

Interim Provisions of the PRC on Labor Dispatch

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Chapter I — General Provisions

Article 1 — These Provisions are formulated in accordance with the Labor Contract Law of the People's Republic of China and the Administrative Licensing Law of the People's Republic of China for the purposes of regulating labor dispatch and safeguarding the lawful rights and interests of dispatched workers.

Article 2 — These Provisions shall apply to the business operations of labor dispatch, the use of dispatched workers by labor users, and the administration of labor dispatch by human resources and social security departments.

Article 3 — The human resources and social security administrative department under the State Council shall be responsible for the supervision and administration of labor dispatch nationwide. The human

resources and social security administrative departments of local people's governments at or above the county level shall be responsible for the supervision and administration of labor dispatch within their respective administrative regions.

Chapter II — Business Licensing of Labor Dispatch

Article 4 — Without obtaining a Labor Dispatch Business Permit (hereinafter referred to as the "Permit"), no entity or individual may engage in the business of labor dispatch. Entities applying to engage in the business of labor dispatch shall meet the following conditions: (1) having a registered capital of not less than RMB 2 million yuan; (2) having fixed business premises and facilities suitable for the business; (3) having a labor dispatch management system that complies with the provisions of laws and administrative regulations; and (4) other conditions prescribed by laws and administrative regulations.

Article 5 — An entity applying to engage in the business of labor dispatch shall submit an application to the human resources and social security administrative department of the people's government at or above the county level where the entity is located. The human resources and social security administrative department shall complete the examination within 20 working days from the date of acceptance of the application. Where the application is approved, a Permit shall be issued. Where the application is not approved, the applicant shall be notified in writing with the reasons stated.

Article 6 — The Permit shall specify the name, address, legal representative, registered capital, scope of business, validity period, and other matters of the labor dispatch entity. The Permit shall be valid for three years. The labor dispatch entity shall display the Permit at its place of business. No entity or individual may forge, alter, assign, lease, or lend the Permit.

Article 7 — Where a labor dispatch entity applies for renewal of the Permit, it shall submit an application to the human resources and social security administrative department 60 days before the expiration of the Permit. The human resources and social security administrative department shall examine whether the labor dispatch entity continues to meet the statutory conditions and make a decision on whether to approve the renewal within 20 working days from the date of acceptance of the application. Where the renewal is approved, the Permit shall be renewed. Where the renewal is not approved, the reasons shall be stated in writing.

Chapter III — Labor Dispatch Positions and Scale

Article 8 — Labor dispatch shall only be used for temporary, auxiliary, or substitute positions. "Temporary positions" means positions that exist for not more than six months. "Auxiliary positions" means non-core business positions that provide services to the main business positions. "Substitute positions" means positions where a worker in the position may be temporarily replaced by another worker during a period when the worker in the position is unable to work due to full-time study, leave, or other reasons.

Article 9 — The labor user shall, in accordance with the provisions of Article 4 of the Labor Contract Law, determine the auxiliary positions through consultation with the workers' representative assembly or all workers, and shall publicize the auxiliary positions within the entity. Where the labor user violates the provisions of the preceding paragraph by using dispatched workers, the human resources and social security administrative department shall order it to make corrections and issue a warning. Where the circumstances are serious, the relevant competent authority shall impose a fine.

Article 10 — The number of dispatched workers used by a labor user shall not exceed 10 percent of its total workforce. For the purposes of the preceding paragraph, "total workforce" means the total number of persons employed by the labor user under labor contracts plus the number of dispatched workers used by the labor user.

Chapter IV — Labor Contracts and Dispatch Agreements

Article 11 — The labor dispatch entity shall conclude a written labor contract with the dispatched worker for a fixed term of not less than two years. The labor dispatch entity shall pay labor remuneration to the dispatched worker on a monthly basis. During the period when the dispatched worker is not assigned to any work, the labor dispatch entity shall pay labor remuneration on a monthly basis in accordance with the minimum wage standard prescribed by the local people's government.

Article 12 — The labor dispatch entity shall conclude a written labor dispatch agreement with the labor user. The labor dispatch agreement shall specify the following matters: (1) the positions and locations of dispatch; (2) the number of dispatched workers and the term of dispatch; (3) the amount and method of payment of labor remuneration; (4) the amount and method of payment of social insurance premiums; (5) working hours, rest and leave; (6) labor safety, health, and working conditions; (7) training; (8) labor protection articles and occupational disease protection; (9) living conditions for cross-regional dispatching; (10) economic compensation for dispatched workers; and (11) liability for breach of contract.

Article 13 — The labor user shall not re-dispatch the dispatched workers to another employer. The labor dispatch entity shall not subcontract the labor dispatch business to another entity or individual.

Chapter V — Cross-Regional Dispatch

Article 14 — Where a labor dispatch entity dispatches workers across regions, the dispatched workers shall enjoy labor remuneration and working conditions in accordance with the standards of the place where the labor user is located. Where the labor dispatch entity dispatches workers across regions, the labor dispatch entity shall pay social insurance premiums for the dispatched workers at the place where the labor user is located, and handle the procedures for social insurance for the dispatched workers in accordance with the provisions.

Chapter VI — Legal Liability

Article 15 — Where an entity engages in the business of labor dispatch without authorization, the human resources and social security administrative department shall ban the entity, confiscate the illegal gains, and impose a fine of not less than one time but not more than five times the illegal gains. Where there are no illegal gains, a fine of not more than RMB 50,000 yuan shall be imposed. Where a labor dispatch entity obtains the Permit through fraud, bribery, or other improper means, the human resources and social security administrative department shall revoke the Permit.

Article 16 — Where a labor dispatch entity violates the provisions of these Provisions by forging, altering, assigning, leasing, or lending the Permit, the human resources and social security administrative department shall impose a fine of not less than RMB 10,000 yuan but not more than RMB 30,000 yuan. Where the circumstances are serious, the Permit shall be revoked.

Article 17 — Where a labor dispatch entity violates the provisions of these Provisions by failing to conclude a labor contract with the dispatched worker, failing to pay labor remuneration in accordance with the provisions, failing to pay social insurance premiums in accordance with the law, or committing other acts that infringe upon the lawful rights and interests of the dispatched worker, the human resources and social security administrative department shall order it to make corrections within a prescribed time limit. Where it fails to make corrections within the prescribed time limit, a fine shall be imposed in accordance with the law. Where the circumstances are serious, the Permit shall be revoked.

Chapter VII — Supplementary Provisions

Article 18 — Where dispatched workers are used for the positions of employees of state organs, public institutions, and social organizations, these Provisions shall apply by reference.

Article 19 — The human resources and social security administrative departments shall exercise supervision and inspection over the implementation of these Provisions. Any entity or individual shall have the right to report violations of these Provisions to the human resources and social security administrative departments.

Article 20 — These Provisions shall come into force on March 1, 2014.

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