



## Labor Dispatching under Regulation of Labor Contract Law

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### Abstract

Employing mode of labor dispatching has had certain effect on employment of laborers, employing of enterprises, and appropriately resolving economic relations among regions. However, in recent years, this kind of employing mode has been unboundedly expanded in terms of its scope, which reveals its negative effects. Labor dispatching units under regulation of labor contract law need adjust their own operation strategies, effectively link requirements of dispatched laborers with those of employing units, provide corresponding value-added service to both parties, and promote further development of labor dispatching industry.

**Keywords:** Labor dispatching, Labor contract law, Labor relation

Employing mode of labor dispatching has had certain effect on employment of laborers, employing of enterprises, and appropriately resolving economic relations among regions. However, in recent years, this kind of employing mode has been unboundedly expanded in terms of its scope, which reveals its negative effects. Since the implementation of “Labor Contract Law” on January 1<sup>st</sup>, 2008, criterion of labor dispatching industry has been intensified, and strict legislative criterion has posed challenges to labor dispatching industry. Risks of employing units in using employing mode of labor dispatching are also being increased, and labor dispatching industry has attained the key period of its development so far. Under such a new circumstance, it is necessary to give research and straightening up to labor dispatching under regulation of labor contract law.

### 1. Analysis of advantages of labor dispatching

Labor dispatching refers to the fact that, dispatching units sign a contract with employing units, and dispatch laborers who have signed a labor contract with them to employing units so as to offer their labor. During labor dispatching, labor contract relation exists between dispatching units and dispatched laborers, while offering of labor force exists between dispatched laborers and employing units. The most obvious feature of labor dispatching lies in separation of employment and application of labor force, which results in the particular situation of “relation without labor and labor without relation”.

#### 1.1 Advantages of labor dispatching

As a new type of employing mode, labor dispatching is helpful in cutting down employing cost, reducing employment management expense, and decrease labor disputes on the part of employing units. And for laborers, it is helpful in establishing stable labor relations, and obtaining sufficient social guarantee. Advantages of labor dispatching is primarily indicated in the following several aspects: firstly, flexibility of labor employing mode. Labor dispatching is a kind of market configuration of human resources. According to requirements of production and operation, employing units can ask dispatching companies to increase or reduce laborers dispatched at any moment, which is propitious to flexibility of employing. Meanwhile, it helps to offer extensive employment opportunities for laid-off and unemployed people and farmers, increase supply-and-demand matching rate of employing positions and effectively cut down on cost of employing units. Secondly, satisfaction of demands from different entities. As for labor dispatching personnel, use of labor dispatching and signing a labor contract between employees and labor dispatching institutions ensures that, employment is protected by the law and employees’ rights are guaranteed on the condition of complying with labor contract law on the part of both parties. Even if labor dispatching personnel are unemployed, they will get a certain

amount of income, which ensures living requirements of the labor dispatching personnel to a certain extent. As for laborers, labor dispatching not only offers regular employment channels for those with low employment capacity, but also satisfies some particular demands of those with high employment capacity. Thirdly, rapid change of labor relation. Since labor relation is kept in labor dispatching companies, administration of personal files should also be kept there, which enables rapid issuing of various certificates related to personal files for laborers, and lays foundation for social guarantee to cover labor dispatching personnel. The implementation of labor dispatching has reduced burden of employing enterprises and has enabled them to concentrate more on participation of market competition.

### *1.2 Disadvantages of labor dispatching*

As a new type of employing mode, although labor dispatching has resolved part of social employment issues to a certain degree, yet it has also revealed many problems in practice due to disordered development of Chinese labor dispatching industry, outstandingly in the following aspects: excessive establishment of dispatching institutions, similar work with different salary, and frequent infringement on social insurance rights, etc.. Ambiguity of rights and obligations in labor dispatching companies, laborers and employing units is open to be further resolved. Firstly, low status of dispatched laborers. Since most of labor dispatching is short term, employing units don't consider dispatched laborers as their employees, so a great deal of social welfare and salary are missed. Their salary tends to be lower than that of employees in the similar position. Quite lots of dispatched laborers think that their social status is "lower than others". Employing units choose not to provide them with any continuing education training that is helpful for their long-term development, so there are relatively fewer opportunities for their individual positions. Some labor dispatching companies even reduce laborers' salary at discretion. All the above phenomena have impacts on working enthusiasm of dispatched laborers. Secondly, labor dispatching regarded as normal employment mode. Except that a limited number of management personnel are formal employees, other positions, such as sale personnel, counter personnel and even teachers etc, are all dispatched laborers. Employing units see labor dispatching as a normal employment mode, and under the employment pressure, the weak group in the society --- the large quantities of laborers have no choice but to stoop to compromise in the reality of not obtaining any guarantee for their rights. Thirdly, in terms of organization and administration, dispatched laborers may show low positivity the organization may show low promise, and laborers show low performance, etc.. At the time when labor dispatching realizes multi-party win-win of the society, labor dispatching institutions, employing units and dispatched laborers, it also poses inherent limitations, that is, all parties in participation of labor dispatching will encounter great risks: lack of ascription sense on the part of dispatched laborers, bad stability of their work, high pressure of their work and psychology, impossibility to obtain guarantee on their legal rights, and ambiguous career development direction. Although employing units have reduces part of cost by means of labor dispatching, their loss will be greater due to lowered performance of dispatched laborers. All the above phenomena are disadvantageous for labor dispatching institutions, employing units and dispatched laborers.

## **2. Mutual relations among three parties of labor dispatching under regulation of "Labor Contract Law"**

With regard to labor dispatching, "Labor Contract Law of PRC" which came into effect on January 1<sup>st</sup>, 2008, made particular regulations on labor dispatching system in Section Two, Chapter Five, and mentioned such issues as setting up labor dispatching units, rights and obligations of the three parties involved in labor dispatching and formulation of labor dispatching agreement, etc.. "Labor Contract Law" defined rights, obligations, and interests of the three parties, and reset balance condition for interactive relations between the three parties, which has brought new game rules for effective running of labor dispatching. In labor dispatching, interactive relations are built up among employment units, labor dispatching units and dispatched laborers. Therein, a legal relation that defines obligations and rights of the two parties exists between employment units and labor dispatching units; an administrative relation with the purpose of performance output exists between employment units and dispatched laborers; a labor contract relation with the purpose of guaranteeing rights and interests of them and an administrative relation with the purpose of supporting employment units exist between labor dispatching units and dispatched laborers.

### *2.1 Labor dispatching units are faced with new challenges*

Currently, what labor dispatching institutions execute is self-discipline administration. Since the overall legal system of Chinese labor guarantee is not sound, labor dispatching has no law to comply with and no regulation to follow in its practical running. After the implementation of "Labor Contract Law", labor dispatching units are confronted with more challenges, which is embodied in the fact that, this law has largely elevated admittance threshold for labor dispatching units. It prescribes that, labor dispatching units should not reduce wages of dispatched laborers, not charge any fee from dispatched laborers, and has changed the originally generally applicable payoff rules. It also stipulates employment units' identification of labor dispatching units, which should carry out all responsibilities of employment units. It specifies that, labor dispatching units should sign a labor contract with fixed term above two years with dispatched laborers, and they should pay labor reward monthly. Furthermore, after the issue of "Labor Contract Law", labor dispatching units should assume more responsibilities, and be up against more challenges. Strict admittance system and conditions ask for assurance from those with considerable financing and aptitude. Establishment of checkup and elimination system has aggrandized difficulty of labor dispatching.

### *2.2 "Labor Contract Law" intensifies protection strength upon dispatched laborers*

Obviously, "Labor Contract Law" is inclined to protecting legal rights and interests of laborers, who, according to the law, have the right to sign a labor contract with labor dispatching units, to enjoy rights specified by the contract, and to acquire labor guarantee. Once their rights and interests are violated, labor contract will become evidence for protecting their rights. Labor rewards of dispatched laborers get guaranteed. Dispatched laborers have rights to enjoy equal payment for equal work with permanent staff of employment units. Employment units should not delay paying off or reducing labor reward of dispatched laborers. For those dispatched laborers who are dispatched cross-regionally should enjoy labor reward and conditions carried out in the place of employment units. Dispatched laborers have the rights to know what employment unit where they are to be dispatched, dispatching time limit, employment position, labor reward, amount of social insurance and payment means promised in the labor dispatching agreement. They also have the rights to legally participate in or organize labor unions in labor dispatching units or employment units, and to vindicate their own legal rights and interests. Therefore, "Labor Contract Law" has eliminated dispatched laborers' future worries that their legal rights and interests would be violated, and has impelled a lot more laborers to accept labor dispatching.

### *2.3 Demand of employment units on labor dispatching is restrained and also impelled*

On one hand, "Labor Contract Law" restrains employment units to abuse labor dispatching. In order to prevent employment units from abusing labor dispatching and escaping from legal obligations, "Labor Contract Law" restrains applicable scope of labor dispatching. It definitely specifies obligations to be assumed by employment units, and intensifies punishment strength upon illegal use of labor dispatching by employment units. When accidents happen, employment units and labor dispatching units should bear joint and several compensation obligations. So it turns out to be more difficult for employment units to extensively employ dispatched laborers as cheap work force. Employment units should bear more obligations and encounter more restrictions in use of labor dispatching. On the other hand, "Labor Contract Law" gives prominence to advantages of labor dispatching in terms of criterion of common employment mode from employment units. "Labor Contract Law" intensifies protection strength on laborers, and aggrandizes restraint upon direct employment system's flexibility of employment units. As for employment units, adoption of labor dispatching on temporary and auxiliary positions has more advantages. In labor dispatching, employment units can flexibly confirm labor dispatching term based on position requirements, and need not assume any stable employment risk brought about by the labor contract without fixed term with laborers. After the dispatching term, when dispatched laborers return to labor dispatching institutions, employment units need not pay any economic compensation to dispatched laborers. As for unqualified dispatched laborers, employment units merely should reject them back to labor dispatching units, which will reduce employment risk of employment units. Adoption of labor dispatching on temporary and auxiliary positions can help employment units to aggrandize flexibility of their response to outside changes. In the market situation of efficiency as a priority, labor dispatching still get popularized among employment units.

## **3. Development countermeasures of labor dispatching units under the new situation**

In the interactive relations among the three parties of labor dispatching, labor dispatching units need to take into consideration requirements of both dispatched laborers and employment units in the practical operation. They have the competence to provide value added for the double terminals of the supply chain. And through professional operation, they set up a platform for joint of the two parties of supply and demand, and by means of value provision to the two parties, they broaden the development space of their own, so as to promote development of labor dispatching industry. Standardized operation of labor dispatching units and improvement of efficiency and value of workforce resource supply chain are the key to further development of labor dispatching industry. After the issue of "Labor Contract Law", labor dispatching units need to make improvements in the following aspects in order to offer corresponding value to employment units and dispatched laborers and to obtain self-development.

### *3.1 They should standardize two contracts and make clear rights, obligations and interests of the three parties involved*

Labor dispatching units should communicate effectively with dispatched laborers and employment units, and standardize labor contract and labor dispatching agreement on the basis of what "Labor Contract Law" stipulates. And they should make clear rights, obligations and interests of the three parties, and evade frequent labor disputes and employment risks in labor dispatching, which is the primary condition for further development of labor dispatching industry. Then they should establish risk security fund for labor dispatching. As the legal employers of dispatched laborers, labor dispatching units should bear more responsibilities when laborers' interests are violated. In order to effectively stand against risks, labor dispatching units should establish dispatching risk security fund system, and pick up part of their own earnings as risk fund, which will be used when dispatched laborers' interests are violated but there is no way to repay temporarily.

### 3.2 Labor dispatching units should build interests share inspiration mechanism, and realize win-win of three parties involved

Interests of three parties involved rests with performance of dispatched laborers in employment units. Labor dispatching units and employment units should have thorough communication, set up an information share platform, and support performance assessment system targeted at dispatched laborers. Labor dispatching units should respectively negotiate on benefit distribution means of the three parties in the labor dispatching agreement and labor contract, and establish a three-party inspiration mechanism. Labor dispatching units afford effective labor dispatching service for employment units, while dispatched laborers produce value for employment units. Salary scheme of dispatched laborers should be rationally designed, and their excellent performance should be encouraged. In the labor dispatching agreement, labor dispatching units should negotiate with employment units that their benefits will be connected to value produced by dispatched laborers for employment units. Inspiration mechanism may maximize value created, realize win-win of three parties involved and accelerate long-term development of labor dispatching.

### 3.3 Labor dispatching units should set up value-added platforms for human resource training, and upgrade skills of dispatched laborers

In virtue of their professional advantages, labor dispatching units offer employment instruction to dispatched laborers, help them accumulate work experiences and elevate their value. In order to maintain their manpower within a relatively long period of time and to offer dispatching service to employment units more effectively, labor dispatching units should provide training for dispatched laborers, which can upgrade skills of dispatched laborers and elevate manpower value. As professional human resource institutions, labor dispatching units should set up training platforms of human resource and conduct professional operation by integrating various resources. In this way, they can offer a demand-jointing platform for dispatched laborers and employment units, provide required value for the other two parties, and aggrandize appeal of labor dispatching to dispatched laborers and employment units.

“Labor Contract Law” standardizes labor dispatching industry, intensifies protection strength on dispatched laborers, and propels demand of enterprises upon labor dispatching. With gradual perfection of labor dispatching regulations and entrance of oversea labor dispatching companies into China, competition of labor dispatching will necessarily get more and more vehement. In such a new situation, labor dispatching units should adjust their own administrative strategy, effectively link up demands of laborers and employment units, provide corresponding value-added service, and promote further development of labor dispatching industry.

#### References

- Chen, Dexi. (2008). On Criterion and Development of Labor Dispatching in the Background of Employment Contract Law. *Chinese Businessleader*, (7), 69.
- Gao, Guoliang. (2008). On the Labor Services Dispatching System in the Labor Contract Law. *Journal of Jiangsu Polytechnic University*, (2), 45.
- Jiang, Ying. (2006). *Employment Contract Law*. Law Press, 333.
- Ke, Shujun. (2008). Perspective on the Labor Services Dispatching Mode in the Labor Contract Law. *Business China*, (2), 114.