

Contents

1	The Meaning of a Labor Relationship and Identification of the Employee and the Employer	1
1.1	The Meaning of a Labor Relationship	1
1.2	Basic Criteria for Identifying a Labor Relationship.....	2
1.3	Special Categories of Employees.....	3
1.3.1	Domestic Workers	3
1.3.2	Post-Retirement Age Individuals Who Return or Remain in the Workforce	9
1.3.3	Student “Employees”	13
1.3.4	Apprentice	13
1.3.5	Corporate Executives	14
1.4	Establishment of a Labor Relationship	15
1.5	Qualifications for “Employer” Status and Differential Treatment for Different Types of Employers	16
1.5.1	Can a Natural Person Be an Employer?.....	16
1.5.2	Differential Treatment of Different Types of Employers	17
1.5.3	How to Provide Differential Treatment.....	20
2	Basic Duties of the Employer and the Employee	23
2.1	Basic Duties of the Employer and the Employee in Labor Law	23
2.2	Duties of the Employer and the Employee in Some Countries.....	24
2.2.1	Duties of the Employer and Employee Under the Laws in Germany	24
2.2.2	Duties of the Employer and Employee Under the Laws in the U.K.	25

2.3	Factors that Determine the Duties of the Employer and the Employee	26
2.4	Improvement of Duties of the Employer and the Employee.....	27
2.4.1	The Employee's Duties of Due Diligence and Loyalty....	27
2.4.2	Duties of the Employer	31
3	Anti-discrimination Law in the Workplace	33
3.1	Introduction	33
3.2	Current Employment Discrimination Situation and Its Origins	34
3.3	Development of China's Anti-discrimination Law in the Workplace.....	36
3.4	Implementation Mechanism for the Anti-discrimination Law	40
3.4.1	The Administrative Implementation Mechanism	40
3.4.2	Labor Arbitration and Litigation Proceedings.....	41
3.4.3	Typical Discrimination Cases.....	42
3.5	Future Challenges and Tasks in Anti-discrimination in Employment	50
3.5.1	Improving Legislation on Anti-discrimination in Employment.....	50
3.5.2	Strengthening Education on Awareness and Attitude of Employers	51
3.5.3	Improving the Role of Government in Anti-discrimination in Employment	52
3.5.4	Improving the Capability of Arbitration Commissions and the Courts	53
3.6	Summary	53
4	Combating Employment Discrimination Against the Disabled and the Quota System.....	55
4.1	Legal Prohibition Against Disability Discrimination in Employment	56
4.2	The Quota System	57
4.2.1	Laws and Regulations for the Quota System	57
4.2.2	Defects of the Quota System.....	59
4.3	Relationship Between Anti-discrimination Law and the Quota System	60
4.4	How to Improve the System of Anti-discrimination Against Disability in China.....	61
5	Wages, Work Hours and Holidays.....	65
5.1	Wage System in General	65
5.1.1	Definition of Wage	65
5.1.2	Principles of Remuneration and Determination of Wages.....	66
5.1.3	Major Regulations on Wages	66

5.2	The Minimum Wage.....	67
5.2.1	Theories and Debates on the Minimum Wage System.....	68
5.2.2	Main Points of the Minimum Wage System	69
5.2.3	Problems in and Improvements Needed for China's Minimum Wage System	71
5.3	Work Hours	74
5.3.1	Standard Work Hours	74
5.3.2	Restrictions on Overtime.....	75
5.3.3	Special Work Hours Systems	75
5.4	Holidays	77
6	Regulation on Labor Dispatch	79
6.1	Labor Dispatch Legislation and Its Implementation	79
6.2	Main Reasons for Excessive Reliance on Labor Dispatch.....	81
6.2.1	Benefits of Labor dispatching	81
6.2.2	Insufficient Legal Regulation	82
6.2.3	Effect of the Labor Contract Law	82
6.2.4	The Limit and Effect of Employment Modality.....	83
6.2.5	The Effect of the Urban-Rural Dual System	83
6.3	The Problem of Unequal Pay for Equal Work	84
6.4	The Revision of the Labor Contract Law in 2012.....	85
6.5	Problems to Be Solved in China's Labor Dispatch System	87
6.5.1	"Joint Employer" or Not? Ambiguity in the Legal Status of the Host Company	87
6.5.2	Improving Enforcement Mechanisms	90
7	Termination of Labor Contracts	91
7.1	Legitimate Grounds for Dismissals Under Chinese Law	91
7.2	Legitimate Grounds for Dismissal in Some Other Countries	94
7.2.1	The U.K.....	94
7.2.2	Germany	95
7.2.3	France.....	96
7.2.4	Japan.....	96
7.2.5	The U.S.	97
7.3	Employer Duty to Provide Severance Allowance	98
7.3.1	Severance Allowance Provisions in Select Countries	98
7.3.2	Severance Allowance Under Chinese Law.....	99
7.3.3	Reasons for the Differences of the Rules in Different Countries and Regions	100
7.3.4	The Nature and Purpose of Severance Allowance	102
7.4	Employer Liability for Wrongful Dismissal	103
7.4.1	Liability for Wrongful Dismissal Under Chinese Law.....	103
7.4.2	How to Improve the Rules on Employer's Liability for Wrongful Dismissal	104
7.5	Employee-Initiated Termination of Labor Contracts	106

8	Work-Related Injury Insurance System	109
8.1	Overview	109
8.2	Scope of the Program and Qualifications for Eligible Injuries	110
8.2.1	Who Must Offer the Program to Their Employees	110
8.2.2	Work-Related Injuries: Definition and Criteria	110
8.2.3	Categories of Work-Related Injuries	111
8.2.4	Circumstances Deemed Work Injuries	112
8.2.5	Ineligible Cases	113
8.3	Procedures for Claiming Work-Related Injury Compensation	115
8.4	Work-Related Injuries Compensation for the Uninsured	117
8.5	Payment of Work-Related Injury Compensation	118
8.6	The Relationship Between Injury Compensation and Tort Damages	119
9	Labor Inspection System and Employer's Liability	123
9.1	Matters of Labor Inspection	123
9.2	Effects and Effectiveness of Labor Inspection	125
9.3	Challenges in Labor Inspection	126
9.3.1	Topics Targeted for Inspection	126
9.3.2	Shortage of Labor Inspectors	127
9.3.3	Relationship Between Labor Inspection and Other Forms of Remedy	128
9.4	The Power of the Labor Inspectorate and Employers' Liabilities	129
9.4.1	Ordering Employers to Meet Their Obligations	129
9.4.2	Improving the Employer's Liability in Labor Inspection	130
10	Labor Dispute Resolution	131
10.1	Necessity of Establishing a Special Labor Dispute Resolution Mechanism	131
10.2	Labor Dispute Resolution in Some Countries	133
10.2.1	The U.K.	133
10.2.2	Germany	135
10.2.3	Japan	136
10.3	Labor Dispute Resolution in China	137
10.3.1	Labor Arbitration	137
10.3.2	Labor Litigation	141
10.3.3	Labor Mediation	141
10.3.4	Collective Labor Dispute Resolution	142
10.4	Controversies Regarding Labor Dispute Resolution Model and Its Improvements	142
	References	145
	Index	149