

Legal Risks and Prevention Strategies in Human Resources Management of Y Fujian Branch

Fangkai Chen *

Department of Management, NANJING AUDIT UNIVERSITY JINSHEN COLLEGE, Nanjing, Jiangsu, China

* Corresponding author Email: 1102383377@qq.com

Abstract: As national laws, regulations and rules tend to improve, and the legal awareness of workers and the awareness of their rights gradually rises, the legal risks in the management of human resources in enterprises are increasing, and this change of situation has put forward higher requirements for the level of human resources management in enterprises. This paper mainly introduces the general situation of Y Fujian Branch and analyzes its human resource management status in detail. Then it analyzes the legal risk and its causes in human resource management. Finally, according to the legal risks existing in human resource management of Y Fujian Branch, the corresponding prevention strategies are put forward. It is hoped that this study can provide effective preventive strategies for Y Fujian Branch to fully cope with the legal risks in its human resource management, and can also provide corresponding reference value for other enterprises' human resource management.

Keywords: Human Resource Management; Labor Law; Labor Contract Law Legal Risk; Prevention Strategy.

1. Introduction

1.1. Research Background

As an important part of enterprise management, human resource management should have a series of sound preventive strategies to avoid legal risks. With the gradual improvement of national laws and the gradual improvement of the education level of the people, the biggest feature in the field of enterprise human resource management is that the awareness of workers to protect their rights has been greatly improved, and the requirements of workers for work and work units are also getting higher and higher. However, if workers think that their legitimate rights and interests have been infringed, they are not as afraid or good at fighting with enterprises as in the early days, which highlights the necessity of legal risk prevention strategies in enterprise human resource management.

For enterprise management, human resource management has developed from traditional personnel management to professional management, and enterprises urgently need to improve the level of human resource management. However, many small and medium-sized enterprises or newly established enterprises do not adopt a professional human resource management model due to financial constraints, lack of management experience and other reasons, but the company's personnel work is responsible for several people, and has not set up a special human resources department, and such work is attributed to the administrative department. This management model is bound to breed many problems, both administrative and legal.

1.2. Literature Review

In the domestic research on legal risk and prevention strategies in enterprise human resource management, some representative research results are as follows: Chen Xingui (2010.10) took Company A as the research object and conducted a strategic analysis of the company's human resources by combining theory with practice method and SWOT method. According to the company's development

history, organizational structure, employee age, educational structure and other human resource management status quo, the internal strengths and weaknesses as well as external opportunities and threats are analyzed to provide guidance for its human resource management reform. Unlike other literature studies, Chen Xingui puts forward preventive strategies for the enterprise's human resource management from the macro level. For example, the guiding ideology and principles of human resource management, corporate culture, human resource management system and other aspects [1]. This literature research has macroscopic guiding significance for many enterprises at present, but it is too abstract and lacks in specific application level. Liang Fuying (2019.6) analyzed the causes of legal risks in H company from the aspects of employee recruitment, contract signing and labor dispatch based on the current situation of H company and human resource management against the background of the improvement of labor laws such as labor law. In view of the legal risks existing in H company and the causes of its risks, abstract and concrete preventive strategies are proposed for H Company's human resource management [2]. Chu Hongwei (2019.12) analyzed the legal risks commonly existing in human resource management of 80 small and medium-sized enterprises, and focused on LX Company as a specific case to analyze and summarize the legal risks existing in human resource management of domestic small and medium-sized enterprises, and put forward preventive strategies that are of reference significance for small and medium-sized enterprises [3].

Foreign research on human resource management and legal risk is relatively ahead of China. As early as the 19th century, western scholars have formed a preliminary understanding of human resource management and risk, and later research is gradually becoming mature. As for "human resource management", American scholar Jacques Fitz proposed in his book "Return on Investment of Human Capital" that enterprises can evaluate the value-added effect of human resources on enterprises through five ways: evaluation, planning, acquisition, maintenance and development, and must define the measurement scale starting from the

enterprise level such as the coefficient of human capital return and the value-added of human economy. A series of scholars such as John Williamson and Ronald Harry Coase also believe that people and environment will have a certain impact on the operation and management of enterprises, and these impacts may promote the development of enterprises, but also may make enterprises face certain risks.

Due to the different national conditions, Chinese enterprises should not blindly adopt foreign strategies when dealing with the legal risks in human resource management, but should be based on the actual situation faced by the enterprise, and fully combine the foreign research with China's national conditions and the status quo of enterprises.

1.3. Research Significance

The competition among enterprises has been reflected in the competition of "human resources", that is, enterprises are required to improve their human resources management level, and human resources management, like other management of enterprises, may face related risks. If enterprises handle some matters related to workers improperly, they will suffer certain losses in economy, reputation and so on.

This article involves three aspects, namely enterprise human resource management, legal risk and its prevention strategy. Based on the current situation of human resource management in Y Fujian Branch, this topic will analyze the legal risks and their causes in human resource management, and put forward relevant measures. This paper analyzes the legal risks prevalent in the human resource management of many enterprises through big data, and focuses on the current situation of human resource management and the legal risks existing in a certain enterprise, and integrates a set of systematic prevention strategies based on this, hoping to provide some references for this enterprise or even more enterprises.

2. Y Fujian Branch and Its Human Resource Management Status

Y Company is a supply chain integrated service provider integrating supply chain, industrial chain and service chain, and is relatively representative in the industry. Its annual revenue from 2014 to 2019 is about 35,192.6 million yuan. Y Fujian Branch was established in 2015, its rules, regulations and management are not perfect, basically follow the headquarters system and management mode. The Comprehensive Management Department is responsible for the human resources management of Fujian Branch. In addition, the comprehensive management Department is also responsible for the party building, administration, supervision and logistics of the company. The general management Department has a total of 14 employees, 4 of whom are responsible for the company's human resources management. Most of the employees in Fujian Branch are labor dispatch employees, and the enterprise management department is all labor dispatch employees except the department manager and supervisor, and the service life of the labor dispatch employees has not reached 3 years. Therefore, the comprehensive management department is also unstable and chaotic in human resource management. In general, the human resources Department lacks systematic and comprehensive knowledge and work experience related to human resources management. Faced with a huge workload, the human resources department is usually unable to complete

the task in a timely and effective manner.

3. Y Fujian Branch Human Resource Management Legal Risk Analysis

Combining the current situation of human resource management of Y Fujian Branch and the Labor Law of the People's Republic of China, this paper finds that Y Fujian Branch is faced with many legal risks in the field of human resource management, especially in the aspects of employee recruitment management and on-boarding management, labor dispatch system management and salary management.

3.1. Recruitment Management and On-Boarding Management

There are some conceals in the job announcement. There are two forms of employment in Y Fujian Branch. One is the regular employees who sign labor contracts with Y Fujian Branch. These employees are usually recruited through recruitment, interview and assessment. The other is the labor dispatch employee, the labor dispatch company signs the labor contract with the worker and manages the worker's personnel file. However, the recruitment announcement of Y Fujian Branch did not clearly inform the employment form of labor dispatch, and during the communication between the workers and Y Fujian Branch, Y Fujian Branch never stated or reminded the workers of this fact. If the laborer collects evidence related to the recruitment of Y Fujian Company and appeals to the court for a judgment that he has established a labor contract relationship with Y Fujian Branch rather than a labor dispatch relationship; Or because Y Fujian Branch publishes false recruitment information or intentionally conceals recruitment details, appeals to the court on the grounds of fraud of Y Fujian Branch and requests the court to rule that the labor contract is invalid, Y Fujian Branch may need to pay economic compensation.

The legal risks in the management of the probation period of Fujian Branch are mainly reflected in the termination of the labor contract during the probation period. According to the Labor Contract Law, if an enterprise terminates a labor contract during the probation period, it is required to explain the reason to the employee [4]. In the case of an employee who fails to pass the assessment during the dismissal probation period, the company shall provide evidence to prove that the dismissed employee does not in fact meet the employment conditions of the company. However, the "Evaluation Form for the probation period of New employees" of Y Fujian Branch only included the assessment results, without sufficient evidence to support the assessment results, and the evaluation form did not have the signature and approval of the employees in the probation period. In this case, the court is very likely to find that Y Fujian Branch has illegally terminated the labor relationship with its employees, and Y Fujian Branch needs to bear certain legal responsibilities.

3.2. Labor Dispatch Employment Management

Since its establishment in 2015, Fujian Branch has started to use labor dispatch employees, and the number of labor dispatch employees has been increasing. According to the current situation of the company mentioned above, the number of labor dispatch employees in the company accounts for nearly 60% of the total number of employees (the sum of contract employees and labor dispatch employees), which is

far more than 10% stipulated in the Interim Regulations on Labor Dispatch. This situation has seriously violated the relevant provisions of the Labor Contract Law and the Interim Provisions on Labor Dispatch, and the company may face some administrative penalties.

Y Fujian Branch entrusted a labor dispatching company to pay its employees' compensation and social security contributions, but the labor dispatching company did not pay social insurance in full according to the actual total wages of the employees under the labor dispatching system, but paid the local minimum wage standard, that is, the minimum payment standard, which has violated the Social Insurance Law, the Labor Law and other relevant laws and regulations. Although this behavior is implemented by the labor dispatch company, Y Fujian Branch, as an employing unit to accept the labor dispatch system employees, may need to bear the legal risk of joint and several liability.

3.3. Compensation Performance Management

Y The Fujian Branch has unclear salary agreement and fails to pay employees overtime pay as required. In the recruitment announcement, the company described the salary as 6-8,000 yuan, but when establishing the labor dispatch relationship with the workers, it did not agree with the employees about the specific basic salary, performance, welfare benefits and other compensation benefits, but responded with "payment according to the company's salary level", and there was no specific agreement on social security payment. For employees' overtime work, Y Fujian Branch has never paid overtime or allowed employees to take time off. According to the provisions on overtime in the Labor Contract Law and the Interim Provisions on Wage Payment, the enterprise is required to pay employees a certain amount of overtime pay or to transfer employees to rest, and Y Fujian Branch may face the legal risk of compensation.

4. Y Fujian Branch Human Resource Management Legal Risk Analysis

4.1. Human Resource Management Personnel Lack of Professional Quality and Weak Awareness of Legal Risks

There are only 3 people in the general management Department of Fujian Branch responsible for human resource management, and only one of them has more than 3 years of work experience and is specialized in human resource management. The staff responsible for human resource management lacks professional quality, which is specifically manifested as ignorance of the law, and believes that the enterprise will not face legal risks or bear legal responsibilities. Moreover, human resource managers are often negligent in the retention of evidence, such as forgetting to retain relevant documents with employee signatures, and the agreement between employees is not fixed in written form.

4.2. The Law has Certain Skewed Protections for Workers

China's Labor Law was adopted at the eighth meeting of the Standing Committee of the Eighth National People's Congress in 1994 and has undergone two revisions. This Law is enacted in accordance with the Constitution in order to protect the lawful rights and interests of laborers, adjust labor relations, establish and maintain a labor system adapted to the

socialist market economy, and promote economic development and social progress. This is the principle of the Labor Law, the main purpose of which is to protect the legitimate rights and interests of workers, so the Labor Law, the Labor Contract Law and other labor related laws in the legislative, judicial, enforcement process are tilted toward workers [4].

4.3. Public Opinion is More in Favor of Protecting Workers

Disputes between workers and employers often make waves on the Internet. The masses will express their opinions on the Internet, mostly for the workers. The employer will fall into the target, and the public opinion of the society may affect the law enforcement degree of the judicial personnel to a certain extent, so that the enterprise will face legal evaluation that is not conducive to its own.

5. Y Prevention Strategy of Legal Risk in Human Resource Management of Fujian Branch

5.1. Strengthen the Legal Consciousness and Evidence Consciousness of Enterprise Personnel

Enterprise managers should enhance legal awareness and abide by the law, and carry out legal awareness into enterprise management activities. In addition, you can cooperate with a law firm. For example, lawyers are invited to conduct legal publicity, and employees are educated about the law to enhance their legal awareness. Second, any major decision should be made in consultation with a law firm to ensure the legality of its corporate actions. Finally, it is necessary to strengthen employees' awareness of evidence retention. Human resource managers are required to keep legal written evidence in their work, including but not limited to written agreements in the process of recruitment management, onboarding management, labor contract signing, change management, pay and performance management and dismissal management.

5.2. Strengthen Investment in Human Resource Management

The company should improve the team of human resource management personnel and establish a systematic training system for human resource management personnel. Human resource management personnel allocation plays a decisive role. The company should pay more attention to the professional quality of the staff when recruiting human resource management staff, not only need to reach a certain degree level, but also need to be related to human resource management. In addition, it is also necessary to equip a certain number of legal related professional staff or human resource management staff with certain legal literacy, so that they can basically cope with the legal problems faced in the work. At present, Fujian Branch has no systematic and perfect staff training system, especially the training system for human resource management personnel. Therefore, it is urgent to establish a complete training system for human resource management personnel. The establishment of a complete human resource management personnel training system needs to start from the system level and the implementation level. Y Fujian Branch should develop a strict training management

system, and formulate training plans, training budgets, course systems, instructor systems and training assessment according to the system.

5.3. Standardize Recruitment Management and On-Boarding Management

Y Fujian Branch shall make the recruitment announcement truthful and specific in terms of employment conditions to avoid employment discrimination. The applicant registration form should collect employees' basic information, education experience, work experience and qualifications and other non-privacy content, which is the embodiment of the company's right to know. Since workers are under no legal obligation to voluntarily inform themselves at the time of application, companies need to ensure that what applicants tell them during the application process is not a false statement. This requires the applicant registration form to be written down to ensure the legitimate rights and interests of the company, which is also an important basis for the company to manage employees in the future. In addition, the company also needs to inform the applicant of relevant matters, that is, the company has strictly fulfilled the obligation to fully inform and ensure the applicant's right to know, to avoid unnecessary legal risks.

5.4. Standardized Management of Labor Dispatch System Employees

Y Fujian Branch shall employ labor dispatch employees in strict accordance with national laws and regulations, and limit the number of labor dispatch employees to less than 10% of the total number of employees. At present, the number of employees under the labor dispatch system in Y Fujian Branch has far exceeded 10%. Employees under the labor contract system can be introduced in various ways, or the proportion of employees under the labor dispatch system can be reduced by transferring the employees under the labor dispatch system. In the process of downsizing, we should properly handle the matters related to the dismissal of the labor dispatch system employees to avoid more serious legal problems. Y Fujian Branch shall supervise the labor dispatching company's payment of employees' salaries and full payment of social security, so as to ensure equal pay for employees under the labor dispatching system and the labor contract system. In particular, the normal payment of social security, truly protect the legitimate rights and interests of employees, but also to avoid bearing the corresponding legal risks.

5.5. Standardized Management of Labor Dispatch System Employees

Y Fujian Branch should specify the employee's salary and performance plan after entry into the labor contract. If there is a salary plan promised orally or in writing during the interview process, it should be fixed in the labor contract. Including but not limited to the basic salary, five insurance and one fund payment base, performance, subsidies, benefits and year-end bonuses and other compensation schemes, as far as possible to avoid future labor disputes with workers. The phenomenon of overtime work exists in Fujian Branch, so the

company should develop an appropriate overtime work system, and provide employees with time off or a certain amount of overtime pay.

6. Conclusion

To sum up, this paper finds that there are some legal risks in human resource management of Y Fujian Branch. Including the existence of information concealment in the recruitment announcement, mainly manifested in the failure to indicate in the recruitment announcement whether the employment form of the recruitment post is labor dispatch; The staff in charge of personnel work does not retain sufficient evidence in the recruitment process and dismisses the employee who fails to pass the assessment during the probation period; Illegal use of labor dispatch system employees, because the labor dispatch system employees have reached 60% of the total number of employees, seriously exceeding the 10% required by laws and regulations.

In recent years, the legal consciousness of workers has gradually risen, and they are good at using the weapon of law to protect their legitimate rights and interests, and enterprises should gradually improve their legal consciousness and improve the management level of enterprises. Promoting the optimization of human resource management can not only effectively seek profits for enterprises, but also lay a foundation for enterprises to better assume social responsibilities. This paper focuses on Y Fujian Branch, and analyzes its human resource management status, legal risks and causes of legal risks. This paper sorts out the unreasonable and unreasonable behaviors in human resource management of Y Fujian Branch, and puts forward preventive strategies to solve these problems, so as to seek better development of the company in the future. For example, strengthen the legal awareness and evidence awareness of enterprise personnel, strengthen the investment in human resource management, standardize the recruitment management and on-boarding management, standardize the management of labor dispatch employees, and improve the performance appraisal and salary management plan. It is hoped that this study will alert other enterprises to better optimize their human resource management. At the same time, it is also hoped that the labor disputes between employers and workers will gradually decrease, and a harmonious employment relationship can be realized in the true sense.

References

- [1] Xingui Chen. Research on human resource Management of small and medium-sized lighting enterprises -- taking A company as an example. Southwest Jiaotong University. 2010.
- [2] Fuying Liang. Research on legal risk and prevention of human resource management in H Company. Guangxi University. 2019.
- [3] Hongwei Chu. Research on legal risk and prevention in human Resource Management of small and medium-sized enterprises -- A case study of LX Company. Guilin University of Electronic Technology. 2019.
- [4] Standing Committee of the National People's Congress. Labor Contract Law of the People's Republic of China. 2012.