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Labor Law

MOHRSS Released Implementing Measures on Labor Dispatch Licensing

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On December 28, 2012, the 30th Session of China's Standing Committee of the Eleventh National People's Congress adopted *The Decision of the Standing Committee of the National People's Congress on Amending the Employment Contract Law of People's Republic of China* (the "**Decision**"), to amend and regulate the current system of labor dispatch. On June 20, 2013, the PRC Ministry of Human Resources and Social Security promulgated the *Implementing Measures for Administrative Licensing for Labor Dispatch* (the "**Implementing Measures**") to further specify the details of the administrative licensing for labor dispatch. The Implementing Measures, together with the Decision, both effective on July 1, 2013, mainly regulate the following aspects:

I. Conditions of Engaging in Labor Dispatch Business

The Implementing Measures further reiterated the following conditions of engaging in labor dispatch business, which have been provided in the Decision: (a) The registered capital shall not be less than RMB2 million; (b) Have fixed premises and facilities adapted to the business development; (c) A labor dispatch management system in conformity with laws and administrative regulations has been established; and (d) Other conditions stipulated by laws and administrative regulations.

The Implementing Measures further provided that, before engaging in labor dispatch business, an administrative license shall be applied for with the administration of human resources and social security, and no entity or individual is allowed to carry on labor dispatch business without a license.

II. Procedures for Obtaining a Labor Dispatch Operation License

(i) Application Materials

As provided in the Implementing Measures, to apply for a Labor Dispatch Operation License

(an “**Operation License**”), an applicant shall submit the following materials to the Licensing Authority:

- (a) The written application for Operation License;
- (b) The Business License or the Notice of Pre-approval of the Business Name;
- (c) The Articles of Association and the report on the verification of capital issued by a capital verification institution or financial audit reports;
- (d) The using certificate of the business premises and list of office facilities and equipments, information management system and etc., which are adapted to the business development;
- (e) The identity certificate of legal representative; and
- (f) The labor dispatch management system, including texts of rules and regulations related to the laborers' immediate interests such as employment contract, remuneration for labor, social security, working hours, rest and vacation, and labor discipline, etc.; the samples of the labor dispatch agreements to be entered into with the employers.

(ii) Application Procedures

The Implementing Measures provided specific provisions regarding the procedures, conditions and term of different processes of licensing for labor dispatch, including the Acceptance, Examination, Modification and Extension, etc.

(a) Acceptance

As provided in the Implementing Measures, if there is any fault that may be corrected on the spot in the application materials, the applicant shall be allowed to do so; If the application materials are not complete or not in accordance with the statutory format, the applicant shall be informed to supplement the other necessary materials on the spot or within five working days; If the Licensing Authority decides to accept the application submitted by applicant, it shall issue the Acceptance Decision; If not, it shall issue a Dismissal Decision, inform the applicant of specific reasons for dismissal and the rights to appeal.

(b) Examination

As provided in the Implementing Measures, the Licensing Authority shall examine the substance of application materials, and make a decision regarding whether or not to approve the administrative licensing within 20 working days from the date of acceptance. If the decision is made to approve the administrative licensing, the Licensing Authority shall inform the applicant to receive the Operation License within five working days from the date of decision-making; but, if not, the Licensing Authority shall inform the applicant of the specific reasons and the rights to appeal.

(c) Modification

As provided in the Implementing Measures, If the name, address, legal representative,

registered capital or other relevant issues of a labor dispatch entity have changed, and such changes meet the lawful conditions, the Licensing Authority shall carry on the procedure of modification according to laws within ten working days from the date of acceptance of application, and issue a new Operation License or give clear indication of the original Operation License; If such modification fails to meet the lawful conditions, the Licensing Authority shall make a written decision, including its reasons, within ten working days from the date of acceptance of application. In addition, if a new company is set up after a merger or division of the original labor dispatch entity, the Operation License shall be re-applied for.

(d) Extension

As provided in the Implementing Measures, the validity period of an Operation License is three years, the labor dispatch entity shall submit a written application for extension of the Operation License to Licensing Authority at least 60 days before expires, meanwhile the report of basic business situation in the last three years shall be submitted too; the Licensing Authorities shall, according to the application of a labor dispatch entity for extension, decide whether or not to approve the extension before the expiry of the validity period of such administrative license; If the decision fails to meet the time limit, the extension of application shall be deemed as approved.

III. The Authority of Issuing the Operation License

According to the Implementing Measures, the Ministry of Human Resources and Social Security shall take responsibility for the supervision and guidance of nationwide administrative licensing for labor dispatch. Local administrations of human resources and social security at or above the county level are responsible for the implementation of administrative licensing for labor dispatch and the relevant supervision and inspection within their respective administrative areas, in accordance with the division of licensing jurisdiction determined by administrations of human resources and social security of provinces, autonomous regions and municipalities directly under the Central Government.

Based on our understanding, due to the differences of actual situations among different places, the Implementing Measures did not unify the provision on the division of licensing jurisdiction, but left such division to be determined by administrations for human resources and social security of provinces, autonomous regions and municipalities directly under the Central Government. We will pay close attention to the specific regulatory developments of each place, and share the messages with you promptly.

IV. Norms and Legal Liabilities of Labor Dispatch Entities

- (i) Labor dispatch business shall not be operated without license. As provided in the Implementing Measures, no entity or individual is allowed to carry on labor dispatch business without license. Furthermore, the Implementing Measures clearly defined the legal liabilities regarding unlawful operation of labor dispatch business, including: (a) If

any entity and individual, in violation of the provisions of the PRC Labor Contract Law, operates labor dispatch business without license, the administration of human resources and social security shall order it to stop illegal activities, confiscate the illegal gains, and impose a fine of more than one time but less than five times of the illegal gains; If there is no illegal gains, a fine amounting to less than CNY50,000 could be imposed; (b) If any labor dispatch entity violates the provisions of labor dispatch in the PRC Labor Contract Law, the administration of human resources and social security shall order it to make rectification within a specified time limit; If it fails to make rectification within the specified time limit, it shall be imposed a fine of more than CNY5,000 but less than CNY10,000 for each laborer, and the Operation License shall be revoked.

- (ii) The obligation to keep the Operation License appropriately. According to the Implementing Measures, the labor dispatch entity shall keep the Operation License appropriately and shall not alter, resell, rent, lend or illegally transfer it in any other forms. If the labor dispatch entity violates the aforesaid provision, normally a fine of less than CNY10,000 could be imposed; When the circumstances are serious, a fine of more than CNY10,000 but less than CNY30,000 could be imposed.
- (iii) The obligation to report regularly. As provided in the Implementing Measures, a labor dispatch entity shall submit the labor dispatch operation report of previous year to the Licensing Authority before March 31 in each year; A subsidiary or branch set up by a labor dispatch entity, shall also submit the labor dispatch operation report of previous year to the administration for human resources and social security with which it went through the licensing and filing procedures.

V. Transitional Provisions

According to the Implementing Measures and The Decision, since July 1, 2013, the entities that engaged in labor dispatch business before July 1, 2013, may operate new labor dispatch business after obtaining an Operation License in accordance with the Implementing Measures; After the Implementing Measures come into effect, those entities that fail to obtain the Operation License shall not operate new labor dispatch businesses. However, (a) Labor contracts and labor dispatch agreements entered into by labor dispatch entities before the promulgation of the Decision (December 28, 2012), may continue to be performed until the expiry of the term, but if the contents of such contracts or agreements fail to conform to the principle of equal pay for equal work, such provisions shall be adjusted; (b) Labor contracts and labor dispatch agreements entered into by labor dispatch entities between December 28, 2012 and June 30, 2013 shall be performed in accordance with the Decision after July 1, 2013.

We hope the above introduction will be helpful to you. If you have any questions, you are welcomed to contact us at any time.

Important Announcement

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