

The People's Supreme Court Issued Interpretation IV on Certain Issues Regarding Applicable Laws in Labor Dispute Cases

February 1, 2013

The People's Supreme Court ("Supreme Court") released the Interpretation IV on Certain Issues regarding Applicable Laws in Labor Dispute Cases (hereinafter the "Interpretation") on December 31, 2012, which came into effect on February 1, 2013.

The Interpretation includes the following major issues:

1. Jurisdiction of Labor Dispute Litigation

The court has the power to censor whether the labor dispute arbitration authority has the jurisdiction over the labor dispute.

If the labor dispute arbitration committee refuses to accept to deal with the labor dispute case with the reason of no jurisdiction and the applicant brings it to the lawsuit, the court shall deal with such case under the following rules:

- a. If the arbitration committee has no jurisdiction over the case, the court shall inform the applicant to apply for the arbitration to the competent arbitration committee;
- b. If the arbitration committee has the jurisdiction over the case, the court shall inform the applicant to apply for the arbitration to this arbitration committee. If this arbitration committee still refuses to deal with the case, the applicant has the right to bring the case to the lawsuit and the court shall accept to hear it.

2. Arbitration Decision

The arbitration decision shall be issued in writing. If the arbitration decision doesn't clarify whether the decision is final and the employer brings the case into lawsuit, the court shall hear the case under the following rules:

- a. If the arbitration decision is not final, the court shall accept to hear the case;
- b. If the arbitration decision is final and the court refuses to hear the case, the court shall inform that the employer has the right to apply for the revocation of the arbitration decision to the intermediate court;
- c. If the court has already heard the case, it shall reject the lawsuit.

3. Working Period of the Employee

For reasons not attributed to the employee, arrangement is made for the employee to work for a new employer, if the original company hasn't paid the compensation to the employee, when the employee terminates the labor agreement with the new

employer or the new employer terminates the labor agreement with the employee, the working period of the employee with the original employer shall be taken into account and included in the whole working period.

“For reasons not attributed to the employee” mentioned above refer to the following circumstances:

- a. The employee works in the same position and working places but the employer is changed;
- b. The work of the employee is changed by the employer in the form of appointment or dispatch;
- c. The work of the employee is changed due to the merger, division of the employer;
- d. The employer and its subsidiaries sign the labor agreement with the employee in turn;
- e. Other reasonable circumstances.

4. Non-Competition

If the labor agreement or non-disclosure agreement includes the non-competition clause but excludes the compensation to the performance of non-competition by the employee after the termination of the agreement, when the non-competition is executed, the employee may request the compensation equivalent to 30% of average monthly salary of previous 12 months before the termination of the agreement. If this compensation amount is less than the minimum monthly salary amount in the place where the labor agreement is executed, the minimum monthly salary shall be paid by the employer for the compensation.

If the labor agreement or non-disclosure agreement includes the non-competition as well as the compensation clause, when the agreement is terminated, the employer has the right to request the non-competition to be performed by the employee. However, the employer shall pay the compensation after the employee finishes the performance of the non-competition. If the employer fails to pay the compensation for three months, the employee has the right to release the responsibility of non-competition.

During the term of non-competition, the employer may terminate the non-competition agreement and the employee has the right to request three months' compensation.

Even If the employee has paid the penalty to the employer due to the violation of non-competition clause, the employee shall continue to perform the responsibility of non-competition.

5. Change of Labor Agreement

If the labor agreement is changed verbally and has been actually performed for more than one month, and the revised agreement complies with the Chinese law,

regulations, national policy, public order and good custom, this new labor agreement shall be regarded as effective by the court.

6. Expiration of Business Duration of the Employing Legal Entity

If the labor agreement is terminated because the duration of the employing legal entity is expired and the employing legal entity will not continue to do business, the employee has the right to request the relevant compensation.

7. Foreign Employees without Work Permit in China

If a foreign employee or stateless person or a resident from HK, Macao or Taiwan signs the labor agreement with the employer within the territory of China but hasn't obtained the work permit in China, the labor relationship is not established,

Conclusion

The Interpretation regulates how the court shall handle labor dispute cases regarding specific issues which have not been regulated in the applicable labor laws and regulations. It facilitates the judgment of the court for the labor cases and improves the labor laws and regulations of China. On the other hand, the Interpretation also clarifies the rights and responsibilities of parties involved in the labor disputes.

However, there are some issues that cannot be resolved under the Interpretation as follows:

- a. The compensation amount borne by the employee who breaches his obligations of non-competition clause is unclear if this amount is not regulated in the non-competition clause of the labor agreement or non-disclosure agreement;
- b. The terms of the compensation to the employee are unclear if the labor agreement is terminated due to the expiry of the duration of the employing legal entity.