

REGULATIONS OF THE PEOPLE'S REPUBLIC OF CHINA ON SETTLEMENT OF LABOUR DISPUTES IN ENTERPRISES

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CHAPTER I GENERAL RULES CHAPTER II MEDIATION IN ENTERPRISES CHAPTER III ARBITRATION CHAPTER IV RULES OF PUNISHMENT CHAPTER V SUPPLEMENTARY PROVISIONS

Article 1 The present Regulations are drawn up to properly handle labour disputes in enterprises, protect the legitimate rights and interests of the enterprise and the workers and employees, maintain the order of normal production and management, develop sound labour relations, and promote the smooth progress of the reform and the implementation of the open policy.

Article 2 The Regulations are applicable to the following labour disputes between the enterprise and the workers and employees within the territory of the People's Republic of China:

- (1) Disputes arising out of dismissal, discharge or lay-off of workers and employees by enterprises, or resignation by workers and employees or leaving their jobs of their own volition;
- (2) Disputes concerning implementation of relevant State policies on wages, insurance, welfare, training and labour protection;
- (3) Disputes regarding execution of the labour contract;
- (4) Disputes that other laws and regulations stipulate should be handled with reference to the regulations.

Article 3 The enterprise and the worker(s) and employee(s) involved shall be the parties to a case of labour dispute.

Article 4 Settlement of labour disputes shall observe the following principles:

- (1) Emphasis is given to mediation and prompt handling;
- (2) Labour disputes shall be dealt with in accordance with law on a fact-finding basis;
- (3) The parties involved are equal before applicable laws.

Article 5 When there are more than three workers and employees with the same grievances as one of the parties, the workers and employees involved shall nominate their representative to participate in the work of mediation and arbitration.

Article 6 In case of a labour dispute, the parties shall first find solution through negotiations. If the parties are unwilling to go for negotiations or negotiations fail, the case may be referred to the mediation committee of the enterprise in which the dispute has occurred; if mediation fails, the case may be referred to the labour dispute arbitration committee for arbitration. The parties may also petition directly to the labour dispute arbitration committee for arbitration. When one of the parties or both parties refuse to accept the arbitration award, he or they may bring a lawsuit before the people's court.

In the course of handling a labour dispute, neither party shall aggravate the dispute.

CHAPTER II MEDIATION IN ENTERPRISES

Article 7 An enterprise may set up a labour dispute mediation committee (hereinafter referred to as mediation committee) to be responsible for mediation of labour disputes within the enterprise.

The mediation committee shall be composed of the following persons:

- (1) Representative(s) of workers and employees;
- (2) Representative(s) of the enterprise;
- (3) Representative(s) of the enterprise trade union.

The workers' representatives shall be nominated by the congress of workers' representatives or the workers' congress, the enterprise representatives appointed by the enterprise director or manager, and the enterprise trade union representatives appointed by the enterprise trade union committee.

The number of members to the mediation committee shall be determined through negotiations between workers' congress and the enterprise director or manager, at the proposal of the former. The number of enterprise representatives shall not exceed one third of the total.

Article 8 The post of chairman of the mediation committee shall be taken up by a representative of the enterprise trade union.

The mediation committee shall set up its office at the enterprise trade union committee.

Article 9 In an enterprise without any trade union organization, the establishment and composition of the mediation committee shall be determined through negotiations between the workers' representatives and the enterprise representatives.

Article 10 Disputes taken up by the mediation committee shall wind up within 30 days starting from the date of application by the parties; otherwise, mediation shall be considered unsuccessful.

Article 11 The mediation committee shall observe the policy of voluntariness for both parties during mediation. Agreements reached through mediation shall be written in a mediation note for voluntary execution by the two parties; if mediation fails, the case may be referred to the labour dispute arbitration committee within a set time limit.

Article 12 Counties, cities and city districts shall set up labour dispute arbitration committees (hereinafter referred to as arbitration committees).

Article 13 The arbitration committee shall be composed of the following persons:

- (1) Representatives of the department in charge of labour administration;
- (2) Representatives of the trade union council;
- (3) Representatives of the department of overall economic administration appointed by the government.

The members to the arbitration committee must be in odd numbers, and the post of chairman is to be taken up by an official in charge of the department of labour administration.

The labour dispute settlement section of the department of labour administration shall ensure the secretarial work of the arbitration committee, and be responsible for dealing with its day-to-day routine.

Article 14 The system of arbitrators and arbitration tribunals shall be adopted by the arbitration committee in the settlement of labour disputes.

Article 15 The arbitration committee may engage personnel from the department in charge of labour administration or from other relevant government departments, trade union officials, experts and scholars, and lawyers as full-time or part-time arbitrators.

Part-time and full-time arbitrators shall enjoy equal rights in discharging their duties of arbitration.

In executing their duties of arbitration, part-time arbitrators shall receive the support of their own work units.

Article 16 In handling a labour dispute, the arbitration committee shall form an arbitration tribunal which shall be composed of three arbitrators.

A simple labour dispute may be handled by a single arbitrator appointed by the arbitration committee.

The arbitration tribunal may submit major or complicated labour dispute cases to the arbitration committee for deliberation and decision. The arbitration tribunal must implement the decisions of the arbitration committee.

Article 17 The arbitration committees set up in counties, cities and city districts shall be in charge of handling labour disputes in their respective administrative areas.

The scope of jurisdiction of the arbitration committees in cities with districts and in such districts in handling labour disputes shall be decided by the people's governments of the provinces and autonomous regions.

Article 18 When the enterprise and the worker(s) involved in a dispute are not located in areas under the jurisdiction of the same arbitration committee, the dispute shall be handled by the arbitration committee located at the place where the worker(s) in question has wage relations.

Article 19 Any party may mandate one to two lawyers or other agents to act for him in arbitration. The party that mandates others to act for him in arbitration shall submit to the arbitration committee a Power of Attorney bearing his signature or seal. The Power of Attorney shall specify clearly the terms and powers of the mandate.

Article 20 A worker with limited capacity to take part in civil cases or without such capacity, or a deceased worker, may be represented in arbitration proceedings by his legal representative. The arbitration committee may appoint an agent for a worker without a legal representative.

Article 21 The two parties in dispute may reach a compromise on their own.

Article 22 A third party whose personal interest will be affected by the outcome of a labour dispute may file a petition to participate in the proceedings or may participate when so notified by the arbitration committee.

Article 23 A party to a labour dispute should petition for arbitration to the arbitration committee in writing within 6 months from the date when he knows or should know that his rights have been infringed upon.

The arbitration committee shall accept a petition when a party fails to observe the time limit stipulated in the aforesaid clause due to force majeure or other justifiable reasons.

Article 24 When a party petitions for arbitration to the arbitration committee, the petition shall be

submitted to the arbitration committee, and copies of the petition shall also be submitted in accordance with the number of respondents.

The petition shall specify the following:

- (1) the name, occupation, address and work unit of a worker who is a party to the case, or, if the party is an enterprise, its name, address and legal representative's name and position;
- (2) the claim of arbitration and the facts and grounds on which it is based; and
- (3) any evidence as well as the names and addresses of witnesses.

Article 25 Within seven days from the date of receipt of a petition, the arbitration committee shall decide whether to accept it or not. If the decision is in the affirmative, the arbitration committee shall send a copy of the petition to the respondent and form an arbitration tribunal. If it is in the negative, the committee shall make the reasons clear.

The respondent shall within 15 days after receipt of the copy of the petition file a bill of defence with related evidence. Delay or failure by the respondent to file a bill of defence shall not prevent the case from being heard by the committee.

The arbitration committee shall have the authority to request the parties to provide or supplement their evidence.

Article 26 The arbitration tribunal shall notify the parties in dispute four days in advance and in writing the start of its time and place of hearing. If a party has received the notice in writing but refuses to appear at the hearing without justifiable reasons or walks out in the course of deliberations without permission of the arbitration tribunal, and if he is the claimant, the arbitration tribunal may decide that the case is withdrawn; and if it is the respondent, the arbitration tribunal may make an award by default.

Article 27 In handling disputes, the tribunal shall firstly mediate and try to bring the two parties involved together to reach an agreement on their own on a fact-finding basis. The contents of the agreement shall not contradict existing laws and regulations.

Article 28 In case an agreement is reached through mediation, the arbitration tribunal shall produce a mediation note in accordance with the contents of the agreement. The note is legally binding as from the date of receipt by the parties.

If no agreement is reached through mediation or if one party retracts before the note is delivered, the arbitration tribunal shall proceed promptly with a ruling.

Article 29 The arbitration tribunal shall hand out its rulings under the principle of the minority of its members submitting to the majority. Differing views shall be placed on record.

After the tribunal has made a ruling, an arbitration award shall be produced and sent to the parties in dispute.

Article 30 If a party refuses to accept the arbitration award, he may bring a lawsuit before the people's court within 15 days from receiving the arbitration award. Otherwise, the arbitration award shall come into force legally.

Article 31 The legally effective mediation note and arbitration award shall be implemented within the set time limit by both parties. In case one party fails to implement the note or the award upon expiration of the time limit, the other party may petition with the people's court for enforcement of the note or the award.

Article 32 All disputes handled by an arbitration tribunal shall be concluded within 60 days from the date of its setting up. If a case is complicated requiring an extension of its mandate, it shall be submitted to the arbitration committee for approval, and the extension shall not exceed 30 days.

Article 33 In the course of handling a labour dispute, the arbitration committee has the authority to consult files, documents and other evidences pertaining to the case from the units concerned, and also to investigate insiders. Such units and persons shall not refuse.

The arbitration committees may entrust each other with the work of investigation.

If in investigating labour disputes certain information involves secrets or private affairs, the arbitration committee and its personnel shall keep them confidential.

Article 34 When a party involved in a labour dispute applies for arbitration, he shall pay arbitration fees according to the relevant rules set by the State.

Arbitration fees include an acceptance fee and a fee for dealing with the case. The rates and procedures for charging arbitration fees shall be determined by the department in charge of labour administration under the State Council jointly with the departments in charge of finance administration and commodity prices administration under the State Council.

Article 35 Any member of the arbitration committee and any arbitrator shall himself request withdrawal from his office, and the parties to the dispute also have the right to request, orally or in writing, that he be withdrawn from his office, in any one of the following circumstances:

- (1) if he is one of the parties, or a close relative of a party to the dispute;
- (2) if he has a personal interest in the labour dispute; or
- (3) if he has some other relations with a party to the labour dispute that might affect the impartial handling of the case.

Article 36 The arbitration committee shall make a prompt decision on a request of withdrawal, and notify the parties orally or in writing.

Article 37 If in the course of handling a labour dispute a party or any related person commits any of the following acts, the arbitration committee may criticize and admonish him, or order him to correct his mistakes; if the case is serious, he shall be punished according to relevant provisions of the Regulations of the People's Republic of China on Administrative Penalties for Public Security; in case of a crime, he shall be dealt with for his criminal liabilities according to law:

- (1) if he interferes with mediation and arbitration, and hinders the arbitration personnel from performing their duties;
- (2) if he provides false information;
- (3) if he refuses to provide relevant documents, materials and other evidences; or
- (4) if he retaliates against the arbitration personnel, assistants, witnesses or assistant executive personnel.

Article 38 If any of the arbitration personnel in the course of handling a labour dispute bends the law for his own benefit, takes bribes, abuses his powers, or reveals secrets and private affairs of

individuals, he shall be dealt disciplinary sanction by his work unit or its superior organ; if he is an arbitrator, he shall be discharged by the arbitration committee; in case of a crime, he shall be dealt with for his criminal liabilities according to the law.

CHAPTER V SUPPLEMENTARY PROVISIONS

Article 39 Labour disputes between state organs, institutions and social organizations and their workers, or disputes between individual businesses and their assistants or apprentices shall be handled with reference to the present Regulations.

Article 40 The Rules of Organization and the Procedure Rules of the arbitration committee shall be formulated by the department in charge of labour administration under the State Council jointly with relevant departments.

Article 41 The people's governments of the provinces, autonomous regions and municipalities may formulate their own measures of application in accordance with the present Regulations.

Article 42 The department in charge of labour administration under the State Council shall be responsible for the interpretation of the Regulations.

Article 43 The present Regulations shall come into force from August 1, 1993. The Provisional Regulations on Settlement of Labour Disputes in State-Owned Enterprises promulgated by the State Council on July 31,

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