



PRESS RELEASE

NEW REGULATION ON PROMOTION OF HARMONIOUS LABOR RELATIONS

Shenzhen, China – October 20, 2008 –The government of the Shenzhen Special Economic Zone (SEZ) adopted its Regulation on Promotion of Harmonious Labor Relations. A draft of this regulation was released in June for public comment. The adopted version dropped restrictive limitations on the use of contract workers (seconded employees) that were written into the draft, apparently to make the regulation consistent with the Implementing Rules of the Labor Contract Law.

The key provisions of the regulation are as follows—

- **Mandatory Annual Collective Bargaining and Government’s Power to Intervene in Strikes in Public Utilities Industries.** The regulation contains a provision requiring employers to engage in collective bargaining with their employees over wage adjustments at least once a year. It authorizes the government to issue “orders to restore public order” in collective work stoppages (another name for strikes in China) or plant closings in public utilities and to impose a 30-day “cooling period.” During this 30-day period, neither the employer nor the employees may resort to any action that may intensify conflicts. Government agencies, trade unions and relevant trade associations shall use this period to organize negotiations and mediation to push the employer and the employees to reconcile.
- **Mandatory Requirement for One Day of Rest per Week.** Employers must guarantee an “uninterrupted” 24-hour period for employees’ rest every week. This places a limit on the employers’ right to ask employees on the flexible schedule system and the cumulative hour system to work more than six days per week. This is a major change from the national law on work hours.
- **Priority of Employee’s Claims in Bankruptcy Proceedings.** The regulation also provides that, if the employee’s wage is less than the local average wage, then claims for employees’ medical expenses for work injuries and monthly wages for the three months prior to a company’s filing for bankruptcy enjoy priority in bankruptcy proceedings. Under the regulation, security interests in “remaining assets” shall enjoy a priority claim on those assets. The language is somewhat vague on whether “remaining asset” means assets left over after the employees’ claims are settled. The newspaper report on the regulation quoted an expert as saying that it was a revision of the Bankruptcy Law based on the spirit of the Constitution and received approval from the NPC, the

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Ministry of Labor and the ACFTU. The absolute priority enjoyed by secured creditors over employees' back wage claims arising after the effective date of the PRC Bankruptcy Law was a major concession made by ACFTU to the business community when the Law was adopted. We will have to wait to see, through clarifications by the government, whether this concession is taken back at the local level.

- Ban on Contingency Fee Arrangements in Labor Disputes. The regulation contains a provision banning the practice among lawyers of charging only contingency fees in labor disputes. From now on, attorneys will be required to charge their fees according to a fee schedule issued by the local government (local Department of Justice).