



Impacts of Law of People's Republic of China on Employment Contracts on Colleges and Universities' Personnel Employment System and Countermeasures

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Abstract

Law of People's Republic of China on Employment Contracts generates significant impacts on colleges and universities' personnel labor relationship pattern, personnel labor relationship management mode, labor relationship parties' rights and obligations. How to make best use of Law of People's Republic of China on Employment Contracts to improve the human resource management level, avoid labor-capital conflicts, and build harmonious and stable employment relationship has turn into a new project in front of colleges and universities. This paper probes into the adaptability of Law of People's Republic of China on Employment Contracts and the impacts on employment, and measures for perfecting the employment system in colleges and universities.

Keywords: Law of People's Republic of China on Employment Contracts, Colleges and Universities, Personnel employment system, Impacts

Law of People's Republic of China on Employment Contracts that takes effects in January 2008 is a new important law protecting laborers' benefits after the Labor Law of People's Republic of China. It offers legal basis for colleges and universities regulating the employment management. At present, colleges and universities have three types of employees. The first type is the employee who signs an employment contract in compilation. The second type is the employee who gets annual pay or signs a personnel agent contract. His or her personnel files are collected by local talents center. The third type is hired by labor dispatching. To analyze issues, such as whom the Law of People's Republic of China on Employment Contracts is right for, what impacts are on colleges and universities' personnel employment system, and how colleges and universities response to, can help colleges and universities to perfect the personnel employment system based on self development strategy.

1. The adaptability of Law of People's Republic of China on Employment Contracts in Colleges and Universities

Under present legal system in China, whether the Law of People's Republic of China on Employment Contracts is right for colleges and universities should be identified by two points. Firstly, identify the nature of colleges and universities, private or state-owned. Secondly, identify the role of employee, in- compilation or out-of-compilation. In specific, private colleges and universities are non-enterprises. All employees, including teachers and assistants, are regulated by Law of People's Republic of China on Employment Contracts. Public colleges and universities are institutions. In-compilation employees sign "employment contracts", what are not regulated by Law of People's Republic of China on Employment Contracts. Out-of-compilation employees and dispatching workers sign "labor contracts", what are regulated by Law of People's Republic of China on Employment Contracts. In 2002, China starts to reform institutions' personnel system and applies the employment system. For institutions that adopt the employment system, all in-compilation employees sign "employment contracts" instead of "labor contracts". It belongs to the scope of personnel management. As employees dispute with institutions, it follows the procedures for personnel disputes, which are different from labor disputes. Out- of-compilation employees sign "labor contracts". It belongs to the labor employment scope. As there are disputes, it adopts the procedures for labor disputes. Therefore, as for state-owned colleges and universities that apply the employment system, the out-of-compilation employees and dispatching workers are regulated by Law of People's Republic of China on Employment Contracts. The in-compilation employees are not. Relevant regulations about employment contracts are different from articles in Law of People's Republic of China on Employment Contracts. For in-compilation employees in institutions, only several issues can follow the articles in Law of People's Republic of China on Employment Contracts.

2. The impacts of Law of People's Republic of China on Employment Contracts on Colleges and Universities' Employment

2.1 The Employment Cost Will Rise.

(1) Laborers have more rights and employment costs are rising.

Firstly, Law of People's Republic of China on Employment Contracts regulates that all regulations concerning laborers' interests (including salaries, holidays, labor disciplines, social welfares, and other management rules) need to negotiate with the labor union or representatives, which enlarges the right of labor union, employee representative conference, and laborers in the process of forming regulations, standardizing the procedures for employers constituting and changing regulations. It means regulations are set by both parties instead of one, what can benefit laborers in a sense. As a result, the employment cost will rise.

Secondly, Law of People's Republic of China on Employment Contracts gives laborers the right of "terminating the contract at any time" and the right of "getting compensation". If the employer fails to pay the social insurance premiums for the employee in accordance with the law or has rules and regulations that violate laws or regulations, thereby harming the employee's rights and interests, a employee may terminate his employment contract at any time. And the employee can get the severance pay from the employer. Before the validity of Law of People's Republic of China on Employment Contracts, in order to decrease employment costs, some colleges and universities, especially the logistics may fail to pay the social insurance premiums for the casual workers. Apparently, to pay the social insurance premiums can increase the employment costs to a great degree.

(2) Increasing costs for recruitment, development, and quit.

Law of People's Republic of China on Employment Contracts sets strict rules for probation period and contract term. It enlarges laborers' right of quit. It protects laborers after unemployment. It increases severance pay for laborers in ending of employment contract. These rules force colleges and universities to reduce employment costs caused by unnecessary flow of out-of-compilation workers by applying strict recruitment. However, it may make the recruitment more difficult and lead to higher recruitment cost.

Before the validity of Law of People's Republic of China on Employment Contracts, the employer can ask the employee to sign an agreement on the term of service if the employer supports the employee with funds in training. If the employee breaches the agreement, he must pay higher compensation for the employer. After the validity of Law of People's Republic of China on Employment Contracts, if the employee breaches the agreement on the term of service, he shall pay liquidated damages to the employer as agreed. The measure of the liquidated damages may not exceed the training expenses paid by the employer. The liquidated damages that the employer requires the employee to pay may not exceed the portion of the training expenses allocable to the unperformed portion of the term of service. The decrease of compensation increases the employer's risk of offering trainings for the employee, which may add more costs for human resource development.

Before the validity of Law of People's Republic of China on Employment Contracts, as the fixed-term contract ends, if the employer does not sign a new contract with the employee, it is not necessary for the employer paying compensations for the employee. After the validity of Law of People's Republic of China on Employment Contracts, as the fixed-term contract ends, if the employer does not sign a new contract with the employee, the employer must pay compensation for the employee. Therefore, the compensation increases the cost of employee quit for the employer.

2.2 Colleges and Universities Face More Difficulties in Employment.

Law of People's Republic of China on Employment Contracts regards the laborer as the weak party in the employment contract. It offers protection for laborers as much as possible in detail. It increases difficulties for colleges and universities in employment. For example, Law of People's Republic of China on Employment Contracts regulates shorter probation period, which reduces the employer's chance of knowing the laborer in the probation period. The employer can not predict the development potential of laborers, which makes it more difficult for signing an agreement on the term of contract. The Law encourages to building a long-term and stable labor relationship. For open-ended employment contract, once it is signed, it can not be terminated by all means. The Law of People's Republic of China on Employment Contracts sets many conditions for terminating the fixed-term contracts, which adds difficulties in operations in a sense, increasing the employer's burden. For the employer, how to maintain the effective flow of personnel and avoid fixed labor relationship is the difficulty in front of the human resource department.

2.3 More Risks for Colleges and Universities' Employment

The Law of People's Republic of China on Employment Contracts gives more rights to the employee and more obligations to the employer, which increases colleges and universities' risks in employment. The Law of People's Republic of China on Employment Contracts reduces limits for the quit of laborer. As a result, the employee may quit at once. The Labor Dispute Mediation and Arbitration Law give more obligations to the employer. The employer should

offer necessary proofs that are useful for the solution of disputes. If not, the employer will be punished. Because the employer should pay social premiums for the employee, the employer may employ more labors whose social premiums are not paid by the employer. Besides, lots of articles make labor dispute mediation and arbitration happen frequently, such as strict probation period, can not reach the agreement of compensation as will, low conditions for signing open-ended term contracts, strict limits for the employer dismissing the employee, enlarge laborers' right of terminating the contract, dispatching laborers have the same right with formal employees, and lower fees for labor dispute mediation and arbitration. All these aspects make colleges and universities face more risks in employment.

3. Countermeasures for Perfecting Colleges and Universities' Personnel Employment System

3.1 Achieve the Scientific Management to the Right and the Responsibility of Employees and Positions

Firstly, check the validity of contracts and insure the legal effect of contract. Law of People's Republic of China on Employment Contracts sets compulsory regulations on the item of employment contract, and it adds some new regulations on the right and the obligation of the employer and the employee. If the contract is short of some legal items, or some items conflict with articles in Law of People's Republic of China on Employment Contracts, the contract may be invalid or partly invalid. Secondly, check the fulfillment of the contract and insure the complete fulfillment of the contract. Colleges and universities should check the fulfillment of the contract periodically, including the college or the university and the employee. If one party breaches the contract, the party must take relevant legal responsibility.

3.2 Perfect Regulations and Reduce Costs for Illegal Activities

Colleges and universities should make up internal regulations, which can insure the normal operation and serve as important basis for prevent and solving labor disputes. Colleges and universities can use legal and effective regulations to enhance the personnel employment management. For example, according to the Article 39 in Law of People's Republic of China on Employment Contracts, the employer may terminate an employment contract if the employee materially breaches the employer's rules and regulations or commits serious dereliction of duty or practices graft, causing substantial damage to the employer. But the law does not make regulations on what is "materially breach" or "commits serious dereliction of duty or practices graft", which turns into the space for the internal regulations and rules. For these issues, the employer can make it clear in the internal regulations. Once the employee breaches these rules, the employer can terminate the contract legally. Law of People's Republic of China on Employment Contracts sets higher standards for internal regulations. The contents should be legal and the process should be standardized, including necessary procedures.

3.3 Emphasize on Procedures and Improve the Consciousness of Proof

All departments of colleges and universities, especially the office of law affairs and the department of human resource should build a consciousness of proof in daily management. Pay attention to the differences of natural facts and legal facts. Relevant department must pay attention to collecting and keeping file proofs in recruiting, punishing, terminating, or ending employment contracts. Once there is labor dispute, colleges and universities can protect self interests to a great degree. For example, in making up regulations and rules, colleges and universities should keep proofs for legal procedures, such as meeting records and process of discussions. Besides, colleges and universities should collect proofs of informing procedures, including notices and work manuals. As punishing employees or terminating employment contracts, colleges and universities must keep proofs for verifying the just of activities. Even at the probation period, the employer should make performance test carefully, which can serve as the powerful proofs for terminating employment contracts at the probation period. All these points mean that the human resource department in colleges and universities must performance carefully, and emphasizes on the completeness and continuousness of files.

3.4 Try New Employment Mode and Decrease Colleges and Universities' Employment Risks

Except normal employment contracts, Law of People's Republic of China on Employment Contracts includes articles concerning part-time labor and placement, which gives more choices for the employer in employment mode. Colleges and universities can try to adopt a new employment mode, optimizing the internal employee structure, such as "outsourcing services, part-time labor, and placement". By this way, it can actualize efficiency and effectiveness. These modes are especially right for the logistics in colleges and universities.

3.5 Build an Effective Dispute-Response Mechanism

The perfect contracts and regulations can not stop labor disputes completely. In order to response to disputes effectively and solve disputes in time, colleges and universities should pay attention to two issues. Firstly, all punishments and terminations of contracts should be verified with right procedures, powerful proofs, and normal reasons. Secondly, choose the way for solving disputes rationally. According to the nature of disputes and relevant conditions, solve the disputes by negotiations, considering the costs. The third-party mediation, arbitration, or suits are all choices for solving the labor disputes.

3.6 Improve the Labor Union'S Responsibilities

To protect employees' legal rights is the fundamental responsibility of labor union. The PRC Labor Union Law, Law of People's Republic of China on Employment Contracts, and relevant regulations make clear requirements for colleges and universities' labor union protecting employees' legal rights. In addition, Law of People's Republic of China on Employment Contracts, as the special law regulating employment contracts, makes it clearer for the responsibilities of labor union in colleges and universities. After the issue of Law of People's Republic of China on Employment Contracts, although the labor union in colleges and universities does not take part in the construction of "three-party coordination mechanism" directly, it participates in the coordination of colleges and universities' personnel department and relevant departments. The labor union is responsible for helping and directing employees to sign employment contracts. It should pay attention to the fulfillment of employment contracts. By building a collective negotiation mechanism, the labor union can protect employees' legal rights. In one word, the labor union must work legally. In fact, the work of labor union concerns many fields, including the sign, the fulfillment, the change, the termination, and the ending, and the check on employments. Therefore, the labor union should improve itself in the fields of coordination, and participation.

The popularization and globalization of high education ask colleges and universities to meet the development trend in personnel management. For the innovation of personnel management, colleges and universities should take the impacts of Law of People's Republic of China on Employment Contracts into consideration, enhance the position management and take employees' interests and the improvement of management performance as the core, which can help to achieve the win-win goal of ensuring the education quality of colleges and universities and improving the education efficiency.

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