

Decision on the Amendments on the Labour Contract Law of the PRC

(Passed by the Thirty Plenary of the Standing Committee of the Eleventh National People's Congress on December 28, 2012)

中文文本	English Translation (Non-official)
<p>一、将第五十七条修改为：经营劳务派遣业务应当具备下列条件：</p> <p>（一）注册资本不得少于人民币二百万元；</p> <p>（二）有与开展业务相适应的固定的经营场所和设施；</p> <p>（三）有符合法律、行政法规规定的劳务派遣管理制度；</p> <p>（四）法律、行政法规规定的其他条件。</p> <p>经营劳务派遣业务，应当向劳动行政部门依法申请行政许可；经许可的，依法办理相应的公司登记。未经许可，任何单位和个人不得经营劳务派遣业务。</p>	<p>Article 57 shall be revised to read:</p> <p>Following conditions shall be satisfied for any firm to carry out the labour dispatching services:</p> <p>(1) having a minimum registered capital of not less than RMB 2,000,000 yuan;</p> <p>(2) having the fixed place and facilities for the labour dispatching services in conformity with laws and administrative regulations;</p> <p>(3) having established rules for the labour dispatching services in conformity with laws and administrative regulations;</p> <p>(4) other conditions as set forth by laws and administrative regulations.</p> <p>To carry out the labour dispatching services, any firms shall apply to the labour administration for the administrative permission. Wherever permitted, the relevant corporate registration shall be applied. Without such a permission any entity or natural person shall not carry out the business of labour dispatching services.</p>
<p>二、将第六十三条修改为：“被派遣劳动者享有与用工单位的劳动者同工同酬的权利。用工单位应当按照同工同酬原则，对被派遣劳动者与本单位同类岗位的劳动者实行相同的劳动报酬分配办法。用工单位无同类岗位劳动者的，参照用工单位所在地相同或者相近岗位劳动者的劳动报酬确定。</p>	<p>Article 63 shall be revised to read:</p> <p>Employees dispatched shall have the equal right for the same work for same payment as those employees of the accepting unit. According to the principle of same work for same payment, any accepting unit shall adopt a formula of same compensation for the like work as those employees of the like job position of the unit.</p> <p>Where there is no the same employees in the like job position, the accepting unit shall</p>

<p>“劳务派遣单位与被派遣劳动者订立的劳动合同和与用工单位订立的劳务派遣协议，载明或者约定的向被派遣劳动者支付的劳动报酬应当符合前款规定。”</p>	<p>fix the standard of those who are in the same place of the accepting unit or the nearby for reference. Labour dispatching unit shall conclude the labour dispatching agreement to stipulate or agreement upon the compensation that shall be paid to the employees dispatched in conformity with the previous paragraph.</p>
<p>三、将第六十六条修改为：“劳动合同用工是我国的企业基本用工形式。劳务派遣用工是补充形式，只能在临时性、辅助性或者替代性的工作岗位上实施。 “前款规定的临时性工作岗位是指存续时间不超过六个月的岗位；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。 “用工单位应当严格控制劳务派遣用工数量，不得超过其用工总量的一定比例，具体比例由国务院劳动行政部门规定。”</p>	<p>Article 66 shall be revised to read: Employees under a labour contract shall be the basic form of employees for any enterprises in China. The dispatching employees shall generally be implemented for temporary, auxiliary or substitute job positions. The temporary job position in the afore-said provision refers to such ones that exist for no more than 6 months. The auxiliary job position refers to such non-major business operations that provide services in nature. Substitute job position refers to such ones that can be replaced by other employees in the certain period of time due to the employees' unable to work for learning or holiday in the accepting unit. The accepting unit shall strictly control the numbers of dispatching employees and not overpass certain percentage of the total employees. The specific percentage shall be fixed by the labour administration under the State Council.</p>
<p>四、将第九十二条修改为：“违反本法规定，未经许可，擅自经营劳务派遣业务的，由劳动行政部门责令停止违法行为，没收违法所得，并处违法所得一倍以上五倍以下的罚款；没有违法所得的，可以处五万元以下的罚款。 “劳务派遣单位、用工单位违反本法有关劳务派遣规定的，由劳动行政部门责令限期改正；逾期不改正的，以每人五千元以上一万元以下的标准处以罚款，对劳</p>	<p>Article 92 shall be revised to read: Where a labour dispatching firm, without a permission, violates this Law to operate labour dispatching services arbitrarily, the labor administration shall order it to stop such illegal activities, confiscate the illegal gains and impose a fine no less than one time and no more than five times as that of the illegal gains. The imposition of an amount of RMB 50,000 yuan may be taken simultaneously by the confiscation of the illegal gains. The labour administration shall order to rectify in a time limit where any violation of</p>

<p>务派遣单位，吊销其劳务派遣业务经营许可证。用工单位给被派遣劳动者造成损害的，劳务派遣单位与用工单位承担连带赔偿责任。”</p>	<p>the provisions concerning the labour dispatching committed by the labour dispatching unit and accepting unit. Failing to rectify within the time limit as fixed, the violator shall be imposed a fine of not less than RMB 5,000 yuan and not more than RMB10,000 yuan, and the labour dispatch business license shall be revoked by the labour administration. Where the accepting unit causes the damage of the dispatching employees, the labour dispatching unit and the accepting unit shall be jointly and severally liable for damages.</p>
<p>本决定自 2013 年 7 月 1 日起施行。</p>	<p>This Decision shall be implemented from July 1, 2013.</p>