

CHINA LEGAL BRIEFING* 175

AUGUST 20 - 25, 2007



* CHINA LEGAL BRIEFING is a weekly collection of Chinese law related news gathered from various media and news services, edited by WENFEI ATTORNEYS-AT-LAW LTD. distributed to its clients and CHINA LEGAL BRIEFING subscribers. WENFEI ATTORNEYS-AT-LAW LTD. does not accept responsibility for accuracy of quotes or truthfulness of content. CHINA LEGAL BRIEFING is not intended to provide advice.

1 Labor Contract Law

2 Regulation on the Administration of Drug Registration

3 Regulation on the Administration of Qualification Certificates of Exploration and Design for Construction Project

Labor Contract Law

劳动合同法

| | |
|----------------|---|
| Issued By | Standing Committee of China People's Congress |
| Subject | Labor Contract |
| Promulgated on | June 29th 2007 |
| Effective from | January 1st 2007 |
| Source | www.molss.gov.cn |

The Labor Contract Law (hereinafter as the “Law”) shall govern labor relations between employees and such employers as enterprises, private organizations, government and official organizations (to the extent that the employment relation is based on the Labor Law). The most significant improvement of the Law compared to previous laws is that a number of concrete and applicable systems are clearly adopted. The next part will brief on the major systems:

Form of contract: the Law provides that a written labor contract shall be entered into between the employer and the employee within 1 month after the employee starts to work, except for the situation that the employee only works not more than 4 hours per day and not more and 24 hours per week for the employer where an oral agreement shall also be acceptable. Failure to enter into the written contract by employer shall entitle the employ double salary for the period when such contract is absent.

Probation: for contracts with a 3 to 12 months term, the probation shall not be longer than 1 month; for contracts with a 1 to 3 years term, the probation shall not be longer than 2 months; for contracts over 3 years or without a fixed term, the probation shall not be longer than 6 months. The probation cannot be applied more than once to the same employee, or to employees employed solely for certain tasks.

Non-competition: the employer may enter into a non-competition agreement with its senior staff, senior technical personnel and other employees assuming a confidentiality obligation, subject to a monthly compensation to be paid to the employee during the restriction period. The restriction period shall not exceed 2 years after the employee leaves office.

Termination of contract: the Law provides three legal ways to terminate a labor contract.

1. Both sides may terminate the contract through mutual agreement;
2. The employee may terminate the contract with 30 days written notice; or terminate the contract with immediate effect when the employer has not provided proper working condition, or has not duly paid remuneration or social securities,

or when the by-laws and rules of the employer breach mandatory laws or regulations and thus incur damages to employees, etc.;

3. The employer may terminate the contract with immediate effect if the employee is proven to be unqualified during the probation, or violates criminal law or seriously breaches the by-laws or rules of the employer, or incurs substantial damages to the employer out of breach of the employee's duty; or concurrently works for another employer which results in a serious impact on his/her performance of duties, etc.; or
4. The employer may terminate the contract with 30 days written notice when the employee is not qualified for his/her position and remain unqualified after training or a change of position, or after the expiration of medical period(except for the situation of work injury) the employee can fulfill neither his/her original duties nor new assigned duties, etc.

Circumstances in which the employer may not terminate the contract except for the situations where the employer is entitled to terminate the contract with immediate effect:

1. During the medical period when the employee becomes sick or suffers a personal injury;
2. The employee contracts an occupational disease or suffers a work injury and has been confirmed to have completely or partly lost the ability to work;
3. The employee who has been exposed to the risk of occupational diseases has not taken a physical examination, or during the diagnosis or medical observation period of such occupational diseases;
4. During the pregnancy, confinement or lactation of female employees;
5. The employee has consecutively worked for 15 years for the employer.

Compensation: the employer may not impose any liability of compensation on the employee except for the breach of the employee's obligations regarding service term (related with training received by the employee), confidentiality and non-competition; the employer shall be liable to compensate the employee if the employee terminates the contract based on his/her right to terminate the contract with immediate effect, or when the employer terminates the contract through agreement with the employee, or under most circumstances where the employer is entitled to terminate the contract with 30 days written notice.

Standard of compensation by the employer: for each full year the employee has worked for the employer, the employer shall compensate an amount equal to the employee's monthly salary.

The employer's liabilities for recruiting an employee who has not terminated labor contract with his/her original employer: in such case the employer shall assume a joint and several liability to compensate damages suffered by the original employer.

Regulation on the Administration of Drug Registration

药品注册管理办法

| | |
|----------------|--|
| Issued By | State Food and Drug Administration |
| Subject | Drug Registration |
| Promulgated on | July 10th 2007 |
| Effective From | October 1st 2007 |
| Source | www.sda.gov.cn |

This Regulation shall govern all the applications about clinic experiment of drugs, production and import of drugs within the territory of PRC, and the approval, inspection and supervision related to such applications.

State Food and Drug Administration (hereinafter as “SDA”) shall be in charge of the registration of drugs and the approval of the clinic experiment, the production and the import of drugs.

Domestic applicants shall be such institutions which have been legally registered and which can assume civil liabilities independently. Foreign applicants shall be legal producers of drugs, and shall authorize either its subsidiary in China or a Chinese agent to file the application.

The applicant shall make a declaration of the involved patents and the ownership of such patents regarding the applied drug or its formula, process or uses. The declaration shall be publicized on the official website of the approving authorities.

The registration of new drugs is subject to clinic experiment. The clinic experiment shall be conducted within 3 years after the approval. SDA may also, at its discretion, require a supervision period for certain new drugs which shall not be longer than 5 years starting from the approval of the production of such new drug. During the supervision period, SDA shall not approve the application of other applicants to produce, modify the formula of or import the supervised new drug.

The application of the import of drugs shall require a sale license issued by the country or region of the producer. However, for drugs confirmed by SDA to be safe, effective and needed for clinic use, approvals may be granted where the required sale license is absent.

The approval to divide packages of imported drugs shall only be granted for drugs China has not started to produce, or the domestic production of which cannot meet clinic demand. The inner package of the drugs should have been completed abroad, except for tablets or capsules. One type of drug manufactured by the same producer shall only be further packed by one domestic drug producer.

The validity of approvals, Import Drug Registration License and Medical Product Registration License is 5 years. The application for re-registration shall be filed by 6 months before the expiration.

Regulation on the Administration of Qualification Certificates of Exploration and Design for Construction Project

建设工程勘察设计资质管理规定

| | |
|----------------|--|
| Issued By | Ministry of Construction |
| Subject | Qualifications for Construction |
| Promulgated on | June 26th 2007 |
| Effective From | September 1st 2007 |
| Source | www.cin.gov.cn |

The exploration and design for construction projects in China shall be subject to the availability of Qualification Certificate of Exploration for Construction Project and Qualification Certificate of Design for Construction Project, and shall be carried out within the licensed scope of the certificates. The qualification certificates are granted to applicants with adequate registered capital, technical staff, equipment & facilities and necessary achievements.

There are three types of Qualification of Exploration: comprehensive qualification, specialized qualification and labor service qualification.

Various grades of qualification are classified, corresponding to different scopes of design the qualification holder may undertake: for comprehensive qualifications, only Grade A is available, covering the design work for all projects (except for marine projects); for specialized qualifications, Grade A and Grade B are differentiated, and Grade C is also granted for limited specialties; labor service qualifications are not graded.

Four types of Qualification of Design are granted: comprehensive qualification, qualification for a specific industry, specialty qualification, sub-specialty qualification.

Likewise, the comprehensive qualifications for design are not further classified with only Grade A available; the qualifications for a specific industry, specialty qualifications and sub-specialty qualifications are graded into A, B and C; Grade D of qualification for a specific industry is also granted in certain industries.

The application of all Grade A qualifications and Grade B qualifications for the design in railway, transportation, water resource, information industry, civil aviation must be reviewed and approved by Ministry of Construction; provincial construction authorities shall have the competence to review and approve the application for the rest qualifications.

Grade A qualifications cannot be granted to enterprises applying initially. For such initial application, previous achievement is not required either.

The Qualification Certificates shall have a validity of 5 years, extendable upon application by 60 days before the expiration.

© Wenfei, Beijing, 25 August 2007

Check the China Legal Briefing archives on: Check the China Legal Briefing archives on:

<http://www.wenfei.com/publications/html>

Obtain your personal subscription from: clb@wenfei.com