

## ISSUE BRIEF

*The FLA is a multi-stakeholder organization combining the efforts of businesses, universities, and civil-society organizations to improve conditions for workers around the world. Occasionally, the FLA publishes briefs on current issues in the global supply chain. We intend for these briefs to provide an overview of the various perspectives on a given issue. At all times, the FLA expects its business affiliates to comply with all legal requirements, as well as the provisions of its Workplace Code of Conduct.*

### **LABOR DISPATCH WORKERS IN CHINA** *March 2016*

#### **THE ISSUE:**

How should FLA affiliates respond to new limits on the use of labor dispatch workers coming into force in March 2016?

#### **THE HISTORY:**

The enactment of China's Labor Contract Law in 2008 was intended to provide greater protections for Chinese workers, requiring employers to draw up labor contracts in writing and deliver them to all workers. The law's provisions have led to some unintended consequences, however.

Because the law required companies to provide labor contracts only to directly employed workers, some employers saw a way to outsource the financial or regulatory responsibilities of the "employer" onto a third party -- a "dispatch agent." As a result, by 2011, China's Ministry of Human Resources and Social Security reported that the number of "dispatch workers" in China had grown to 27 million.<sup>1</sup> The All-China Federation of Trade Unions put the figure much higher, at 60 million.<sup>2</sup>

To address the growing over-reliance on dispatch workers, the Chinese government took action to restrict the number of dispatch workers a company may employ and clarifying the definitions of the three job categories dispatch workers may be hired to do. These restrictions -- amendments to the original law and a dedicated law governing dispatch labor -- have come into force gradually, with some elements put in place in 2013 and 2014. As of March 1, 2016 (following a two-year window for companies to adjust), the most recent restriction has been put in place, requiring that dispatched workers shall not exceed 10 percent of the total number of employees at a given company.

#### **THE THREE JOB CATEGORIES:**

To remain in compliance with the law, employers are allowed to hire dispatch workers for three types of workplace duties only:

- A **"temporary"** work position is a job that lasts no longer than six months, However, the law requires the agency to

<sup>1</sup> Cairns, D. 2015, 'New formalities for casual labour: Addressing unintended consequences of China's Labour Contract Law', Washington International Law Journal, 24(1), p.238.

<sup>2</sup> [http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---sector/documents/publication/wcms\\_246921.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_246921.pdf)

#### **THE GOVERNING ELEMENT OF THE FLA CODE: EMPLOYMENT RELATIONSHIP\***

"Employers shall adopt and adhere to rules and conditions of employment that respect workers, and, at a minimum, safeguard their rights under national and international labor and social security laws and regulations."

#### **BENCHMARK 5**

"Employers shall not use employment agencies that ... require workers to pay recruitment and/or employment fees."

#### **BENCHMARK 6**

"Employers shall use standard contract language with employment agencies that specifically imparts power to employers to directly pay wages to contract workers and ensures equality of compensation and workplace standards as set under the FLA Workplace Code and national laws and regulations."

#### **BENCHMARK 9**

"Employers shall not hire contract/contingent/temporary workers as a means to support normal business needs on a continuous basis or as regular employment practice."

\* <http://www.fairlabor.org/our-work/labor-standards>

sign at least a two-year fixed-term contract with the employee.

- An “**auxiliary**” position provides supporting services to the core business positions of an enterprise. For instance, security, canteen and dormitory services are most often labor dispatch positions. While the law itself does not provide sufficient clarity on what positions may be considered “auxiliary,” it requires the companies to consult with worker representatives to negotiate which positions may be defined as “auxiliary.”
- A “**substitute**” position refers to a temporarily vacant position. Such vacancies often occur when the former worker takes time off for maternity or sick leave, off-site education, or for other reasons.

All of these restrictions – as well as the more recent 10-percent cap – are intended to protect dispatch workers from performing the core work of a business without the benefits of contracted, long-term employment.

### **THE PROBLEMS WITH DISPATCH WORK:**

Studies have shown that dispatched workers often receive lower wages than their permanently employed counterparts, despite the legal requirement to provide equal pay for equal work.<sup>3</sup>

For example, a survey conducted by the Nanjing Municipality (a capital city of Jiangsu Province, China) in 2013 showed that the average wages for regular staff and dispatch workers were CNY 3909 and CNY 2715 per month respectively.<sup>4</sup> Among the top 44 enterprises in this survey, the wage gap was as wide as CNY 3000, excluding benefits.<sup>5</sup> Similarly, reports have found that it is a common practice that dispatch workers often do not receive legally required social insurance<sup>6</sup> and housing provident contributions.

During the 2014 and 2015 factory due diligence cycles, FLA assessors found that three out of 89 factories assessed in China were using or had used dispatched labor. The findings of these assessments confirmed that many dispatch workers were receiving delayed or partial payment for their social insurance, and one factory

<sup>3</sup> Article 63, Amended Labor Contract Law; Article 7, Interim Provisions on Labor Dispatch, 2014.

<sup>4</sup> Private Employment Agencies and Labor Dispatch in China, Liu Genghua, Working Paper No.293, ILO, p.22.

<sup>5</sup> Ibid.

<sup>6</sup> <http://www.businessweek.com/articles/2012-03-08/why-chinas-factories-are-turning-to-temp-workers>.

was found to be paying housing provident benefits only to regular workers, and not for dispatch workers.

Dispatch workers at that time averaged around 38 percent of total workforce of the three assessed factories, and were widely assigned throughout the production lines with no distinction between regular job positions and temporary, auxiliary, or substitute job positions. Assessors found that these factories had not yet devised any detailed plans to bring the share of the dispatch workers in the workforce within the legal limit of 10 percent before the recent deadline.

FLA assessors have also found that factories on occasion have used dispatch agencies that charged workers recruitment fees ranging from CNY 10-50 (\$1.5 - \$6), which violates the FLA Workplace Code of Conduct. Other researchers have found that workers are required to pay recruitment fees as high as \$15 - \$60.<sup>7</sup>

### **FLA RECOMMENDATIONS:**

When brands encounter facilities employing labor dispatch workers, the FLA recommends implementing the following strategies in their workplace standards monitoring programs:

- Monitor whether workers must pay a recruitment fee, and stop the practice if it is found.
- Monitor the proportion of dispatched workers, and if it exceeds the legal limit of 10 percent, develop a time-bound action plan to reduce the dispatch worker proportion to within the legal limit.
- Monitor whether dispatch workers are placed in the temporary, auxiliary or substitute positions only, and review how facilities define the three positions in their written policies and procedures.
- Monitor to ensure that dispatch workers receive equal pay for the same work as regular workers, and that dispatch workers’ mandatory social benefits are paid.
- Communicate to facilities that industrial relations with dispatch workers should be the same as with regular workers.

Responsible supply-chain leaders like FLA-affiliated companies can take a proactive approach to helping bring suppliers into compliance with the most recent updates to Chinese Labor Contract Law and Regulation on Labor Dispatch.

<sup>7</sup> China Labor Watch, Tragedies of Globalization: The Truth Behind Electronics Sweatshops No Contracts, Excessive Overtime and Discrimination (2012), available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2104&context=globaldocs>.