If a unit with which a worker has been placed has no other worker in the same position, the labor compensation shall be determined with reference to the guiding rate for labor market wages published by the municipal-level People's Government of the place where the said unit is located.

Article 63. Placed workers have the right to lawfully join the labor union of their staffing firm or the unit with which they have been placed or to organize such unions, so as to protect their own lawful rights and interests.

Article 64. Placed workers may terminate their employment contracts with their staffing firms pursuant to Article 38 hereof.

If any of the circumstances provided for in Article 39 hereof applies to a placed worker, the unit with which he is placed may return him to the staffing firm, which shall terminate its employment contract with him in accordance with the relevant provisions hereof.

Article 65. The placement of workers shall generally be practiced for temporary, auxiliary or substitute job positions. The specific job positions shall be prescribed by the State Council's labor administration authority.

Article 66. Units that use labor may not establish their own staffing firms and place works with themselves or their subordinate units.

Section 3. Use of Labor in Other Ways

Article 67. The term "part-time labor" means a form of labor for which the compensation is chiefly calculated by the hour and where the worker generally averages not more than 4 hours of work per day and not more than an aggregate 24 hours of work per week for the same Employer.

Article 68. Agreements for part-time labor may be concluded orally.

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A worker who engages in part-time labor may enter into an employment contract with one or more Employers, but a subsequently executed employment contract may not prejudice or harm the rights and obligations under a previously executed employment contract.

Article 69. No probation period may be stipulated for part-time labor.

Article 70. Either Party may terminate the use of the labor by notice to the other party at any time. No severance pay shall be payable upon terminate of the use of the labor.

Article 71. The labor compensation settlement cycle for part-time labor may not exceed 15 days.

Article 72. Where, after having obtained approval, an individual contracts for the hiring of workers, the individual or organization that employed such contractor shall be governed by the provisions hereof that relate to Employers, and the unit that uses the workers shall be governed by the provisions of Section 2 of Chapter 5 hereof that relate to units with which workers have been placed. If an individual contracts for the hiring of workers in violation of this Law and a worker suffers harm as a result thereof, the individual or organization that employed such contractor and the unit that uses the worker shall be jointly and severally liable for damages.

CHAPTER 6. MONITORING INSPECTIONS

Article 73. The State Council's labor administration authority shall be responsible for overseeing the implementation of the employment contract system.

The labor administration authorities of local People's Governments at the county level and above shall be responsible for overseeing the implementation of the employment contract system in their respective jurisdictions.

In the course of overseeing the implementation of the employment contract system, the labor administration authorities of People's Governments at the county level and above shall consider the opinions of the labor unions, the Employers and the authorities in charge of the industries concerned.

Article 74. The labor administration authorities of local People's Governments at the county level and above shall conduct monitoring inspections of the implementation of the following aspects of the employment contract system, in accordance with the law:

- (1) Employers' formulation of labor rules and regulations;
- (2) Employers' carrying out of the employment procedures when hiring workers;
- (3) Employers' provision of the text of the employment contract;
- (4) the conclusion and termination of employment contracts by Employers and workers;
- (5) compliance with relevant regulations on placement by staffing firms and units with which workers are placed;

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- (6) Employers' compliance with regulations on working hours, rest and leave;
- (7) Employers' payment of labor compensation as specified in the employment contracts and compliance with minimum wage rates;
- (8) Employers' enrollment in the various types of social insurance and payment of social insurance premiums; and
- (9) other labor matters requiring monitoring inspections, as specified in laws and administrative statutes.

Article 75. When the labor administration authority of a local People's Government at the county level or above conducts a monitoring inspection, it has the authority to review materials relating to the employment contracts and collective contracts and conduct an on-the-spot inspection of the work premises. Both the Employer and the workers shall truthfully provide relevant information and materials.

When staff of a labor administration authority conduct a monitoring inspection, they shall show their IDs and shall enforce the law in a legal and well-disciplined manner.

Article 76. Such competent authorities as construction authorities, health authorities, production safety regulators, etc. of People's Governments at the county level and above shall, to the extent of their respective purviews, oversee the implementation of the employment contract system by Employers.

Article 77. Labor unions shall safeguard the lawful rights and interests of workers in accordance with the law and monitor the performance of the employment contracts and collective contracts by Employers. If an Employer violates labor laws or statutes or breaches an employment contract or collective contract, the labor union has the right to voice its opinion or require that the matter be handled anew. If a worker applies for arbitration or institutes an action, the labor union shall provide support and assistance in accordance with the law.

Article 78. All organizations and individuals are entitled to report violations of this Law. The labor administration authorities of People's Governments at the county level and above shall timely check and handle the violations reported and reward those persons whose reports are valuable.

CHAPTER 7. LEGAL LIABILITY

Article 79. If a labor rule or regulation formulated by an Employer violates laws or administrative statutes, such rule or regulation shall be invalid and the labor administration authority shall give a warning and order rectification. If the said rule or regulation caused a worker to suffer harm, the Employer will be liable for damages.

Article 80. If an Employer fails to carry out the employment procedures when hiring workers, the labor administration authority shall order rectification and impose a fine at the rate of RMB¥500 per worker.

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Article 81. If the text of an employment contract provided by an Employer lacks any of the mandatory clauses which this Law requires to be included in such contracts, the labor administration authority shall order rectification; if the worker suffered harm as a result thereof, the Employer will be liable for damages.

Article 82. If an Employer fails to conclude a written employment contract with a worker within one month after the date of carrying out the employment procedures, it shall pay to the worker wages being twice the amount of due compensation for his labor.

Article 83. If the probation period stipulated by an Employer with a worker violates this Law, the probation period shall be invalid and the labor administration authority shall order the Employer to rectify the matter in accordance with this Law. If the illegally stipulated probation period has been performed, the Employer shall pay compensation to the worker based on the worker's monthly wage rate and the length of the illegally stipulated probation period.

Article 84. If an Employer violates this Law by requiring workers to provide security, demanding property from workers or retaining their ID cards or other papers, the labor administration authority shall order the same returned to the workers within a specified period of time and impose a fine on the Employer of not less than RMB¥500 and not more than RMB¥2,000 for each worker; if the workers suffered harm as a result as a result of the said conduct on the part of the Employer, the Employer will be liable for damages.

If an Employer retains a worker's file or other article after he has terminated his employment contract in accordance with the law, a penalty shall be imposed in accordance with the preceding paragraph.

Article 85. If an Employer:

- (1) fails to pay a worker labor compensation as stipulated in his employment contract or provided for in this Law;
- (2) pays labor compensation below the local minimum wage rate;
- (3) arranges overtime without paying overtime pay; or
- (4) terminates an employment contract without paying the worker severance pay pursuant to this Law;

then the labor administration authority shall order it to pay the labor compensation, overtime pay or severance pay within a specified period of time; if the labor compensation is lower than the local minimum wage rate, the Employer shall pay the shortfall. If payment is not made within the time limit, the Employer shall be ordered to additionally pay damages to the worker at a rate of not less than 50 percent and not more than 100 percent of the amount payable.

If an employer takes advantage of a worker's difficulties or uses deception or coercion to cause him to conclude an employment contract, the labor administration authority shall impose on it a fine of not less than RMB¥2,000 and not more than RMB¥20,000; if the

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worker suffers harm as a result of the said conduct on the part of the Employer, the Employer will be liable for damages.

Article 86. If an Employer violates this Law by failing to enter into an open-ended employment contract, it shall, at the time of termination of the employment contract, pay damages to the worker at twice the rate of the severance pay provided for in Article 46 hereof.

Article 87. If an Employer:

- (1) uses violence, threats or unlawful restriction of personal freedom to compel a worker to work;
- (2) instructs in violation of rules and regulations, or peremptorily orders, a worker to perform dangerous operations which threaten his personal safety; or
- (3) insults, corporally punishes, beats, illegally searches or detains a worker;

and such conduct constitutes a criminal offense, criminal liability shall be pursued according to law; if the said conduct constitutes a law and order violation, administrative sanctions shall be imposed according to law; if the worker suffers harm as a result of the said conduct on the part of the Employer, the Employer will be liable for damages.

Article 88. If an Employer fails to issue to a worker a certificate evidencing the termination of his employment contract as required in the first paragraph of Article 49 hereof, the labor administration authority shall order rectification. If the worker suffers harm as a result of such failure, the Employer will be liable for damages.

Article 89. If an Employer hires a worker whose employment contract with another Employer has not yet terminated or been terminated, causing the original Employer to suffer a loss, it will be liable for damages.

Article 90. If a worker terminates his employment contract in violation of this Law or breaches the confidentiality obligations or competition restrictions stipulated in his employment contract, and if such violation or breach causes his Employer to suffer loss, he will be liable for damages.

Article 91. If a staffing firm violates this Law, the labor administration authority shall order it to rectify the situation within a specified period of time. If the circumstances are serious, it shall impose a fine of not less than RMB¥1,000 and not more than RMB¥5,000 for each worker, and the administration for industry and commerce shall revoke the business license. If the rights and interests of the worker(s) placed are harmed, the staffing firm shall pay labor remuneration to the worker(s) placed.

Article 92. If a unit that operated without a business license is being dealt with in accordance with the law and its workers have already performed labor, the unit being dealt with shall pay them labor compensation.

Article 93. If a labor administration authority, another competent authority or a member of its working personnel exercises its/his authority in violation of the law, thereby infringing upon the lawful rights and interests of an Employer or a worker, it will be liable for damages;

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the leading official directly in charge and the other persons directly responsible shall be subjected to administrative penalties in accordance with the law; if a criminal offense is constituted, criminal liability shall be pursued in accordance with the law.

CHAPTER 8. SUPPLEMENTARY PROVISIONS

Article 94. Where the State Council has formulated separate, special regulations concerning employment contracts under the employment system practiced by the institutions specified in the second paragraph of Article 2 hereof, such regulations shall prevail; the State Council's personnel administration authority shall be in charge of overseeing the implementation of the employment contract system by such institutions.

Article 95. The establishment of employment relationships in China between, and the conclusion, performance, amendment and termination of employment contracts in China by, workers and the resident representative offices in China of foreign enterprises shall be handled with reference to this Law.

Article 96. This Law shall be implemented from _____.