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*China's New Labor Contract Law**

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1. Preface

Because of a growing economy, geographic changes and China's surplus labor pool, the Chinese government decided to revise the existing labor law, which underwent its last major change in the mid-1990s, in order to improve workers' rights by formalizing standards in labor contracts, rights of temporary workers, and severance pay privileges. In October 2005, the Labor Contract Act was passed by the Law Committee of the National People's Congress (NPC) and underwent a first reading by the standing Committee of the NPC. When the Chinese government opened a 30-day public comment in March 2006, more than 191,000 comments were received during the consultation period. The Labor Contract Law was then redrafted in its second version and presented for the second reading. As a general rule a Chinese draft law must be read by the standing Committee of the NPC three times before it is adopted. The 2nd draft, circulated widely in business and legal circles, more sharply limited the use of temporary workers and required approval from the state-controlled union for layoffs. Companies argued that the rules would substantially increase labor costs and reduce flexibility, and some foreign businesses warned that they would have little choice but to move their operations out of China if the provisions were enacted unchanged⁽¹⁾.

After rereading the fourth draft of the new Labor Contract Law Of The People's Republic Of China the Law Committee of the NPC has suggested to put the draft to a vote on June 25th 2007. It was adopted at the 28th Session of the Standing Committee of the 10th NPC on June 29th 2007. The law, which would take effect on January 1st, 2008 received 145 of the 146 votes of the NPC. Only one vote was not cast.

2. The table of content of the new labor contract law

The table of content of the new labor contract law is as follows:

- Chapter 1. General Provisions;
- Chapter 2. Conclusion Of Employment Contracts;
- Chapter 3. Performance And Amendment Of Employment Contracts;
- Chapter 4. Termination And Ending Of Employment Contracts;
- Chapter 5. Special Provisions;
- Chapter 6. Monitoring Inspections;
- Chapter 7. Legal Liability;
- Chapter 8. Supplementary Provisions.

3. Fixed-Term Contract

A Fixed-Term Contract is a contract whose ending date is agreed upon by the employer and the worker. An employer and a worker may enter into a fixed-term contract after reaching a negotiated consensus⁽²⁾.

4. Unfixed-Term Contract

An Unfixed-Term Contract is a contract for which the employer and the worker have agreed not to stipulate a definite ending date. If a worker proposes or agrees to renew his employment contract or to conclude an employment contract in any of the following circumstances, an unfixed-term contract shall be created, unless the worker requests the creation of a fixed-term employment contract:

- the worker has been employed by the employer for a consecutive period of not less than 10 years;
- when the employer introduces the contract or the state owned enterprise that employs him renews the contract as a result of restructuring, the worker has been working for the employer for a consecutive period of not less than 10 years and is less than 10 years away from his legal retirement age; or
- prior to renewal, a fixed-term contract was concluded on two consecutive occasions and the worker is not characterized by any of the circumstances set forth in Article 39 and items (1) and (2) of Article 40⁽³⁾.

5. Shortened Probationary Periods

Salaries paid during probationary periods are not to be less than 80% of the standard company salary. Dismissals during the probationary period must be based on a demonstrated failure to perform, according to requirements set out in the contract. Probationary periods are restricted to a maximum length, based on the length of the contract period:

- Contract of less than 1 year, less than a month probation period;
- Contract of 1 to 3 years, 2 month probation period;
- Contract of not less than 3 years, 6 month probation period;
- Contract may not provide that the compensation is less than 80% below the local minimum wage;
- employers cannot repeatedly put workers on probation.

An employer would not be able to rescind an employment contract during the probationary period unless there clear proof that the employee was not qualified for the job. The wages of employees on probation may not be less than 80% of the wages as established by collective agreements⁽⁴⁾.

6. Employee Training

If an employer provides special funding for a worker's training and gives him professional technical training, the employer may conclude an agreement specifying a term of service with such worker. If the worker breaches the terms of service in the agreement, he shall pay liquidated damages to the employer as agreed. The liquidated damages may not exceed the training expenses paid by the employer. The liquidated damages that the employer requires the worker to pay may not exceed the portion of the training expenses allocable to the unperformed portion of the term of service⁽⁵⁾.

7. Noncompete Agreements

An employer and employee may include in their contract provisions confidentiality matters relating to maintaining the confidentiality of trade secrets of the employer and intellectual property. If a worker has a confidentiality obligation, the employer may agree with the employee on competition restrictions 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 contract. If the worker breaches the competition restriction provision, he shall pay liquidated damages to the employer as stipulated. The competition restriction requirements shall be limited to the employer's senior management, senior technician and other person with a confidentiality obligation⁽⁶⁾.

8. Collective Dismissals

A collective dismissal would be defined as the layoff of 20 or more employees or 10% of total staff. Employers would be required to inform and consult with the trade union 30 days in advance of implementing any change due to:

- restructuring according to the Enterprise Bankruptcy Law;
- serious difficulty in production and operation;
- the enterprise switches production, introduces a major technological innovation or revises its management methods, after amendment of employment contracts, and still needs to reduce its workforce; or
- another major change in the objective economic circumstances relied on at the time of conclusion of the employment contracts, making them unperformable.

When reducing the workforce, the employer shall retain the following priority employees:

- who have entered into fixed-term employment contracts with a relatively long term;
- who have entered into open-ended employment contracts with the employer;

or

- who are the sole provider for the family, which consists of an elderly person or a minor who is not able to provide for themselves⁽⁷⁾.

9. Severance Pay

A worker shall be paid severance pay based on the number of years worked with the employer at the rate of one month's wages for each full year worked. Any period of employment of not less than six months but less than one year shall be counted as one year. The severance pay payable to a worker for any period of less than six months shall be one-half of his monthly wages. If the monthly wage of a worker is greater than three times the average monthly wage of employees in the employer's area as published by the local government at the level of municipality directly under the central government or municipality divided into districts of the area where the employer is located, the rate for the severance pay shall be three times the average monthly wage of employees and shall be for not more than 12 years of work. The term «Monthly Wage» is defined as the worker's average monthly wage for the 12 months prior to the termination or ending of his contract⁽⁸⁾.

10. Collective Contract

Union or employee representatives, in equal number with employer representatives, have the right to negotiate and sign a collective contract that governs labor compensation, working time, rest, leave, work safety and hygiene, insurance, benefit, etc. The draft of the collective contract should be presented to the employee representative congress or all the employees for discussion and approval. Unions in certain industries such as construction, mining, and food and beverage, would be permitted to negotiate and sign an industry-wide or area-wide collective agreement. The rate of labor compensation, and working condition standards stipulated in a collective contract may not be lower than the minimum rate and standard prescribed by the local people's government⁽⁹⁾.

11. Labor Placement

Staffing firms shall be established in accordance with the relevant provisions of the Company Law and must have registered capital of not less than RMB 500,000. The employment contracts between the staffing firm and the worker 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. During periods when there is no work for the worker, the staffing firm shall pay such worker compensation on a monthly basis at the minimum wage rate prescribed by the local government where the staffing firm is located⁽¹⁰⁾.

12. Part-time Employment

The law defines part-time employment. Employees working no more than four hours per day and 24 hours per week would be considered part-time employees. An employer would not be required to provide a part-time employee with a written employment contract, and an employee would not be entitled to severance pay upon the termination of employment. Employers must pay part-time employees at least every 2 weeks⁽¹¹⁾.

13. Labor Administration Punishment

If the labor administration, another competent authority or a member neglects their duty, fails to perform their statutory duty or exercises their authority in violation of the law, thereby causing harm to a worker or an employer, liability for damages would be available and the leading official directly in charge and the other persons directly responsible shall be subjected to an administrative penalty in accordance with the law; if a criminal offense is constituted, criminal liability shall be pursued in accordance with the law⁽¹²⁾.

14. Conclusioni

«The law is meant to protect workers and their rights», Xin Chunying, deputy

chairwoman of the legislature's law committee, said at a news conference⁽¹³⁾. The law adds to a series of government steps to update China's legal and political systems to keep pace with explosive economic and social change. A law passed in June ended two decades of blanket tax breaks for foreign investors, equalizing their rates with those paid by Chinese companies. «If there is some bias in the application of the law, it would be in favor of foreign investors because local governments have great tolerance for foreign investors in order to attract and retain investment», Xin said. «Even if they violate labor law, they are still hesitant to resist them»⁽¹⁴⁾. Xin said there wouldn't be a substantial cost increase for companies that strictly follow the existing Labor Law⁽¹⁵⁾.

However, the main need at present is for authorities to enforce the country's existing labour laws. That is the most urgent priority. If they will not show a real willingness to enforce these new laws, it is hard to see how in practice it will improve the rights of Chinese workers.

* It is not any formal English version of Law Of The People's Republic Of China On Labor Contract in Chinese government website until now. Please check the Chinese version. And this news letter is not intended to constitute legal advice and no business or legal decision should be taken based solely on its content.

⁽¹⁾ See J. KAHN, D. BARBOZA, *China to give workers more rights. Labor law passes despite lobbying by foreign businesses*, June 30, 2007, in www.sfgate.com.

⁽²⁾ See article 13.

⁽³⁾ See article 14.

⁽⁴⁾ See article 19 and 20.

⁽⁵⁾ See article 22.

⁽⁶⁾ See article 23 and 24.

⁽⁷⁾ See article 41.

⁽⁸⁾ See article 47.

⁽⁹⁾ See article 51 and 56.

⁽¹⁰⁾ See article 61-67.

⁽¹¹⁾ See article 68-72.

⁽¹²⁾ See article 95.

⁽¹³⁾ See J. McDONALD, *China Pushes Through New Labor Law*, in *Newsfactor Business Report*, June 29, 2007, in <http://business.newsfactor.com>.

⁽¹⁴⁾ See J. McDONALD, *China Approves New Labor Law*, June 29, 2007, in www.sfgate.com.

⁽¹⁵⁾ See Z. ZHE, *China adopts new labor rules*, in *China Daily*, June 30, 2007, in www.chinadaily.com.