

Text

The Special Provisions on Labor Protection of Female Workers adopted at the 200th executive meeting of the State Council on April 18, 2012 are hereby promulgated and shall come into force on the date of promulgation.

Premier Wen Jiabao

April 28, 2012

Special Provisions on Labor Protection of Female Workers

Article 1 These Provisions are formulated for the purposes of reducing and resolving the special difficulties at work caused by the physiological features of female workers and protecting the health of female workers.

Article 2 These Provisions shall apply to employers such as the State organs, enterprises, public institutions, social groups, individual economic organizations and other social organizations within the territory of the People's Republic of China and their female workers.

Article 3 Employers shall strengthen the labor protection of female workers, adopt measures to improve the labor safety and health conditions of female workers and organize training on labor safety and health knowledge for female workers.

Article 4 Employers shall comply with the provisions on the scope of labor activities that are tabooed for female workers. Employers shall inform female workers in writing of the posts falling within the scope of labor activities that are tabooed for female workers.

The scope of labor activities that are tabooed for female workers is specified in the appendix of these Provisions. The supervisory and administrative department of work safety under the State Council shall, in conjunction with the administrative department of human resources and social security under the State Council and the administrative department of health under the State Council, adjust the scope of labor activities that are tabooed for female workers based on the status of economic and social development.

Article 5 Employers shall not reduce the wages of female workers, dismiss female workers or rescind the labor or employment contracts with female workers because the female workers are pregnant, give birth or breast-feed their babies.

Article 6 If a female worker cannot adapt to the original labor activities during pregnancy, her employer shall reduce her workload or arrange other labor activities to which she can adapt based on the certification from a medical institution.

If a female worker is pregnant for seven months or more, her employer shall not extend her working hours or arrange her to work night shifts and shall arrange certain rest time

for her during the working hours.

If a pregnant female worker undergoes the prenatal physical examination during the working hours, the time required for such examination shall be included in the working hours.

Article 7 A female worker who gives birth shall have 98 days of maternity leave, of which 15 days of maternity leave may be taken before giving birth. In the case of a dystocia, the maternity leave shall be extended for 15 days. In the case of a multiple birth, the maternity leave shall be extended for 15 days for the birth of each additional baby.

A female worker shall receive 15 days of maternity leave in the case of a miscarriage in the first four months of pregnancy and shall receive 42 days of maternity leave in the case of a miscarriage after four months of pregnancy.

Article 8 If a female worker has already participated in maternity insurance, the maternity subsidy given to her during the maternity leave shall be paid by the maternity insurance fund according to the standard of the average monthly wage of the workers paid by the employer during the preceding year. If a female worker has not participated in maternity insurance, the maternity subsidy shall be paid by the employer according to the standard of the wage of the female worker before the maternity leave.

A female worker's medical expenses for child birth or miscarriage shall be paid according to the items and standards specified by the maternity insurance and shall be paid by the maternity insurance fund if the worker has participated in maternity insurance and by the employer if the worker has not participated in maternity insurance.

Article 9 With regard to female workers who breast-feed babies less than one year old, their employers shall not extend their working hours or arrange them to work night shifts.

Employers shall arrange one hour of breast-feeding time for lactating female workers during the working hours every day. In the case of a multiple birth, the breast-feeding time shall be extended for one hour every day for each additional baby being breast-fed.

Article 10 Employers with relatively more female workers shall, based on the needs of the female workers, establish facilities such as the health rooms for female workers, resting rooms for pregnant women and breast-feeding room so as to properly resolve the difficulties of female workers in practicing physical hygiene and breast-feeding.

Article 11 Employers shall prevent and prohibit any sexual harassment of female workers in the workplace.

Article 12 The administrative departments of human resources and social security and the supervisory and administrative departments of work safety under the

people's governments at or above the county level shall be responsible for supervising and examining employers' compliance with these Provisions according to their respective duties.

Trade unions and women's organizations shall supervise employers' compliance with these Provisions in accordance with the law.

Article 13 If an employer violates the provisions of the second paragraph of Article 6, Article 7 or the first paragraph of Article 9 of these Provisions, the administrative department of human resources and social security under the people's government at or above the county level shall order it to make rectification within the specified time limit and impose a fine calculated according to the standard of more than RMB 1,000 and less than RMB 5,000 for each female worker being harmed.

If an employer violates the provisions of Article 1 or Article 2 of the Appendix of these Provisions, the supervisory and administrative department of work safety under the people's government at or above the country level shall order it to make rectification within the specified time limit and impose a fine calculated according to the standard of more than RMB 1,000 and less than RMB 5,000 for each female worker being harmed. If an employer violates the provisions of Article 3 or Article 4 of the Appendix of these Provisions, the supervisory and administrative department of work safety under the people's government at or above the country level shall order governance within the specified time limit and impose a fine of more than RMB 50,000 and less than RMB 300,000; if the case is serious, the department shall order the suspension of the relevant operation or request the relevant people's government to order closure according to the limits of authority specified by the State Council.

Article 14 If an employer violates these Provisions by prejudicing the lawful rights and interests of a female worker, the female worker may lodge a complaint, report the violation or file a petition in accordance with the law, or apply to the labor and personnel dispute mediation and arbitration institution for mediation and arbitration in accordance with the law. A female worker who is dissatisfied with the arbitral award may initiate a litigation at the people's court in accordance with the law.

Article 15 If an employer violates these Provisions by prejudicing the lawful rights and interests of a female worker and causing any harm to the female worker, it shall offer compensation in accordance with the law. If the employer as well as the personnel directly in charge and other directly responsible personnel commit criminal offenses, they shall be subject to criminal liabilities in accordance with the law.

Article 16 These Provisions shall come into force on the date of promulgation. The Provisions on Labor Protection of Female Workers promulgated by the State Council on July 21, 1988 shall be simultaneously repealed.

Appendix:

Scope of Labor Activities Tabooed for Female Workers

1. Scope of labor activities that are tabooed for female workers:

- (1) Operation in mines and pits;
- (2) Operation with intensity of physical work reaching level 4 as specified in the standard of classification of intensity of physical work; and
- (3) Operation that requires the carrying of heavy load that exceeds 20kg each time for at least six times every hour or operation that requires the carrying of heavy load that exceeds 25kg each time on a discontinuous basis.

2. Scope of labor activities that female workers are barred from during the menstrual period:

- (1) Operation in cold water reaching level 2, level 3 or level 4 as specified in the standard of classification of operation in cold water;
- (2) Operation at low temperature reaching level 2, level 3 or level 4 as specified in the standard of classification of operation at low temperature;
- (3) Operation with intensity of physical work reaching level 3 or level 4 as specified in the standard of classification of intensity of physical work; and
- (4) Operation at high altitude reaching level 3 or level 4 as specified in the standard of classification of operation at high altitude;

3. Scope of labor activities that are tabooed for female workers during pregnancy:

- (1) Operation in an operation premise with concentration of toxic substance such as lead and its chemical compound, mercury and its chemical compound, benzene, cadmium, beryllium, arsenic, cyanide, nitrogen oxide, carbon monoxide, carbon disulfide, chlorine, caprolactam, chloroprene, vinyl chloride, ethylene oxide, aniline or formaldehyde in the air exceeding the national standard of occupational health;
- (2) Operation such as the production of anti-cancer drugs or diethylstilbestrol and the contact of anaesthetic gas;
- (3) Operation of unsealed radioactive substance and the emergency handling of nuclear accidents and radiation accidents;
- (4) Operation at high altitude as specified in the standard of classification of operation at high altitude;
- (5) Operation in cold water as specified in the standard of classification of operation in cold water;
- (6) Operation at low temperature as specified in the standard of classification of operation at low temperature;
- (7) Level 3 or level 4 operation as specified in the standard of classification of operation at high temperature;

(8) Level 3 or level 4 operation as specified in the standard of classification of operation in noisy environment;

(9) Operation with intensity of physical work reaching level 3 or level 4 as specified in the standard of classification of intensity of physical work; and

(10) Operation in confined space or high voltage room or diving operation, operation where strong vibration is required or operation where frequent stooping, climbing or crouching is required.

4. Scope of labor activities that are tabooed for female workers during lactation:

(1) Item 1, item 3 and item 9 of the scope of labor activities that female workers are barred from during pregnancy; and

(2) Operation in an operation premise with concentration of toxic substance such as manganese, fluorine, bromine, methanol, organophosphorus compound or organochlorine compound in the air exceeding the national standard of occupational health.