



## China to Implement Measures for Publicizing Material Violations of Labor Protection Laws in 2017

Measures for Publicizing Material Violations of Labor Protection Laws (Order of the Ministry of Human Resources and Social Security of the People's Republic of China No.29, hereinafter referred to as the “Measures”) will come into force on January, 1<sup>st</sup> 2017. According to the Measures, the Ministry of Human Resources and Social Security (hereinafter referred to as “MHRSS”) shall publicize all confirmed violations of any labor protection laws.

### ■ Background of the Measures

The Regulations on Labor and Social Security Inspection (Decree No. 423 of the State Council), promulgated by the State Council in 2004, already contain a provision that requires the Labor and Social Security Administration Department (the “LSSAD”, the predecessor of the MHRSS) to keep records of the credibility of employers and their compliance of the labor and social security law. Under these regulations, the LSSAD is obligated to share with the public any gross violations of the labor and social security law by an employer. Later, regions such as Beijing, Tianjin, Guangdong have enacted their own rules on publicizing serious labor law violations. However, the Measures will be the first nation-wide law that provides a uniform framework on this issue.

The Interim Regulations on the Disclosure of Enterprise Information (Order No.654 of the State Council) mandate all departments of the State Council and all local governments at or above the county level, except for the Administration for Industry and Commerce, to “properly carry out their work related to publicizing enterprise information.” The implementation of the Measures will remedy vague regulations like this by setting specific guidelines for the MHRSS.

### ■ Why Enact the Measures?

According to the Article 1 of the Measures, the objective of the Measures is to strengthen the punishments for material violations of labor protection laws, to enhance monitoring by the public, and to promote employers' compliance with labor protection laws, regulations and rules.

■ **What Types of Violations Will Be Publicized?**

The Measures include seven categories of the material violations of labor protection laws and an eighth catch-all provision:

a.	Nonpayment and late payment of employee wages without cause, if the amount is significant.
b.	Refusal to pay labor remunerations, if the case has been transferred to judicial authorities for determination of criminal liabilities.
c.	Failure to purchase social insurances or pay social insurance premiums in accordance with the law, if the violations are serious.
d.	Violations of the rules on working hours, leaves and holidays, if the violations are serious.
e.	Violations of the rules on special protections for female and underage employees, if the violations are serious.
f.	Violations of the rules on the prohibition of child labor.
g.	Violations that cause serious negative social influences.
h.	Other acts in material violation of labor protection laws.

The Measures do not explain what constitutes “serious violations” or “significant amount,” so local branches of the MHRSS will be expected to figure out their own rules and standards in accordance with local needs.

■ **What Information Will Be Publicized?**

1. The full name, unified social credit code (or registration number), and address of the violator;
2. The name of the legal representatives or persons-in-charge of the violating entity;
3. Main facts of the violations; and
4. The penalties imposed.

However, the information involving state secrets, trade secrets and personal privacy may not be disclosed.

■ **Publicizing Media**

Acts of material violations of labor protection laws will be publicized on the web portals of the MHRSS, in major newspapers, on TV, and in other media in the respective administrative regions where the violations occur.

■ **Publicizing Frequency**

Acts of material violations of labor protection laws may be publicized periodically or at any time.

Authorities	The way to publicize	
	Regular period	Any time
MHRSS at the municipal and county levels	Once Every Quarter	According to Need
MHRSS at the provincial level	Once Every Half Year	

■ **Remedies for Publication Errors**

The Measures stipulate the following remedies for errors made in the publications of the MHRSS:

Remedies	Processing time
<p>1. <u>The specific administrative act has not been modified or revoked</u></p> <p>Where an employer raises objections to the publicized contents, the MHRSS that is responsible for investigating and setting penalties will review the objections, render a decision, and will inform the employer.</p>	<p>Within 15 working days as of the date of the receipt of the application.</p>
<p>2. <u>The specific administrative act has been modified or revoked</u></p> <p>Where a decision of a material violation of labor protection laws has been changed or canceled in accordance with the law by administrative review or administrative appeal, the MHRSS that is responsible for investigating and setting penalties will make corrections to the publicized contents.</p>	<p>Within 10 working days as of the date of the change or cancelation.</p>

■ **What Does This Mean for Your Company? Compliance Tips?**

The MHRSS will record an employer’s violations in the employer’s Labor Protection Compliance and Credit File and incorporate such information into the Human Resources and Social Security Credit System. Information about the violations will also be shared with other departments and social organizations, and as a result, joint penalties may be imposed by several departments.

Therefore, the publicizing of an employer’s violations will lead to significant damages to the employer’s reputation and credit worthiness. To avoid running afoul of the Measures, we

strongly recommend companies do the following:

- a. Regularly self-check the compliance with labor laws and regulations.
- b. Once any compliance risks have been discovered, rectify them immediately.
- c. If investigated by the MHRSS, cooperate in good faith and respond with honesty. Then seek the lowest penalties possible within the legal framework.
- d. Carefully analyze and evaluate the risks and remedies to eliminate uncertainties related to the administrative conduct of the MHRSS. Seek the assistance of external experts when necessary.

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