

Title Employment Services Act

Amended Date 2009.05.13

Chapter V Employment and Administration of Foreign Workers

Article 42 For the purpose of protecting nationals' right to work, no employment of foreign worker may jeopardize nationals' opportunity in employment, their employment terms, economic development or social stability.

Article 43 Unless otherwise specified in the Act, no foreign worker may engage in work within the Republic of China should his/her employer have not yet obtained a permit via application therefore.

Article 44 No one may illegally let foreign worker stay and engage in work.

Article 45 No one may illegally refer foreign worker to work for any third party.

Article 46 Unless otherwise provided for in the Act, the work that a foreign worker may be employed to engage in within the Republic of China is limited to the following:

1. Specialized or technical work;
2. Director/manager/executive of a business invested in or set up by overseas Chinese or foreigner(s) with the authorization of the Government of the Republic of China;
3. Teacher at the following schools:
 - (1)Teacher at a public or registered private college/university or school established especially for foreign residents;
 - (2)Approved teacher teaching course(s) on foreign language(s) at a public or registered private high or primary school ;
 - (3)Teacher teaching course(s) at a public or registered private experimental high school' s bilingual department or at bilingual school;
4. Full-time teacher teaching course(s) on foreign

language(s) at a short-term class registered for supplementary schooling in accordance with the Supplementary Education Act;

5. Sports coach and athlete;
6. Religious, artistic, and show business work;
7. Crew member of a merchant vessel, working vessel, and vessel ad hoc permitted by the Ministry of Transportation and Communication;
8. Marine fishing/netting work;
9. Household assistant;
10. Workers designated by the Central Competent Authority in response to national major construction project(s) or economic/social development needs; and
11. Other specialized workers ad hoc approved by the Central Competent Authority due to the lack of such specialist in the domestic employment market and the business necessity to retain the service of such specialist therefore.

The Central Competent Authority shall consult the other central competent authority(ies) administering the work concerned to determine the working qualification(s) and standard of review thereof in respect of the foreign worker engaging in work as referred to in paragraph 1 of this article.

Employer, when employing foreign worker to engage in work as referred to in subparagraphs 8 to 10 of paragraph 1 of this article, shall execute labor contract in writing with the employed foreign worker and with fixed duration only; in case where it is not so fixed, the duration of his/her employment shall be deemed as the same with the duration of employment permit thereof. The foregoing in this paragraph shall equally apply in the case of extension of such labor contract.

Article 47 With respect to the employment of foreign worker(s) to engage in work as referred to in Subparagraphs 8 to 11 of Paragraph 1 of Article 46, employer shall first make domestic recruitment with reasonable labor terms; only when such domestic recruitment cannot acquire

sufficient number of employee(s) to satisfy the needs of his/her business employer may apply for permit to recruit foreign person(s) with a view to filling up such insufficiency. Furthermore, when conducting recruitment of foreign worker(s) under such circumstances, employer shall notify the labor union or labors of the business entity of the full and entire content concerning such recruitment and shall publicly announce the same in the work place designated for such foreign worker(s) to engage in work.

When conducting the domestic recruitment in accordance with paragraph 1 of this article, employer, unless otherwise justified, may not refuse to employ job applicant(s) as referred by public employment services institution(s).

Article 48 Prior to employing foreign worker to engage in work, employer shall apply to the central competent authority for employment permit with relevant documents submitted. However, the following foreigners are exempted :

1. A foreign worker to be employed as consultant or researcher by the respective government or their subordinate academic research institutes.
2. A foreign worker has married a national of the Republic of China with a registered permanent residence in the Republic of China and has been permitted to stay therein.
3. A foreigner employed at a public or registered private college/university within six months in the field of a course of lectures or an academic research approved by the Ministry of Education.

The Central Competent Authority shall collaborate with the other central competent authority(ies) administering the occupations in question to prescribe the regulations regarding the application for permit and annulment thereof as referred to in paragraph 1 of this article and other matters related to the employment and administration of foreign workers.

The Central Competent Health Authority shall collaborate with the Central Competent Authority to prescribe the regulations administering the health examinations conducted upon the employed foreign worker as referred to in paragraph 1 of this article prior to his/her entry into the Republic of China and thereafter.

The hospital(s), as may be designated by the Central Competent Health Authority, shall conduct the health examinations as referred to in paragraph 3 of this article upon the employed foreign worker after his/her entry into the Republic of China; the Central Competent Health Authority shall prescribe the regulations regarding the qualification(s) of the hospital(s) for such designation, the designations, the termination of such designation and other matters related to administration thereof.

Should an employed foreign worker fail such health examinations and be ordered to depart from the Republic of China within a specified period, his/her employer shall immediately urge and supervise such departure.

The Central Competent Authority may prescribe the country of origin and the quota thereof regarding the foreign workers who engage in the work as referred to in Subparagraphs 8 to 11 of Paragraph 1 of Article 46.

Article 49 While stationed in the Republic of China, foreign embassies/consulates, foreign agencies, international organizations and the staff thereof intending to employ foreign worker(s) to engage in work therefore in the Republic of China shall apply to the Ministry of Foreign Affairs for permit to that effect; the Ministry of Foreign Affairs shall collaborate with the Central Competent Authority to prescribe the regulations regarding the issuance and annulment of such permit and other matters related to the employment and administration thereof.

Article 50 The scope of works as limited in Paragraph 1 of Article 46 does not apply to the following categories of students to be employed to engage in work in the Republic of China; with the exception of the winter and summer vacations, their sum of working hours shall not exceed sixteen hours per week:

1. Foreign students enrolled in a public or registered private college/university; and
2. Overseas Chinese students and other foreign students of Chinese origin enrolled in a public or registered private high or higher school.

Article 51 Where the employed foreign worker is amongst any of the following, the requirements as referred to in Paragraphs 1 and 3 of Article 46, Article 47, Article 52, Paragraphs 3 and 4 of Article 53, Subparagraph 5 of Article 57, Subparagraph 4 of Article 72 and Article 74 are exempted, and his/her employer is also exempted from paying the employment security fees as required under Article 55:

1. A refugee permitted to stay in the Republic of China;
2. One who has been continuously employed, with permission of the relevant competent authority(ies), to engage in work in the Republic of China, has maintained a settled practice of good-mannered behavior, and has kept a residence in the said territory for at least five consecutive years;
3. One permitted to live with his/her lineal relative who has a registered domestic residence in the Republic of China; or
4. One permitted to stay permanently in the territory of the Republic of China.

The foreign workers as referred to in subparagraphs 1, 3 and 4 of paragraph 1 of this article may, without their employers' initiation, apply on their own initiatives to the Central Competent Authority for permits to engage in work in the Republic of China.

Where the performance of contract(s) of construction, sale, technical cooperation and so forth necessitates a

foreign legal person to appoint a foreign worker to engage in work as referred to in Subparagraph 1 or 2 of Paragraph 1 of Article 46 in the Republic of China, and where such foreign legal person has not established any branch office or representative agency in the said territory, the business entity with whom such foreign legal person contracted or the agent duly authorized by such foreign legal person shall apply therefore in accordance with the regulations promulgated pursuant to Paragraphs 2 and 3 of Article 48.

Article 52 Where a foreign worker is employed to engage in work as referred to in Subparagraphs 1 to 7 and Subparagraph 11 of Paragraph 1 of Article 46, the duration of the permit therefore shall not exceed three years; , upon the expiration of which the employer may apply for extension thereof pursuant to his/her business needs.

Where a foreign worker is employed to engage in work as referred to in Subparagraphs 8 to 10 of Paragraph 1 of Article 46, the duration of the permit therefore shall not exceed two years; upon the expiration of which the employer may apply for one time for extension thereof; the extended duration shall not exceed one year. Should some major and special circumstances occur, the employer may apply for a further extension thereof. The Executive Yuan shall prescribe the duration of such further extension. However, in the event of a major construction, the duration of such further extension shall not exceed six months.

The Central Competent Authority shall invite and consult with representatives of the relevant governmental agency(ies), labors, employers, and scholars to decide, pursuant to the foreign workers employment alert index, the maximum number of foreign workers permitted per year to be introduced into the Republic of China to engage in work as referred to in paragraph 2 of this article.

An employed foreign worker who has not violated any

laws or regulations within the duration of employment permit, and has departed from the Republic of China due to the termination of employment or the expiration of the employment permit, or an employed foreign worker who failed the health examinations but accepted medical treatment thereafter at his/her national country and then passed health examinations therein, may re-enter the Republic of China to work. However, as for a foreign worker who engages in work as referred to in Subparagraphs 8 to 10 of Paragraph 1 of Article 46, such re-entry may be allowed only after one day following his/her departure, but the aggregate duration in which such foreign worker engages in work in the said territory shall not exceed nine years.

Article 53 Should an employed foreign worker have to transfer to a new employer or be employed for two or more employers within the duration of the employment permit, the new employer(s) shall apply for permit therefore; in case of transfer to a new employer, the new employer shall submit upon such application the relevant document(s) certifying the termination of the previous employment.

The requirement as referred to in paragraph 1 of this article is exempted in the case where the foreign workers as referred to in Subparagraphs 1, 3 and 4 of Paragraph 1 of Article 51 have obtained the permit from the Central Competent Authority.

Where a foreign worker who has been employed to engage in work as referred to in Subparagraphs 1 to 7 of Paragraph 1 of Article 46 shifts to a new employer or new work, he/she is prohibited from engaging in work as referred to in subparagraphs 8 to 11 the of same paragraph of same article for his/her new employer or as his/her new work.

Unless otherwise authorized by the Central Competent Authority on account of the respective circumstances as referred to in Paragraph 1 of Article 59, a foreign worker who has been employed to engage in work as referred

to in Subparagraphs 8 to 11 of Paragraph 1 of Article 46 may not shift to a new employer or new work.

Where an employed foreign worker as referred to in paragraph 4 of this article is authorized to shift to a new employer or new work, the duration of the previous employment and the new one, as calculated in aggregate, shall be subject to the restriction as referred to in Article 52.

- Article 54 Should any of the following circumstances have arisen or existed with respect to the employment of foreign worker(s) to engage in work as referred to in Subparagraphs 8 to 11 of Paragraph 1 of Article 46, the Central Competent Authority shall not issue the permit for recruitment, employment, or the extension thereof; in case the permit for recruitment has already been issued, the Central Competent Authority may halt the introduction of foreign workers:
1. The work place in which the foreign worker(s) is designated to engage in work once employed has been subject to a legal strike or industrial dispute as referred to in Article 10;
 2. During the domestic recruitment, the employer has unjustifiably refused to employ worker(s) referred by public employment services institution(s) or job applicant(s) appeared on his/her/their own initiative(s);
 3. The number of foreign workers whose whereabouts are untraceable or who are deliberately hidden by the employer has reached a certain figure or percentage as prescribed by the central competent authority;
 4. The Employer has ever illegally employed foreign worker(s) to work;
 5. The employer has ever illegally laid off/discharged national worker(s);
 6. The local competent authority(ies) has/have investigated and proven that the employment of foreign worker(s) has undermined the labor terms in the employment contract(s) with national worker(s);
 7. The employed foreign worker(s) has/have disturbed

the tranquility and public orders of the local community and has/have been adjudicated upon and punished on that account in accordance with the Social Order Maintenance Act;

8.The employer has ever illegally withheld passport(s)/ residence certificate(s) of foreign worker(s), or embezzled belongings of foreign worker(s);

9.The Employer has failed to pay within the prescribed period the travel expenses required for dispatching the employed foreign worker(s) out of the territory of the Republic of China or the necessary expenses for the detention of his/her employed foreign worker(s) prior to the departure;

10.When the entrusting private employment services institution(s) with recruiting foreign worker(s), the employer has demanded, agreed to be paid at a later stage, or accepted unjust interests from such institution(s);

11.The employer has submitted false information when processing the application for the employment of foreign worker(s) or matters regarding the recruitment, introduction, or administration thereof;

12.The employer has made false recruitment advertisement(s);

13.The employer's application has not been made in conformity with the relevant requirements and he/she has failed to make necessary supplements and/or rectifications thereof within the specified period of time;

14.The employer has violated the provision(s) of the act or the regulations promulgated pursuant to Paragraphs 2 or 3 of Article 48 or Article 49; or

15.Other than the above, the employer has been in serious violation of applicable laws and regulations protecting labors.

For the purpose of this article, the circumstances as referred to in subparagraphs 3 to 15 of paragraph 1 of this article shall be limited to those that have arisen or existed within the two year period prior to the day of

application.

The Central Competent Authority shall officially announce the figure or percentage of number as referred to in subparagraph 3 of paragraph 1 of this article.

Article 55 Where employing foreign worker(s) to work as referred to in Subparagraphs 8 to 10 of Paragraph 1 of Article 46, the employer shall pay employment security fees into the specific account for employment security fund as established by the Central Competent Authority to be utilized for the purposes of processing matters regarding promotion of employment of nationals, enhancement of labor welfare, and handling the employment and administration of foreign workers.

The amount of the employment security fees as referred to in paragraph 1 of this article shall be determined by the Central Competent Authority in accordance with economic development of the state, labor supply and demand and related work conditions; the amount may be varied according to characteristics of industries and occupations after consultation with other relevant competent authorities.

The employer is exempted from paying the employment security fees as required in accordance with paragraph 1 of this article as long as the employer duly reported, pursuant to applicable legal procedures, the fact that the employed foreign worker had been unjustifiably absent from his/her work and had not been in contact for three consecutive days or that the employment regarding the employed foreign worker had been terminated, and as a result thereof the employment permit was annulled.

Where employer fails to pay off the employment security fees within the specified period, an extension thereof for thirty days may be granted; where employer fails to pay off the said fees within the grace period, a late payment fine of one percent of the outstanding accrued fees shall be levied per day from the day

following the expiration of the grace period until the day prior to the complete payment thereof; but the aggregate sum of such fine shall not exceed the full amount of the outstanding accrued employment security fees.

Should employer fail to pay off the said fees by the end of thirty days after the belated payment fine was levied daily as referred to in paragraph 4 of this article, the Central Competent Authority shall thereafter resort to legal compulsory proceedings to collect the then unpaid fees as well as the belated payment fine levied but yet paid, and annul in whole or in part his/her employment permit.

The competent authority shall post the utilization of the employment security fund and the records of related meetings on its website.

Article 56 Should an employed foreign worker have been unjustifiably absent from his/her work and not in contact for three consecutive days or should the employment of a foreign worker be terminated, the employer shall notify in writing the local competent authority(ies) and the Police of such event within three days thereafter.

Article 57 As for employment of foreign worker(s), employer shall not engage in any of the following:

1. Employing a foreign worker without permit or after the expiration of permit therefore, or a foreign worker that has been permitted to be employed at the same time by a third party;
2. Employing in the name of the employer a foreign worker, but in reality causing that foreign worker to engage in work for a third party;
3. Appointing the employed foreign worker to work that is not within the sphere of the permit;
4. Commanding, without permission therefore, an foreign worker who is employed to engage in the work as referred to in Subparagraphs 8 to 10 of Paragraph 1

of Article 46 to change his/her work place;

5. Failing to arrange for the employed foreign worker to undergo health examinations or failing to submit the health examinations report(s) to the competent health authority in accordance with the applicable laws and regulations;
6. Dismissing or laying off national worker(s) as a result of having employed foreign worker(s) by the employer;
7. Exerting coercion, threat, or any other illegal means upon the employed foreign worker(s) to enforce him/her/them to engage in work contrary to his/her/their free will;
8. Illegally withholding the passport(s)/ residence certificate(s) of foreign worker(s) or embezzling belongings of foreign worker(s); or
9. Having violated, other than the above, the provision(s) of the Act or the regulations promulgated pursuant to the Act.

Article 58 Where foreign worker(s) have departed from the Republic of China or deceased within the duration of the employment permit due to reason(s) not attributable to their employer, the employer may apply to the Central Competent Authority for replacement thereof.

Where employing foreign worker(s) to engage in family nursing work as referred to in Subparagraphs 10 of Paragraph 1 of Article 46, the employer may apply to the Central Competent Authority for replacement thereof should no reasons be attributable to their employer and any of the following circumstances has arisen or existed:

1. Where a foreign worker whose whereabouts is untraceable at airports of entering or departing countries or at detained institutions, the employer has notified the police pursuant to applicable legal procedures; or
2. A foreign worker whose whereabouts is untraceable at employer's location has not been captured after the employer has notified the police pursuant to applicable

legal procedures for six months, and native care takers have been referral in accordance with legal procedures but failed.

The duration of the permitted replacement as referred to in paragraphs 1 and 2 of this article shall be restricted to the remainder of the original duration of the employment permit regarding the replaced foreign worker(s); the application for replacement shall not be permitted should the remainder of the said original duration be less than six months.

Where employed foreign worker(s) whose whereabouts are untraceable prior to the effective date of the amendment on May 4, 2007 of the Act, the employer applies to the replacement as referred to in paragraphs 2 of this article should they have notified the police pursuant to applicable legal procedures.

Article 59

When one of the following circumstances has arisen or existed, the foreign worker employed to work as referred to in Subparagraphs 8 to 11 of Paragraph 1 of Article 46 may shift to work for a new employer or to engage in new work upon the authorization of the central competent authority:

1. His/her original employer or the one who was intended to be taken care of by the employed foreign worker has deceased or emigrated;
2. The vessel he/she works on has been seized, has sunk, or has been under repair so as to compel the discontinuation of the work;
3. The discontinuation of the work caused in the fact that his/her original employer has wind up the factory, suspended the business, or failed to pay the wage/salary pursuant to the employment contract resulting in the termination thereof;
4. Other than the above, similar circumstances not attributable to the employed foreign worker.

The Central Competent Authority shall promulgate the procedures governing the shift to a new employer or new work as referred to in paragraph 1 of this article.

Article 60 Should an employed foreign worker be dispatched out of the Republic of China by the police in accordance with applicable laws and regulations, the travel expenses required for such dispatch and the necessary expenses for the detention prior to the departure shall be paid by the following order:

1. Person who illegally accommodates, employs or introduces foreign worker to engage in work;
2. Foreign worker's employer whom are attributable to reasons of dispatch; and
3. Foreign worker to be dispatched.

Should there be more than one person as referred to in subparagraph 1 of paragraph 1 of this article, all shall take joint and several responsibility.

The expenses as referred to in paragraph 1 of this article shall be advanced by the employment security fund and to be repaid by responsible person(s), upon which the competent authority administering the said fund shall notify the person(s) of such and specify a certain period of time for the person(s) to reimburse the fund the advanced money; should the person(s) fail to make the reimbursement within the specified time limit, the said competent authority shall resort to legal compulsory proceedings to collect therefore.

Where employer has paid the bond may apply to the Central Competent Authority for return of said bond by submitting said bond payment together with relevant certifying document(s).

Article 61 Should an employed foreign worker decease during the duration of the employment contract, his/her employer shall deal with on behalf of the deceased with and be responsible for the relevant funeral matters.

Article 62 The competent authorities, the police or coastal patrol and defense agencies may appoint personnel to carry certificates and conduct inspections in places where foreign worker(s) engage(s) in work or places suspected of having foreign worker(s) illegally engaged in work

therein.

No employer may evade, impede, or refuse the inspections as referred to in paragraph 1 of this article.