INTERIM MEASURES FOR PARTICIPATION IN SOCIAL INSURANCES OF FOREIGNERS EMPLOYED IN CHINA

Description

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Decree of the Ministry of Human Resources and Social Security of the Peopleâ€™s Republic of China No.16
The Interim Measures for Participation in Social Insurances of Foreigners Employed in China have been deliberated and passed at the 67th Administrative Meeting of the Ministry of Human Resources and Social Security and approved by the State Council. These Measures are hereby promulgated and shall come into force as of October 15, 2011.

Yin Weimin (Minister)

September 6, 2011

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INTERIM MEASURES FOR PARTICIPATION IN SOCIAL INSURANCES OF FOREIGNERS EMPLOYED IN CHINA
ARTICLE 1 These Measures are formulated in accordance with the Law of the Peopleâ€™s Republic of China for Social Insurances (â€œSocial Insurance Lawâ€•), for the purpose of protecting the lawful rights and interests of Foreigners employed in China to participate in social insurances and enjoy the benefits of social insurances, as well as for the purpose of strengthening the management of social insurances.

ARTICLE 2 â€œForeigner employed in Chinaâ€• means a person who is not of Chinese nationality holding employment certificates and foreigner residence permit certificates such as Work Permit for Foreigners, Foreign Expert Certificate, and Permit for Permanent Foreign Journalists, as well as Foreigner Permanent Residence Certificate, and who is employed lawfully with the territory of China.

ARTICLE 3 Foreigners employed by organizations duly incorporated or registered in China such as enterprises, public institutions, social organizations, private non-enterprise entities, foundations, law firms, accounting firms, etc. (â€œEmployerâ€•), shall participate in basic pension insurance for employees, basic medical insurance for employees, work related injury insurance, unemployment insurance and maternity insurance. The insurance premiums shall be paid by the Employer and the foreigner pursuant to the applicable regulations.

A foreigner, who has concluded an employment contract with his overseas employer and then dispatched to any branch or representative office duly incorporated or registered in China (â€œDomestic Work Unitâ€•), shall participate in basic pension insurance for employees, basic medical insurance for employees, work related injury insurance, unemployment insurance and maternity insurance. The insurance premiums shall be paid by the Domestic Work Unit and the foreigner

pursuant to the applicable regulations.

ARTICLE 4 An Employer who employs any foreigner shall product the social insurance registration for the foreigner within 30 days upon issuance of his/her employment certificate.

The Domestic Work Unit shall product the social insurance registration for the foreigner who is dispatched to China by his/her overseas employer.

The agencies issuing the employment certificate for the foreigners shall report the employment related information of the foreigners in China to the local social insurance agencies. The social insurance agencies shall regularly inquire about the status of the employment certificates of foreigners with the relevant agencies.

ARTICLE 5 Where a foreigner participating in the social insurances satisfies the prescribed conditions, he/she may enjoy the social insurance benefits.

If a foreigner leaves China before he/she is qualified for enjoying the pension benefits, his/her individual social insurance account shall be maintained and his/her period of contributions may be accumulated when he/she is employed in China again; upon his/her written application for termination of the social insurance relationship, the balance in his/her private social insurance account may be refunded in a lump sum.

ARTICLE 6 The balance in a foreignerâ€™s private social insurance account may be inherited according to law in case of his/her death.

ARTICLE 7 A foreigner, who receives social insurance benefits outside China on a monthly basis, shall at least once a year provide the social insurance agency responsible for paying his/her social insurance benefits with an existence certificate issued by China embassy or consulate, or an existence certificate notarized by competent authority in the country where he/she lives in and certified by China embassy or consulate.

A foreigner who lawfully enters into China may prove his/her existence by personal presence at the relevant social insurance agency, and therefor is not required to provide the existence certificate mentioned in the preceding paragraph.

ARTICLE 8 Where there is a dispute between a foreigner participating in the social insurances and his/her Employer or Domestic Work Unit, either party may apply for mediation, arbitration or file an action according to law. Where an Employer or a Domestic Work Unit infringes the foreignerâ€™s lawful rights and interests, he /she may apply with the social insurance administrative authority or social insurance premiums collecting agency for lawful settlement.

ARTICLE 9 Social insurances for foreigners employed in China with nationalities of countries who have concluded bilateral or multilateral treaties upon social insurance with China shall be handled in accordance with respective treaties.

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ARTICLE10 The agencies responsible for social insurances shall formulate the Social Security Numbering Rules for Foreigners, assign the social security number and distribute the social security cards of the Peopleâ€™s Republic of China to foreigners.

ARTICLE11 The social insurance administrative authorities shall supervise and inspect the participation of foreigners in social insurances in accordance with the Social Insurance Law. Where an Employer or a Domestic Work Unit fails to complete the social insurance registration for any employed foreigner, or fails to pay the social insurance premium for any foreigner, it shall be handled in accordance with the applicable laws, regulations and rules, including the Social Insurance Law and the Regulations for Supervision over Labor Security.

Where an Employer employs any foreign who does not hold a valid employment certificate or the Foreigner Permanent Residence Certificate, it shall be handled in accordance with the Regulations for Administration of Employment of Foreigners in China.

ARTICLE 12 These Measures shall come into force as of October 15, 2011.

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Author
admin