

Employment and Labor: New Policies for Coping with the Economic Downturn

MARCH 1, 2009

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In order to help deal with the current economic downturn and strengthen labor relationships, the central government of China has recently announced a series of employment-related policies.

Policies announced by various central government ministries include:

A. The Notice as to Measures to Lighten Enterprises' Burden and Stabilize The Employment Situation (RenSheBuFa [2008]117) (the "Notice"), released by the Ministry of Human Resources and Social Security ("MOHRSS"), the Ministry of Finance ("MOF"), and the State Administration of Taxation ("SAT") on December 20, 2008.

The Notice lists measures to help enterprises deal with employment-related issues, such as:

- enterprises having financial difficulties may postpone the payment of social insurance fees for up to six months and there will be no surcharge or penalty for the postponement;
- local authorities may appropriately lower the rates for employees' basic medical insurance, unemployment insurance, job-related injury insurance and childbirth insurance for a period of no more than twelve months; however, the rate for retirement insurance cannot be reduced without permission from provincial authorities;
- enterprises having financial difficulties may use unemployment insurance funds to pay a social insurance subsidy if they do not lay off employees or lay off very few employees; and
- local governments will provide funds to carry out vocational skill training programs for unemployed workers who have lost their jobs due to layoffs by enterprises having financial difficulties.

B. The Opinion on Stabilizing Labor Relationship under Current Economic Situation (RenSheBuFa[2009]18) (the "Opinion"), issued by MOHRSS, the All-China Federation of Trade Unions ("ACFTU"), and the China Enterprise Association ("CEA") (jointly, the "Three Parties") on January 23, 2009.

The Opinion states that the Three Parties should coordinate with each other to help enterprises avoid or reduce mass layoffs by adopting alternative cost cutting measures, such as wage reductions, work adjustments, holiday and annual leave rotations and other flexible working arrangements. To better guide and supervise layoffs and other potential labor-related issues, the

Three Parties also urged the promotion of collective consultation mechanisms to deal with labor-related issues between enterprises and employees.

C. The Guidance to Improve Employment under Current Economic Situation (GuoFa[2009]4) (the “Guidance”), issued by the State Council on February 3, 2009.

The Guidance advises all levels of government to create more employment opportunities by investing in construction projects, promoting the establishment of medium and small-scale enterprises, and developing service industries, among other things.

The Guidance also provides preferential policies on self-employment, hiring of unemployed workers, new college graduates and migrant workers, as well as vocational training programs.

To stabilize existing employment relationships, the Guidance emphasizes the implementation of mass layoff procedure as set forth in the Labor Contract Law (that went into effect on January 1, 2008). Those procedures require enterprises that plan to lay off more than 20 employees or over 10% of the total staff to discuss the layoff with the applicable trade union or the entire work force at least 30 days in advance and then report the layoff plans to the local labor bureau.

D. The Circular about Extending Tax Incentives for Re-Employment of Laid-Off Workers (CaiShui[2009]23) (the “Circular”), released by MOF and SAT on March 3, 2009, points out that qualified enterprises hiring personnel with a Preferential Certificate for Re-Employment for newly-added positions, entering into labor contracts with terms longer than one year, and paying social insurance benefits may enjoy certain tax preferential policies. The examination and approval period for these tax preferential policies is from January 1 to December 31, 2009, which is an extension of the prior circulars CaiShui[2005]186 and GuoShuiFa[2006]8.

In response to the central government’s policies, various local authorities have issued their own policies and measures. Examples include:

- Beijing: Employers may be eligible for a social insurance subsidy for 3 to 5 years when they sign a labor contract for one or more year(s) with registered unemployed female workers over 40 years old and male workers over 50 years old, or disabled persons.
- Shenzhen: All employers must pay RMB400 for each employee as a wage protection fee in the first quarter of every year; otherwise a fine of RMB2,000 will be imposed.
- Shenzhen: From February 2009, the portion of premium rates paid by employers for job-related injury insurance and medical insurance were reduced from 0.5% to 0.25% and from 7.3% to 5%, respectively. Also, employers will pay 0.2% for childbirth insurance.
- Guangdong: Guangdong province has released three guides to maintain harmonious labor relationships. On the basis of the existing laws and regulations, Guide One systematizes the procedures and provides guidance for enterprises regarding layoffs, production shutdowns, and bankruptcies. Guide Two provides detailed guidance for labor arbitration tribunals on major issues in dealing with collective labor disputes due to production shutdowns or bankruptcies. Guide Three systematizes the rules set forth in the Labor Contract Law and its Implementation Rules

regarding the conclusion, implementation, modification, termination or renewal of labor contracts, and attaches a series of sample labor contracts for practical reference.

Many of the policies and measures described in this article are relatively new and may require legal consultation and/or consultation with the local officials who administer them. Please let us know if we can assist you in this regard.