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## **China**

### **China: Companies Must Shed 'Dispatch Workers'**

*By Mark Melnicoe*

April 4— The deadline has passed for employers to make sure temporary workers hired through third-party agencies don't exceed 10 percent of the firm's overall workforce.

The Interim Regulations of Labor Dispatch, released by the Ministry of Human Resources and Social Security in January 2014, amended China's Labor Contract Law of 2012 to "safeguard the legitimate rights and interests of workers."

Hiring so-called dispatch workers can be advantageous to companies for a variety of reasons, employment lawyers say. Work at some companies goes through seasonal variations, and the use of third-party agencies allows the firms to employ only those workers they need and only when they need them, saving them money. Companies are also protected in cases of worker disputes, since the hiring agency is responsible as the legal employer.

The dispatch worker system can put workers at a disadvantage, however, leaving them open to abuses such as forced overtime.

#### **Separate from Outsourcing**

Dispatch work is a classification separate from outsourcing. Dispatch agencies supply workers for a company that doesn't want to hire them itself, whereas outsourcing companies take over entire projects for companies. In outsourcing, workers generally are supervised by and follow the rules of the outsourcing company. Dispatch workers fall under the supervision of the third-party agency and are subject to its rules and regulations.

"The labor dispatch system is mostly used by Chinese entities, especially big state-owned enterprises," Grace Yang, an attorney at Harris Moure in Seattle who specializes in employment law, told Bloomberg BNA in a March 31 e-mail. "It affects a variety of industries, including telecommunications, electric power, construction, food, banking, retail, manufacturing and fast-moving consumer goods."

#### **Supplementary Employment Approach**

Yang said China has at least 60 million dispatch workers.

"Due to its flexibility and lower cost, labor dispatch is one of the most popular ways to hire employees in China," Allan Xu, manager of business advisory services for the Dezan Shira & Associates business consultancy in Shanghai, wrote in the "China Briefing" blog March 8.

The Interim Regulations of 2014 and the Labor Contract Law of 2012 "restrict what types of positions dispatched staff can hold, the proportion of workers in a company that can be comprised of dispatched staff and how they are returned to their agencies," Xu wrote. "These measures emphasize that labor dispatch can only be used as a supplementary employment approach."

The Interim Regulations, placing a 10-percent limit on dispatch workers, gave companies two years to get into compliance, a window that expired March 1.

"Many employers are now facing the problem of reducing their dispatched staff to the specified level while maintaining their business scale," Xu wrote.

#### **Three Choices**

According to Xu, employers have three main options: convert dispatched staff into regular employees, return enough dispatch workers to get under the 10-percent limit or "use other employment approaches, such as outsourcing."

"Consideration of alternative employment approaches—outsourcing in particular—is essential for companies to maintain their business scale without drastically increasing costs," she said.

The government issued the law to squelch worker abuse, but some companies are taking evasive actions, Yang told Bloomberg BNA.

"The rule is targeted at companies that used the old rules to mistreat their dispatched workers, and those are not typically great or stable employers to begin with," she said. "Some employers are being sneaky and trying to get around the rules by, for example, setting an additional probation period for the dispatched worker who is being converted to a regular employee, so as to cut down the 'new' employee's wages. But these sorts of actions violate the spirit of the law even though they may technically be permitted, and they will probably lead to problems for these companies down the road."

### **Many Firms Will Ignore Law, Attorney Says**

Another practitioner said plenty of companies are going beyond the law, taking matters into their own hands.

"Outsourcing seems to be the most common action taken by companies serious about compliance if they are not 'laying off' such dispatch workers," Andy Yeo, a partner at Mayer Brown JSM in Shanghai, told Bloomberg BNA in an April 1 e-mail. "There are those who sign them on as regular employees, but there would seem to be many more who just do nothing, whether out of ignorance, inefficiency, disregard or lack of fear of consequences because they feel they can resolve problems with their 'guanxi,'" which roughly corresponds to U.S. "networking."

Those counting on such connections with government officials could face big fines. The law sets the penalty at up to 10,000 yuan (more than \$1,500) for every worker above the 10 percent threshold, so the costs could add up very quickly for companies that are punished for lack of compliance.

"Some municipalities (such as Shenzhen) have been very active in cracking down on illegal practices," Yang said in her e-mail.

### **Spotty Enforcement**

As often occurs in China, enforcement of the new dispatch worker rules may be uneven across the country.

"We think some localities will visit some such companies at least to show they mean business," said Yeo. "Whether there will be nationwide and frequent checks remains to be seen."

In a follow-up e-mail, Yeo said compliance likely would depend on the type of company.

"We need to categorize companies into local and foreign-invested and also their size," Yeo said. "In my experience, the foreign-invested would generally be compliant-conscious because of culture or because they realize they are in foreign territory and don't want to mess up. Locals, however, tend generally to be more unused to fastidious compliance and more unafraid of the consequences of noncompliance."

"Likewise," Yeo said, "large companies are generally more compliant-conscious and small ones less so and medium companies in between."

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### **For More Information**

The Interim Regulations of Labor Dispatch can be found in Chinese [here](#).

For more information on Chinese HR law and regulation, see the [China primer](#).

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