

The Interpretation (III) of the SPC of Several Issues on the Application of Law in the Trial of Labor Dispute Cases

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Announcement of the Supreme People' s Court

The Interpretation (III) of the Supreme People' s Court of Several Issues on the Application of Law in the Trial of Labor Dispute Cases, which was adopted at the 1,489th session of the Judicial Committee of the Supreme People' s Court on July 12, 2010, is hereby promulgated and shall come into force on September 14, 2010.

September 13, 2010

Interpretation (III) of the Supreme People' s Court of Several Issues on the Application of Law in the Trial of Labor Dispute Cases

(Interpretation No.12 [2010] of the Supreme People' s Court)

To correctly try labor dispute cases, this Interpretation is made in accordance with the Labor Law of the People' s Republic of China, the Labor Contract Law of the People' s Republic of China (hereinafter referred to as the "Labor Contract Law"), the Law of the People' s Republic of China on Labor Dispute Mediation and Arbitration (hereinafter referred to as the "Mediation and Arbitration Law"), the Civil Procedure Law of the People' s Republic of China and other relevant laws and in light of the civil trial practice.

Article 1 Where an employee requires his employer to compensate him for losses on the ground that he cannot enjoy social insurance treatments because his employer fails to conduct the social insurance formalities for him and the social insurance agency cannot make up such formalities, the people' s court shall accept a case on such a dispute.

Article 2 The people' s court shall accept a case on any dispute arising from the self-restructuring of an enterprise.

Article 3 Where an employee brings an action in the people' s court according to Article 85 of the Labor Contract Law to clam compensation or additional compensation from his employer, the people' s court shall accept such a case.

Article 4 Where any dispute arises between an employee and his employer which fails to obtain a business license, has forfeited its business license or continues business operation after its business license expires, the employer or its capital contributor shall be the party concerned.

Article 5 Where an employer which fails to obtain a business license, has forfeited its business license or continues business operation after its business license expires borrows another person' s business license for its business operation in the form of affiliation, etc., the employer and the lender of the business license shall be the parties concerned.

Article 6 Where a party brings an action in the people' s court pursuant to law against an arbitral award rendered by the labor and personnel dispute arbitration committee, and the people' s court deems upon examination that any party which must jointly participate in the arbitration was absent according to the arbitral award, it shall add the absent party as a party to the action pursuant to law.

Where the added party shall assume any liability, the people's court shall deal with it concurrently.

Article 7 Where any employment dispute arises between an employer and an employee who has already enjoyed pension insurance treatments or received pensions pursuant to law when he is employed by the employer, and either party brings an action in the people's court, the people's court shall deal with it as a service dispute.

Article 8 Where an employee of an enterprise who is on leave with pay suspension, has retired under the statutory age of retirement, is removed from post or waiting for a post or is on a long leave due to the enterprise's operational cessation of production brings an action in the people's court pursuant to law for a dispute with his new employer, the people's court shall deal with it as a labor dispute.

Article 9 Where an employee claims overtime pay, he shall assume the burden of proof as to the fact of overtime work. Where the employee has evidence that his employer possesses but fails to provide any evidence on the existence of overtime work, the employer shall bear the adverse consequences.

Article 10 An agreement reached between an employee and his employer on the relevant formalities for rescinding or terminating the labor contract, paying wages, remunerations, overtime pay, economic indemnity or compensation, etc. shall be deemed valid as long as it does not violate the mandatory provisions of laws and administrative regulations and is not reached by fraud or threat or by taking advantage of the opposite party's hardship.

Where a party concerned requests revocation of an agreement as mentioned in the preceding paragraph because there is any major misunderstanding therein or it is an obviously unfair agreement, the people's court shall support such a request.

Article 11 Where a mediation record made by the labor and personnel dispute arbitration committee has taken effect, and one party regrets and brings an action, the people's court shall not accept such a case; or if it has accepted the case, shall make a ruling to dismiss the action.

Article 12 Where the labor and personnel dispute arbitration committee fails to make a decision on acceptance of a case or render an arbitral award within the prescribed time limit, and the party concerned directly brings an action, the people's court shall accept such a case, except that there is any of the following causes of the pending arbitration:

1. The case is transferred to another arbitration committee having jurisdiction;
2. The service is being made or there is any delay in service of process;
3. The committee is waiting for the result of another lawsuit or a disability appraisal conclusion;
4. The party concerned is waiting for a hearing by the labor and personnel dispute arbitration committee;
5. The authentication procedure is started or another department is authorized to investigate and take evidence; or
6. There is any other legitimate cause.

Where a party concerned brings an action on the ground that the labor and personnel dispute arbitration committee fails to render an arbitral award within the prescribed time limit, the party shall submit the acceptance notice issued by the labor and

personnel dispute arbitration committee or any other certificate or proof on the committee' s acceptance of the party' s arbitration application.

Article 13 Where an employee requests labor remunerations, medical expenses for a work-related injury or economic indemnity or compensation according to subparagraph (1) of Article 47 of the Mediation and Arbitration Law, and the arbitral award involves several of them with the determined amount of each of them not exceeding 12 months' local minimum monthly wage, it shall dealt with as a final award.

Article 14 Where an arbitral award rendered by the labor and personnel dispute arbitration committee contains both matters on which final determinations are made and matters on which no final determinations are made, and a party concerned brings an action in the people' s court against such an arbitral award, it shall be dealt with as an interlocutory award.

Article 15 Where an employee brings an action in the basic people' s court according to Article 48 of the Mediation and Arbitration Law, and his employer applies for revocation of an arbitral award to the intermediate people' s court at the place where the labor and personnel dispute arbitration committee is located according to Article 49 of the Mediation and Arbitration Law, the intermediate people' s court shall not accept such an application; or if it has accepted it, shall make a ruling to dismiss the application.

If the people' s court dismisses the action or the employee withdraws the action, the employer may, within thirty days after receiving the court ruling, apply to the intermediate people' s court at the place where the labor and personnel dispute arbitration committee is located for revocation of the arbitral award.

Article 16 Where an employer applies for revocation of an arbitral award to the intermediate people' s court according to Article 49 of the Mediation and Arbitration Law, the ruling of the intermediate people' s court on dismissing the application or revoking the arbitral award shall be final.

Article 17 Where an employee applies to the people' s court for a payment order according to paragraph 2 of Article 30 of the Labor Contract Law and Article 16 of the Mediation and Arbitration Law, if the application complies with the provisions of Chapter 17: Prompting Procedure of the Civil Procedure Law, the people' s court shall accept the application.

Where an employee directly brings an action in the people' s court for a labor dispute after the people' s court makes a ruling to terminate the prompting procedure in which the employee applies for a payment order according to paragraph 2 of Article 30 of the Labor Contract Law, the people' s court shall notify him to firstly apply to the labor and personnel dispute arbitration committee for arbitration.

Where an employee directly brings an action in the people' s court according to the mediation agreement after the people' s court makes a ruling to terminate the prompting procedure in which the employee applies for a payment order according to Article 16 of the Mediation and Arbitration Law, the people' s court shall accept such a case.

Article 18 Where an employee applies to the people' s court for enforcing a final award of the labor and personnel dispute arbitration committee, and his employer applies for revocation of the final award to the intermediate people' s court at the place where the labor and personnel dispute arbitration committee is located, the people' s court shall make a ruling to suspend the enforcement.

If the employer withdraws its application for revocation of the final award or its application is dismissed, the people' s court shall make a ruling to resume

enforcement. If the arbitral award is revoked, the people' s court shall make a ruling to terminate enforcement.

If, after its application to the people' s court for revocation of the arbitral award is dismissed, the employer makes a non-enforcement defense in the enforcement procedure on the same grounds, the people' s court shall not support such a defense.