

**The Standing Committee of the
Twelfth People's Congress of Guangdong Province
Public Notice¹
(No.21)**

Guangdong Provincial Regulations on Collective Contracts for Enterprises, adopted by the Eleventh Session of the Standing Committee of the Twelfth People's Congress of Guangdong Province on September 25, 2014, is hereby promulgated, and will be effective on January 1, 2015.

Standing Committee of the Guangdong Provincial People's Congress
September 25, 2014

**Guangdong Provincial Regulation on Collective Contracts for
Enterprises**

(Passed by the Eleventh Session of the Standing Committee of the
Twelfth People's Congress of Guangdong Province on September 25, 2014)

Chapter I. Principles

Article 1. In order to regulate conduct of collective negotiations, to improve the system of collective contracts, to protect the legal rights of employees and enterprises, and to establish harmonious and stable labor relations, the following regulations are established in light of the situation in this province and in accordance with the "Labor Law of the People's Republic of China," the "Labor Contract Law of the People's Republic of China," the "Trade Union Law of the People's Republic of China," the "Labor Dispute Mediation and Arbitration Law of the People's Republic of China," the "People's Mediation Law of the People's Republic of China" and other legal regulations.

Article 2. This Regulation is applicable to enterprises and employees conducting collective negotiations and signing collective contracts in the administrative jurisdiction of this Province.

Article 3. Enterprises shall establish sound collective negotiations and collective contract systems in accordance with the law.

Collective negotiations, as used in this regulation, refers to the conduct of negotiations on an equal basis between the employees and the enterprise with regard

¹ This unofficial English translation is provided by the International Center for Joint Labor Research at Sun Yat-sen University. The official Chinese notice was published on September 28, 2014, and can be found at http://www.gdrd.cn/gdrdfb/ggtz/201409/t20140928_142698.html (last accessed October 7, 2014).

to labor remuneration, working hours, rest and vacations, labor safety and health, insurance and welfare and other such matters.

Collective contract, as used in this Regulation, refers to the written agreement signed between the employees and the enterprise agreed through collective negotiations.

Article 4. The conduct of collective negotiations and the establishment of collective contracts should follow principles of legality, fairness, equality and voluntary participation, consensus, honesty and trust, taking into account the legal interests of both sides.

Article 5. All levels of the People's Government should strengthen the coordination work regarding labor relations, build and develop harmonious and stable labor relations, and on a timely basis investigate and resolve major problems regarding collective negotiations and collective contracts.

The human resources and social security administration departments of the people's governments above the county level shall establish a tripartite mechanism for the coordination of labor relations in conjunction with trade unions and enterprise organizations.

All levels of the human resources and social security departments shall direct, coordinate and supervise the implementation of collective negotiations and collective contracts according to the law.

Article 6. The local federations of trade unions shall organize, direct, and coordinate enterprise trade unions to conduct collective negotiations and establish and implement collective contracts according to the law.

The enterprise trade unions shall, in accordance with the law, represent employees in conducting collective negotiations, signing a collective contract, and safeguarding the legal rights and interests of employees.

Article 7. Enterprise organizations, such as enterprise associations, industry and commerce federations, industry associations, and chambers of commerce should assist enterprises in establishing sound collective negotiations and collective contract systems.

Chapter II. Collective Negotiations

Section I. Content of Collective Negotiations

Article 8. The employees and the enterprise may undertake collective negotiations with regard to the following subjects:

1. Determination of labor remuneration, increase or decrease;

2. Work hours, mainly including the system of working hours, methods to lengthen working hours, working hours for special classifications of work, and work quota standards;
3. Rest and vacation, mainly including daily rest hours, weekly rest days, annual leave arrangements, holidays for workers who cannot carry out standard work hours, and other holidays;
4. Labor safety and health;
5. Social insurance and benefits;
6. Special protection of women workers and minors between the ages of 16 and 18;
7. Liability for breaching the collective contract;
8. Other items that both sides believe should be negotiated.

Article 9. The employees and the enterprise should follow the principles of wage distribution according to work, and equal pay for equal work. They may carry out specific collective wage negotiations over the following items:

1. Wage standards, forms of wage distribution and other wage distribution issues and methods of wage payment;
2. Annual average payment level of employees and the range and methods of adjustment;
3. Wages during the probationary period, sick leave and leaves of absence;
4. Other wage items that both sides believe should be negotiated.

Article 10. Collective wage negotiations should take into consideration the following factors comprehensively:

1. Labor productivity and economic performance of the enterprise;
2. Total payroll and employees' average wage level in the enterprise in the preceding year;
3. Wage guidelines for enterprises, labor market wage level guidelines issued by human resources and social security administrative authorities;
4. Consumer Price Index issued for local town and city residents by the people's government's statistics bureaus;
5. Local minimum wage, regional and industrial average wage increase levels as issued by relevant government authorities;
6. Other matters related to collective wage negotiations.

Article 11. To conduct collective wage negotiations enterprises and employees may propose a wage increase, no increase or decrease.

The employees' side may put forward demands for wage increase according to the enterprise annual profit growth, the wage guidelines of local people's government, the local wage growth rate, and wage levels of the enterprises in the same region and the same industry.

Enterprises may propose no increase or decrease in wages based on actual significant financial loss and comprehensively considering consumer prices, the government wage guidelines and other factors.

Section II. Collective Negotiations Representatives

Article 12. To conduct collective negotiations, the enterprise and the employees should select their own negotiations representatives. The collective negotiations representatives (hereinafter referred to as the negotiations representatives) shall have the authority to represent their respective side's interests in collective negotiations.

The employees and the enterprise shall each have three to nine negotiations representatives and each side appoints a chief negotiations representative. Large enterprises with a large number of employees may appropriately increase the number of negotiations representatives with the consent of both sides. Both sides may also have an appropriate number of observer representatives.

Negotiations representatives of the enterprise and the employees shall not hold concurrent positions on both sides.

Article 13. Negotiations representatives for the enterprise shall be designated by the legal representative of the enterprise. The chief negotiations representative for the enterprise should be the legal representative of the enterprise or other management staff authorized in written form by the legal representative of the enterprise.

Negotiations representatives for the employees shall either be selected by the trade union or by a democratic election by the staff and workers that is organized by the trade union. The chief representative for the employees should be a leader of the trade union. In enterprises without a trade union, negotiations representatives for the employees are selected in a democratic election by the staff and workers in an election that is organized by the local federation of trade unions, upon the consent of the majority of the enterprise staff and workers; the chief negotiations representative shall be elected by the negotiations representatives participating in the negotiations.

Replacement, and substitution of negotiations representatives shall follow the procedures of designation of negotiations representatives.

Article 14. The responsibilities of the negotiations representatives are:

1. To participate in collective negotiations activities, raise negotiations opinions;
2. To collect, keep and provide materials and documents related to collective negotiations;
3. To listen and collect opinions of constituents, to answer inquiries about collective negotiations from the individuals they represent, and to timely report or provide feedback about negotiations to their constituents;
4. To represent their constituents in the handling of disputes during collective negotiations;

5. Other responsibilities as prescribed by laws and regulations.

Article 15. The enterprise should guarantee necessary work time and conditions for negotiations representatives to carry out the duties required by negotiations, and provide true information and documentation related to collective negotiations to the employee negotiations representatives. Negotiations representatives should keep confidential any business secrets of the enterprise.

The employee negotiations representatives should provide to the enterprise materials that they possess about collective negotiations.

Article 16. The legal rights of negotiations representatives are protected by law, their negotiations duties are regarded as regular work, enterprises may not adjust their jobs, reduce their wages and benefits without justifiable reasons.

If their labor contracts² expire during the period when negotiations representatives are performing negotiations duties, said labor contracts are automatically extended until the negotiations responsibilities terminate. During the period when negotiations representatives are performing their duties, the enterprise shall not terminate the labor contracts of the negotiations representatives, except in situations covered under Article 36 and Article 39 of the "Labor Contract Law of the People's Republic of China."

Section III. Collective Negotiations Procedures

Article 17. Either the employees or the enterprises may initiate a request to negotiate on an equal basis, in accordance with the law.

Collective negotiations normally shall be conducted once a year.

Article 18. Collective negotiations requests should be made in written form.

Employees who believe it is necessary to engage in collective negotiations with the enterprise should direct their requests for collective negotiations to the enterprise trade union. The enterprise trade union may decide whether or not to submit a request for negotiations to the enterprise, based on the opinions of the employees and the concrete situation of the enterprise. If half or more of the staff and workers, or half or more of the Staff and Workers Representative Congress propose to negotiate, the trade union should submit a request to negotiate to the enterprise. If a trade union does not exist in an enterprise, employees may make a request to the local trade union federation for collective negotiations. The local trade union federation, upon the consent of half or more of the employees or half or more of the Staff and Workers Representative Congress, should make the request for collective negotiations to the enterprise.

Enterprises that believe there is a need for collective negotiations with employees should submit a request to negotiate to the enterprise trade union. If a trade

² Translator's note: "Labor contracts" refers to individual employment contracts, not collective contracts.

union does not exist in an enterprise, the enterprise may make a request to the local trade union federation for collective negotiations.

Article 19. When the employees or the enterprise makes a written request to negotiate, the other side should sign on the delivery receipt of the written request to negotiate, and give a written reply within 30 days from the date of receipt, responding to the content of the request point by point, and conducting negotiations on relevant issues. The request for collective negotiations should include time, place and subjects of negotiations, and the reasons for the request.

Article 20. The period of collective negotiations is three months from receipt of the request to negotiate. According to the actual situation of the enterprise, both parties may mutually agree to shorten or lengthen the period appropriately, but the extension should not be longer than 60 days.

Article 21. Collective negotiations are normally conducted by meeting in person, but may also be done in writing or other methods by mutual consent. If one side requests meeting in person, then this method should be used.

When collective negotiations are conducted in person, the chief representatives of both parties chair the negotiations by taking turns or jointly chairing. The minutes of collective negotiations meetings should be signed and confirmed by all the negotiations representatives present. When collective negotiations are conducted in writing, the written opinions should be signed and confirmed by all of the negotiations representatives.

The enterprise should provide a meeting place and other necessary provisions for conducting collective negotiations sessions.

Article 22. During collective negotiations, the employees and the enterprise should conduct collective negotiations in a peaceful and rational manner, maintain regular production procedures, and must not engage in the following activities:

1. Refuse or intentionally delay progress of collective negotiations without a justified reason;
2. Intimidate or bribe negotiations representatives of the other side;
3. Use violence, intimidation or other illegal methods to disrupt, destroy the collective negotiations procedures;
4. Restrict the personal freedom of the relevant person, or make insults, threats, or commit violent bodily harm;
5. Engage in other actions that may intensify conflict.

Article 23. During the period of collective negotiations the enterprise must not engage in the following activities:

1. Restrict or interfere with the trade union carrying out its activities or with selection of employee collective negotiations representatives, attack or carry out reprisals on employee collective negotiations representatives;

2. Refuse to provide information necessary for collective negotiations or provide false information;
3. Refuse to carry out a collective negotiations mediation agreement.

Article 24. During the period of collective negotiations the employees must not engage in the following activities:

1. Violate the labor contract and fail to complete job tasks;
2. Violate labor discipline, or in various ways force other employees to leave their posts;
3. Block, obstruct or seal off access to the enterprise, obstruct employees, materials from entering or exiting the enterprise, destroy the enterprise's equipment and tools, or damage the enterprise's regular production procedures and public order.

Article 25. When agreement is reached in collective negotiations, the enterprise side shall draft a collective contract.

When no agreement is reached in collective negotiations, negotiations may be terminated and a time to resume negotiations may be set up with the consent of both sides.

Chapter III. Collective Contracts

Article 26. The draft collective contract should be discussed by the Staff and Workers Representative Congress or a meeting of all staff and workers. When the draft collective contract is discussed at the Staff and Workers Representative Congress or meeting of all staff and workers, more than two thirds of the Staff and Workers Representatives or two thirds of all staff and workers should be present. The draft is considered ratified with the agreement of half or more of the Staff and Workers Representatives or half or more of the staff and workers present. Once the draft collective contract has been ratified, it shall be signed and stamped with an official seal by the chief representatives of both negotiations parties, and shall be submitted by the enterprise to the local human resource and social security administration for recording within seven days from the adoption of the collective contract.

If the draft collective contract is not ratified, the negotiations representatives of the employees shall listen to and collect the opinions of employees, and after conducting additional negotiations with enterprise representatives, shall again submit the draft for discussion and ratification.

Article 27. When the collective contract is adopted and begins to take effect according to the law, it is binding upon both the enterprise and its employees, both sides should strictly implement the collective contract. The enterprise should make the collective contract available to all employees within five days after the collective contract begins to take effect.

Article 28. The term of the collective contract shall be from one to three years. The collective contract automatically ends on the expiration date or when mutually-agreed conditions of termination occur.

Within three months before the expiration of the collective contract, either side may request to the other side to sign a new contract or renew the current contract.

Article 29. The collective contract remains in effect if during the term of the collective contract the enterprise changes its name, legal representative, principal leaders, stock rights, experiences increase or loss of capital, or other such things.

Article 30. The collective contract may be modified or terminated under one of the following conditions:

1. If it is agreed by both sides;
2. A part or all of the collective contract cannot be fulfilled due to *force majeure*;
3. The enterprise goes bankrupt, ceases operation, or dissolves so that the collective contract cannot be fulfilled;
4. Other situations according to laws and regulations.

Modification or termination of a collective contract follows the procedures of collective negotiations and of the signing of a collective contract as stipulated in this regulation.

Chapter IV. Dispute Handling

Article 31. The employees and the enterprise should handle collective negotiations disputes based on facts, observing legal, orderly and peaceful principles.

Article 32. If disputes occur in the process of collective negotiations or the performance of the collective contract, and neither the employees nor the enterprise are willing to negotiate, negotiations fail, or the collective agreement cannot be implemented after having reached settlement, may apply for mediation from lawfully established grassroots people's mediation organizations or organizations with labor dispute mediation capacity.

When an agreement is reached after mediation, the employees and the enterprise should perform the agreement.

Article 33. If disputes occur in the process of collective negotiations, the employees may submit requests for mediation to the local federation of trade unions, local federation of trade unions should timely intervene, guide and help the employees and enterprises to carry out negotiations and reach an agreement according to the law.

Article 34. If disputes occur in the process of collective negotiations, enterprise organizations should timely intervene, guide, and supervise enterprises to carry out collective negotiations in accordance with the law, help enterprises to maintain the normal production and business order, and coordinate the two sides to reach a consensus.

Article 35. If disputes cannot be resolved after the mediation of local federation of trade unions and enterprise organizations, the local human resources and social security administrative department should send personnel or designate someone from a list of collective bargaining experts to mediate.

Article 36. If a collective bargaining dispute occurs involving a large number of people and significant influence, the people's governments at various levels should coordinate the departments of human resources and social security, public security, judicial administration, state owned assets supervision and administration, in conjunction with the local federation of trade unions and enterprise organizations to jointly handle the dispute.

Article 37. If during collective negotiations in public institution units and related enterprises that provide water, electricity, gas, public transportation, broadcasting and communication, television, public sanitation, healthcare, education, finance, etc., there occurs production or business stoppages, or employees affect the provision of public services, leading to or potentially leading to one of the following consequences, the local people's government may according to the actual situation issue an order to the enterprise units and employees to cease such conduct and restore normal order:

1. Harming public security;
2. Undermining the normal social order and the order of residents' lives;
3. Other consequences that seriously threaten public interests.

The local human resources and social security administrative department, relevant government departments, local federation of trade unions, enterprise organizations should guide and urge the parties to carry out collective negotiations and resolve the conflicts.

Article 38. For disputes pertaining to the enforcement of the collective contract, if negotiations fail, the trade union or the enterprise may apply for arbitration, appeal to a court according to the law.

Chapter V. Legal Accountability

Article 39. If negotiations representatives violate Article 15 of this Regulation, disclose business secrets and cause losses to the enterprise, they shall assume the liability for compensation according to the law. If crimes have been committed, the violators shall be held accountable for criminal activities according to the law.

Article 40. If relevant enterprise management staff violate the 2nd, 3rd, or 4th items of Article 22, the 1st item of Article 23, in violation of public security regulations, it shall be dealt with according to the relevant provisions of "Public Security Management Punishment Law of the People's Republic of China"; if crimes have been committed, violators shall be held accountable for criminal activity according to the law.

If employees violate the 2nd, 3rd, or 4th items of Article 22, the 3rd item of Article 24, in violation of public security regulations, it shall be dealt with according to the relevant provisions of "Public Security Management Punishment Law of the People's Republic of China"; if crimes have been committed, violators shall be held accountable for criminal activity according to the law.

Article 41. Public institution units and related enterprises or their employees that violate Article 37 of this regulation, refuse to follow the order of the local People's government and engage in conduct in violation of public security administration, will be charged under the provisions of the "Public Security Management and Punishment Law of the People's Republic of China."

Article 42. If staff of enterprise organizations do not fulfill their legal duties or damage the legal interests of enterprises in the collective negotiations, enterprise organizations shall order them to make corrections. If the circumstances are serious, the staff shall be terminated or given sanction in accordance with the by-laws of the organization.

Article 43. If the trade union staff do not perform their duties in collective negotiations according to law or damage the legal rights and interests of employees, the trade union at the same or higher level shall order them to make corrections; if the circumstances are serious, the staff shall be terminated or given sanction in accordance with the "Constitution of Trade Unions of China." If crimes have been committed, the violators shall be held accountable for criminal activity according to the law.

Article 44. If personnel of a relevant government department in carrying out work regarding collective negotiations are derelict in their duties, abuse their power, or commit favoritism or irregularities for personal interests, the relevant department shall punish them. If crimes have been committed, the violators should be held accountable for criminal activity according to the law.

Chapter VI. Supplemental Provisions

Article 45. When the branch of an enterprise, with consent from the enterprise, conducts collective negotiations, signs and implements a collective contract with employees in the branch, it shall abide by this regulation.

Institutions and privately owned non-enterprises which implement enterprise-style management shall abide by this regulation.

Article 46. This regulation shall go into effect as of January 1st, 2015.