

## **Labor Contract Law Revision: Stricter Regulation over Labor Dispatch**

January 15, 2013.

On December 28th, 2012, Standing Committee of the National People's Congress (NPC) approved a Decision on the Revision to the Labor Contract Law of the People's Republic of China (hereinafter referred to as the "Decision") which shall come into force on July 1st, 2013.

The Decision focused on the provisions related to labor dispatch and was designed to strengthen the administration of labor dispatch agencies and protect the rights and interests of the dispatched employees.

### **Main Content**

#### **1. Four Amendments**

According to the Decision, Article 57, 63, 66 and 92 of the current Labor Contract Law will be amended. Details of the four amendments are as follows:

##### **1.1. Higher Threshold for Labor Dispatch Agencies (Article 57)**

A labor dispatch agency shall:

- (1) have a registered capital of not less than RMB 2,000,000;
- (2) own fixed premise(s) and facilities for business operation;
- (3) establish a system of labor dispatch management in accordance with laws and administrative regulations;
- (4) meet other requirements provided by laws and administrative regulations.

As provided by law, a labor dispatch agency shall apply for an administrative license for operating labor dispatch business to the competent labor administrative department and shall go through the relevant registration formalities after obtaining the license. No entity or individual can provide labor dispatch services without the license.

##### **1.2. Emphasis on the Principle of Equal Pay for Equal Work (Article 63)**

The dispatched employees shall have the equal pay for equal work as that received by the employees who directly enter into labor contracts with the labor users (hereinafter referred to as the "directly-hired employees"). According to the principle of equal pay for equal work, the same method of remuneration distribution shall be applied to both dispatched employees and directly-hired employees who hold the like positions. If a labor user has no direct-hired employee in the like position, the remunerations shall be determined with reference to that paid to the employees who work in the place where the labor user is located and hold the same or similar positions.

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The labor contract concluded between the dispatched employees and the labor dispatch agencies, the dispatch agreement concluded between the labor users and the labor dispatch agencies and the expressed or agreed remunerations shall be in accordance with the preceding clause.

### 1.3. Definitions for “Temporary”, “Auxiliary” and “Substitutive” (Article 66)

Labor contract is the fundamental employment model while labor dispatch is the supplemental employment model which shall only be used for temporary, auxiliary or substitutive positions.

A temporary position refers to the position of which the duration is no more than six months; an auxiliary position refers to the position regarding non-operating business which provides services to the positions regarding operating business; a substitutive position refers to the position in which the employee takes in place of the labor-user’s directly-hired employee who is not able to work for a certain period due to full-time study, vacation, etc.

### 1.4. Severer Punishment on Violation (Article 92)

Where a labor dispatch agency provides labor dispatch services without complying with the Labor Contact Law, the competent labor administrative department shall order it to cease its illegal activities, confiscate its illegal income and charge a penalty. The penalty shall be no more than 50,000 yuan or shall be not less than one time but not more than five times the illegal income, if any.

Where a labor dispatch agency or a labor user violates the provisions regarding labor dispatch, it shall be ordered to make ratification in a given period by the competent labor administrative department. If the ratification is overdue, it shall be fined at the rate of not less than 5,000 yuan but not more than 10,000 yuan per person and the labor dispatch agency shall have its administrative license for operating labor dispatch business revoked. If any damage is caused to the dispatched employee by the labor user, the labor dispatch agency and the labor user shall bear joint and several liability of compensation.

## 2. Retroactive Effect

2.1. The labor contracts and labor dipatch agreements which were concluded before the issuance of the Decision can continue to be executed till their dates of expiration. However, the content of those labor contracts and labor dispatch agreements shall be adjusted if it's not in accordance with the method of remuneration distribution under the principle of equal pay for equal work, as set forth in the Decision.

2.2. In order to carry on new business, the labor dispatch agencies which provided labor dispatch services before the date of implementation of the

Decision shall obtain the above-mentioned license and go through the relevant registration formalities within one year from the date of implementation of the Decision. The detailed rules for implementation will be developed by state labor administrative department and other competent state departments.

### **General Comment**

After the Labor Contract Law came into force in 2008, many enterprises favored using dispatched employees because they brought advantages such as flexible employment relationships and cost savings. However, due to the ambiguity of wording and the lack of definitions in the Labor Contract Law (2008), the use of the labor dispatch model in China has increased —— to the point of “abuse” according to some voices.

The Decision limited the application of the labor dispatch model through stricter rules of labor dispatch business operation and clear definitions for “temporary”, “auxiliary” and “substitutive”. In addition, the Decision detailed the principle of equal pay for equal work in order to protect the rights and interests of the dispatched employees.

According to the Decision, labor dispatch agencies shall make necessary adjustment and obtain the license for operating labor dispatch business before they can carry on new business; enterprises that currently use the labor dispatch model to staff their workforces should take a proactive and thorough review of the functions of their dispatched employees so that they can successfully adapt to the changes.