

Labor Dispatch Arrangements in China

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International Employment

On December 28, 2012, the Labor Contract Law was amended to provide more detail with respect to the use of labor dispatch arrangements by enterprises and other entities in China. The implementation rules issued recently by China's Ministry of Human Resources and Social Security provide greater regulation over the use of such arrangements in the workplace, and impose a compliance deadline of March 2016.

Use of Labor Dispatch Arrangements

Labor dispatch arrangements have long been a common means of engaging personnel in China. Under such arrangements, individuals are employed by labor dispatch organizations, which in turn dispatch these individuals to provide their labor to work entities (e.g., companies, representative offices). Such arrangements were primarily intended for representative offices of foreign corporations, which are required to hire all individuals under work dispatch arrangements. Over time however, some foreign-invested enterprises, which could hire employees independently, also adopted this approach for various reasons, including, to limit their liabilities as employers, to bypass headcount requirements imposed by headquarters, to reduce their administrative burdens on the HR front, etc. Hiring indirectly via labor dispatch arrangements also meant that companies could offer different types of benefits to official employees and dispatched individuals.

Restrictions and Exceptions

Under the new rules, labor dispatch arrangements will be limited to temporary positions (lasting six months or less), ancillary positions (non-core roles that provide services to the core business) or substitutive positions (temporary replacement of a permanent employee who is unable to report to duty for a certain period for certain reasons). Furthermore, the percentage of individuals employed under labor dispatch arrangements should not exceed 10% of the total number of employees. Companies should no longer be relying on labor dispatch arrangements as an alternative to formal employment.

However, certain entities, *i.e.*, representative offices of foreign companies, and representative offices of foreign financial institutions and international oceangoing seamen hired by entities under labor dispatch arrangements, that must rely on labor dispatch arrangements and are not allowed to hire employees independently are exempted from the aforementioned restrictions.

Grandfathering and Compliance

The restrictions on the use of labor dispatch arrangements provided under these new rules makes it far more difficult for companies to hire indirectly using such arrangements. Companies that are not in compliance must make the necessary changes to their workforce (*i.e.*, by converting dispatched individuals that are not in temporary, ancillary or substitutive positions into formal employees of the company, and reducing the number of dispatched individuals to less than 10% of the company's total workforce) within two years after the implementation rules take effect, *i.e.*, March 1, 2016. However, labor dispatch arrangements that were put in place prior to the December 2012 amendment to the Labor Law will be allowed to continue until expiration.

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