



A Study on Enterprises' Employment Strategies with Labor Contract Law

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Abstract

The issuance and implementation of Labor Contract Law and Implementing Regulations of Labor Contract Law have exerted a direct effect on the establishment, fulfillment, change and termination of enterprises' labor contracts, hence influencing their employment forms and costs. Therefore, it has been an urgent and practical issue for enterprises' human resource management how to adapt their employment system to the new labor regulations. From the perspective of human resource management, this article aims at exploring into some possible legal problems during the course of recruiting, employing and dismissing employees as well as coming up with some suggestions on how to adjust and perfect the present employment system.

Keywords: Enterprise, Employment, Labor contract, Legal problems

1. Problems and Strategies of Enrollment

1.1 Strictly Conducting Enrolling Examination

As is laid down in Article 8 of Labor Contract Law, employing units have the right to learn about the information about laborers relevant to their labor contracts and laborers have the obligation to tell the truth. According to Article 91, an employing unit, hiring a laborer who hasn't terminated his contract with another unit and causing a loss to that unit, is committed to joint and several liability. With enrollment the first and most important section in employment, it is of vital significance to have a successful enrolling examination in order to enroll the most suitable people at proper cost and reduce the turnover rate. Since it is laid down in law, employing units are supposed to make good use of their right to know. By examining their would-be employees, they will reduce some potential legal risks as well as unnecessary replacement cost. Therefore, it seems dispensable to interview candidates and investigate their background information when enrolling new employees. To be more specific, enterprises can do something in the following five aspects:

- a. Identity, education background, qualification, working experience and so on. Since such information directly determines laborers' working capacity, an enrollment may fail finally if employees try to enter an enterprise by cheating.
- b. Whether having any disease or disability. Because some risks may be caused if an employing unit hires some people with health hazard, physical examination is quite necessary.
- c. Whether reaching the age of 16. Any employing unit who hires laborers younger than 16 years old has to bear the corresponding legal responsibility.
- d. Whether having any undue labor contract with other units. A certificate for the termination of the labor contract with former working unit may be asked for, whose original can be kept by the employing unit. As for those laborers who haven't terminated their labor contracts with their former units, a written certificate from their former units to allow the enrollment should be asked for in order to avoid some unnecessary joint and several liability.
- e. Whether having any undue prohibition agreement with other employing units. When enrolling advanced managers and technicians who are likely to have business secrets, enterprises are expected to have strict examination on whether they have any undue prohibition agreement with other employing units. They'd better make these people make written promises of having no prohibition agreement with other employing units in order to avoid some unnecessary risks.

1.2 Promptly Signing Written Labor Contracts

According to Article 10 of Labor Contract Law, a written labor contract is expected to be signed to establish labor relations. If no contract is signed at the establishment of labor relations, it is supposed to be signed one month from the

day of employment. Besides, it is laid down in Article 82 that any employing unit who doesn't sign written labor contracts with their laborers working for it longer than one month while shorter than one year should pay doubled salary to laborers each month.

If an enterprise decides to hire laborers after primary election, interview, second-round examination and physical examination, it should sign labor contracts with them promptly. Many enterprises, however, have a wrong idea that there is no labor relation if they don't sign labor contracts with laborers. Thus, they will pay less or no social insurance, dismiss employees at their own will and avoid legal responsibility even when employees resort to law.

Implementing Regulations of Labor Contract Law has clearly laid down that labor relations are established from the day of employment and that enterprises should pay doubled salary to laborers from the first day of the second month to the day before the end of one year. In addition, they also have the obligation to make up for their written labor contracts with laborers under the circumstance of open-ended contracts established.

As a result, enterprise should have their outmoded ideas renovated and develop the habit of establishing labor contracts before employment or no later than one month after employment. Meanwhile, they should abandon the idea of terminating their labor contracts with laborers at any time. Accordingly, even after the due time of a labor contract while the laborer is still working in the working unit, another labor contract should be signed within one month. As is laid down in Article 5 of Implementing Regulations of Labor Contract Law, if any laborer refuses to sign a written labor contract with his employing unit one month from the day of employment with a written notice from the employing unit, the employing unit should give him a written notice to terminate their labor relations, after which no financial compensation needs to be given to the laborer while his salary in accordance with his actual working hours should be given to him. Accordingly, enterprises should keep relevant evidence in this case, such as the written notice of signing a labor contract, in order to avoid some potential legal risks.

2. Problems and Strategies of Labor Force Management

2.1 Establishing and Perfecting Enterprise Regulations

Regulations are the law inside an enterprise, which exist in the whole employment process and serve as an important basis for an enterprise to exert its management as well as termination of contracts. For example, as for those laborers seriously against enterprise regulations, their labor contracts can be terminated according to Paragraph 2, Article 39 of Labor Contract Law. In addition, legal regulations serve as an important basis in the case of labor disputes. No enterprise will do without regulations. The content of enterprise regulations should be in accordance with law, so should the procedures of their establishment and announcement.

Article 4 of Labor Contract Law clearly lays down the legal procedures for enterprises to follow when establishing regulations. Three aspects should be attached importance to when enterprises establish or amend their regulations: first, legal procedures should be performed strictly and the written evidence of discussions and negotiations of worker representative assemblies or the whole staff should be kept. Second, enterprises should have legal examination on their former regulations, amend or delete those articles not conforming to law. Third, the publicity procedure should be conducted. A variety of publicity methods can be employed, such as putting up a notice on the bulletin board, distributing brochures to staff, training staff about regulations, organizing examinations about regulations and so on. In terms of burden of proof, relevant sign-in records and exam papers should be kept in case of any legal disputes.

2.2 Promptly Modifying Labor Contracts

According to Article 35 of Labor Contract Law, labor contracts can be modified if both parties agree on that. The written form should be taken when modifying a contract. In addition, both the working unit and the laborer should retain a copy of the new contract.

During the employing process, enterprises may have some adjustments in employees' positions, posts or salaries in accordance with changes in their production and operation. When these things occur, enterprise should have prompt negotiations with their employees to modify their labor contracts in order to avoid some potential disputes. Without agreement, enterprises cannot modify labor contracts at their own will in most cases. Therefore, enterprises should pay more attention to the following things to avoid unnecessary disputes:

- a. Detailed and normative post instructions should be established to clarify the duties, working contents and qualifications of different posts. In the case of business adjustments and changes of technical methods, these instructions should be modified promptly. In this way, a standard document to measure whether a laborer is qualified for a post is provided.
- b. It should be laid down in labor contracts that enterprises have the right to adjust their employees' posts, positions and salaries in some specific situations.
- c. It should be further clarified in relevant regulations that in what situations enterprises are able to adjust employees' posts, positions and salaries.

d. Detailed performance management system should be established and strictly conducted, according to which employees' assessment results are combined with their appointment. Relevant data and materials should be kept as the original materials for employees' position exchanges, adjustments and dismissal.

3. Problems and Strategies in Personnel Leaving

3.1 Properly Treating Personnel Quitting

Two conditions are laid down for laborers' quitting in Article 37 of Labor Contract Law: one is a 30-day prior notice; the other is a written notice. A laborer in the trial period is also required to give a notice three days in advance. Enterprises should allow their employees' application for quitting and transact the quitting process for them as long as the above two requirements are fulfilled.

Certainly, personnel quitting, especially that of those laborers at important posts, will affect the normal production and operation of enterprises and hence cause inevitable damages to them since they can hardly find an ideal replacement for the former laborers within 30 days. In real life, many enterprises give written notices refusing laborers' requests for quitting after receiving the written quitting notices of laborers. However, what they do is invalid, hence cannot defending their illegal actions. Some enterprises even try to retain their employees by distraining their documents or property. According to Article 84 of Labor Contract Law, in the case of legal personnel quitting, any employing unit who distrains his employees' documents or property will be ordered to return them with a time limit as well as a fine ranging from 500yuan to 2000yuan; enterprises are responsible for a compensation for the damages over laborers. In addition, according to Article 25 of Labor Contract Law, except specific training and business secrets, any employing unit is not permitted to make any agreement about laborers' liquidated damages. Therefore, it is vital for enterprises how to retain excellent employees. The following four points should be followed:

- a. Confidentiality sections should be included in the labor contracts with those laborers at critical positions and service agreements should be signed with those laborers attending technical trainings with the fees afforded by enterprises. As is laid down in Article 102 of Labor Contract Law, laborers who are against the above regulation to terminate their contracts or are against their labor contracts relevant to confidentiality sections and cause damages for enterprises should bear the compensation responsibility.
- b. Enterprises should exert a variety of methods to retain excellent personnel.
- c. A reserve system for managers at critical positions should be established to cultivate potential successors, hence preventing breaks caused by personnel quitting.
- d. A cadre exchange system should be established to conduct regular exchanges among departments or regions in order to cultivate employees' abilities at a series of relevant positions.

3.2 Legally Dismissing Employees

Enterprises are liable to dismiss their employees for different reasons. Legal reasons and procedures of blamable termination as well as unblamable one are listed in Labor Contract Law. Article 40 of Labor Contract Law lays down three legal situations for unblamable termination of labor contracts. Two things should be attached importance to in this case: first, the usual procedure has to be followed to terminate a labor contract, for example, as for those employees who are unable to do their former jobs after medical treatment period, they should be shifted to some other positions; as for those who are not qualified for their work, training or a transfer is necessary; in the case of great changes in objective conditions, labor contracts can be changed after negotiations with labors. Anyone who fails to follow the procedure will bear the risk of illegal termination of labor contracts and have to pay doubled compensation. Second, it must be thought over whether to terminate a labor contract by paying one extra month's salary or by giving a 30-day written notice.

Actually, both methods have the same cost. In the latter method, the enterprise still needs to pay the employee's salary in the 30 days from the distribution of the notice to the termination of the labor contract, which is equal to one extra month's salary. However, different risks exist for them. Since a lot of things are likely to happen during the 30 days, such as industrial injuries, diseases, pregnancy and accidental injuries, employment units may fail to terminate their labor contracts with their employees. If an extra month's salary is given to terminate a labor contract, no risk will exist. Enterprises should dismiss their employees accordingly.

In addition to full-time employment, enterprises can also turn to part-time employment or labor service dispatch in order to complete certain tasks. In spite of their freedom in flexibly choosing suitable employment forms, enterprises must understand and fully utilize some relevant labor regulations because strategic employment will effectively reduce enterprises' labor cost and improve their competitiveness.

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