

禁止使用童工规定

Provisions on Prohibition of Child Labour

Decree No. 364 of the State Council of the People's Republic of China

(Adopted at the 63rd Executive Meeting of the State Council on September 18, 2002, promulgated by Decree No. 364 of the State Council of the People's Republic of China on October 1, 2002, and effective as of December 1, 2002)

Article 1 These Provisions are formulated in accordance with the Constitution, the Labour Law and the Law on the Protection of Minors for the purposes of protecting the physical and mental health of minors, promoting the implementation of the system for compulsory education and safeguarding the lawful rights and interests of minors.

Article 2 No State organs, social organizations, enterprises, institutions, private non-enterprise units, or individual industrial and commercial businesses (hereinafter referred to as employing units) may recruit and hire minors under the age of 16 (the term "hiring minors under the age of 16" is hereinafter referred uniformly to as "use of child labour").

All units and individuals are prohibited from providing job placement service to minors under the age of 16.

Minors under the age of 16 are prohibited from starting business and engaging in individual business operation activities.

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Article 3 The parents or guardians of minors under the age of 16 shall protect their physical and mental health, safeguard their rights to compulsory education and shall not permit them to be illegally hired by employing units.

Where the parents or guardians of minors under the age of 16 permit them to be illegally hired by employing units, the people's government of the township (town), the urban subdistrict office, the villagers' committee or the residents' committee where they are located shall criticize and educate the parents or guardians.

Article 4 Employing units, when recruiting employees, shall verify the identification card of the recruited; no minors under the age of 16 shall be recruited. The employing units shall properly preserve the documents for recruitment registration and verification.

Article 5 Labour and social security administrative departments of the people's governments at or above the county level shall be responsible for the supervision over and inspection of the enforcement of these Provisions.

Administrative departments for public security, industrial and commercial administration, education and public health, etc. of the people's governments at or above the county level shall supervise and inspect the enforcement of these Provisions within their jurisdiction and support the supervision and inspection conducted by the labour and social security administrative departments.

Trade unions, Youth Leagues, Women's Federations and other social organizations shall protect the lawful rights and interests of minors in accordance with law.

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Any unit or individual shall, where discovering child labour, have the right to report the case to the labour and social security administrative department of the people's government at or above the county level.

Article 6 In the case of use of child labour by an employing unit, the labour and social security administrative department shall punish it by the standard of fining 5,000 yuan for each of children employed per month; In the case of use of child labour in workplaces where toxic substances are used, a heavier punishment shall be imposed in consistence with the fine range stipulated in the Regulations on Labour Protection in Workplaces Where Toxic Substances Are Used, or by the standard of fining 5,000 yuan for each of children employed per month. The labour and social security administrative department shall order the employing unit to send the children back to their original places of residence and hand them to their parents or other guardians within a prescribed period, and all the costs of transportation and accommodations so entailed shall be borne by the employing unit.

Where the employing unit, when ordered to make corrections by the labour and social security administrative department in accordance with the preceding paragraph, fails to send the child labourers back to their parents or other guardians within the prescribed period, the labour and social security administrative department shall punish it by the standard of fining 10,000 yuan for each of children employed per month from the date of ordering corrections to be made within the prescribed period, and the department for industrial and commercial administration shall revoke their business licenses or, the civil affairs department shall cancel the non-enterprise unit registration; if the employing unit is a State organ or public institution, the relevant units shall impose administrative or disciplinary sanctions of

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demotion or discharging from the post on the persons in charge directly responsible and other persons directly responsible.

Article 7 Where a unit or an individual provides job placement service to minors under the age of 16, the labour and social security administrative department shall punish it by the standard of fining 5,000 yuan for each of the minors placed; where a job placement service agency provides job placement service to minors under the age of 16, the labour and social security administrative department shall also revoke its job placement license.

Article 8 Any employing unit that fails to preserve, or forges the documents for recruitment registration according to the provisions of Article 4 of these Provisions shall be fined 10,000 yuan by the labour and social security administrative department.

Article 9 Any unit that has no business license or whose business license is revoked according to law or any unit that has not been registered or submitted itself for the record according to law employs a child or provides job placement services to a child shall be fined twice of the standards stipulated in Article 6, 7 or 8 of these Provisions, and that illegal unit shall be banned by the relevant competent administrative department.

Article 10 Where a child employed is sick or injured, the employing unit shall bring him to the medical institution for treatment and bear all the medical and living costs during the period of treatment.

Where a child employed is disabled or dead, the department for industrial and commercial administration shall revoke the business license of the employing unit or, the civil affairs department shall cancel the non-enterprise unit registration; if the employing unit is a State organ or an institution, the

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relevant unit shall impose administrative or disciplinary sanctions of demotion or discharging from the post on the persons in charge directly responsible and other persons directly responsible; the employing unit shall also pay lump sum compensation to the lineal relatives of the disabled or dead child labourer, and the amount of compensation shall be fixed in accordance with the provisions on work-related injury insurance of the State.

Article 11 Whoever abducts a child for use as a labourer, forces a child to work, employs a child to be engaged in work high above the ground or down in the pit, work involving radioactive, highly poisonous, inflammable or explosive substances or work of the 4th degree labour intensity as stipulated by the State, or employs a child under the age of 14, or causes death or severe injury to a child employed, shall be investigated for criminal liability in accordance with the provisions of the criminal law on the crime of abducting and trafficking in children, the crime of forced labour or other crimes.

Article 12 The staff members of the government administrative departments who commit one of the following acts shall be given administrative sanctions of recording a serious demerit or demotion according to law, shall be discharged from the post or dismissed according to law if the circumstances are serious, and shall be investigated for criminal liability in accordance with the provisions of the criminal law on the crime of abuse of power, the crime of neglect of duty or other crimes if a crime is constituted:

(1) the staff members of the labour and social security administrative departments and other relevant departments fail to stop, rectify and investigate and punish those who employ children, when they discover that children are employed in the course of supervision and inspection of the prohibition of child labour;

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(2) the people's policemen of the public security organs issue identification cards or record false date of birth in the identification cards in violation of relevant provisions;

(3) the staff members of the departments for industrial and commercial administration issue a business license for engaging in individual business when discovering that the applicant is a minor under the age of 16.

Article 13 Artistic or sports units may, upon agreement by their parents or guardians, recruit minors under the age of 16 as professional artists or sportsmen. The employing units shall protect the physical and mental health of the minors recruited under the age of 16 and guarantee their rights to compulsory education. The measures for recruitment of professional artists and sportsmen under the age of 16 by the artistic or sports units shall be formulated by the labour and social security administrative department of the State Council jointly with the culture administrative department and the physical culture and sports administrative department of the State Council.

The work conducted by minors under the age of 16 in educational practical and vocational training program organized by schools, other educational institutions or vocational training institutions according to the relevant provisions of the State, which does not affect their safety and physical and mental health, shall not fall into the category of child labour.

Article 14 These Provisions shall be effective as of December 1, 2002. The Provisions on Prohibition of Child Labour promulgated by the State Council on April 15, 1991 shall be repealed simultaneously.

October 1, 2002

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《禁止使用童工规定》已经 2002 年 9 月 18 日国务院第 63 次常务会议通过，现予公布，自 2002 年 12 月 1 日起施行。

总理 朱镕基

二 00 二年十月一日

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第一条 为保护未成年人的身心健康，促进义务教育制度的实施，维护未成年人的合法权益，根据宪法和劳动法、未成年人保护法，制定本规定。

第二条 国家机关、社会团体、企业事业单位、民办非企业单位或者个体工商户（以下统称用人单位）均不得招用不满 16 周岁的未成年人（招用不满 16 周岁的未成年人，以下统称使用童工）。

禁止任何单位或者个人为不满 16 周岁的未成年人介绍就业。

禁止不满 16 周岁的未成年人开业从事个体经营活动。

第三条 不满 16 周岁的未成年人的父母或者其他监护人应当保护其身心健康，保障其接受义务教育的权利，不得允许其被用人单位非法招用。

不满 16 周岁的未成年人的父母或者其他监护人允许其被用人单位非法招用的，所在地的乡（镇）人民政府、城市街道办事处以及村民委员会、居民委员会应当给予批评教育。

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第四条 用人单位招用人员时，必须核查被招用人员的身份证；对不满 16 周岁的未成年人，一律不得录用。用人单位录用人员的录用登记、核查材料应当妥善保管。

第五条 县级以上各级人民政府劳动保障行政部门负责本规定执行情况的监督检查。

县级以上各级人民政府公安、工商行政管理、教育、卫生等行政部门在各自职责范围内对本规定的执行情况进行监督检查，并对劳动保障行政部门的监督检查给予配合。

工会、共青团、妇联等群众组织应当依法维护未成年人的合法权益。

任何单位或者个人发现使用童工的，均有权向县级以上人民政府劳动保障行政部门举报。

第六条 用人单位使用童工的，由劳动保障行政部门按照每使用一名童工每月处 5000 元罚款的标准给予处罚；在使用有毒物品的作业场所使用童工的，按照《使用有毒物品作业场所劳动保护条例》规定的罚款幅度，或者按照每使用一名童工每月处 5000 元罚款的标准，从重处罚。劳动保障行政部门并应当责令用人单位限期将童工送回原居住地交其父母或者其他监护人，所需交通和食宿费用全部由用人单位承担。

用人单位经劳动保障行政部门依照前款规定责令限期改正，逾期仍不将童工送交其父母或者其他监护人的，从责令限期改正之日起，由劳动保障行政部门按照每使用一名童工每月处 1 万元罚款的标准处罚，并由工商行政管理部门吊销其营业执照或者由民政部门撤销民办非企业单位登记；用人单位是国家机关、事业单位的，由有关单位依法对直接负责的主管人员和其他直接责任人员给予降级或者撤职的行政处分或者纪律处分。

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第七条 单位或者个人为不满 16 周岁的未成年人介绍就业的，由劳动保障行政部门按照每介绍一人处 5000 元罚款的标准给予处罚；职业中介机构为不满 16 周岁的未成年人介绍就业的，并由劳动保障行政部门吊销其职业介绍许可证。

第八条 用人单位未按照本规定第四条的规定保存录用登记材料，或者伪造录用登记材料的，由劳动保障行政部门处 1 万元的罚款。

第九条 无营业执照、被依法吊销营业执照的单位以及未依法登记、备案的单位使用童工或者介绍童工就业的，依照本规定第六条、第七条、第八条规定的标准加一倍罚款，该非法单位由有关的行政主管部门予以取缔。

第十条 童工患病或者受伤的，用人单位应当负责送到医疗机构治疗，并负担治疗期间的全部医疗和生活费用。

童工伤残或者死亡的，用人单位由工商行政管理部门吊销营业执照或者由民政部门撤销民办非企业单位登记；用人单位是国家机关、事业单位的，由有关单位依法对直接负责的主管人员和其他直接责任人员给予降级或者撤职的行政处分或者纪律处分；用人单位还应当一次性地对伤残的童工、死亡童工的直系亲属给予赔偿，赔偿金额按照国家工伤保险的有关规定计算。

第十一条 拐骗童工，强迫童工劳动，使用童工从事高空、井下、放射性、高毒、易燃易爆以及国家规定的第四级体力劳动强度的劳动，使用不满 14 周岁的童工，或者造成童工死亡或者严重伤残的，依照刑法关于拐卖儿童罪、强迫劳动罪或者其他罪的规定，依法追究刑事责任。

第十二条 国家行政机关工作人员有下列行为之一的，依法给予记大过或者降级的行政处分；情节严重的，依法给予撤职或者开除的行政处分；构成犯罪的，依照刑法关于滥用职权罪、玩忽职守罪或者其他罪的规定，依法追究刑事责任：

（一）劳动保障等有关部门工作人员在禁止使用童工的监督检查工作中发现使用童工的情况，不予制止、纠正、查处的；

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(二) 公安机关的人民警察违反规定发放身份证或者在身份证上登录虚假出生年月的;

(三) 工商行政管理部门工作人员发现申请人是不满 16 周岁的未成年人, 仍然为其从事个体经营发放营业执照的。

第十三条 文艺、体育单位经未成年人的父母或者其他监护人同意, 可以招用不满 16 周岁的专业文艺工作者、运动员。用人单位应当保障被招用的不满 16 周岁的未成年人的身心健康, 保障其接受义务教育的权利。文艺、体育单位招用不满 16 周岁的专业文艺工作者、运动员的办法, 由国务院劳动保障行政部门会同国务院文化、体育行政部门制定。

学校、其他教育机构以及职业培训机构按照国家有关规定组织不满 16 周岁的未成年人进行不影响其人身安全和身心健康的教育实践劳动、职业技能培训劳动, 不属于使用童工。

第十四条 本规定自 2002 年 12 月 1 日起施行。1991 年 4 月 15 日国务院发布的《禁止使用童工规定》同时废止。