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Regulation on the Administration of Foreign Labor Cooperation [Effective]

对外劳务合作管理条例 [现行有效]

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Order of the State Council

(No. 620)

Regulation on the Administration of Foreign Labor Cooperation, as adopted at the 203rd executive meeting of the State Council on May 16, 2012, is hereby issued and shall come into force on August 1, 2012.

Premier: Wen Jiabao

June 4, 2012

Regulation on the Administration of Foreign Labor Cooperation

国务院令

(第620号)

《对外劳务合作管理条例》已经2012年5月16日国务院第203次常务会议通过，现予公布，自2012年8月1日起施行。

总理 温家宝

二〇一二年六月四日

对外劳务合作管理条例

Chapter I General Provisions

第一章 总 则

Article 1 This Regulation is formulated in order to standardize foreign labor cooperation, protect the lawful rights and interests of contract workers, and promote the healthy development of foreign labor cooperation.

第一条 为了规范对外劳务合作，保障劳务人员的合法权益，促进对外劳务合作健康发展，制定本条例。

Article 2 The term "foreign labor cooperation" as mentioned in this Regulation means the operational activities of organizing contract workers to work in other countries or regions for foreign enterprises or institutions (hereinafter referred to as "foreign employers").

第二条 本条例所称对外劳务合作，是指组织劳务人员赴其他国家或者地区为国外的企业或者机构（以下统称国外雇主）工作的经营性活动。

Foreign enterprises, institutions or individuals shall not recruit contract workers within the territory of China to work abroad.

国外的企业、机构或者个人不得在中国境内招收劳务人员赴国外工作。

Article 3 The state encourages and supports legal foreign labor cooperation, improvement of foreign labor cooperation and protection of lawful rights and interests of contract workers. The relevant departments of the State Council shall formulate and improve policies and measures that promote the development of foreign labor cooperation, and establish and improve foreign labor cooperation service systems, as well as risk prevention and handling mechanisms.

第三条 国家鼓励和支持依法开展对外劳务合作，提高对外劳务合作水平，维护劳务人员的合法权益。国务院有关部门制定和完善促进对外劳务合作发展的政策措施，建立健全对外劳务合作服务体系以及风险防范和处置机制。

Article 4 The commerce department of the State Council shall be responsible for the nationwide supervision and administration over foreign labor cooperation. The departments of

第四条 国务院商务主管部门负责全国的对外劳务合作监督管理工作。国务院外交、公安、人力资源社会保障

foreign affairs, public security, human resources and social security, transport, housing and urban-rural development, fishery, administrative department for industry and commerce and other relevant departments of the State Council shall, within the scope of their respective duties, be responsible for the relevant work in the supervision and administration over foreign labor cooperation.

The local people's governments at or above the county level shall uniformly lead, organize and coordinate the supervision and administration over foreign labor cooperation within their respective administrative regions. The commerce departments of local people's governments at or above the county level shall be responsible for the supervision and administration over foreign labor cooperation within their respective administrative regions, and other relevant departments shall, within the scope of their respective duties, be responsible for the relevant work in the supervision and administration over foreign labor cooperation.

Chapter II Enterprises and Contract Workers Engaging in Foreign labor cooperation

Article 5 Enterprises engaging in foreign labor cooperation shall obtain qualifications to engage in foreign labor cooperation with the approval of the commerce department of the people's government at the level of a province or districted city in accordance with the provisions of the people's government of the province, autonomous region or municipality directly under the Central Government.

Article 6 Anyone that applies for qualifications to engage in foreign labor cooperation shall meet the following conditions:

1. meets the conditions for being an enterprise legal person;
2. its paid-in registered capital is not less than six million yuan;
3. has three or more managers who are familiar with the foreign labor cooperation business;
4. has a sound internal management system and emergency disposal system; and
5. its legal representative has no record of any intentional crimes.

Article 7 An enterprise that applies for qualifications to engage in foreign labor cooperation shall submit to the commerce department of the local people's government at the level of a province or districted city (hereinafter referred to as the "commerce department responsible for examination and approval") the materials proving that it meets the conditions as provided for in Article 6 of this Regulation. The commerce department responsible for examination and approval shall, within 20 working days of receipt of certification materials, conduct examination and make an approval or disapproval decision. If the department makes an approval decision, it shall issue the qualification certificate for foreign labor cooperation; and if the department makes a disapproval decision, it shall notify the applicant in writing and state the reasons for the disapproval.

The applicant shall lawfully undergo registration formalities with the administrative department for industry and commerce based on the qualification certificate for foreign labor cooperation.

The commerce department responsible for examination and approval shall submit the list of enterprises that have lawfully obtained the qualification certificate for foreign labor cooperation and have undergone registration formalities (hereinafter referred to as "foreign labor cooperation enterprises") to the commerce department of the State Council, which shall notify Chinese embassies and consulates stationed abroad in a timely manner.

Enterprises failing to lawfully obtain the qualification certificate for foreign labor cooperation and undergo registration formalities shall not engage in foreign labor cooperation.

障、交通运输、住房城乡建设、渔业、工商行政管理等有关部门在各自职责范围内，负责对外劳务合作监督管理的相关工作。

县级以上地方人民政府统一领导、组织、协调本行政区域的对外劳务合作监督管理工作。县级以上地方人民政府商务主管部门负责本行政区域的对外劳务合作监督管理工作，其他有关部门在各自职责范围内负责对外劳务合作监督管理的相关工作。

第二章 从事对外劳务合作的企业与劳务人员

第五条 从事对外劳务合作，应当按照省、自治区、直辖市人民政府的规定，经省级或者设区的市级人民政府商务主管部门批准，取得对外劳务合作经营资格。

第六条 申请对外劳务合作经营资格，应当具备下列条件：

- (一) 符合企业法人条件；
- (二) 实缴资本不低于600万元人民币；
- (三) 有3名以上熟悉对外劳务合作业务的管理人员；
- (四) 有健全的内部管理制度和突发事件应急处置制度；
- (五) 法定代表人没有故意犯罪记录。

第七条 申请对外劳务合作经营资格的企业，应当向所在地省级或者设区的市级人民政府商务主管部门（以下简称负责审批的商务主管部门）提交其符合本条例第六条规定条件的证明材料。负责审批的商务主管部门应当自收到证明材料之日起20个工作日内进行审查，作出批准或者不予批准的决定。予以批准的，颁发对外劳务合作经营资格证书；不予批准的，书面通知申请人并说明理由。

申请人持对外劳务合作经营资格证书，依法向工商行政管理部门办理登记。

负责审批的商务主管部门应当将依法取得对外劳务合作经营资格证书并办理登记的企业（以下称对外劳务合作企业）名单报至国务院商务主管部门，国务院商务主管部门应当及时通报中国驻外使馆、领馆。

未依法取得对外劳务合作经营资格证书并办理登记，不得从事对外劳务合作。

Article 8 Foreign labor cooperation enterprises shall not allow other entities or individuals to organize contract workers to work abroad in the enterprises' names.

No entity or individual may organize contract workers to work abroad in the name of business, tourism or overseas study.

Article 9 A foreign labor cooperation enterprise shall, within five working days of the date of registration with the administrative department for industry and commerce, open a special account at the bank designated by the commerce department responsible for examination and approval to deposit a risk disposal reserve for foreign labor cooperation of not less than three million yuan (hereinafter referred to as "reserve"). The reserve may be deposited by submittal of bank guarantee of equivalent amount to the commerce department responsible for examination and approval.

The commerce department responsible for examination and approval shall release to the public the list of foreign labor cooperation enterprises that have deposited the reserve.

Article 10 The reserve will be used to pay the following expenses that the foreign labor cooperation enterprise refuses or is unable to assume:

1. service fees which are collected by the foreign labor cooperation enterprise in violation of the provisions of the state and shall be returned to contract workers;
2. labor remuneration that are paid by the foreign labor cooperation enterprise to contract workers in accordance with the law or as stipulated;
3. expenses required for compensation for the losses of contract workers pursuant to law; and
4. expenses required for contract workers to return to China or receive emergent relief due to the occurrence of any emergency.

The foreign labor cooperation enterprise shall, after using the reserve, replenish the reserve to the original amount within 20 working days of the date of use.

The specific measures for the deposit and use of reserves and the supervision and administration thereof shall be formulated by the commerce department of the State Council jointly with the financial department of the State Council.

Article 11 No foreign labor cooperation enterprise shall organize contract workers to go abroad to engage in work relating to gambling and pornographic activities.

Article 12 Foreign labor cooperation enterprises shall arrange for contract workers to receive training on vocational skills, safety protection knowledge, foreign languages, as well as relevant laws, religious beliefs, customs and other knowledge of the country or region at the place where the labor use project is located, as required for working abroad; where no arrangements are made for contract workers to receive training, such contract workers shall not be organized to work abroad.

Contract workers shall receive training, obtain the relevant skills and knowledge required for working abroad, and improve the ability to satisfy the requirements for working abroad and safety protection.

Article 13 Foreign labor cooperation enterprises shall purchase personal accident insurance for contract workers when they work abroad unless the foreign labor cooperation enterprises and foreign employers have agreed that the foreign employers shall purchase such insurance for contract workers.

Article 14 Foreign labor cooperation enterprises shall undergo exit formalities for contract workers, and assist in undergoing the foreign residence and work permits and other formalities for contract workers.

第八条 对外劳务合作企业不得允许其他单位或者个人以本企业的名义组织劳务人员赴国外工作。

任何单位和个人不得以商务、旅游、留学等名义组织劳务人员赴国外工作。

第九条 对外劳务合作企业应当自工商行政管理部门登记之日起5个工作日内, 在负责审批的商务主管部门指定的银行开设专门账户, 缴存不低于300万元人民币的对外劳务合作风险处置备用金(以下简称备用金)。备用金也可以通过向负责审批的商务主管部门提交等额银行保函的方式缴存。

负责审批的商务主管部门应当将缴存备用金的对外劳务合作企业名单向社会公布。

第十条 备用金用于支付对外劳务合作企业拒绝承担或者无力承担的下列费用:

(一) 对外劳务合作企业违反国家规定收取, 应当退还给劳务人员的服务费;

(二) 依法或者按照约定应当由对外劳务合作企业向劳务人员支付的劳动报酬;

(三) 依法赔偿劳务人员的损失所需费用;

(四) 因发生突发事件, 劳务人员回国或者接受紧急救助所需费用。

备用金使用后, 对外劳务合作企业应当自使用之日起20个工作日内将备用金补足到原有数额。

备用金缴存、使用和监督管理的具体办法由国务院商务主管部门会同国务院财政部门制定。

第十一条 对外劳务合作企业不得组织劳务人员赴国外从事与赌博、色情活动相关的工作。

第十二条 对外劳务合作企业应当安排劳务人员接受赴国外工作所需的职业技能、安全防范知识、外语以及用工项目所在国家或者地区相关法律、宗教信仰、风俗习惯等知识的培训; 未安排劳务人员接受培训的, 不得组织劳务人员赴国外工作。

劳务人员应当接受培训, 掌握赴国外工作所需的相关技能和知识, 提高适应国外工作岗位要求以及安全防范的能力。

第十三条 对外劳务合作企业应当为劳务人员购买在国外工作期间的人身意外伤害保险。但是, 对外劳务合作企业与国外雇主约定由国外雇主为劳务人员购买的除外。

第十四条 对外劳务合作企业应当为劳务人员办理出境手续, 并协助办理劳务人员在外国的居留、工作许可等手续。

A foreign labor cooperation enterprise shall, after organizing the exit of contract workers, report the relevant information in a timely manner to Chinese embassy or consulate stationed in the country where the labor use project is located.

Article 15 Foreign labor cooperation enterprises and contract workers shall abide by the laws of the countries or regions at the places where labor use projects are located, and respect the local religious beliefs, customs and cultural traditions. Foreign labor cooperation enterprises and contract workers shall not conduct activities that damage national security or national interest.

Article 16 Foreign labor cooperation enterprises shall track and obtain the information on contract workers' work and living conditions abroad, assist in resolving difficulties and problems in contract workers' work and life, and report the reasonable requirements of contract workers to foreign employers in a timely manner. Where a foreign labor cooperation enterprise dispatches 100 or more contract workers to the same country or region, it shall dispatch accompanying managers, and submit the list of such managers to Chinese embassy or consulate stationed in the country where the labor use project is located.

Article 17 Foreign labor cooperation enterprises shall formulate emergency response plans. If any emergencies occur abroad, the foreign labor cooperation enterprise shall handle such emergencies in a timely and appropriate manner, and immediately report to Chinese embassy or consulate stationed in the country where the labor use project is located and relevant departments of China.

Article 18 Where a war, riot, major natural disaster, or emergency occurs in the country or region where the labor use project is located, and Chinese government makes the corresponding disaster prevention arrangements, the foreign labor cooperation enterprise and contract workers shall obey the arrangements and offer assistance.

Article 19 Where a foreign labor cooperation enterprise ceases foreign labor cooperation, it shall make appropriate arrangements for the dispatched contract workers who still work abroad, and file the arrangement plan with the commerce department responsible for examination and approval. The commerce department responsible for examination and approval shall submit the arrangement plan to the commerce department of the State Council, which shall notify in a timely manner Chinese embassies and consulates stationed in the country where the labor use project is located.

Article 20 Contract workers shall be entitled to file complaints with the commerce department and other relevant departments for breaches of contract or other infringements of lawful rights and interests of contract workers by foreign labor cooperation enterprises. The departments that receive complaints shall, in accordance with their duties, handle the complaints in a timely manner pursuant to law, and provide feedback on the handling information to the complainant.

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对外劳务合作企业组织劳务人员出境后,应当及时将有关情况向中国驻用工程项目所在国使馆、领馆报告。

第十五条 对外劳务合作企业、劳务人员应当遵守用工程项目所在国家或者地区的法律,尊重当地的宗教信仰、风俗习惯和文化传统。对外劳务合作企业、劳务人员不得从事损害国家安全和国家利益的活动。

第十六条 对外劳务合作企业应当跟踪了解劳务人员在国外的工作、生活情况,协助解决劳务人员工作、生活中的困难和问题,及时向国外雇主反映劳务人员的合理要求。对外劳务合作企业向同一国家或者地区派出的劳务人员数量超过100人的,应当安排随行管理人员,并将随行管理人员名单报中国驻用工程项目所在国使馆、领馆备案。

第十七条 对外劳务合作企业应当制定突发事件应急预案。国外发生突发事件的,对外劳务合作企业应当及时、妥善处理,并立即向中国驻用工程项目所在国使馆、领馆和国内有关部门报告。

第十八条 用工程项目所在国家或者地区发生战争、暴乱、重大自然灾害等突发事件,中国政府作出相应避险安排的,对外劳务合作企业和劳务人员应当服从安排,予以配合。

第十九条 对外劳务合作企业停止开展对外劳务合作的,应当对其派出的尚在国外工作的劳务人员作出妥善安排,并将安排方案报负责审批的商务主管部门备案。负责审批的商务主管部门应当将安排方案报至国务院商务主管部门,国务院商务主管部门应当及时通报中国驻用工程项目所在国使馆、领馆。

第二十条 劳务人员有权向商务主管部门和其他有关部门投诉对外劳务合作企业违反合同约定或者其他侵害劳务人员合法权益的行为。接受投诉的部门应当按照职责依法及时处理,并将处理情况向投诉人反馈。

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