

**LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON LABOR-DISPUTE
MEDIATION AND ARBITRATION
ORDER OF THE PRESIDENT OF THE PEOPLE'S REPUBLIC OF CHINA**

NO.80

The Law of the People's Republic of China on Labor-dispute Mediation and Arbitration, adopted at the 31st Meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on December 29, 2007, is hereby promulgated and shall go into effect as of May 1, 2008.

Hu Jintao

President of the People's Republic of China

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Law of the People's Republic of China on Labor-dispute Mediation and Arbitration

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

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Chapter I

General Provisions

Article 1 This Law is enacted in order to resolve labor disputes in an impartial and timely manner, protect the lawful rights and interests of the parties and promote harmonious and stable labor relations.

Article 2 This Law is applicable to the following labor disputes arising between employing units and workers within the territory of the People's Republic of China:

(1) disputes arising from the confirmation of labor relations;

(2) disputes arising from the conclusion, performance, alteration, cancellation or termination of labor contracts;

(3) disputes arising from expulsion, charge, resignation or severance;

(4) disputes arising from working hours, the period of rest and vacation, social insurance, welfare benefits, training and occupational protection;

(5) disputes arising from labor remuneration, medical expenses for job-related injury, economic compensation or damages, etc.; and

(6) other labor disputes prescribed by laws and regulations.

Article 3 Labor disputes shall be resolved on the basis of facts and pursuant to the principles of lawfulness, impartiality and timeliness, with stress on mediation, in order to protect the lawful rights and interests of the parties according to law.

Article 4 When a labor dispute arises, the worker concerned may have a consultation with the employing unit or invite the trade union or a third party to join in the consultation with the employing unit, in order to reach a settlement agreement.

Article 5 Where a labor dispute arises and the parties are not willing to have a consultation, or the consultation fails, or the settlement agreement reached is not performed, they may apply to a mediation institution for mediation. Where the parties are not willing to have mediation, or the mediation fails, or the mediation agreement reached is not performed, they may apply to a labor-dispute arbitration commission for arbitration. Where they are dissatisfied with the arbitral award, they may initiate a litigation to a people's court, unless otherwise provided for in this Law.

Article 6 Where a labor dispute arises, the parties have the responsibility to give evidence for their own claims. Where the evidence relevant to the matter under dispute is kept and controlled by the employing unit, the said unit shall provide such evidence. Where the employing unit refuses to do so, it shall bear any unfavorable consequences.

Article 7 Where the party in a labor dispute consists of 10 workers or more, and they have a common request, they may choose one worker to represent them in mediation, arbitration or litigation.

Article 8 The administrative departments of labor of the people's governments at or above the county level shall, in conjunction with the trade unions and representatives of enterprises, establish a tripartite coordination mechanism for labor relations to jointly study and resolve the major issues of labor disputes.

Article 9 Where an employing unit, in violation of State regulations, defaults in the payment of labor remuneration or fails to pay the same in full, or defaults in the payment of medical expenses for job-related injury, economic compensation or damages, the worker concerned may make a complaint to the administrative department of labor, which shall handle the complaint in accordance with law.

Chapter II

Mediation

Article 10 Where a labor dispute arises, the parties may apply for mediation to the following mediation institutions:

- (1) labor-dispute mediation commissions of enterprises;
- (2) people's mediation institutions at the grass-roots level established in accordance with law; and
- (3) organizations with the function of labor-dispute mediation established in towns, townships or neighborhoods.

The labor-dispute mediation commission of an enterprise shall be composed of representatives of employees and of the enterprise. The representatives of employees shall be trade union members or be chosen by all employees, and the representatives of the enterprise shall be designated by the leading person of the enterprise. The director of the labor-dispute mediation commission of the enterprise shall be a trade union member or a person chosen by both parties.

Article 11 The mediators of labor-dispute mediation institutions shall be adult citizens who are fair-minded and upright, maintain ties with people, are devoted to mediation, are familiar with certain laws and policies, and are well-educated.

Article 12 The parties that apply for mediation of a labor dispute may do so in writing or orally. Where an application is made orally, the mediation institution shall, on the spot, note down the basic background of the applicant, the matters under dispute, the reasons for mediation and the time of application.

Article 13 When mediating labor disputes, the mediator shall pay full heed to the facts and reasons stated by both parties, persuade them with patience and help them reach an agreement.

Article 14 Where an agreement is reached after mediation, a mediation agreement shall be prepared.

The mediation agreement shall be signed or sealed by both parties, and be signed by the mediator and sealed by the mediation institution to take effect. It shall be binding on both parties and be performed by them.

Where no mediation agreement is reached within 15 days from the date the labor-dispute mediation institution receives the application for mediation, the parties may apply for arbitration in accordance with law.

Article 15 Where, after the mediation agreement is reached, one of the parties fail to perform the agreement within the time limit prescribed in the agreement, the other party may apply for arbitration in accordance with law.

Article 16 Where a mediation agreement is reached on the payment of labor remuneration, medical expenses for job-related injury, economic compensation or damages in arrears and the employing unit fails to perform the agreement within the time limit prescribed in the agreement, the worker concerned may, on the strength of the mediation agreement, apply to a people's court for a payment order in accordance with law. The people's court shall issue the payment order in accordance with law.

Chapter III

Arbitration

Section 1

General Stipulations

Article 17 Labor-dispute arbitration commissions shall be set up pursuant to the principles of overall planning, rational geographical distribution and meeting actual needs. The people's governments of provinces and autonomous regions may decide to set up such commissions in cities and counties; and the people's governments of municipalities directly under the Central Government may decide to set up such commissions in districts and counties; in municipalities directly under the Central Government and cities divided into districts, one or more labor-dispute arbitration commissions may also be established. Labor-dispute arbitration commissions shall not be set up level by level according to administrative divisions.

Article 18 The administrative department of labor under the State Council shall formulate arbitration rules in accordance with the relevant provisions of this Law. The administrative departments of labor of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall provide guidance in labor-dispute arbitration within their own administrative areas.

Article 19 A labor-dispute arbitration commissions shall be composed of representatives of the administrative department of labor, the trade unions and the enterprises. The number of the component members of such commission shall be an odd number.

Labor dispute arbitration commissions shall perform the following duties in accordance with law:

- (1) appointing and dismissing full-time or part-time arbitrators;
- (2) accepting and handling labor-dispute cases;
- (3) discussing major or complicated labor-dispute cases; and
- (4) exercising supervision over arbitration.

Labor-dispute arbitration commissions shall set up offices for handling their day-to-day work.

Article 20 A labor dispute arbitration commission shall have a roster of arbitrators.

An arbitrator shall be fair-minded and upright, and meet one of the following requirements:

- (1) having served as a judge;
- (2) being engaged in legal research or teaching with a professional title at the intermediary level or above;
- (3) possessing legal knowledge and having been engaged in human resources management, trade union work or other professional work for five full years; or

(4) being a lawyer, having been in legal practice for three full years.

Article 21 A labor-dispute arbitration commission shall be responsible for arbitrating labor disputes arising in the district under its jurisdiction.

A labor dispute shall be under the jurisdiction of the labor-dispute arbitration commission at the place where the labor contract concerned is performed or where the employing unit is located. Where one of the two parties applies for arbitration to the labor-dispute arbitration commission at the place where the labor contract is performed and the other does so at the place where the employing unit is located, the labor dispute shall be subject to the jurisdiction of the former.

Article 22 The worker and the employing unit, between whom a labor dispute arises, constitute the two parties to the labor dispute case for arbitration.

Where a labor dispute arises between a labor dispatching unit or an employing unit on the one hand and a worker on the other, the labor dispatching unit and the employing unit constitute a joint party.

Article 23 The third party that has an interest in the result of a labor dispute case to be handled may apply for participating in arbitration or be notified to do so by the labor-dispute arbitration commission.

Article 24 The parties may appoint agents to participate in arbitration. To appoint an agent to participate in arbitration, a letter of attorney signed or sealed by the appointing party shall be submitted to the labor-dispute arbitration commission, in which shall clearly be stated the entrusted matters and the limit of authority.

Article 25 A worker who fully or partially loses the capability of civil conduct shall have his statutory agent participate in arbitration. Where such an agent is lacking, an agent shall be designated for him by the labor-dispute arbitration commission. Where the worker is dead, his close relative or agent shall participate in arbitration.

Article 26 The arbitration of labor disputes shall be conducted openly, unless where the parties agree otherwise, or where State secrets, commercial secrets or personal affairs are involved.

Section 2

Application and Acceptance

Article 27 The limitation period for application for arbitration of a labor dispute is one year, which shall be calculated from the date a party comes to know or is expected to know the infringement of its rights.

The limitation period for arbitration as prescribed in the preceding paragraph shall be discontinued when one party claims its rights against the other party or requests the relevant department for remedy, or when the other party agrees to perform its obligations. The limitation period for arbitration shall be calculated anew from the time of discontinuance.

Where, due to force majeure or for other justifiable reasons, the party fails to apply for arbitration within the limitation period for arbitration as prescribed in the first paragraph of

this Article, the limitation period for arbitration is suspended, calculation of the limitation period for arbitration shall continue from the date the reasons for suspension disappear.

Where, during the existence of the labor relations, a dispute arises over the default in payment of labor remuneration, application for arbitration by the worker concerned shall not be restricted by the limitation period for arbitration prescribed in the first paragraph of this Article. However, where the labor relations are terminated, such application for arbitration shall be submitted within one year from the date the labor relations are terminated.

Article 28 To applying for arbitration, the applicant shall submit a written application for arbitration and submit duplicates of the application according to the number of the respondents.

In the application for arbitration shall clearly be stated the following matters:

- (1) name, gender, age, occupation, working unit and domicile of the worker, title and domicile of the employing unit, and name and position of the legal representative or the principal leading person;
- (2) the claims for arbitration and the facts and reasons on which the request is based; and
- (3) evidence and the source thereof, and name and domicile of the witness.

Where the applicant has difficulty in writing an application for arbitration, he may make an oral application, which shall be transcribed by the labor-dispute arbitration commission and be made known to the other party.

Article 29 The labor-dispute arbitration commission shall, within five days from the date it receives the arbitration application, accept the application and notify the applicant of its acceptance, if it considers that the application meets the conditions for acceptance; otherwise, it shall notify the applicant in writing that it shall not accept the application and state the reasons. Where the labor-dispute arbitration commission rejects an application or fails to make a decision within the specified time limit, the applicant may initiate a litigation to a people's court with respect to the labor dispute in question.

Article 30 The labor-dispute arbitration commission shall, upon acceptance of an application for arbitration, serve a duplicate of the said application on the respondent within five days.

The respondent shall, upon receipt of the duplicate of the arbitration application, submit a statement of defense to the labor-dispute arbitration commission within 10 days. The labor-dispute arbitration commission shall, within five days after it receives the statement of defense, serve a copy of the statement of defense on the applicant. Failure on the part of the respondent to submit a statement of defense shall not affect the arbitration procedure.

Section 3

Hearing and Award

Article 31 To make awards of labor-dispute cases, labor-dispute arbitration commissions shall adopt the arbitral tribunal system. The arbitral tribunal shall be composed of three arbitrators, with one serving as chief arbitrator. Simple labor-dispute cases may be arbitrated solely by one arbitrator.

Article 32 The labor-dispute arbitration commission shall, within five days from the date it accepts an application for arbitration, notify the parties in writing of the composition of the arbitral tribunal.

Article 33 An arbitrator shall withdraw, and the parties also have the right to apply orally or in writing for his withdrawal, under one of the following circumstances:

- (1) He is a party to the case in question or a close relative of a party or its agent;
- (2) He has an interest in the case;
- (3) He has other relations with a party to the case or its agent, which may affect impartial award; or
- (4) He meets with a party or its agent without authorization or accepts invitation to dinners or gifts therefrom.

The labor-dispute arbitration commission shall, in a timely manner, make a decision on the application for withdrawal and notify the parties of the decision orally or in writing.

Article 34 Where an arbitrator is under the circumstances prescribed in Subparagraph (4) of Article 33 of this Law, or extorts for or accepts bribes, engages in malpractices for personal gain, or perverts the law in making awards, he shall bear legal liability in accordance with law. The labor-dispute arbitration commission shall dismiss him.

Article 35 The arbitral tribunal shall, five days before the hearing is held, notify both parties to a case of the date and place of the hearing in writing. Where a party has justifiable reasons, it may, three days before the hearing is held, request for postponing the hearing. The decision on whether to postpone the hearing is up to the labor-dispute arbitration commission to make.

Article 36 Where the applicant has received the written notification but fails to be present for the hearing without justifiable reasons or, without approval of the arbitral tribunal, withdraws from the hearing before it is over, it may be deemed to withdraw its arbitration application.

Where the respondent receives the written notification but fails to be present for the hearing without justifiable reasons or, without approval of the arbitral tribunal, withdraws from the hearing before it is over, an award may be rendered by default.

Article 37 Where the arbitral tribunal considers that expert evaluation is needed for issues of a special character, it may hand over such issues to the evaluation institution agreed upon by the parties; where there is no such agreement or the parties cannot reach an agreement, it shall designate an evaluation institution for the purpose.

The evaluation institution shall, at the request of the parties or under demand from the arbitral tribunal, send its experts to participate in the hearing. With permission of the arbitral tribunal, the parties may put questions to the experts.

Article 38 In the course of arbitration, the parties shall have the right to examination and cross-examination and to debate. Upon conclusion of the examinations and cross-

examinations and the debates, the chief arbitrator or the sole arbitrator shall solicit the final opinions of the parties.

Article 39 Where the evidence provided by a party is substantiated upon verification, the arbitral tribunal shall make it the basis on which to confirm the facts.

Where a worker cannot provide the evidence, which is kept and controlled by the employing unit and is relevant to his arbitration claim, the arbitral tribunal may require the employing unit to give such evidence within a specified time limit. Where the employing unit fails to do so, it shall bear the unfavorable consequences.

Article 40 The arbitral tribunal shall make a written record of the hearing. Where the parties or the other participants in the arbitration believe that there are omissions or errors in their statements recorded, they shall have the right to apply for supplementation or correction. If the tribunal refuses to make supplementation or correction, the application shall be recorded.

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

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

Article 42 The arbitral tribunal shall mediate before making an award.

Where an agreement is reached through mediation, a statement of mediation shall be prepared by the arbitral tribunal.

In the statement of mediation shall be stated the arbitration claims and the results agreed upon by the parties. The statement of mediation shall be signed by the arbitrators, sealed by the labor-dispute arbitration commission and served on the parties. The statement of mediation shall take legal effect after acknowledgement by both parties.

Where mediation fails or before the statement of mediation is served, one party goes back on the agreement reached, the arbitral tribunal shall make an award in a timely manner.

Article 43 Where the arbitral tribunal is to make an award of a labor dispute case, it shall finish making the award within 45 days from the date the labor-dispute arbitration commission accepts the arbitration application. If an extension is needed due to the complexity of the case, such extension shall be subject to approval by the director of the labor-dispute arbitration commission, and the parties shall be notified of the extension in writing; however, the period of extension may not exceed 15 days. If no arbitral award is made at the expiration of the time limit, the parties may initiate a litigation to a people's court with respect to the labor dispute.

When making an award of a labor dispute case, in which part of the facts are clear, the arbitral tribunal may make an award first on the basis of the said facts.

Article 44 In respect of the cases involving the recovery of labor remuneration, payment of medical expenses for job-related injury, economic compensation or damages, the arbitral tribunal may, according to the application of the parties, make an award on advance execution and transfer it to the people's court for execution.

For the arbitral tribunal to make an award on advance execution, the following conditions shall be met:

- (1) The relationship between both parties in terms of their rights and obligations are clearly defined; and
- (2) The living standards of the applicant will seriously be affected, unless advance execution is awarded.

Where a worker applies for advance execution, no guarantee needs to be provided.

Article 45 An award shall be made on the basis of the opinions of the majority of the arbitrators, and the differing opinions held by the minority of the arbitrators shall be recorded. When an opinion of the majority cannot be formed in the arbitral tribunal, an award shall be made on the basis of the opinion of the chief arbitrator.

Article 46 In the award shall clearly be stated the arbitration claim, the facts under dispute, the reasons for award, the results of award and the date of award. The award shall be signed by the arbitrators and sealed by the labor-dispute arbitration commission. The arbitrators holding differing opinions on the award may choose to sign or not to sign it.

Article 47 For the following labor disputes, the arbitral award shall be final and the award shall take legal effect from the date the award is made, unless otherwise provided for in this Law:

- (1) disputes involving the recovery of labor remuneration, medical expenses for job-related injury, economic compensation or damages, and the amount involved does not exceed that of the standard local monthly wage rates multiplying 12 months; and
- (2) disputes arising over working hours, the period of rest and vacation, and social insurance, etc., in the course of applying the occupational standards of the State.

Article 48 Where a worker is dissatisfied with the arbitral award as prescribed in Article 47 of this Law, he may initiate a litigation to a people's court within 15 days from the date he receives the award.

Article 49 Where an employing unit has evidence to prove that the arbitral award prescribed in Article 47 of this Law falls under one of the following circumstances, it may, within 30 days from the date it receives the award, apply for revocation of the award to an intermediate people's court at the place where the labor-dispute arbitration commission is located:

- (1) It is definite that Laws and regulations are applied erroneously;
 - (2) The labor-dispute arbitration commission has no jurisdiction over the dispute;
 - (3) The statutory procedure is contravened;
 - (4) The evidence on which the award is based is forged;
 - (5) The other party has concealed evidence, which is sufficient to affect an impartial award;
- or

(6) When arbitrating the case, the arbitrator extorts or accepts bribes, engages in malpractices for personal gain, or perverts the law in making the award.

If the people's court, after forming a collegiate bench, finds upon examination and verification that any of the circumstances as prescribed in the preceding paragraph exists in award-making, it shall revoke the award.

Where the arbitral award is revoked upon decision by the people's court, the parties may, within 15 days from the date they receive the award, initiate a litigation to a people's court with respect to the labor dispute in question.

Article 50 Where a party has objection to the arbitral award of a labor dispute case, other than the ones prescribed in Article 47 of this Law, it may initiate a litigation to a people's court within 15 days from the date it receives the award. If no litigation is initiated at the expiration of the prescribed time limit, the award shall take legal effect.

Article 51 The parties shall, within the prescribed time limit, perform the statement of mediation or the award that takes legal effect. If one party fails to do so at the expiration of the time limit, the other party may, in accordance with the relevant provisions of the Civil Procedure Law, apply to a people's court for execution. The people's court that accepts the application shall execute the statement of mediation or the award in accordance with law.

Chapter IV

Supplementary Provisions

Article 52 Where a staff member of a public institution, in which the system of appointment is practiced, is involved in a labor dispute with the institution, this Law shall be applicable; if laws and administrative regulations or the regulations of the State Council provide otherwise, the said provisions there shall prevail.

Article 53 Arbitration of labor disputes is free of charge. Funding for labor-dispute arbitration commissions shall be guaranteed by the government.

Article 54 This Law shall go into effect as of May 1, 2008.