

## 江三角·劳动法论坛—劳务派遣：调整方案制定与实施

### RDL —Labor Dispatch:Formulation and Implementation of Employment Adjustment

调查摸底·法律分析·分流方案·方案施行

Investigations • Legal Analysis • Adjustment Scheme • Implementation

北京：2月28日，上海：3月6日，深圳：3月20日

Beijing/Feb.28<sup>th</sup>, Shanghai/Mar.6<sup>th</sup>, Shenzhen/Mar.20<sup>th</sup>

语言：中文 Language: Chinese

#### 课程背景：

2014年1月26日，《劳务派遣暂行规定》正式公布，并将于2014年3月1日生效施行。作为劳务派遣领域的核心规定，《暂行规定》的出台使《劳动合同法修正案》所确定的原则更具有可操作性。

其一，大量此前悬而未决的问题得到了明确，如“辅助性”的界定方法、“一定比例”的具体数值及计算方式、“异地派遣”的社保缴纳……

其二，《暂行规定》也进行了很多有价值的创举性规定，如“退回”情形的增加、合同解除与经济补偿制度的完善、“二年缓冲期”的引入……

然而，仍应当看到，《暂行规定》相比《征求意见稿》做了大量删减，很多有争议的问题被搁置，如“约定退回”的合法性、“无固定”的适用、“直接劳动关系的认定”……

问题被明确并不代表已被解决，而被搁置也并非不再存在，《暂行规定》的出台却无疑拉开了新一场的序幕——劳务派遣这个国家和政府认为“非改不可”的问题已经到了企业“非动不可”的时候。因此，对法规条文的“阅读理解”远不足够，再观望等待已是不能，一套系统、合法且效益最大化的调整方案成为必需。

从广大企业的需求出发，江三角不止于“**What**”，更关注“**How**”，以对劳务派遣持续研究以及丰富的律师实战经验，倾囊相授 **The Key to Labor Dispatch**，帮助尚未启动调整的企业建立以法律法规为基准、实用为导向的调整方案，已经启动调整的企业也能借此进一步审查完善现有方案。

#### 课程目标：

- ※ 系统梳理劳务派遣领域国家与地方规范，帮助企业全面了解核心内容；
- ※ 全程指导劳务派遣调整方案的制定实施，帮助企业有效掌握实用技能。

#### 参会对象：

人事总监、人事经理、公司法务、工会干部及其他高级管理人员。

#### 论坛日程 Agenda:

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|-------------|--|
| 08:30—09:00 | 签到 Reception   |
| 09:00—10:30 | 调查摸底：获取有效信息<br>Investigations: obtaining the effective information |

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|-------------|---|--|
| 10:30—10:45 | 茶歇 Tea Break  |  |
| 10:45—12:00 | 法律分析：合法性评估<br>Legal Analysis: evaluation of legality                                      |  |
| 12:00—13:30 | 午餐 Lunch  |  |
| 13:30—15:00 | 分流方案：常见分流方式及优劣比较<br>Adjustment Scheme: normal adjustment ways, pros and cons              |  |
| 15:00—15:15 | 茶歇 Tea Break  |  |
| 15:15—16:30 | 方案施行：破解执行难题<br>The implementation of the scheme: solution to the puzzle of implementation |  |

**课程大纲：**

**一、调查摸底：获取有效信息**

- 1、明确“辅助性”岗位的具体范围，需要哪些资料？
- 2、计算“一定比例”需要哪些数据？
- 3、仅通过劳务派遣协议所确定的劳务派遣用工总量是否准确？
- 4、现有劳务派遣员工的哪些信息需要统计？
- 5、应从哪些资料判断劳务派遣员工的待遇是否符合“同工同酬”？
- 6、适用“老合同过渡期”以及“二年缓冲期”需要哪些材料？

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**二、法律分析：合法性评估**

- 1、如何判断各用工方式的法律属性及明确现有劳务派遣的具体范围？
- 2、如何判断现有劳务派遣是否符合“三性”的要求？
- 3、如何判断现有劳务派遣是否符合“比例”的要求？
- 4、如何判断现有劳务派遣是否符合“同工同酬”的要求？
- 5、如何判断现有劳务派遣协议是否符合法律要求？
- 6、如何判断现有外包协议是否符合法律要求？

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**三、分流方案：常见分流方式及优劣比较**

- 1、**继续派遣：**如何从程序与实体上界定“辅助性”岗位的范围？如何在尽可能减少对现有薪酬体系冲击的基数上实现“同工同酬”？异地派遣的社保如何操作可最大程度降低法律风险？.....
- 2、**直接雇佣：**如何确定劳务派遣员工中转为直接雇佣的具体人员？企业如何选择转为直雇的具体方式，有哪些法律风险？由派遣转为直雇是否需要支付经济补偿金？被派遣劳动者工龄是否应承继？.....
- 3、**服务外包：**外包能否有效替代劳务派遣？如何防止外包被认定为劳务派遣？被认定为“假外包真派遣”将面临什么法律责任？.....

4、**退回清退**：劳务派遣员工在哪些情况下可以被退回？非三性、超比例但企业不想直接雇佣的劳动者能否退回？被退回后劳动关系如何处理？

5、**其他法律和非法律方法**

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四、**方案施行：破解执行难题**

- 1、辅助性岗位确定中的民主参与与民主管理
- 2、同工同酬与规章制度、劳动合同的修订、实施
- 3、劳务派遣协议的审查与修订
- 4、劳动合同的修改完善
- 5、外包协议的修改完善
- 6、过渡调整方案的制定与执行
- 7、批量性群体性劳动关系处理常见风险与技巧

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**讲师介绍：**

**陆敬波---首席合伙人，江三角律师事务所**

著名劳动法专家，资深执业律师，资深高级培训师。上海江三角律师事务所首席合伙人、主任。陆敬波律师是中国大陆劳动法律师服务市场的先行者和开拓者。早在 2002 年，陆敬波律师就创立了中国第一家劳动法律服务在线平台——“劳动法苑”（laodongfa.com）；2004 年，陆敬波律师创办了中国第一家以劳动人事法律服务为主的律师事务所。在陆敬波律师的带领下，江三角事务所已成长为中国大陆律师团队规模最大、服务网络最完善的劳动法律服务机构。陆敬波律师受众多大型跨国集团、国内外企业、各政府行政部门聘请担任常年法律顾问、培训讲师，提供各项法律服务。在劳动法专业领域的突出表现为陆敬波律师在业内赢得了很好的口碑和声誉。不论是在律师服务还是培训市场，陆敬波律师都是中国大陆劳动法律服务的标杆性人物。

法律实务工作之外，陆敬波律师同样重视劳动法律理论研究，担任上海大学等四所高等院校的兼职教授；先后出版有《维权课堂—劳动者维权实战攻略》、《劳动合同法 HR 应用指南》、《纷争与和谐——劳动争议的预防和处理》、《企业招聘管理法律实务》等专著，再版多次，销量累计达数万册；陆敬波律所主编的期刊《劳动法苑》更是成为企业学习、使用劳动法律的重要资料。

**Course Background:**

*Interim Provisions on Labor Dispatch* was promulgated in Jan 26th, 2014, and will take effect on March 1st, 2014. As the core regulation in the field of labor dispatch, the promulgation of *Temporary Provisions* will improve the maneuverability of the principle made by the *Amendment of Labor Contract Law*.

Firstly, a lot of pending questions are defined, for example, how to define "auxiliary position", the concrete number of "certain percentage" and calculation method, contribution of social security for dispatch to other areas etc.

Secondly, *Interim Provisions* has a lot of valuable creative provisions, like adding the circumstance of sending back dispatched workers, bettering the system

of terminating contract with dispatched workers and economic compensation payment, and the introduction of "two-year grace period"...

However, we should still notice that compared with *Draft for Soliciting Opinions*, a lot of content has been deleted, a lot of controversial problems are postponed, for example, the validity of "sending back dispatched workers by mutual consent", the application of "open-ended employment contract", "the affirmation of direct employment relations"...

Problems are cleared and defined, but are not solved. Postponed problems are still existing. The promulgation of *Interim Provisions* is a new opening: in the view of the country and the government, the problem of labor dispatch has to be solved and the reform is a must, employers have to take action at this time. Therefore, the mere "reading and understanding" of articles in law is not enough, and we have no time to wait, a systematic, legal and most effective adjusting scheme is desperate to go on the stage.

From the point of meeting the employers' requirements, River Delta Law Firm is focusing not only on "What", but also on "How", we will give you the lecture of *Scheme on Labor Dispatch Employment Adjustment and Real Life Practice* with our continuous research outputs in years and rich real life experience in labor dispatch, hoping to provide guidelines for those employers which have not started up employment adjustment schemes to establish legal and operation-oriented adjustment schemes, and for those which have taken on adjustment to check and better their current ones.

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Reviewing national and local laws and regulations in the field of labor dispatch systematically, and helping employers understand the core content.

**Course Objective:**

Guiding the setup of adjustment plans, and helping employers effectively grasp real life skills.

**Subject of Participants:**

HR director, HR manager, legal counsel, trade union cadre and other senior management.

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**Course Outline:**

1. Investigation: obtaining information

1.1 In order to define the scope of "auxiliary positions", what materials do we need?

1.2 What data do we need to calculate the "certain percentage"?

1.3 Is it correct to just rely on the number of labor dispatch agreements to determine the number of dispatched workers?

1.4 What information in relation with dispatched workers should be counted?

1.5 Whether remuneration and benefits of dispatched workers are consistent

with the principle of "Equal Pay for Equal Work"?

1.6 When we apply "the transition period of the old contract" and "two-year grace period", what materials do we need?

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## 2. Legal Analysis: evaluation of legality

2.1 How to judge legal attributes of various employments and how to define the specific scope of existing labor dispatch?

2.2 Whether the existing labor dispatch is consistent with the principle of "the characteristics of temporality, auxiliary, substitutability".

2.3 Whether the existing labor dispatch is consistent with the principle of "proportion".

2.4 Whether the existing labor dispatch is consistent with the principle of "Equal Pay for Equal Work".

2.5 Whether the existing agreements of labor dispatch are consistent with law.

2.6 Whether the existing outsourcing agreements are consistent with law.

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## 3. Adjustment Scheme: normal adjustment methods, pros and cons

3.1 Dispatch: How to define the scope of "auxiliary position" procedurally and substantively? How to realize "Equal Pay for Equal Work" and reduce impact on the current remuneration system? In the case of dispatching to other areas, how to address social security issues, and to minimize the legal risk?

3.2 Direct employment: When dispatched workers are transferred into direct employment, how to define the scope of those dispatched employees? If the employer chooses direct employment, what is the legal risk? Should the company pay the economic compensation when the dispatched workers are transferred into direct employment? Should the working years of the dispatched workers be succeeded?

3.3 Service outsourcing: Whether outsourcing can effectively take the place of labor dispatch. How to prevent the outsourcing from being identified as labor dispatch? If outsourcing is ruled as "false outsourcing, true labor dispatch", what is the legal responsibility?

3.4 Sending back: Under which circumstances should dispatched workers be sent back? If it is a position inconsistent with "three characteristics", or if an employer's dispatched workers exceed "proportion", and the employer doesn't want to hire the employees on the position directly, can the employer send back the dispatched workers? After the workers are sent back, how to deal with the employment relations?

3.5 Other legal and real life methods.

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4.The implementation of the scheme: Solution to the puzzle of implementation

4.1 The democratic involvement and democratic management in the process of confirming the auxiliary position.

4.2 "Equal Pay for Equal Work", the amendment and implementation of rules and regulations and employment contract.

4.3 The review and amendment of labor dispatch agreement.

4.4 The amendment and optimization of employment contract.

4.5 The amendment and optimization of outsourcing agreement.

4.6 The formulation and implementation of adjustment scheme in transitional period.

4.7 Common risks and skills of dealing with collective employment relations.

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**For More Information, please contact with...**

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Note: All-day meeting covers morning and afternoon tea break, and lunch.

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