Interim Provisions on Labor Dispatch

Document Number: Order No. 22 of the Ministry of Human Resources and Social Security
Area of Law: General Provisions on Trade Unions
Level of Authority: Departmental Rules
Date Issued: 01-24-2014
Effective Date: 03-01-2014
Issuing Authority: Ministry of Human Resources & Social Security
Status: Effective

Order of the Ministry of Human Resources and Social Security

(No. 22)

The Interim Provisions on Labor Dispatch, as deliberated and adopted at the 21st executive meeting of the Ministry of Human Resources and Social Security on December 20, 2013, are hereby issued and shall come into force on March 1, 2014.

Minister of the Ministry of Human Resources and Social Security: Yin Weimin

January 24, 2014

Interim Provisions on Labor Dispatch

Chapter I General Provisions

人力资源和社会保障部令

（第22号）

《劳务派遣暂行规定》已于2013年12月20日经人力资源社会保障部第21次部务会审议通过，现予公布，自2014年3月1日起施行。

部长　　尹蔚民

2014年1月24日

劳务派遣暂行规定

第一章　总则

Article 1 These Provisions are formulated in accordance with the Labor Contract Law of the People's Republic of China (hereinafter referred to as the "Labor Contract Law"), the Regulation on the Implementation of the Labor Contract Law of the People's Republic of China (hereinafter referred to as the "Regulation on the Implementation of the Labor Contract Law") and other applicable laws and administrative regulations for purposes of regulating labor dispatch, protecting the lawful rights and interests of workers, and promoting the development of harmonious and stable labor relations.

第一条 为规范劳务派遣，维护劳动者的合法权益，促进劳动关系和谐稳定，依据《中华人民共和国劳动合同法》（以下简称劳动合同法）和《中华人民共和国劳动合同法实施条例》（以下简称劳动合同法实施条例）等法律、行政法规，制定本规定。

Article 2 These Provisions shall apply to the provision of labor dispatch services by labor dispatch entities and to the employment of dispatched workers by enterprises (hereinafter referred to as the "employers").

第二条 劳务派遣单位经营劳务派遣业务，企业（以下称用工单位）使用被派遣劳动者，适用本规定。

These Provisions shall apply to the employment of dispatched workers by legally-established partnership organizations such as accounting firms and law firms, foundations, private non-enterprise entities and other organizations.

依法成立的会计师事务所、律师事务所等合伙组织和基金会以及民办非企业单位等组织使用被派遣劳动者，依照本规定执行。

Chapter II Scope and Proportion of Employment

第二章　用工范围和用工比例

Article 3 Employers may employ dispatched workers in temporary, auxiliary or substitutable positions only.

第三条 用工单位只能在临时性、辅助性或者替代性的工作岗位上使用被派遣劳动者。

For the purpose of the preceding paragraph, "temporary positions" means the positions that exist for not more than six months; "auxiliary positions" means the positions of non-main

前款规定的临时性工作岗位是指存续时间不超过6个月的岗位；辅助性工作岗位是指为主营业务岗位提供服务的非主营业务岗位；替代性工作岗位是指用工单位的劳动者因脱产学

business that provide services for the positions of main businesses; and “substitutable positions” means the positions that can be held by substitute workers during a certain period of time when the employees of the employers who originally hold such positions are unable to work because they are undergoing full-time study, or on leave or for any other reason.

习、休假等原因无法工作的一定期间内，可以由其他劳动者替代工作的岗位。

To determine auxiliary positions in which dispatched workers are to be employed, an employer shall put forward proposals and suggestions after discussion by the employees' congress or by all employees, conduct equal consultations with its trade union or employees' representatives, and shall make an announcement internally.

用工单位决定使用被派遣劳动者的辅助性岗位，应当经职工代表大会或者全体职工讨论，提出方案和意见，与工会或者职工代表平等协商确定，并在用工单位内公示。

Article 4 An employer shall strictly control the number of dispatched workers employed which shall not exceed 10% of the total number of its workers.

第四条 用工单位应当严格控制劳务派遣用工数量，使用的被派遣劳动者数量不得超过其用工总量的10%。

For the purpose of the preceding paragraph, the total number of workers means the sum of the number of employees who have entered into labor contracts with the employer and the number of dispatched workers employed by the employer.

前款所称用工总量是指用工单位订立劳动合同人数与使用的被派遣劳动者人数之和。

An employer that calculates the proportion of the dispatched workers employed refers to an employer that can enter into labor contracts with workers in accordance with the Labor Contract Law and the Regulation on the Implementation of the Labor Contract Law.

计算劳务派遣用工比例的用工单位是指依照劳动合同法和劳动合同法实施条例可以与劳动者订立劳动合同的用人单位。

Chapter III Conclusion and Performance of Labor Contracts and Labor Dispatch Agreements

第三章　劳动合同、劳务派遣协议的订立和履行

Article 5 A labor dispatch entity shall enter into written labor contracts with the dispatched workers for a fixed term of two years or more in accordance with law.

第五条　劳务派遣单位应当依法与被派遣劳动者订立2年以上的固定期限书面劳动合同。

Article 6 A labor dispatch entity may agree on a probation period with a dispatched worker in accordance with law. However, it may agree with the same dispatched worker only on one probation period.

第六条　劳务派遣单位可以依法与被派遣劳动者约定试用期。劳务派遣单位与同一被派遣劳动者只能约定一次试用期。

Article 7 A labor dispatch agreement shall specify:

第七条　劳务派遣协议应当载明下列内容：

(1) the title and nature of the positions in which the dispatched workers are to be employed;

（一）派遣的工作岗位名称和岗位性质；

(2) job location;

（二）工作地点；

(3) the number of the dispatched workers and the period of dispatch;

（三）派遣人员数量和派遣期限；

(4) the amount and payment method of labor remuneration determined under the principles of “equal pay for equalwork”;

（四）按照同工同酬原则确定的劳动报酬数额和支付方式；

(5) the amount and payment method of the social insurance premiums;

（五）社会保险费的数额和支付方式；

(6) working hours,vacation and leave;

（六）工作时间和休息休假事项；

(7) related benefits for the dispatched workers during work-related injury, birth-giving or illness;

（七）被派遣劳动者工伤、生育或者患病期间的相关待遇；

(8) work safety and hygiene as well as training;

（八）劳动安全卫生以及培训事项；

(9) economic compensation and other fees;

（九）经济补偿等费用；

(10) the term of the labor dispatch agreement;

（十）劳务派遣协议期限；

(11) the payment method and criteria for labor dispatch service fees;

（十一）劳务派遣服务费的支付方式和标准；

(12) liability for breach of the labor dispatch agreement; and

（十二）违反劳务派遣协议的责任；

(13) other matters that should be included in the labor dispatch agreement as prescribed by laws, regulations and rules.

（十三）法律、法规、规章规定应当纳入劳务派遣协议的其他事项。

Article 8 A labor dispatch entity shall perform the following obligations with respect to dispatched workers:

第八条 劳务派遣单位应当对被派遣劳动者履行下列义务：

(1) Truthfully informing the dispatched workers of the matters provided for in Article 8 of the Labor Contract Law, the rules and regulations that should be complied with and the content of the labor dispatch agreement.

（一）如实告知被派遣劳动者劳动合同法第八条规定的事项、应遵守的规章制度以及劳务派遣协议的内容；

(2) Establishing training rules to provide the dispatched workers with training on job-related knowledge and safety education.

（二）建立培训制度，对被派遣劳动者进行上岗知识、安全教育培训；

(3) Paying the labor remuneration and other benefits to the dispatched workers in accordance with the relevant provisions of the state and the labor dispatch agreement.

（三）按照国家规定和劳务派遣协议约定，依法支付被派遣劳动者的劳动报酬和相关待遇；

(4) Paying social insurance premiums and handling relevant social insurance formalities for the dispatched workers in accordance with the relevant provisions of the state and the labor dispatch agreement.

（四）按照国家规定和劳务派遣协议约定，依法为被派遣劳动者缴纳社会保险费，并办理社会保险相关手续；

(5) Urging the employers to provide the dispatched workers with labor protection and work safety and hygiene conditions in accordance with law.

（五）督促用工单位依法为被派遣劳动者提供劳动保护和劳动安全卫生条件；

(6) Issuing certificates of rescission or termination of labor contracts in accordance with law.

（六）依法出具解除或者终止劳动合同的证明；

(7) Providing assistance in settling disputes between the dispatched workers and the employer.

（七）协助处理被派遣劳动者与用工单位的纠纷；

(8) Other matters as prescribed by laws, regulations and rules.

（八）法律、法规和规章规定的其他事项。

Article 9 An employer shall, in accordance with Article 62 of the Labor Contract Law, provide the dispatched workers with position-related welfare benefits, and may not discriminate against the dispatched workers.

第九条 用工单位应当按照劳动合同法第六十二条规定，向被派遣劳动者提供与工作岗位相关的福利待遇，不得歧视被派遣劳动者。

Article 10 Where a dispatched worker is injured in a work-related accident while working for an employer, the labor dispatch entity shall apply for determination of a work-related injury in accordance with law, and the employer shall assist it

第十条 被派遣劳动者在用工单位因工作遭受事故伤害的，劳务派遣单位应当依法申请工伤认定，用工单位应当协助工伤认定的调查核实工作。劳务派遣单位承担工伤保险责任，但可以与用工单位约定补偿办法。

in the investigation and verification in respect of the determination of work-related injury. The labor dispatch entity shall assume the work-related injury insurance liability, but it may agree with the employer on the compensation methods.

Where a dispatched worker applies for diagnosis or assessment of an occupational disease, the employer shall be responsible for dealing with the matters relevant to the diagnosis or assessment of the occupational disease, and truthfully provide the materials required for the diagnosis or assessment of the occupational disease, such as the occupational history and the history of exposure to occupational hazards of the dispatched worker, and the testing results of occupational hazard factors at the workplace, and the labor dispatch entity shall provide other materials necessary for the diagnosis or assessment of the occupational disease of the dispatched worker.

被派遣劳动者在申请进行职业病诊断、鉴定时，用工单位应当负责处理职业病诊断、鉴定事宜，并如实提供职业病诊断、鉴定所需的劳动者职业史和职业危害接触史、工作场所职业病危害因素检测结果等资料，劳务派遣单位应当提供被派遣劳动者职业病诊断、鉴定所需的其他材料。

Article 11 Where the administrative license of a labor dispatch entity is not renewed upon expiration or its Labor Dispatch Business License is cancelled or revoked, the labor contracts that it has already concluded with the dispatched workers in accordance with law shall continue to be performed until expiration. The labor contracts may be rescinded if both parties reach a consensus through negotiations.

第十一条 劳务派遣单位行政许可有效期未延续或者《劳务派遣经营许可证》被撤销、吊销的，已经与被派遣劳动者依法订立的劳动合同应当履行至期限届满。双方经协商一致，可以解除劳动合同。

Article 12 Under any of the following circumstances, an employer may return a dispatched worker to the labor dispatch entity:

第十二条 有下列情形之一的，用工单位可以将被派遣劳动者退回劳务派遣单位：

(1) The employer falls under the circumstance as prescribed in Article 40 (3) or Article 41 of the Labor Contract Law.

（一）用工单位有劳动合同法第四十条第三项、第四十一条规定情形的；

(2) The employer is declared bankrupt, has its business license revoked, is ordered to close down, or is cancelled in accordance with law, or decides to dissolve in advance or to discontinue business upon expiration of its operation term. Or

（二）用工单位被依法宣告破产、吊销营业执照、责令关闭、撤销、决定提前解散或者经营期限届满不再继续经营的；

(3) The labor dispatch agreement is terminated upon expiration.

（三）劳务派遣协议期满终止的。

During the period when the dispatched worker has no job after being returned, the labor dispatch entity shall pay remuneration to him/her on a monthly basis at a rate not lower than the minimum wage standards specified by the local people's government.

被派遣劳动者退回后在无工作期间，劳务派遣单位应当按照不低于所在地人民政府规定的最低工资标准，向其按月支付报酬。

Article 13 Where a dispatched worker falls under any of the circumstances as prescribed in Article 42 of the Labor Contract Law, the employer shall not return the dispatched worker to the labor dispatch entity concerned in accordance with the provisions of Item (1) of Paragraph 1 of Article 12 herein before the period of dispatch expires; and if the period of dispatch expires, the dispatched worker can be returned only when the period of dispatch is extended until the relevant circumstance disappears.

第十三条 被派遣劳动者有劳动合同法第四十二条规定情形的，在派遣期限届满前，用工单位不得依据本规定第十二条第一款第一项规定将被派遣劳动者退回劳务派遣单位；派遣期限届满的，应当延续至相应情形消失时方可退回。

Chapter IV Rescission and Termination of Labor Contracts

第四章　劳动合同的解除和终止

Article 14 A dispatched worker may rescind the labor contract concluded with a labor dispatch entity upon 30 days' prior written notice to such entity. A dispatched worker in his/her probation period may rescind the labor contract with the labor dispatch entity upon three days' prior notice. The labor dispatch entity shall promptly inform the employer concerned of the dispatched worker's notice to rescind the labor contract.

第十四条 被派遣劳动者提前30日以书面形式通知劳务派遣单位，可以解除劳动合同。被派遣劳动者在试用期内提前3日通知劳务派遣单位，可以解除劳动合同。劳务派遣单位应当将被派遣劳动者通知解除劳动合同的情况及时告知用工单位。

Article 15 Where a dispatched worker who is returned by an employer in accordance with Article 12 herein disagrees to the labor dispatch entity's maintaining or improving the conditions stipulated in the labor contract when being re-dispatched, the labor dispatch entity may rescind the labor contract.

第十五条 被派遣劳动者因本规定第十二条规定被用工单位退回，劳务派遣单位重新派遣时维持或者提高劳动合同约定条件，被派遣劳动者不同意的，劳务派遣单位可以解除劳动合同。

Where a dispatched worker who is returned by an employer in accordance with Article 12 herein disagrees to the labor dispatch entity's lowering the conditions stipulated in the labor contract when being re-dispatched, the labor dispatch entity may not rescind the labor contract, unless the dispatched worker so requests.

被派遣劳动者因本规定第十二条规定被用工单位退回，劳务派遣单位重新派遣时降低劳动合同约定条件，被派遣劳动者不同意的，劳务派遣单位不得解除劳动合同。但被派遣劳动者提出解除劳动合同的除外。

Article 16 Where a labor dispatch entity is declared bankrupt, has its business license revoked, is ordered to close down, or is cancelled in accordance with law, or decides to dissolve in advance or to discontinue business upon expiration of its operation term, the labor contracts concerned shall be terminated. The employer shall negotiate with the labor dispatch entity about proper placement of the dispatched workers.

第十六条 劳务派遣单位被依法宣告破产、吊销营业执照、责令关闭、撤销、决定提前解散或者经营期限届满不再继续经营的，劳动合同终止。用工单位应当与劳务派遣单位协商妥善安置被派遣劳动者。

Article 17 Where a labor dispatch entity rescinds or terminates a labor contract with a dispatched worker under any of the circumstance as prescribed in Article 46 of the Labor Contract Law or Article 15 or 16 herein, it shall pay economic compensation to the dispatched worker in accordance with law.

第十七条 劳务派遣单位因劳动合同法第四十六条或者本规定第十五条、第十六条规定的情形，与被派遣劳动者解除或者终止劳动合同的，应当依法向被派遣劳动者支付经济补偿。

Chapter V Social Insurance with Respect to Cross-Regional Labor Dispatch

第五章 跨地区劳务派遣的社会保险

Article 18 Where a labor dispatch entity dispatches a worker from one region to another, it shall purchase social insurance for the dispatched worker at the place where the employer concerned is located, and pay social insurance premiums in accordance with the relevant provisions of the place where the employer is located, and the dispatched worker is entitled to the social insurance benefits in accordance with the relevant provisions of the state.

第十八条 劳务派遣单位跨地区派遣劳动者的，应当在用工单位所在地为被派遣劳动者参加社会保险，按照用工单位所在地的规定缴纳社会保险费，被派遣劳动者按照国家规定享受社会保险待遇。

Article 19 Where a labor dispatch entity has a branch at the place where the employer concerned is located, the branch shall go through the formalities for insurance purchase and pay social insurance premiums for the dispatched worker

第十九条 劳务派遣单位在用工单位所在地设立分支机构的，由分支机构为被派遣劳动者办理参保手续，缴纳社会保险费。

Where a labor dispatch entity has no branch at the place where the employer concerned is located, the employer shall go through the formalities for insurance purchase and pay social insurance premiums for the dispatched worker on behalf of the labor dispatch entity.

劳务派遣单位未在用工单位所在地设立分支机构的，由用工单位代劳务派遣单位为被派遣劳动者办理参保手续，缴纳社会保险费。

Chapter VI Legal Liability

第六章　法律责任

Article 20 Any labor dispatch entity or employer that violates the relevant provisions of the Labor Contract Law and the Regulation on the Implementation of the Labor Contract Law on labor dispatch shall be dealt with in accordance with Article 92 of the Labor Contract Law.

第二十条　劳务派遣单位、用工单位违反劳动合同法和劳动合同法实施条例有关劳务派遣规定的，按照劳动合同法第九十二条规定执行。

Article 21 Where a labor dispatch entity rescinds or terminates a labor contract with a dispatched worker in violation of these Provisions, Article 48 or Article 87 of the Labor Contract Law shall apply.

第二十一条　劳务派遣单位违反本规定解除或者终止被派遣劳动者劳动合同的，按照劳动合同法第四十八条、第八十七条规定执行。

Article 22 Where an employer violates the provisions of paragraph 3 of Article 3 herein, the relevant department of human resources and social security shall order it to make corrections, and give it a warning; and if any damage has been caused to the dispatched worker, the employer shall be liable for compensation in accordance with law.

第二十二条　用工单位违反本规定第三条第三款规定的，由人力资源社会保障行政部门责令改正，给予警告；给被派遣劳动者造成损害的，依法承担赔偿责任。

Article 23 Any labor dispatch entity that violates Article 6 herein shall be dealt with in accordance with Article 83 of the Labor Contract Law.

第二十三条　劳务派遣单位违反本规定第六条规定的，按照劳动合同法第八十三条规定执行。

Article 24 Any employer that returns a dispatched worker in violation of these Provisions shall be dealt with in accordance with paragraph 2 of Article 92 of the Labor Contract Law.

第二十四条　用工单位违反本规定退回被派遣劳动者的，按照劳动合同法第九十二条第二款规定执行。

Chapter VII Supplementary Provisions

第七章　附则

Article 25 The employment of dispatched workers by institutions such as foreign enterprises' resident representative offices and foreign financial institutions' representative offices in China and the employment of international oceangoing seafarers in the form of labor dispatch by seafarer employers shall not be subject to the restrictions on the proportion of dispatched workers employed in temporary, auxiliary or substitutable positions.

第二十五条 外国企业常驻代表机构和外国金融机构驻华代表机构等使用被派遣劳动者的，以及船员用人单位以劳务派遣形式使用国际远洋海员的，不受临时性、辅助性、替代性岗位和劳务派遣用工比例的限制。

Article 26 For the purpose of these Provisions, “labor dispatch” excludes the circumstance where an employer sends its employee to work abroad or for a family or a natural person.

第二十六条 用人单位将本单位劳动者派往境外工作或者派往家庭、自然人处提供劳动的，不属于本规定所称劳务派遣。

Article 27 The employment of workers by an employer in the form of labor dispatch in the name of contracting or outsourcing shall be governed by these Provisions.

第二十七条 用人单位以承揽、外包等名义，按劳务派遣用工形式使用劳动者的，按照本规定处理。

Article 28 Where, before these Provisions come into force, the number of dispatched workers employed by an employer exceeds 10% of the total number of its workers, the employer shall develop a plan for employment adjustment, and reduce the proportion to the required proportion within two years from the effective date of these Provisions; however, the labor contracts and labor dispatch agreements that have been concluded in accordance with law prior to the issuance of the Decision of the Standing Committee of the National People's Congress on Amending the Labor Contract Law of the People's Republic of China and will not expire within two years after

第二十八条 用工单位在本规定施行前使用被派遣劳动者数量超过其用工总量10%的，应当制定调整用工方案，于本规定施行之日起2年内降至规定比例。但是，《全国人民代表大会常务委员会关于修改〈中华人民共和国劳动合同法〉的决定》公布前已依法订立的劳动合同和劳务派遣协议期限届满日期在本规定施行之日起2年后的，可以依法继续履行至期限届满。

the effective date of these Provisions may continue to be performed in accordance with law until expiration.

The employer shall submit its plan for employment adjustment to the local administrative department of human resources and social security for recordation.

用工单位应当将制定的调整用工方案报当地人力资源社会保障行政部门备案。

No employers may employ new dispatched workers before they have reduced the number of dispatched workers who are employed before the effective date of these Provisions to the required proportion.

用工单位未将本规定施行前使用的被派遣劳动者数量降至符合规定比例之前，不得新用被派遣劳动者。

Article 29 These Provisions shall come into force on March 1, 2014.

第二十九条 本规定自2014年3月1日起施行。