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On June 29, 2007, China enacted a new comprehensive employment contracts law. The new employment contracts law is designed to settle employment disputes and fix the ambiguities found in China's Labor Law 1995. Since employment relationships in China are often very detailed, and subject to many legal requirements, the impact of the new law will be substantial.

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## International Employment and Labor Law

A Littler Mendelson Newsletter specifically for International Employment and Labor Law

### New Employment Contracts Law Adopted in China

By *Becky Xia*

The Law of the People's Republic of China on Labor Contracts ("Employment Contracts Law") was approved at the 28th session of the 10th National People's Congress Standing Committee on June 29, 2007.

Prior to the new legislation, the Labor Law 1995 was the only national statute governing employment relationships, and serves as the basis of China's employment law system. Following the initial passage of Labor Law 1995, state-owned enterprises and institutions remained the primary employers in the labor market. These state-owned entities usually kept the workers' personnel files and placed employment registration records in the local government offices rather than signing and maintaining at their own sites employment contracts with the workers. Therefore, very few contractual issues arose during this time. However, many private employers preferred signing short-term contracts with their workers, usually lasting less than one year. These contracts were often not renewed, particularly based on the age of the worker, or resulted in an open-ended contract once the fixed term expired. As a result, the terms of labor contracts would be seen as unfair and containing potentially illegal terms, even though Labor Law 1995 did not contain detailed regulations. Further, many staffing companies had no contracts with their workers. Therefore, an increasing number of workers found it difficult to protect their interests, and as a result, the country began its search for a solution three years ago.

The new law, effective January 1, 2008, represents a comprehensive reform of the country's laws regulating the employer-employee relationship. The importance

of this development is reflected by the fact that during the legislative procedure, drafts of this law were revised four times, and the legislators took into consideration the viewpoints not only of China's manufacturing and service industries, but also the increasingly vocal labor movement. By comparison with the labor law which was in effect from 1995 until the present, the Employment Contracts Law contains far more regulations on the issues of contract conclusion, performance, amendment and termination. These new regulations make the employment relationship clearer and easier to administer.

The Employment Contracts Law has significant implications for both employees and employers. The following are some highlights of the new law.

- If a worker agrees to renew the contract but the employer refuses, the worker shall be compensated in accordance with appropriate regulations (Art. 44.1 46.5 & 47).
- An individual has the right to end an open-ended labor contract, if he or she has served in the company for more than ten years or has performed two fixed-term contracts. Employers must take into account that under the new law, a full-time employee who works without a written contract may now be considered to have an open-ended contract. Another pitfall of not having a written contract for a full-time employee is the provision concerning payment for non-contract workers. Such workers who work for more than a month but less than a year are entitled to receive a

sum equal to twice his or her wages each month.

- The Employment Contract Law firmly prohibits the widely-used practice in Chinese manufacturing facilities where the employer retains the worker's resident identity card or other papers, or requires the worker to provide surety, or permits the company to collect property from the worker in order to secure employment.
- Probationary employment periods can be stipulated only once, and the probation period in various situations is strictly regulated by the law. By contrast, under existing law, many companies still require probationary periods of three months or more.
- Additional requirements have been established for staffing companies. Such entities must have registered capital of more than 500,000 Yuan. The staffing firm and the worker are required to have a fixed-term labor contract with a period of not less than two years, with remuneration to be paid on a monthly basis. If a worker does not receive an assignment during the period, the staffing firm is required to pay the worker remuneration on a monthly basis based on the local minimum wages prescribed by the People's Government.
- To prevent unfair competition, employers may restrict the ability of certain employees to seek work with rival companies for a period of time not to exceed two years from the end of the employment relationship. However, the unfair competition regulations apply only to senior management personnel, senior technicians, and other personnel with obligations to protect confidential company information.

In the end, this law has attracted considerable media coverage not only in China but globally as well. The former labor law made it very difficult for Chinese companies to cope with new and more complicated labor disputes generated by the flourishing economic development. However, the Legislature appears quite confident that the new law will be able to protect the lawful rights and interests of workers while at the same time encouraging

the development of harmonious and stable employment relationships.

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