

## Regulations on the Labor Management of Foreign-Funded Enterprises

Article 1 The regulations are formulated in line with State laws and administrative regulations to guarantee the legal rights and interests of the foreign-funded enterprises (FFE) and their employees and establish, maintain and develop stable and harmonious relations between the FFEs and the employees.

Article 2 The regulations are applied to the Sino-foreign joint equity ventures, Sino-foreign cooperative ventures, solely foreign-funded enterprises and Sino-foreign limited companies established within the People's Republic of China and their employees.

Article 3 The labor administrative departments of the people's governments at county and above level exercise supervision over the FFEs in accordance with this set of regulations with regard to their use and training of personnel, and the personnel's wages, insurance and welfare, as well as their working safety and hygiene conditions.

Article 4 The statute and system of the FFEs must not go against the State laws and administrative regulations.

Article 5 The FFEs may decide by themselves the time, conditions and ways of the employment and the number of personnel they employ in line with relevant State laws and administrative regulations.

The FFEs may recruit employees from the employment services which have confirmed by the labor department at the localities of the FFEs but under the approval of the labor administrative departments may also recruit their employees directly or from other regions.

The FFEs must not recruit the employees who are still employed by other employers and are forbidden to use child laborers.

Article 6 The FFEs should employ their Chinese employees within China; whereas there is a real need to employ foreign personnel or personnel from Taiwan, Hong Kong and Macao regions, the employment should be made in line with relevant State regulations and with the approval of the local labor administrative department, and through relevant formalities such as the acquirement of employment certificates.

Article 7 The FFEs should establish certain training programmes for their employees. Those who are required to do technical work or to have special skills must receive training and be certified capable for the job before they assume the posts. A special programme for training must be drawn and used in line with relevant State regulations.

Article 8 Labor contracts are concluded in written form between individual employee and the FFEs. Trade unions (elected worker representatives if no such unions are available) may conclude collective contracts with the FFEs on behalf of the employees through consultations and negotiations with regard to matters like their remuneration, working time and vacation, labor safety and hygiene condition and insurance and welfare.

The content of the labor contracts and the collective contracts should conform with relevant State laws and administrative regulations in content.

Article 9 The labor contracts should be appraised and verified at the local labor administrative department within one month after they are signed. The signed collective contracts should be

reported to the local labor administrative departments for the record. The collective contracts shall become effective whereas the labor administrative departments do not raise any different views within 15 days from the date when they receive the text of the contracts concerned.

Article 10 Labor contracts terminate when their operation terms expire or conditions on which both parties agree to terminate the contracts appear. Labor contracts may also be extended under agreement of both parties.

A labor contract may be revised upon agreement of both parties through consultation and due formalities should go through for the change. The content of the changes in the contract may be decided by both parties of the contract.

Article 11 The FFEs or the employees may terminate the labor contracts in one of the following cases:

1. Parties of the contract reach an agreement for the termination through consultations;
2. A FFE may terminate the labor contract during the trial employing period of a certain employee when the employee is proved not up to the qualifications for recruitment, fails to carry out the contract, seriously violates labor discipline and the lawful statute of the enterprise, or has been convicted to forced labor or other pronounced guilty criminal punishment; and
3. An employee may terminate the labor contract if forced to work for the FFEs under violent treatment, threat, or imprisonment or other means of restricting personal freedom by the FFE; or if the FFE fails to carry out the labor contract or violates the State laws, administrative regulations and infringes upon the legal rights and interests of the employee.

Article 12 FFEs may terminate the labor contracts after soliciting the opinion of the trade union in one of the following cases, but the employees should be notified in written form 30 days in advance:

1. An employee inflicts an ill or injury not on post and thus cannot do the original work or other assignments by the FFE after the medical treatment period expires;
2. An employee can still not do the work after training or reassignment;
3. A contract fails to be carried out due to changes of conditions after the contract is signed and both sides cannot reach an agreement through consultations on changing the contract; and
4. Other matters which are set in laws and administrative regulations.

Article 13 The employer cannot terminate the labor contract when an employee is certified of losing or partly losing work ability due to occupational disease or injury at post, or in regular medical treatment for illness or an woman employee is pregnant or is enjoying maternity and lactation. Whereas an employee asks to terminate the labor contract due to occupational disease or becoming disabled because of work the enterprise should pay the social insurance agency the reemployment settlement fee for those who becoming disabled because of work in accordance with the stipulations of the local government.

The time limit for medical treatment of an employee who is ill or gets injured not because of work is set according to the current regulations.

Article 14 The wage policy of the FFEs should follow the principle of equal pay for equal work. Wages of the employees should be raised year by year on basis of the economic development of the FFEs. Wage standards of the employees should be decided through collective negotiations by the FFEs according to the guideline promulgated by the local people's government of the labour administrative department.

The minimum payment for a legal working hour of an employee in FFEs must not be lower than the standard for the local minimum payment.

Article 15 The FFEs must pay the employees cash wage in time and adequately at least once every month and withhold and pay the income tax for the employees.

Article 16 The FFEs should make account of the wages of the employees in line with relevant regulations and report the account to the local labor administrative department, financial department, statistics department and the enterprise's authoritative department in written form.

Article 17 FFEs must join in old-age, unemployment, medical, on-job injuries, child-bearing and other social insurance for their employees in accordance with relevant State regulations, and pay full premium to the social insurance institutions in time according to the standards set by the local people's government. The insurance premium should be listed and paid in line with the State regulations. Employees should also pay their own old-age insurance premium in line with relevant regulations.

Article 18 The FFEs should establish the system of "Labor Manual" and "Old-Age Insurance Manual" for the employees, recording the age, wage and the payment and spending of various social insurance like old-age, unemployment, on-job injuries and medical treatment of the employees.

Article 19 FFEs should pay living allowance to employees whose labor contracts terminated in accordance with Clauses 1 and 3 Article 11, and Article 12 of this set of regulations and also medical treatment allowance to employees whose labor contract is terminated in accordance with Clause 1 of Article 12 of this set of regulations in addition to the life allowance.

Article 20 The standards of the living and medical treatment allowances are calculated according to the employees, working years in the FFEs. The living allowance issued to the employees with a working period of one year should be equivalent to the one month pay of the employees; the medical treatment allowance to the employees should be equivalent to three months pay to employees with less than 5 years or working term and equivalent to six months' pay to employees with more than 5 years of working term. The working time is counted as 1 year whereas the actual working term is more than 6 months but less than one year.

The base for the living and the medical treatment allowances is the average monthly pay for the six months before the labor contract is terminate.

Article 21 Whereas a FFE disbands in line with relevant regulations or the labor contract is terminated with the agreement of both parties through consultations, the FFE should, in accordance with relevant regulations of the local people's government, pay the life and social insurance premiums as required to social insurance institutions for those employees who are in medical treatment or are recuperating due to injury at work or occupational disease as confirmed by the hospital, and those who entirely lose or partly lose working ability after medical treatment as confirmed by the labor appraisal committee, and the dependents of the deceased at work who are receiving pensions, women employees who are pregnant or are at the time of maternity or lactation,

and those who get nothing insured.

Article 22 The current employees of the FFEs enjoy the welfare treatment in accordance with relevant State regulations.

Article 23 FFEs should draw a certain amount of housing fund for their Chinese employees in line with the regulations of the local people's government.

Article 24 Employees of FFEs enjoy leaves for festivals, vacations, public holidays, visiting parents or spouses and handling funeral affairs, and maternity leave for women employees in line with the State regulations.

Article 25 If the two sides cannot solve through consultations the disputes that occur between the FFEs and the trade unions or the worker representatives while concluding collective labor contracts, the local labor administrative departments may invite the disputing parties together for a solution; if the two sides cannot solve through consultations the disputes that occur while the FFEs implement the collective contract, they may apply for arbitration or take legal proceeding according to laws.

Article 26 FFEs should follow the State regulations for the handling of labor disputes, labor safety and hygiene conditions, report and treatment of accidents occurred in work, working time, special protection for women employees and those under age.

Article 27 FFEs or the employees should bear responsibilities for compensation if they violate the labor contract, infringe upon the interests of the other party and causes losses to the other party.

Article 28 Whereas a FFE violates this set of regulations in recruiting employees, the local labor administrative department may impose on the FFE a fine in the amount of 5 to 10 times of the average monthly pay of the recruited employees.

Article 29 Whereas an employees' wage of a FFE is lower than the local minimum wage standard, the local labor administrative department shall order the FFE to correct within a set time, and, apart from making up for the wage according to the minimum standard, should pay the employee a compensation fund in the amount of 20 to 100 percent of the difference between the actual paid wage and the minimum wage standard. If the FFE fails to pay the make-up and the compensation fund, it will be imposed a fine which is 1 to 3 times the make-up and the compensation fund.

A FFE should correct at once the decision to ask employees to work extra hours and if it fails to do so, it will be imposed a fine which is 5 times the actual monthly or daily pay depending on the total extra time.

Article 30 A FFE that does not go through the formalities of social insurance for the employees should do it in a set time in line with the regulations of labor administrative department; if it fails to pay various social insurance in time, it should pay 2 percent of the delaying fund beginning from the date of expiration. And the delaying fund is put into various social insurances.

Article 31 FFEs should be ordered to correct or be closed to set the thing straight in a set time if it violates regulations about labor safety and hygiene conditions and in addition be imposed a fine in line with relevant regulations.

Article 32 An enterprise that obstructs or refuses the labor supervision by the labor administrative department will be imposed a fine less than 1 percent of its monthly business turnover and sales volume.

Article 33 The above-mentioned fines may only be imposed after the FFE refuses to correct even after the local labor administrative department issues warning to the enterprise.

Article 34 The above-mentioned administrative punishments are carried out by the labor administrative department according to laws and all the fines are handed over to the State treasury.

Article 35 The regulations are also applied to the joint equity- ventures, cooperative ventures, solely owned enterprises and limited- liability companies established in the Chinese mainland by overseas Chinese and investors from Taiwan, Hong Kong and Macao.

Article 36 The Chinese Ministry of Labor is entitled to interpret this set of regulations.

These regulations come into force upon its promulgation and shall dominant should there be any conflict between the regulations and the past labor management regulations concerning FFEs.

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From: Supreme People's Court of the PRC at <http://en.chinacourt.org>