INTERNATIONAL COMPARATIVE STUDY ON DISPATCHED WORK

[1]JEN-CHIA CHANG, [2]WEI-CHENG HUANG

Graduate Institute of Technological & Vocational Education,
National Taipei University of Technology, Taipei City, Taiwan
E-mail: [1](jc5839@mail.ntut.edu.tw), [2](tim641215@gmail.com)

Abstract - The International Labor Organization had made the conventions and recommendations about dispatched employment. Germany and Japan also made the relevant laws, but there were still no relevant laws about dispatched employment in Taiwan. In order to protect the rights of dispatched labors, the law-making which correspond with our national conditions. By comparing of the legalization about dispatched employment of America, Germany and Japan, we want to know the practical conditions and analyze the advantages and disadvantages of those countries above. We can provide our country with the referential aspects in making the law about the dispatched employment in the future. The findings of this study as follow : 1. The problems that may arise from dispatching work, including precarious employment relationship, improper exploitation, differential treatment, attribution of responsibilities on employer's, and so on. 2. The labor dispatch of the legislation which has been promoted, after the adoption of legislation for two years, we have to review the issues of labor dispatch, and gradually allow the dispatch work. 3. In order to conform to the type of work dispatch, we have to amend the labor-related laws and ordinances.

Keywords - Dispatch, Dispatched Employment, Dispatched Work, Dispatched Workers, Labor

I. INTRODUCTION

A. Motivation

Convention No.181 (1997) of "The International Labor Organization Concerning Private Employment Agencies" has mentioned remarkable two points [16]: First, to amend the Convention Concerning Fee-Charging Employment Agencies (NO.96) passed in 1949. The activities of private employment agencies are not limited to the employment agency and job placement. The expansion of functions and roles has become an employer that can employ labor for third parties.

Second, it calls on members of the international community to attach importance to the flexibility of the labor market. "Labor Dispatch" has already stipulated the relevant legislative norms in other countries. For this study, to set the feasible policy directionand provide an important reference for the government to formulate a labor dispatch law in the future.

B. Purpose

Are there any direct interests in reducing the cost of personnel and increasing labor flexibility if using "Labor Dispatch"? How is the currently statement of "Labor Dispatch" in Taiwan and the trend of international? What is the problem of "Labor Dispatch", Is it necessary to legislation? Above of the questions are worth to discuss among this study, the purpose of this study as follow:

1. To clarify the "Labor Dispatch" of the relevant concept and type.
2. To compare and analysis the law of dispatched employment withother countries and learning from the past for reference.
3. To discuss the related issue of "Labor Dispatch"
4. To provide the relevant recommend of dispatched employment law in Taiwan.

C. Methods

1. Historical Method

Through the perspective of historical research, this study will observe the development background of labor dispatch in the United States, Germany and Japan. It is not only to observe the currently statement of dispatched employment in Taiwan, but also set the legislation for reference in our country.

2. Document Analysis

The main resource of literature for this study including:

a.To summarized, compiled, and analyzed the related books andperiodicals, seminars materials, relevant laws, research reports, government documents, newspapers, magazines, and statistical data for Labor dispatch.

b. The relevant reference of "Labor Dispatch" between Japan and western countries.

3. Comparative Analytic Method

The legal institutions of the dispatch labor for other foreign countries are definitely worth learning, including the standard of working condition and management labor relations. To discuss our labor dispatching that how to stipulate the law; therefore, the legal institutions of the dispatch labor for other foreign countries that we need to learn. Moreover, Taiwanese law acquired from this study for the reference in the future.

II. TO DISCUSS THE CONCEPT OF "LABOR DISPATCHING"

The Definition of "Labor Dispatching" and Relationship with Law There are many definitions and points of view for "Labor Dispatch" from domestic industry and academic circle; moreover, there had manydefini-

tions of labor dispatch is summarized as below: Promoting the hiring of regular employees has reached its limits at many companies in Japan. Therefore, the stable employment and better treatment of the dispatch worker is an important topic.For this reason, “Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Work”[10] (hereinafter referred to as Act) is necessary to legislate for dispatched workers. According to the Article 1 of thisAct, to contribute the stability of employment and otherwise to the promotion of the welfare of Dispatched Workers is main purpose. In addition, temporary work is on the increase throughout the EU. To protect the dispatch labor andset the Temporary Employment Act (hereinafter referred to as TEA)whichis applicable to both the private and the public sector with the exception of the building industry [8]. We not only need to knowthe relationship between the user and the temporary work agency, but also to clarify the relationship between the user and the temporary worker. Moreover, TEA makes the temporary worker is protected by all existing laborlaws. On the contrary,In the U.S., there is no specific national regulation for temporary, dispatched, or leased employees. Brown and Rymkevichpointed out that “The employment relationship in a growing number of industries with large concentrations of low wage workers has become ‘fissured.”[7]Under the current trend of law where workers are economically dependent on both employers or controlled by the user employer, joint employer liability is likely.Finally, to explain the relationship between Dispatched Worker, Dispatched Work Agency and User Enterprises, see the figure 1 as follows:

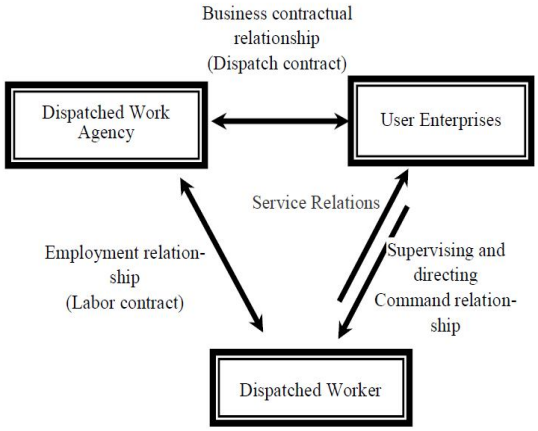


Figure 1 「Labor Dispatch」 Relation Chart

III. TO DISCUSS THE DISPATCHED EMPLOYMENT IN OTHER COUNTRIES

A. To Analysis the International Labor Standards of “Labor Dispatch”

The Convention No.181 (1997) of The International Labour Organization indicated that the biggest problem of the flexible labor market was labor market dualization. The gap has led to the formation of a dual structure of the labor market [16], and this new development also poses a great challenge to the active-labor market policy.

B. To Analysis of the American Legal Institution of “Labor Dispatch”

In America, “Labor Dispatch” is developed by Temporary Help Supply (hereinafter referred to as THS). Moreover, the concept of labor dispatch is included in THS, and other related concepts were also including leased work and outsourcing. There had the concept of the Labor Dispatch and the content is included the workstyle for THS, although it does not have specially term in the United Stated [14]. To analyze the relevant regulations for the dispatch of labor in the United Stated as follows.

1.To Enforce with Maintain and Protect the Right of the Standard of Working Condition

a.To Identify the Problem of the Employer Liability

To be recognized by joint employer, Both of NLRB and America court have different method to examine that NLRB uses a right of control test, while the America court uses mutual control and integration test [13]. No matter what kind of the standard to determine, it still not perfect.

b. To Formulate the Law with the Standard of Labor Dispatch

There have several bills of legislation for labor dispatch in United States Congress, but so far without success. Before to clarify the responsible of the employer liability and to protect the labor right of worker; for this reason, to formulate the law with the standard of labor dispatch not only can solve the problem but also can avoid the labor dispute[13].

c. To Expand the Application with National Labor Relations Act for Dispatch Labor

Expect of the public sector of the United States is excluded the application scope with national labor relations Act and the public sector of the United States collective agreement Act. If the government would like to make the solution, it should expand the national labor relations Act for dispatch labor of the public sector in United Stated, and not formulate the public sector of collective agreement Act. It not only can make dispatch labor provide service for the public sector and be employ by private sector, but also can suitable use the public sector of the collective agreement Act, and it can avoid catch-22 situation[9]. In addition, to consult with multilateral employer, it can make the dispatch labor not just protect with single employer [5].

2. The aspect of Social Security

Social Security Act provides the minimum subsistence allowances of workers after retirement, while the additional pension is paid for employer. But the main of the problem that is dispatch workers who cannot join the pension plan which is established by user enterprises. Because of the dispatched work agency usually are small companies. Therefore, the dispatched work agency almost can’t provide dis-

patching pension for dispatch worker. It is too difficult to protect the dispatch workers who work in the United Stated in accordance with their Employee Retirement Income Security Act[13].

C. The Analysis of Germany Legal Institution of "Labor Dispatch"

When Germany has passed the Legal Institution of Labor Dispatch in 1972, it becomes kinds of employment market. Germany is one of the member nations in EC so the institution of the labor dispatch in Germany is prohibition, regulation and non-regulation. Throughout the AUEG in Germany, it takes Labor Dispatch separate legislation[17]; and the following is based on the Legal Institution of Labor Dispatch in Germany to make us enlightenment:

1.To Formulate the Policy of the Labor Dispatch

To solve the adverse consequences between the employers and users that are main purpose to formulate the Legal Institution of the Labor Dispatch in Germany. For example, Dispatched work Agency in Germany is taken by the Permit Institution. In principle, the applications units are qualified with the Legal Institution of Labor Dispatch for the requirements with the provision of dispatched work agency, and without the situation of the Section III of the Legal Institution of Labor Dispatch, and usually can acquire the permit. However, it does not means that the specification of Dispatched work Agency in Germany is less than other countries [6].

2.Stability of Employment

To protect the work right and Social Security interests for the dispatch labors, the Legal Institution of Labor Dispatch in Germany is not base on the Stability of employment. Compared to Japan, Germany does not have the dispatch labor in register employment. In other words, the labor contract between dispatched work company and dispatch worker is non-fixed term contracts. It means that the dispatch labors will not lost their job because of the termination of the dispatch contract; moreover, to avoid the employment of the dispatch labor be lost in restless state. It protects the right of the dispatched worker and the normal labors who must be protect by the protection against Unlawful Dismissal in Germany [2].

3. The Temporary Labor Demand and Restriction for Business

Not only to avoid the enterprises that used extensively dispatched workers, but also to prevent the enterprises thatuse dispatch contract to evade the employer obligation. Otherwise, the labor Right of regular workers must suffer from conflict. The Legal Institution of the labor dispatch in Germany has the strict restrictionsabout the dispatch period for Dispatched work Agency to dispatch the workers to the user enterprises. For Dispatched workers who are expected that only use in the temporary labor and the staff representative who has the permissions to agree or refuse the dispatch labor for user enterprises [17].

4. Belonging of the Employer's Responsibility

The Legal Institution of the labor dispatch in Germany has the clearly defined about the rights and obligations among dispatched work Agency, dispatched worker, and user enterprises that to protect the labor right of dispatch worker. According to the Paragraph 6 of Article 11 of German Law, the user enterprises have to comply with "Industrial Safety Regulations" and the responsibility of employers'; moreover, the dispatched work Agency and the company of representative can observe the place who works in user enterprises with regular inspection that to protect the dispatch labor's health and safety [6].

D. The Analysis of Japan Legal Institution of "Labor Dispatch"

Deregulation Promotion Program was approved on March 31th, 1995. It is clearly to deregulation the relationship with labor and employer is main purpose [3]. As a result, since the Labor Dispatch Act was promulgated in 1986, the amendments were made in 1990, 1996, 1999, 2003, 2012 and 2015[12]. The analysis of the contents for labor dispatch Act in Japan as follow:

1. To implement the concept and practice of employment stability

Labor Dispatch Act is amendments in 2012, and the main purpose for dispatched employment is safety and guarantee. Moreover, the purpose of legislation is based on "Protect the Rights of Sending Workers" and "Maintain the Employment Stability of Dispatched Labors". By principle, Japan is prohibited from sending workers that the period of employment contract is daily or less than 30 days [12].

2. Requirement of Dispatched Period

Dispatched Employment amendment in 1999, and it assigned labor dispatch as "temporary" and "transient" as an adjustment mechanism for labor supply and demand. The deadline for dispatching new types of industry should not exceed than one year. Labor dispatch was regarded as Short-term labor force to cooperate the labor market's transient needs [4]. However, the law was amended in 2003; the period of dispatch was changed from one year to three years. It will not only destroy the basic structure of dispatch in "temporary" and "transient", but also keep someone in suspense to replace regular labor. Therefore, the person who is unprofessional that the period of dispatch should not be long; it will make "temporary" and "transient" of dispatch labor gone off [15].

3. Prohibition of User Enterprises and Dispatched work Agency Agreed to Dispatch Specific Labor

For the relationship of labor dispatch, the user enterprises should not have any specific work for dispatch workers. Otherwise, it would be easy to make the situation that the dispatch labors that are employed by user enterprises, but will changed from the Dispatched work Agency, and still be employed by the same workers for the user enterprises. This kind of dispatched work may have a serious impact on the rights and interests of workers for user enterprises [11]. For this reason, it is important to establish the law of labor dispatch for reference in our country.

4. The Specification of Employer Liability

Labor dispatch Act is based on the distribution of employer liability in Japan. To separate the responsibility of "the Employment Security Act" and "the Labor Standards Act" in distinguishing both of individual responsibilities and the obligations they have. It is clearly to make a list of responsible for Dispatch work Agency and the user enterprises [11].

E. To compare theLegal Institution of "Labor Dispatch" between the United States, Germany and Japan

To compare the differences in Legal Institution of "Labor Dispatch" between the United States, Germany and Japan, and the analysis is listed below: TableI the Legal Institution of "Labor Dispatch" between the United States, Germany and Japan

TableI the Legal Institution of "Labor Dispatch" between the United States, Germany and Japan

Item	Japan	America	Germany
Title	To ensure the proper operation of the business of Labor Dispatch and the Worker Dispatching Law (1985)	There is no regulation for dispatch labor in Federal Law and Statues, but there still stipulate the regulation in a part of states, such as state of Georgia and State of Texas.	Temporary Employment Act (1972)
The limit of Labor Dispatch	1.Positive listings: the dispatch labor in register employment (26 kinds of categories) 2.Negative listings: the dispatch labor in common employment (port and harbor transportation Business, security guard, construction, the business of dispatch is unsuitable and determined by the other government as not requiring)	No regulation	Except for construction, every kinds of categories can use dispatch.
Regulation	1.the dispatch labor in register employment is used Permission, after revised the valid period change 3 to 5 years. 2.the dispatch labor in common employment is used notification, and there is no expiry date.	According to the difference types for dispatched work agency which is suitable for difference law, such as the dispatched work agency used company to establish, and it should be in accordance with the provision of the Commercial Law for each State.	1.Permission 2.The duration of period should not exceed for one year, and the expiration of dispatch labor which may apply for extension than one year, and permanent permit must be issued.
Type	Regular dispatch labor (register employment) Specific dispatch labor (common employment)	No regulation	No regulation
The relevant treatment and regulations of Wage Equality	Dispatched work agency has the obligation with dispatch worker, including wage, training, welfare etc.	No regulation	Basically, dispatch worker has equal wage and benefits, but allow Collective Agreement have different rule.
Right to Information for Labor	The dispatch labor only can engage in dispatch work and relevant content.	No regulation	Provide the written direction for dispatch labor.
Transfer to regular employees	1.There are 26 kinds of designated business, and there is no expiry date. 2.Expect for these 26 kinds of business, the duration of period is 1 year and not exceed 3 years.	No regulation	No regulation
Employer liability	Labor Standards Act, Occupational there have stipulation that both of user company and dispatched work agency have obligation in Labor Standards Act, Safety and Health Act, Pneumoconiosis Act and Working Environment Monitoring.	1.Occupational Safety and Health Act stipulate user company and dispatched work agency have to assume employer liability. 2.User Company and dispatched work agency both have the obligation, and the wages shall not below the basic wage.	No regulation

IV. ANALYSIS OF THE LEGAL INSTITUTION OF "LABOR DISPATCH"

A. Analysis the Related Problem of Labor Dis-

patch

1. The Problem of Precarious Employment Relationship

The Labor Dispatch gets amount of labor market whether the situation of employment instability and it can be explored from the following two aspects. The first of all, the labors who are employed by labor dispatch, and obtain a guarantee of the right to work. Second, when dispatched employment industry becomes the trend of the employment labor, the enterprises may reduce to employ general labor because of the personnel cost. The result of cannot be ignored.

2. The Problem of Improper Exploitation

The model of the Dispatched work Agency means the wage of dispatch labor is paid by Dispatched work Agency, but the amount of work and salary must be different from user enterprises. The Dispatched work Agency thinks of this gap as an operating profit within the enterprise. If the improper exploitation is existing, it will be worth reviewing whether any illegal interests will be extracted.

3. The Problem of Differential Treatment

There are two types of employees in the enterprise. One is core workers to take up the important positions, which are responsible for implementing important work with better working conditions. The other one is peripheral labor with lower positions and worst conditions, and engaged easier work, which is replaced easily. In this case, no matter what dispatch labor is short-term or long-term dispatching. Therefore, the working condition will be worse than the user enterprises. In addition, it not only makes dispatch workers feel like “secondary workers”, but also feel differential treatment.

4. The Problem of Execution Disciplinary Authority

To execution the disciplinary authority that is belong parts of the management for employers. When dispatch labor violating the rules of the user enterprises that should execution the disciplinary authority for dispatch labor? If the user enterprises execution the disciplinary authority, but it is out of range, how does it give the relief of dispatch labor? Therefore, regard of the execution the disciplinary authority for Dispatched work Agency and the user enterprises, and it must be adopt suitable specification.

5. The Problem of the Belonging of Employer Liability

The employers who really want to dispatch the workers to the user enterprises, due to the absence of a labor contract relationship with the dispatch workers. Before the Act of the labor dispatching expressly provided for the legal liability, it is impossible to classify their obligations under a labor contract. Therefore, the issue of employers' liability arising from the new labor pattern needs to be clarified through legal norms.

B. the Suggestion to Solve the Problems about the Dispatch Labor

1. The Suggestion to Solve the Restless Employment

Currently, the labors shortage and the business need the high quality labors in our country. How to strike a balance between the safety of the employment and the shortage of the labor is an important issue to think about it. If they embrace opening the dispatch labor, it will have a great impact on the traditional employment type. It might make the situation about the restless employment. For this reason, we can make the reference that the Labor dispatches the way of legislation from Japan and take the part which is permitted to avoid the overuse of the dispatch labors from the business.

2. The Suggestion to Solve the Problems about the Improper Exploitation

Currently, there is no definite statistical information for the reasonable standard that should be obtained from the dispatched work Agency. To avoid the improper exploitation, we have to provide the clearly reasonable profit range for the dispatched work Agency that is the way to solve this problem.

3. The Suggestion to Solve the Problems about Differential Treatment

According to the Article 5 of Employment Service Act, for the purpose of ensuring national’s equal opportunity in employment, employer is prohibited from discriminating against any job applicant or employee on the basis of race, class, language, thought, religion, political party, place of origin, place of birth, gender, gender orientation, age, marital status, appearance, facial features, disability, or past membership in any labor union. However, it is controversial whether dispatch labor is neither a job-seeker nor a laborer employed for Dispatched work Agency. Therefore, it still needs to be clearly regulated through legislation.

4. The Suggestion to Solve the Problems about Disciplinary Exercise

When the Dispatched work Agency signs the dispatch contract with the user enterprises, both of them have a restriction of exercise of discipline. Therefore, the clear legislation and standardized manner can not only provide adequate protection for the rights of laborers, but also provide a clear definition about the rights and the obligation of the dispatched work Agency and the user enterprises. Therefore, the provisions of the legislation are the good policy to solve the problems.

5. The Suggestion to Solve the Problems about Employer's Responsibility Attribution

When dispatching labor sign the dispatch contract with Dispatched work Agency, their rights should be informed to avoid discrepancy between dispatch contract and the content of dispatch contract. Moreover, they have to implement the dispatch contract under the agreement of the dispatch labors. The Dispatched work Agency dispatch the dispatch labors have to inform the contents of the work, working conditions, working environment and other matters to the dispatch labors to protect their rights. And the dispatch labors also have the right to accept or reject the dispatching works.

As above, based on the principle of freedom of contract in civil law, if the contractual content is contrary to statute of mandatory or prohibited provisions and without violation of public order and morality, it can be stipulated in the contract. However, if these issues are completely delegated to the civil law contractual freedom, it still have some problem, so it is necessary to clarify the rights and obligations between the dispatched workers, the dispatched work Agency and the tripartite parties for the dispatch labor. Therefore, it is necessary to be governed by the legislative methods.

CONCLUSION

To make the reference from the United States, Germany, Japan that the United States does not have any relevant legislation for labor dispatch law. There have many laws to regulate, but the standardizations still not enough. It is difficult to clarify the attribution of responsibilities on employers. Moreover, the working condition must regulate with the collective agreement Act because it can protect the dispatch labor in United States. When the dispatch labor has special status, it is difficult to be an appropriate consultative unit. However, the legislation of German and Japanese make a law for "Labor Dispatch" which is clearly regulation for "Labor Dispatch".

Finally, When Taiwan establishes the legislation in the future, it can divide to three purposes. One is shortage goal, another is medium-range goal, and the other one is long-range goal.

A. Shortage Goal

Because of the related research and statistical data are not sufficiently for "Labor Dispatch" in Taiwan. Actually, it is too difficult to control the problem of "Labor Dispatch" currently. Through the research about situation from other countries, the problem of labor dispatch including, the problem of precarious employment relationship, the problem of improper exploitation, the problem of differential treatment, the problem of Collective Bargaining, The problem of execution disciplinary authority, and the problem of the belonging of employer liability and so on. It also can find the related experience to provide the solution method.

B. Medium-range Goal

The labor dispatch of the legislation which has been promoted after the adoption of legislation for two years, we have to review the issues of labor dispatch, and gradually allow the dispatch work. Through the process of amendment of worker dispatch law, there has a profound impact for labor dispatch in Japan. They prohibit and limit for labor dispatch at the beginning, but now are gradually allow the dispatch work. This kind of change is good for dispatched work agency and the user enterprise; however, it must be carefully to deal with the original employment security system. When Taiwan government makes the relevant legislation with dispatched employment law, it can make the dispatch industry gradually allow in Taiwan.

C. Long-range Goal

Dispatched employment is related with others Act; therefore, it must be amended the law which is related with labor. We need to make a legislation to correspond with an atypical work style, like labor standards law, Three Labor Laws, and labor safety and health law and so on. Through the amendment of the relevant labor law, actually, it can protect the labor rights and benefits of dispatched workers and general labor force can be assured a win-win situation.

In conclusion, it is hard to make the legislation of dispatched employment. Many labor groups are not satisfied with the law of dispatched employment, and also called evil law. Moreover, they emphasize the government would like to make this kind of illegal work type to be legalization that is not a suitable behavior. In addition, it claims that the currently labor law was enough to solve the problem of labor dispatch. That said the trend of dispatch of employment for this study. It should follow the spirit of the Emperor Yu Tames the Flood that dredge instead of obstruction to make typical law to give the clearly direction between employer and employee. Actually, it is better than mend related of labor law.

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