

「就業服務法」攸關雇主及外勞之重要條文宣導

中英文版

Amendments to relevant articles for employers and foreign workers embodied in the "Employment Services Act"

中華民國九十六年五月二十三日華總一義字第0九六000六四一五一號令修正公布

Amendment Announced on 23 May 2007, Executive Order 09600064151

第五條 為保障國民就業機會平等，雇主對求職人或所僱用員工，不得以種族、階級、語言、思想、宗教、黨派、籍貫、出生地、性別、性傾向、年齡、婚姻、容貌、五官、身心障礙或以往工會會員身分為由，予以歧視；其他法律有明文規定者，從其規定。

雇主招募或僱用員工，不得有下列情事：

- 一、為不實之廣告或揭示。
- 二、違反求職人意思，留置其國民身分證、工作憑證或其他證明文件。
- 三、扣留求職人財物或收取保證金。
- 四、指派求職人從事違背公共秩序或善良風俗之工作。
- 五、辦理聘僱外國人之申請許可、招募、引進或管理事項，提供不實資料或健康檢查檢體。

ARTICLE 5 Amended thus:

For the purpose of ensuring equal employment opportunity for all nationals, the employer is prohibited from discrimination of job applicants or employees on the basis of race, social class, language, ideology, religion, political party, nationality, *place of birth*, sex, *natural tendencies*, age, civil status, appearance, facial features, disability, or previous membership in labor unions, and others as stipulated by the law.

In the recruitment or hiring of an employee, the employer shall not engage in the following acts:

1. Make false advertisements or announcements;
2. Withhold the applicant's identification card, work certificate or other documents against his/her will;
3. Withhold the job applicant's belongings or collect bond;
4. Assign a job applicant to engage in any job that is in violation of public order or morals;
5. Submit false information or fake health examination specimen when applying for permit, recruitment, importation or management of foreign worker.

第五十四條 雇主聘僱外國人從事第四十六條第一項第八款至第十一款規定之工作，有下列情事之一者，中央主管機關應不予核發招募許可、聘僱許可或展延聘僱許可；其已核發招募許可者，得中止引進：

- 一、於外國人預定工作之場所有第十條規定之罷工或勞資爭議情事。
 - 二、於國內招募時，無正當理由拒絕聘僱公立就業服務機構所推介之人員或自行前往求職者。
 - 三、聘僱之外國人行蹤不明或藏匿外國人達一定人數或比例。
 - 四、曾非法僱用外國人工作。
 - 五、曾非法解僱本國勞工。
 - 六、因聘僱外國人而降低本國勞工勞動條件，經當地主管機關查證屬實。
 - 七、聘僱之外國人妨害社區安寧秩序，經依社會秩序維護法裁處。
 - 八、曾非法扣留或侵占所聘僱外國人之護照、居留證件或財物。
 - 九、所聘僱外國人遣送出國所需旅費及收容期間之必要費用，經限期繳納屆期不繳納。
 - 十、於委任招募外國人時，向私立就業服務機構要求、期約或收受不正利益。
 - 十一、於辦理聘僱外國人之申請許可、招募、引進或管理事項，提供不實資料。
 - 十二、刊登不實之求才廣告。
 - 十三、不符申請規定經限期補正，屆期未補正。
 - 十四、違反本法或依第四十八條第二項、第三項、第四十九條所發布之命令。
 - 十五、其他違反保護勞工之法令情節重大者。
- 前項第三款至第十五款規定情事，以申請之日前二年內發生者為限。
- 第一項第三款之人數、比例，由中央主管機關公告之。

ARTICLE 54. Should any of the following circumstances exist with respect to the employment of foreign workers where employers allow them to engage in work as referred to in Subparagraph 8 to 11 of Paragraph 1 of Article 46, the Central Competent Authority shall not issue the Permit for recruitment, hiring, or the extension thereof. In case the Permit for hiring has already been issued, the Central Competent Authority may ban the deployment of foreign worker:

1. The place of work designated to the foreign worker upon hiring is on strike or in the midst of a labor dispute as described in Article 10;
2. During the period of local recruitment, the employer has unjustifiably denied the hiring of an applicant referred by the Public Employment Service Agency or applicants who applied on their own;
3. The number of hired foreign workers who have absconded or those who are deliberately hidden by employer has reached a certain figure or percentage;

4. Previous illegal hiring of a foreign worker;
5. Previous illegal dismissal of a local worker;
6. The local authorities has proven through investigation that the employment of foreign worker has undermined the terms for local workers;
7. The hiring of foreign worker has disturbed public order as judged in accordance with social order protection act.
8. Previous illegal withholding of hired foreign worker's passport, Alien Residence Certificate or belongings;
9. Failure to pay within the prescribed period the travel expenses and necessary accommodation expenses during the detention of foreign worker prior to repatriation;
10. Demanding from a Private Employment Services Agency the collection of unjust interests or the deferment of payment in authorizing said recruiter to hire a foreign worker,
11. The submission of false information when processing the application for the employment of foreign worker or matters regarding the recruitment, introduction, or management thereof;
12. Publication of false job recruitment advertisements;
13. Non- conformity with application requirements and failure to submit the necessary supplemental requirements within the prescribed period;
14. Violation of the provisions of this Act or stipulations in Sections 2 and 3 of Article 48 and Article 49.
15. Serious violation of the laws and regulations protecting workers.

The circumstances mentioned in the aforesaid Articles 3 to 15 shall be limited to those have existed within the two (2)-year period prior to the day of application.

The Central Competent Authority shall promulgate the figure or percentage of number as referred to in Subparagraph 3 of Paragraph 1 of this Article.

第五十五條 雇主聘僱外國人從事第四十六條第一項第八款至第十款規定之工作，應向中央主管機關設置之就業安定基金專戶繳納就業安定費，作為加強辦理有關促進國民就業、提升勞工福祉及處理有關外國人聘僱管理事務之用。

前項就業安定費之數額，由中央主管機關考量國家經濟發展、勞動供需及相關勞動條件，並依其行業別及工作性質會商相關機關定之。

第一項受聘僱之外國人有連續曠職三日失去聯繫或聘僱關係終止之情事，經雇主依規定通知而廢止聘僱許可者，雇主無須再繳納就業安定費。

雇主未依規定期限繳納就業安定費者，得寬限三十日；於寬限期滿仍未繳納者，自寬限期滿之翌日起至完納前一日止，每逾一日加徵其未繳就業安定費百分之一滯納金。但以其未繳之就業安定費一倍為限。

加徵前項滯納金三十日後，雇主仍未繳納者，由中央主管機關就其未繳納之就業安定費及滯納金移送強制執行，並廢止其聘僱許可之一部或全部。

主管機關並應定期上網公告基金運用之情形及相關會議記錄。

ARTICLE 55 Amended thus:

When hiring foreign workers as referred to in Subparagraphs 8 to 10 of Paragraph 1 of Article 46, the employer shall pay Employment Stabilization Fund to be paid into a specified account as established by the Central Competent Authority. This shall be used to strengthen promotion of local employment, enhancement of labor welfare, and handling the employment and administration of foreign workers.

The aforesaid amount for the Employment Stabilization Fund shall be established by the Central Competent Authority based on the national economic development, labor supply and demand and other labor related laws. It shall also be based on the industry category and nature of job as correlated within similar industry.

The Employer is exempted from paying the Employment Stabilization Fund as required in accordance with Paragraph 1 of this Article as long as the Employer duly reports the 3 days consecutive absence with no contact of foreign worker or where the employer-employee relationship fails to exist. The employer in accordance with legal procedures must report the case and cancel the hiring permit.

In case the Employer fails to pay the Employment Stabilization Fund within the specified period, a thirty (30) days extension of payment may be granted; where Employer fails to pay off the said fees within the grace period, a late payment fine of one percent (1%) 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 tender of payment; the aggregate sum of such fine shall not exceed the full amount of the outstanding accrued Employment Stabilization Fees.

Should the employer fail to pay the said fees by the end of thirty (30) days after the late payment fine shall be levied daily as stipulated in Paragraph 3 of this Article, the Central Competent Authority shall thereafter seek legal compulsory proceedings to collect the unpaid fees as well as the fine for late payment levied but yet paid, and cancel in whole or in part the employment permit.

The Central Competent Authority shall regularly publish in the internet status of utilization of funds and other relevant minutes of meeting.

第五十七條 雇主聘僱外國人不得有下列情事：

- 一、聘僱未經許可、許可失效或他人所申請聘僱之外國人。

- 二、以本人名義聘僱外國人為他人工作。
- 三、指派所聘僱之外國人從事許可以外之工作。
- 四、未經許可，指派所聘僱從事第四十六條第一項第八款至第十款規定工作之外國人變更工作場所。
- 五、未依規定安排所聘僱之外國人接受健康檢查或未依規定將健康檢查結果函報衛生主管機關。
- 六、因聘僱外國人致生解僱或資遣本國勞工之結果。
- 七、對所聘僱之外國人以強暴脅迫或其他非法之方法，強制其從事勞動。
- 八、非法扣留或侵占所聘僱外國人之護照、居留證件或財物。
- 九、其他違反本法或依本法所發布之命令。

ARTICLE 57. In the employment of foreign workers, the employer shall not allow the following conditions:

1. Employing a foreign worker without permit or after the expiration of permit, or employing a foreign worker that is hired by another party;
2. The hired foreign worker is made to work for another employer;
3. Making the foreign worker engage in work which is not within the scope of the permit;
4. As stipulated in Subsections 8 to 10 of Paragraph 1 Article 46, the foreign worker has changed place of work without permit;
5. Failing to arrange for health examination of foreign worker or failure to report results of health examination of foreign worker to the health authorities in accordance with the law;
6. The hiring of the foreign worker has resulted to the dismissal of a local national;
7. Exercising coercion, threat, or any other illegal acts to make the foreign worker engage in work that his against his freewill;
8. Illegally withholding the passport, Alien Residence Certificate and belongings of the foreign worker.
9. Violation of any of the provisions of this Act.

第七十三條 雇主聘僱之外國人，有下列情事之一者，廢止其聘僱許可：

- 一、為申請許可以外之雇主工作。
- 二、非依雇主指派即自行從事許可以外之工作。
- 三、連續曠職三日失去聯繫或聘僱關係終止。
- 四、拒絕接受健康檢查、提供不實檢體、檢查不合格、身心狀況無法勝任所指派之工作或罹患經中央衛生主管機關指定之傳染病。
- 五、違反依第四十八條第二項、第三項、第四十九條所發布之命令，情節重大。
- 六、違反其他中華民國法令，情節重大。
- 七、依規定應提供資料，拒絕提供或提供不實。

ARTICLE 73. The employment permit shall be cancelled where any of the following conditions exist with respect to the hired foreign worker:

1. The hired foreign worker worked for an employer who is specified in the permit;
2. The hired foreign worker has illegally engaged himself to a job outside his permit without the employer's instructions;
3. The hired foreign worker has been absent from work for 3 consecutive days without contacting his employer or when the employer-employee relationship has been terminated;
4. The hired foreign worker refuses to undergo health examinations, submits fake specimen, or fails health examinations, or his mental and/or physical condition makes him unfit to carry on his assigned work, or is infected with any of the contagious diseases that have been listed and published by the Central Competent Health Authorities;
5. Serious violation of the provisions of Paragraph 2 and 3 of Article 48 and Article 49.
6. Serious violation of the laws of the Republic of China;
7. Refusal to provide information as required by law or providing false information.

雇主簽名：_____

外勞簽名 OFW Signature：_____

中華民國_____年_____月_____日

日期 DATE：_____