Labor Dispatch Interim Provisions of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1: These Provisions are formulated in accordance with the Employment Contract Law of the People’s Republic of China, the Regulations on the Implementation of the Employment Contract Law, and other laws and administrative regulations for the purpose of regulating labor dispatch and safeguarding the lawful rights and interests of dispatched employees.

Article 2: These Provisions shall apply to the labor dispatch activities conducted by labor dispatch entities, the employment of dispatched employees by accepting entities, and the supervision and administration of labor dispatch by the human resources and social security administrative authorities.

Article 3: Labor dispatch shall only be applied to temporary, auxiliary, or substitute positions. The term “temporary position” refers to a position lasting no more than six months. The term “auxiliary position” refers to a non-core business position that provides services to the main business. The term “substitute position” refers to a position where an employee of the accepting entity is unable to work for a certain period due to full-time study, leave, or other reasons and can be replaced by another employee.

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Article 4: The number of dispatched employees used by an accepting entity shall not exceed 10% of its total number of employees. The total number of employees of the accepting entity includes both employees directly employed and dispatched employees.

Chapter II — Labor Dispatch Entities and Registered Capital

Article 5: Labor dispatch entities shall have a registered capital of not less than RMB 2,000,000 and shall obtain an Administrative License for Labor Dispatch Services before conducting labor dispatch business. Without a license, no entity or individual may conduct labor dispatch business.

Article 6: To apply for an Administrative License for Labor Dispatch Services, an applicant shall meet the following conditions: (1) having a registered capital of not less than RMB 2,000,000; (2) having fixed business premises and facilities suitable for conducting the business; (3) having a lawful and compliant labor dispatch management system; and (4) other conditions prescribed by laws and administrative regulations.

Article 7: The human resources and social security administrative authorities shall complete the examination of an application for an Administrative License for Labor Dispatch Services within 20 working days from the date of receipt or within 30 working days where an on-site inspection is required.

Article 8: The Administrative License for Labor Dispatch Services shall be valid for three years. A labor dispatch entity that intends to continue operations after the expiration of the license shall apply for an extension 60 days before the expiration.

Chapter III — Labor Dispatch Agreements and Employment Contracts

Article 9: Labor dispatch entities shall conclude fixed-term employment contracts of not less than two years with dispatched employees. Labor dispatch entities shall pay labor remuneration on a monthly basis. During periods when no work is assigned to dispatched employees, labor dispatch entities shall pay them monthly remuneration at a rate not lower than the local minimum wage.

Article 10: The labor dispatch agreement between the labor dispatch entity and the accepting entity shall specify: (1) the positions and places of the dispatched work; (2) the number of dispatched personnel and the dispatch period; (3) the amount and payment method of labor remuneration; (4) the amount and payment method of social insurance premiums; (5) working hours, rest, and leave; (6) labor protection, working conditions, and occupational hazard protection; and (7) liability for breach of the agreement.

Article 11: Labor dispatch entities and accepting entities shall not charge fees to dispatched employees.

Chapter IV — Rights and Obligations

Article 12: Dispatched employees shall enjoy the right to equal pay for equal work with employees of the accepting entity in the same position. The accepting entity shall implement a system for the distribution of labor remuneration that treats dispatched and directly employed employees equally.

Article 13: Dispatched employees shall have the right to join the trade union of the labor dispatch entity or the trade union of the accepting entity and to participate in trade union activities in accordance with the law.

Article 14: Labor dispatch entities and accepting entities shall not jointly or separately rescind the employment contract with a dispatched employee in violation of the law. Where an employment contract is rescinded in violation of the law, compensation shall be paid to the dispatched employee.

Article 15: Where a dispatched employee suffers an occupational injury, the labor dispatch entity shall bear the liability for work-related injury insurance, but may agree with the accepting entity on indemnification.

Article 16: Where the accepting entity violates the law and causes damage to dispatched employees, the labor dispatch entity and the accepting entity shall bear joint and several liability for compensation.

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Chapter V — Supervision and Inspection

Article 17: The human resources and social security administrative authorities of local people's governments at or above the county level shall strengthen supervision and inspection of labor dispatch. The human resources and social security administrative authorities shall conduct supervisory checks on labor dispatch entities and accepting entities.

Article 18: Where a labor dispatch entity or accepting entity commits any labor dispatch violations, the human resources and social security administrative authority shall order it to make corrections within a prescribed time limit; where it fails to make corrections within the prescribed time limit, a fine may be imposed in accordance with the law.

Chapter VI — Legal Liability

Article 19: Where an entity conducts labor dispatch business without authorization, the human resources and social security administrative authority shall order it to cease the illegal activities, confiscate its 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 less than RMB 50,000 may be imposed.

Article 20: Where a labor dispatch entity or accepting entity violates the provisions on labor dispatch, the human resources and social security administrative authority shall order it to make corrections within a prescribed time limit; where it fails to make corrections within the prescribed time limit, a fine of not less than RMB 5,000 but not more than RMB 10,000 per person shall be imposed.

Article 21: Where the proportion of dispatched employees used by an accepting entity exceeds the prescribed limit, the human resources and social security administrative authority shall order it to make corrections within a prescribed time limit; where it fails to make corrections within the prescribed time limit, a fine of not less than RMB 5,000 but not more than RMB 10,000 per excess dispatched employee shall be imposed.

Chapter VII — Supplementary Provisions

Article 22: The human resources and social security administrative authority of the State Council shall be responsible for the interpretation of these Provisions.

Article 23: These Provisions shall enter into force as of March 1, 2014. The accepting entities shall reduce the proportion of dispatched employees to the level prescribed in these Provisions within two years from the date of implementation.

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