

Labor Outsourcing

Decree No. 55 and regulatory trends in outsourcing

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Topics to be covered

1. General overview
2. Risk of deemed employees
3. Terminating outsourced employees
4. Practical solutions for dealing with outsourcing
5. Draft Decree amending Decree No. 55

General Overview



What is Labor Outsourcing?

- “Labor Outsourcing” (aka Labor sub-leasing) is an activity where an employee is employed by an enterprise licensed to provide labor outsourcing services ("**labor provider**") and then works for another employer ("**outsourcing employer**").
 - *the outsourced employee is under the management authority of the outsourcing employer,*
 - *labor relations between the outsourced employee and the labor provider are maintained.*



Permitted Purposes for Labor Outsourcing

- To temporarily satisfy a sudden increase in the labor force for a certain period of time;
- To temporarily replace employees on maternity leave, suffering from work-related accidents or occupational diseases, performing citizenship obligations (military service, etc.) or those entitled to a reduction in work hours; and,
- To satisfy a need for highly qualified or technically-skilled employees.

Prohibited Uses of Labor Outsourcing

- To replace striking workers or those exercising other rights in the context of a labor dispute;
- To use labor outsourcing without specifying whether the outsourcing employer or labor provider is responsible for work-related accidents and diseases;
- To replace workers who have been laid off as redundant;
- To use outsourced employees to work in areas with harsh living conditions (unless they have already lived there for 3 years);
- To use outsourced employees for heavy labor, or for jobs that involve exposure to hazardous substances or that are otherwise dangerous.

List of Permitted Jobs

1. Interpreter / translator / stenographer;
2. Secretary / administrative assistant;
3. Receptionist;
4. Tour guide;
5. Sales assistant;
6. Project assistant;
7. Production machine system programmer;
8. Production and installation of television and telecom equipment;
9. Operation / maintenance / repair of construction machines or electric systems for production;
10. Building and factor cleaning and sanitizing;
11. Document editor;
12. Guard / security;
13. Telemarketing / telephone client services;
14. Dealing with financial and tax matters;
15. Automobile repair and maintenance;
16. Scanning, industrial drawing / interior design; and,
17. Driver.

Labor Outsourcing Contracts

- Cannot contain conditions less favorable to outsourced employee than his / her contract with the labor provider
- Maximum term is 12 months
 - consecutive contracts are not allowed
- Must be in written form and specify:
 - work location, description of job, requirements;
 - term and commencement date of outsourcing;
 - working hours, rest breaks, safety / hygiene conditions;
 - which party bears responsibility for work accidents or occupational accidents.



Risks of deemed employees

Risk of an outsourced employee being deemed a permanent employee

- If an outsourced employee continues to work beyond the term of the labor contract (no contract in place) the:
 - Outsourced employee could be deemed to be a permanent employee;
 - Outsourcing employer could then face liability for statutory withholdings and deductions.
- To manage risk, do not use outsourced employees beyond their contractual term and make sure they have employment contracts with their labor provider.



Terminating outsourced
employees

Terminating the Use of an Outsourced Employee



- Keep in mind outsourced employee is the official employee of the **labor provider**, not the **outsourcing employer**
- Terms of the outsourcing contract determine termination
- If contrary to terms of a contract, ***breach of contract*** with labor provider, ***not unlawful dismissal***



Terminating the Use of an Outsourced Employee (Continued)

- Regardless of the terms of the outsourcing contract, services can be terminated if the:
 - Outsourced employee performs poorly; or,
 - Outsourced employee breaches labor rules.
- Can return employee to labor provider;
- Labor provider must deal with labor discipline, but outsourcing employer must provide evidence of misconduct.



Practical solutions for
dealing with outsourcing

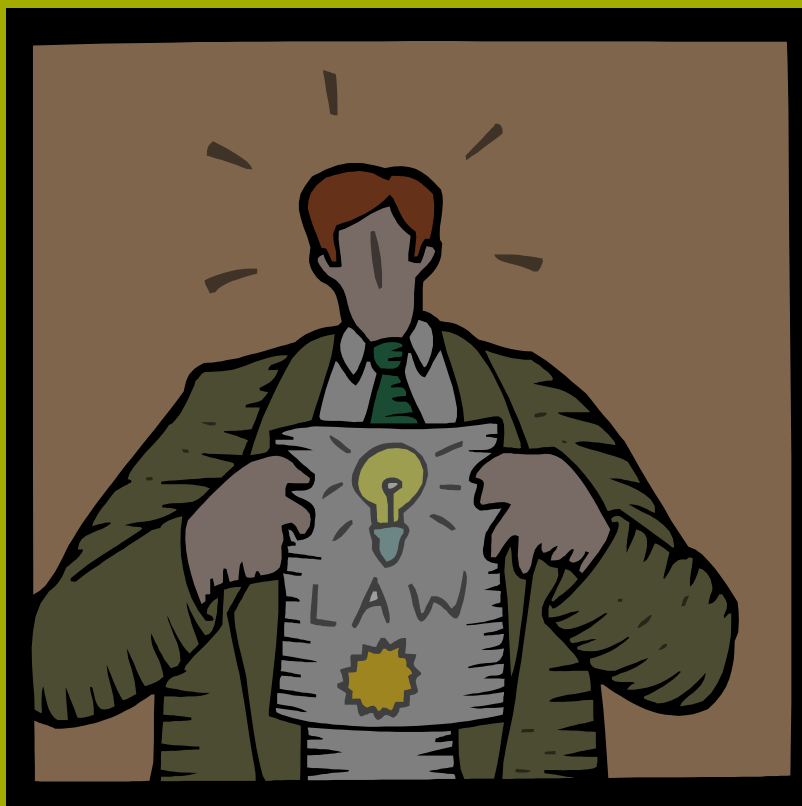


Jobs Not Listed as “Permitted Jobs”

1. Enter into service contracts with labor providers:
 - *Must ensure that the labor provider is licensed to provide the services under service contracts*
2. Enter into independent contractor contracts

Jobs Listed as “Permitted Jobs”

1. Convert the outsourced employees to full-time employees
 - *Consider the headcount limitation*
2. Enter into independent contractor contracts
 - *Consider the jobs that can be done by independent contractors*
3. Enter into service contracts
 - *Ensure that the labor providers are licensed to provide the services under service contracts*
4. Change the outsourced labor force every year
 - *Consider which positions of the labor force can be changed annually*



Draft Decree amending Decree No. 55



Amendment to Decree No. 55/2013/ND-CP

- Effected enterprises:
 - enterprises that take part in protecting national sovereignty and promoting national security and defense, in addition to its normal production and business activities, and for whom the restructuring scheme was approved by the Prime Minister



Amendment to Decree No. 55/2013/ND-CP – Cont'd

- Effected enterprises will be allowed to:
 - conduct sub-leasing activities with enterprises that either have a parent company–subsidiary relationship with the labor sub-leasing enterprise, or that are in the same economic group, as defined in Article 149 of the Enterprise Law, with the labor sub-leasing enterprise; and
 - use sub-leased employees to work in places with harsh living conditions; or engage in heavy, hazardous or dangerous jobs, or in specialized heavy, hazardous or dangerous jobs that are listed in promulgated legal instruments.



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