Research on Development Path of Labor Dispatching

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Abstract. Labor dispatching form of employment has become an important part of human resources management in the industry short of labor. Some companies even prefer to use labor dispatching instead of regular staff recruitment and training. Labor dispatching on the surface, will help decrease the cost of human capital, but in the long run, its characteristics such as liquidity, instability and non-sustainability will lead to increase labor dispatching costs. Companies hire but doesn’t utilizes talents will make principal-agent theory go wrong. These problems such as moral hazard, asymmetric information, "employers must become a savvy buyer", are what we have to face in the process of human resources management. Therefore, these fields such as regulating balance of labor relation in the labor dispatch, labor relations, carrying out the labor supervision, perfecting the interests of the labor dispatching compensation mechanism are what we should clear in the process of implementing human resource management for the future labor dispatching enterprise.

Introduction

Labor dispatching comes into being while market economy is increasingly mature. Labor dispatching, also called employee dispatching, it means that firstly employers (Unit of choose and employ persons) and employees need to sign labor contracts, then the employers and the unit that uses workers need to sign dispatching contracts, lastly, the employees are dispatched to work for the unit that uses workers under the sending of employers. Comparing with the general mode of labor employment, labor dispatching model involves unit that uses workers, employers and workers tripartite main body, legal relationship is relatively complex, and the most difference is that hiring and using workers is detached.

There is no doubt that in the process of rapid development of society, under the market mechanism the mode of labor dispatching has some advantages, which to some extent can meet the demand of labor market in China, and can improve the efficiency of the enterprise, and can integrate talent resources in different industries, enterprises and countries.

Labor dispatch as a new mode of labor is developing rapidly, but because our country's legislation on labor dispatching is less, the constraint mechanism is not perfect, so there are many imperfect dispatching units because of illegal business, imperfect rules and regulations. Their recruitment system severely violates "temporary, auxiliary, alternative" three principles, extensive use of dispatching mode for a long time, even the labor dispatch being as the main channel of employment, abusing labor dispatch for benefit-seeking, which must damage the legitimate rights and interests of the dispatched workers, also must go against the purpose of legislation on the labor dispatch. On March 1, 2014 the interim provisions on labor dispatch was enacted, in which clearly requires: companies whose dispatched workers number more than 10% of the total, shall be drawn up in two years from the date of the enforcement of these provisions (i.e., before the end of February 2016) fell to a specified percentage. In this paper, I will make some thinking and exploring about how to transform, and how to prevent risks and regulations after that the "labor contract law" and the "interim provisions on the labor dispatching are promulgated and implemented.
Analysis of the Motivation on Labor Dispatching in State-Owned Enterprises

How to effectively play the role of human capital is an important topic in the process of management in the state-owned enterprise. In recent years, the phenomenon of labor dispatching in the state-owned enterprises is more and more common. Some enterprises even regard hiring labor dispatching as a long-term mechanism that organizations’ members update. The management behavior has brought a series of change for the management of state-owned enterprises. First of all, the management philosophy between labor dispatching and formal employment is different. Formal employment pursues a long-term investment and development of human capital; labor dispatching pursues a reduction in the short-term costs. Secondly, on the management mechanism, the formal employment focuses on the employees’ self realization of values, and labor dispatching focuses on the short-term economic returns and other ways. Therefore motivation that state-owned enterprises choose labor dispatching mainly include the following several aspects: first of all, state-owned enterprises seek to compress costs in the short term. Input of Labor dispatching units is relatively smaller than a formal employee's in wage payment, equipment or additional investment in human capital. In the short term, the labor dispatching can really reduce the costs of state-owned enterprises. But demographic dividend is a prerequisite for state-owned enterprises to maintain a certain profit level. For those who have no considerable profit margin, costs controlling becomes the primary task of the enterprise management. And it is necessary to reduce the investment of human capital. Again, because the binding force of labor dispatching by law is weak, so there are so many "speculative opportunities". The more strict law, the more complicated regulatory process, the greater cost of the enterprise is. At present, our country has formed a set of strict regulatory system for formal employment, every point of supervision is supervised by the administrative departments, and employers must provide labor monitoring security and welfare for employees. In a sense, state-owned enterprises accepting supervision has become a regulation. For state-owned enterprises, labor dispatching can avoid to be supervised by relevant government department, and state-owned enterprises can cut down their expenditures on Public relations.

Finally, labor dispatch helps to hedge the risk under the existing legal system, which is a kind of risk reduction mechanism for enterprises. Legal regulation on Labor dispatch is not very mature, the whole supervision of dispatching labor from government is relatively weak. Existing law pays more attention on the hazards and risks in the process of formal labor’s regulation, a series of safety accident benefit standards and rules are only for formal labors. In order to evade responsibility and compensation some companies used to using labor dispatching without sign labor contracts. In many labor disputes, it is very difficult to obtain evidence and to get compensation standard and basis through investigation without signing a formal labor contract. Some companies deliberately use the loopholes in the process of labor dispatching to evade the risks.

Confusion in the Process of Labor Dispatching

In the process of labor dispatching, many enterprises prefer to labor dispatching because their wage rate is lower than formal employment’s wage rate. At present, there is just some regulation such as "provisional regulations" and "rules" or "notice" requirements without special law on labor dispatch. As a result, these regulations can't effectively regulate enterprises’ labor dispatching, how to effectively regulate enterprise's labor dispatch is an important management problem. Firstly, some system and management of labor dispatching companies are imperfect, the legitimate rights and interests of the dispatched workers often are impaired by employers. In recent years, the number of labor dispatching company is gradually increased, but their management level and operation quality don’t improve accordingly, which is serious uneven. Some companies have not enough manage manpower, material resources and services, for example, some companies just aim to earn a certain service fee, yet they don't care about the legitimate rights and interests of the dispatched workers, so the rights and interests of workers ultimately will be damaged. For example, someone belongs to nominally company a, but he actually works for company b, because company a do not sign a written labor contract with him, he gets cash wages without corresponding vouchers,
and company do not pay lawful social insurance for him, company a maybe defend itself against labor disputes because that there is no enough evidence, so it is very difficult to safeguard employees' rights and interests.

In practice, some companies make their own employees sign labor contracts with labor dispatching company in order to evade their responsibilities. For example, some companies seek to avoid signing non-fixed term labor contract with employees, some employees have worked for employer for ten more years or will sign the second labor contract, but employers deliberately arrange employees to sign labor contract with different dispatching institutions in order to control the length of service. According to the labor contract law article 14, the employers must sign a contract with the employees who worked over ten years or signed a contract with same employer before. Secondly, the phenomenon of abusing labor dispatching broadly exists, which seriously departures from the original aim for setting up labor dispatching. The "Labor contract law" sixty-sixth provision shows that the position for labor dispatching only applies to temporary, auxiliary or substitute job positions. Although the law do not explain what is temporary, auxiliary, alternative position, but the labor dispatch regulations determine the nature: temporary jobs refer to the duration less than 6 months post; auxiliary work refers to serve for the main business; alternative work refers to a unit laborer can be replaced by other workers due to vacation during a certain period etc. Before Employers deciding to use the dispatched workers, solutions and ideas shall be made by the employee representative congress or all the employees for discussion and put forward solutions and ideas, the labor and the capital must equally consult, determine and publicly show. But in practice, decision-making power for using labor dispatching often belongs to enterprises’ leadership without deciding something democratically, democratic channel in management is not very common.

The fourth provision of the "labor contract law" stipulates that employers shall strictly control dispatching employment number; the number of the dispatched workers shall not exceed 10% of its total. Therefore, temporary jobs should correspond to perennial or permanent post, whose task is generally to complete temporary and seasonal jobs; auxiliary post is opposed to main business, which is generally used to service for main production and operation of the business; Alternative positions generally refers to replace the permanent, main business due to a temporary vacancies. In addition to the special circumstances, labor dispatch shall generally be limited in these three jobs. But in practice, many employers largely use labor dispatching for a long time, and even labor dispatch turns into the main channel of employment in some companies, the number of labor dispatch outnumber the regular member of enterprise itself. The cause for this case is that the labor contract law did not specify the specific operation rules of "temporality, subsidiarity and alternative", which make some employers speculate only being profit-push and avoiding risk and responsibility. Labor dispatching relates to three parties such as laborer, dispatching units that hires workers, and the units that using workers. When the labor dispatch disputes happen, all want to distance themselves form the dispute, and to mutual shuffle, and to make it more difficult to maintain the dispatched workers' rights.

Thirdly, the phenomenon that unequal pay for equal work damages the lawful rights and interests of the dispatched workers emerges in endlessly. The sixty-third provision of the "labor contract law" stipulates that the dispatched workers shall have the right equal pay for equal work. Dispatched workers’ wages can refer to those work at similar position if there is no same post. But in practice, many companies only change post’s name while keeping same post’s duties and responsibilities in fraud of law. In some large enterprises, dispatched workers’ wages and welfare are generally lower than those of regular employees.

In addition, some dispatched workers in some enterprises work overtime can’t charge overtime because of their poor management and service.
Development Path of Labor Dispatching in State-Owned Enterprises

Labor dispatching is the product of the age, but too much abuse of labor dispatch and substandard operation must lead to damage stakeholders’ rights and interests and social harmony. Therefore, we must take effective measures to solve the problem.

Firstly, we should formulate relevant laws and regulations on labor dispatching as soon as possible in practice. On June 26, 2012, the committee of the 11th National People's Congress's 27th meeting first reviews "labor contract law amendment (draft)", scope of labor dispatching was strictly limited, the mode of labor dispatching will be regulated, this is a very important thing as a legal workers. Through legislation we can make the mode of labor dispatch embodiment and operationalization in practice, thereby the labor dispatching can contribute to social rapid development. Content of legislation should include several points: firstly, establishing condition and access system of labor dispatching should be limited stringently , only in the beginning of establishment of dispatching units ,can we carry on the strict censorship, nip in the bud .Those companies which has plenty human, material and financial resources can perform their duties to labor dispatching. Secondly, the definition and scope of temporality, auxiliary and alternative should be more specific from the laws and regulations in order to more effectively prevent the abuse of labor dispatching, which is beneficial to facilitate the stability of career development and social harmony.

Although the labor contract law has made corresponding provisions, these regulations are not specific enough. Thirdly, about unequal pay for equal work, we should make detailed regulations of punishment. Although the purpose is not punishment, but only by punishment measures, can discipline those illegal behavior to alert. Definition about equal pay for equal work, lacking of precise definition of equal pay for equal work in the laws and regulations, so in the process of execution, there is a lot of freedom to speculate. Fourthly, we should distinguish responsibility between dispatching units and the actual units using workers. In practice, when dispatched laborers’ rights and interests are damaged, units that using workers and employers often mutual shuffle in order to avoid responsibility. Only carrying out more clear responsibility sharing, can we safeguard the legitimate rights and interests of the dispatched workers, and can we make the enterprise healthy development.

In the second place, from the administrative regulation, the labor administrative supervision departments should strengthen supervision. For example, whether labor dispatch employment proportion is in line with the requirements, the labor dispatch employment is in line with the nature, whether execute equal pay for equal work? In Practice, labor administrative department should strengthen the supervision of labor dispatching units, and strengthen its management duties. For example , all laborers should be insured according regulations , the dispatched workers can receive timely treatment and compensation after industrial injury , in order to avoid some unnecessary disputes, it is not only beneficial to guarantee the rights and interests of the dispatched workers, it is also beneficial to guarantee smooth production.

If related units delay in exercising the obligation, the labor administrative department should take administrative measures to enforce them carry out the obligations. Secondly, the labor administrative departments can investigate the labor dispatching units in sampling irregularly scheduled in order to identify the actual labor relations, to ensure labor dispatching strictly in accordance with the standard.

Thirdly, we should urge employers and units that using workers to study legal institutions. These companies should study and observe laws and other stipulations and should shoulder social respectability.

Original intention of Labor dispatching employment pattern is to better solve integration and distribution of human resources, and to save cost for the development of the enterprise and to improve efficiency. In practice, there are many problems that have deviated from the orbital direction of development. Its reasons are as follows: firstly, labor dispatching mode is abused widely; secondly, the laws and stipulations are not perfect; thirdly, employers want to avoid social
responsibility; fourthly, labor administrative departments cannot well perform their duties; lastly, social labor security is not perfect in our country.

Our labor system must not only protect the lawful rights and interests of workers, but also the autonomy of enterprise. At the same time I also hope that the revision of the "labor contract law" and implementation will effectively solve the problem and will be put in place very well. Implementation of every law, does not only need to be in place law enforcement, but also requires every enterprise and every citizen responsibly to obey the law.

References