

## China Enacts New Employment Law Affecting Employers Who Do Not Directly Employ Their Workers

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China has a new employment law. This new law significantly impacts an employer who does not directly employ its own workers, but instead uses agencies such as FESCO or third party staffing companies, also known as labor dispatching agencies. At the end of 2012, the Standing Committee of the National People's Congress adopted the Decision on the Revision of the Labor Contract Law of the People's Republic of China ("Amendment"). The Amendment will take effect July 1st of this year. The intent of the Amendment is to offer better protection to workers employed by labor dispatching agencies.

**Labor dispatching** is a common method of employment where a worker enters into an employment contract with a labor dispatch agency and is then dispatched to work in another company – commonly referred to as the “host company”. This type of employment arrangement has proved problematic because many of the dispatched workers are not paid wages commensurate with their work as compared to their direct hire, permanent employee counterparts. Additionally, the dispatched workers' health and safety rights are not well protected. The Amendment tackles this problem by **requiring employers to hire the majority of their workforce directly and by strictly controlling the number of dispatched laborers**. Moreover, the Amendment clearly states that all employers shall stick to the principle of “equal pay for equal work”.

The four main revisions introduced by the Amendment can be found by clicking here:

### MAIN SECTION:

#### Heightened Standards

First, the standards for establishing a Labor Dispatch Agency are heightened. Specifically, a labor dispatch agency is now required to:

- a. have a minimum registered capital of no less than RMB 2,000,000 (previously only RMB 500,000);
- b. operate from a permanent business premise with facilities that are suitable to conduct its business;
- c. have internal dispatch rules that are compliant with the relevant laws and administrative regulations;
- d. satisfy other conditions as prescribed by laws and administrative regulations; and
- e. apply for an administrative license and obtain approval from the relevant labor authorities.

All labor dispatch agencies established after July 1, 2013, will need to meet these new local labor law requirements before they can start the company registration process. Existing agencies that are already licensed have until July 1, 2014, to meet all local labor law requirements before renewing their business registration.

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## **Equal Pay for Equal Work**

Second, one of the most problematic areas of the former dispatch model was the inequitable pay between dispatch workers and their similarly situated, direct hire counterparts. The Amendment adds the principle of “equal pay for equal work” such that dispatch agencies must provide the same remuneration standards for dispatched employees as is provided to the direct hire employees who hold similar positions.

## **Clarification of Acceptable Outsourcing**

Third, the Amendment clarifies that labor dispatch arrangements should only be implemented for temporary, ancillary or substitute positions. The Amendment clearly defines these categories as follows:

- **Temporary position:** A position that will last no more than six months
- **Auxiliary position:** A position that is not a part of the main or core business of the company
- **Substitute position:** A position that must be temporarily filled because a permanent employee is away from work on leave or for other reasons

The Amendment further narrows the use of outsourcing by limiting the percentage of outsourced workers a company may have. The actual percentage shall be prescribed by the Labor Administration Department of the State Council. This percentage of dispatched workers does not apply to representative offices established by foreign companies in China. This is because representative offices are not allowed to hire Chinese employees directly, and instead must hire them through a labor dispatching agency.

## **Tougher Penalties**

Fourth, the Amendment imposes tougher penalties. Specifically, for entities providing labor dispatch services without a license, the labor authorities may confiscate all illegal gains and impose a fine of no less than one time, but not more than five times, the illegal gains on such entities. Where there are no illegal gains, a fine of no more than RMB 50,000 may be imposed.

Employers and dispatching agencies violating the law, and failing to correct the violations within a certain time period, may be fined between RMB 5,000 and RMB 10,000 per dispatched worker. Additionally, labor dispatching agencies may get their business licenses revoked.

## **Conclusion**

How aggressively the new law will be enforced remains to be seen, but companies should be prepared none the less. Companies that use labor dispatch agencies should ensure that their service provider has the proper license. Furthermore, any company with a high percentage of dispatched workers should evaluate their employment model and prepare for potentially transitioning their employment strategies in order to comply with the new Labor Contract Law. This may include direct hiring for some of the currently outsourced positions. Lastly, companies should evaluate their internal policies to ensure that they are sufficient for any changes – especially those involving headcount – that may be made.

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