

Human Resource

Legal Compliance Management

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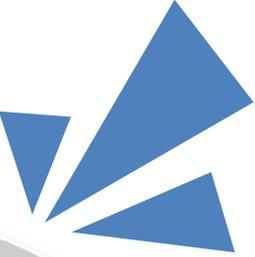
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**Part
01**

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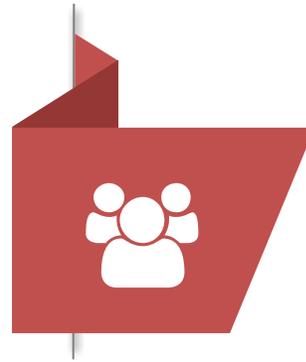
Recruitment Compliance

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Recruitment Compliance



Recruitment



On-board



**Labor Contract
Signing**

Recruiting Advertisement

- Avoid discrimination;
- Specify the job description and requirements for employment.

Offer Letter

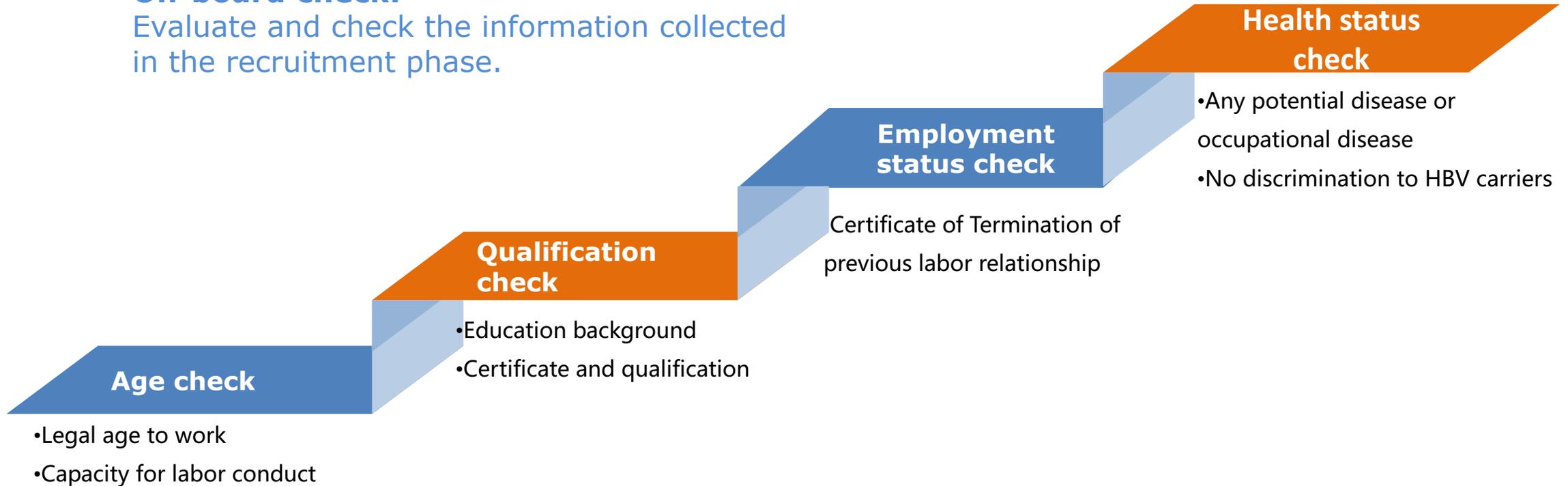
- Be cautious to issue;
- List the circumstances which cannot be hired;
- Specify the deadline of acceptance in the offer.

CASE: After the Offer Letter is issued and accepted, can the company cancel it? Is there any liability to the company under this circumstance?

On-board

On-board check:

Evaluate and check the information collected in the recruitment phase.



On-board check



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No.	Check points	Potential Risks	Solution
1	Education background and work experience	Failure of employment	Exercise the right to know Sign the Integrity Commitment Letter
2	Potential disease or occupational disease	Limitation to termination of labor contract; Liabilities to the treatment	Physical examination
3	Legal Age	Administrative Penalty	Check original ID card
4	Employment status	Joint liabilities	Check the termination certificate
5	Non-Competition restrictions	Compensation liabilities	Research the previous employer; Sign the Non-Competition Restrictions Commitment Letter
6	Foreign Employees' work permit	Illegal employment; Invalid contract	Check the relevant documents and certificates

1、 Types of Employment

- Full-time
- Part-time

2、 Term of Labor Contract

- Term Types (Fixed term , **Non-fixed term** , labor contracts that terminate upon the completion of a certain task)

3、 Signing Date

- Within 1 month since the employee is on-board

4、 Consequences for not signing labor contract properly in time

- Double salary for the period exceeding one month but less than a year;
- Be deemed to non-fixed term labor contract when exceeding one year; double salary

5、 Solutions to the employees who don' t sign labor contract

- Send the Notice of Signing labor Contract to the employee within one month and ask him/her to sign on the receipt (EMS) ;
- Send Notice of Termination of Labor Relationship otherwise (Need to be terminated within one month, economic compensation will apply otherwise)

Non-fixed Term Labor Contract (Open Term Labor Contract)

- ◆ Upon consensus between the parties;

- ◆ If an employee proposes or agrees to renew and conclude a labor contract in any of the following circumstances, an open-ended labor contract shall be concluded, unless the employee requests the conclusion of a fixed-term labor contract instead:
 1. The employee has been working for the Employer for **ten consecutive years**;
 2. When the Employer first introduces the labor contract system or the state-owned enterprise that employs him re-concludes its labor contracts as of restructuring, the employee has been working for the Employer for ten consecutive years and is less than ten years away from his legal retirement age; or
 3. Where a labor contract was concluded as a fixed-term labor contract on **two consecutive occasions** and the employee, in the absence of any of the circumstances stipulated in Article 39 and Items 1 and 2 of Article 40 hereof, renews such contract.

- ◆ If an Employer fails to conclude a written labor contract with an employee within one year from the date the employee commences work, they shall be deemed to have entered into an open-ended labor contract.

Labor Contract VS Labor Service Contract

Differences	Labor Contract	Service Contract
Parties	Between Legal person and natural person	Both parties can be legal persons or natural persons
Relationship between parties	A subordinate relationship, aiming to protect the employees	Equal
Risk Taker	By the employer	By both parties
legal intervention	Legality Written	Agreement Oral or written
Legal consequences	The employer is subject to the labor laws concerning the social security, annual leave, termination, etc.	The rights and obligations are subject to Contract law and principle of fairness and good faith
Applicable Laws Dispute resolution	Labor laws and regulations Mandatory Labor Arbitration	Civil Law and Contract Law Court
Similarity	Labor as the object of contract One party provides labor, the other party pays for it.	



Questions :

- Under what circumstances a labor contract or service contract shall be signed ?



**Part
02**

2

In-Service COMPLIANCE

2

In-service Compliance

- ◆ **Probation Period**
- ◆ **Social Security and Housing fund**
- ◆ **Working hour**
- ◆ **Performance Check**
- ◆ **Labor Contract Modification**
- ◆ **Regulations, Employees' Handbook and other HR documents**

Probation Period

1、 Legal Term :

No.	Term of Labor Contract	Term of Probation Period
1	Term < 3 months	No probation period
2	3 months ≤ Term < 1 year	probation period ≤ 1 month
3	1 year ≤ Term < 3 years	probation period ≤ 2 months
4	3 years ≤ Term, or non-fixed term	probation period ≤ 6 months

2、 Reminder

- Only one time probation period with the same employer
- The probation period cannot be stipulated without having Labor Contract
- Salary in Probation period (≥ 80%)
- Termination in Probation period

Suggestions :

- Fully use the probation period
- Specify the requirements for the position
- Keep the evidence
- Assess and take actions timely
- Signature of employee

(Requirements + Assessment Result)



Article 83 If the probation period concluded between an Employer and an employee violates this Law, the labor administrative department shall order rectification. If such probation period has been carried out, the Employer shall pay compensation to the employee according to the time worked on probation beyond the statutory probation period, at the rate of the worker's monthly wage following the completion of his probation.

Social Insurance and Housing Fund

Payment base

City	Social Insurance base in 2016	Social Insurance base in 2017	Housing fund base in 2016	Housing fund base in 2017
Shanghai	3,563-17,817	3,902-19,512	1,820-16,357	2,020-17,817
Chengdu	2,017-15,130	2,193-16,445	1,500-19,321	1,500-20,972
Chongqing	3,105-15,523	3,370-16,847	1,500-14,213	1,500-16,847

Proportion of payment

Items	Shanghai		Chongqing		Chengdu	
Endowment	20%	8%	19%	8%	19%	8%
Health	9.5%	2%	7.5%	2%	6.5%	2%
Unemployment	0.5%	0.5%	0.5%	0.5%	0.6%	0.4%
Occupational Injury	0.2%-1.9%	0	0.5%	0	Depending on industry, actual rate is (standard rate + floating rate) × 0.7	0
Child Birth	1%	0	0.5%	0	0.6%	0
Housing Fund	7%	7%	5%-12%	5%-12%	5%-12%	5%-12%



1. Exceptions for Social Insurance and housing fund ?
 - 1) Part-time employee (Work-related Injury insurance is needed)
 - 2) Interns (Internship agreement with school and list)
 - 3) Dispatched workers (Dispatching company pays)
 - 4) Labor Service provider
 - 5) Retired



2. The employee asks for cash instead of social insurance and issues a guarantee letter, is there any risk to the employer in this case?

Yes, the employer is still obliged to pay social insurance, otherwise the employer will face the following consequences:

- 1) Compensation
- 2) Supplementary payment
- 3) Fine from authorities

Working Hour Management- Overtime pay

Types of Working Hour	Applies to	Overtime pay for extended hours	Overtime pay for rest days	Overtime pay for Statutory holidays	Remark
Standard	All employees	150%	200%	300%	No more than 3hours/day No more than 36 hours/month
Flexible	Senior managers, sales, transportation personnel, loading workers, etc.	NO	NO	300%/NO	Needs approval Regional Difference(SH 300%;Chengdu 0)
Generalized Calculation	<ol style="list-style-type: none"> 1. Special industries; 2. Seasonal positions; 3. Others 	150%	NO	300%	<ol style="list-style-type: none"> 1. Needs approval 2. The total working hours and average working hours shall not exceed the limit of laws and regulations.

The Employees Handbook or Company Regulations shall stipulate that overtime application shall be approved by Managers and/or HR.

Performance Check

- 
- How to set up the performance targets?
 - 1、 Refer to the business plan, job description and employee's capability.
 - 2、 Specified, detailed, quantified
 - 3、 Specify the consequences in case of unqualified
 - 4、 Communication and signature of the employee

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- Evaluation of the performance
 - 1、 Combination of subjective comments and objective data
 - 2、 Collection of supporting documents
 - 3、 Separate the investigation and conclusion
 - 4、 Fair assessment
 - 5、 Employee's signature



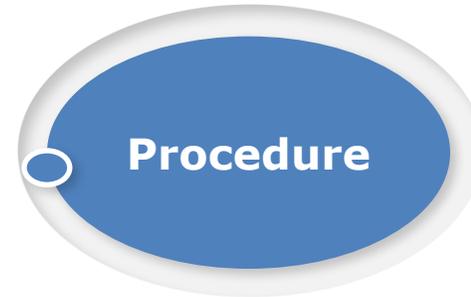
Alternation of Labor Contract Provisions

- Upon consensus - In written
- Alternation provided by laws
 1. where the employee is unable to resume his original work after the expiration of the prescribed medical treatment period for an illness or non-work-related injury;
 2. where the employee is incompetent; or
 3. a material change in the objective circumstances relied upon at the time of conclusion of the labor contract renders it impossible for the parties to perform

Regulations and Employees' Handbook



Discussion and consultation with employees.



HR Documents

- 1. Labor Contract**
- 2. Employee Roster**
- 3. Position and Job Description Notification**
- 4. On-board Registration Form**
- 5. Notice of Signing Labor Contract (When the employee doesn't sign the Labor Contract within 1 month)**
- 6. Agreement of Labor Contract Modification**
- 7. Notice of Termination of Labor Contract**
- 8. Certificate of Termination of Labor Contract**
- 9. Overtime/Leave/Business Trip Application**
- 10. Notice of Renewal of Labor Contract**
- 11. Non-disclosure, Non-Solicitation and Non-Competition Agreement**
- 12. Training Agreement**



**Part
03**

3

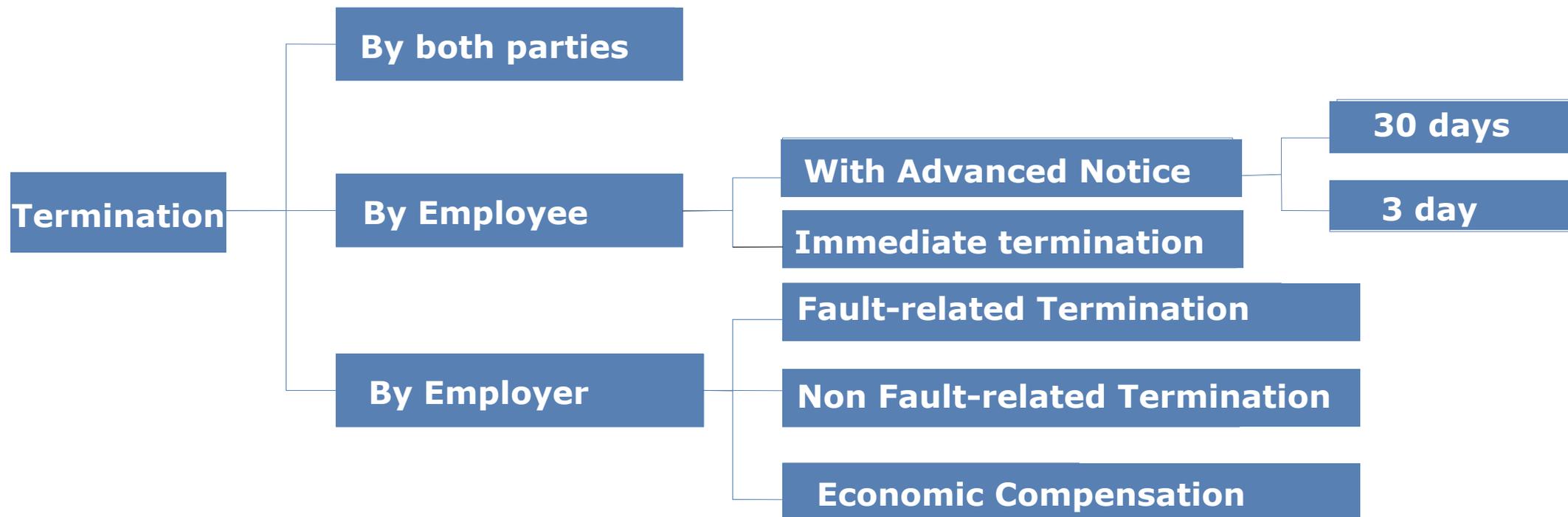
Termination Compliance

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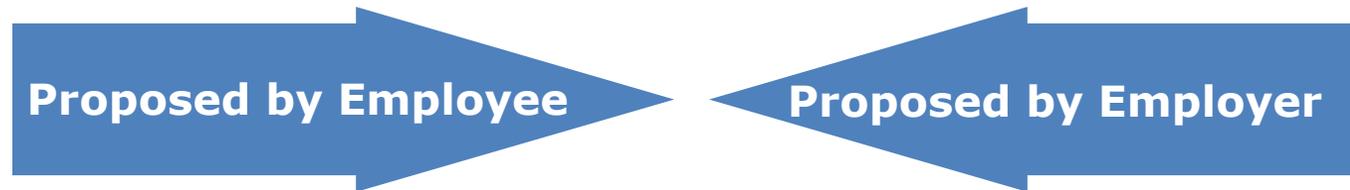
Termination Management

- ◆ **Termination of Labor Contract**
- ◆ **Expiry of Labor Contract**
- ◆ **Economic Compensation**

Termination of Labor Contract



Upon Consensus



- **No substantial or procedural requirements**
- **Economic compensation required when proposed by employer**

Terminated by Employee

Compensation

Article 38

1. fails to provide work protection or working conditions;
2. fails to pay salary in full or on time;
3. fails to pay the social;
4. adopts rules or regulations that are in violation of laws or regulations, thereby impairing the employee's rights and interests;
5. Concludes the labor contract by fraud or coercion

Immediate Termination

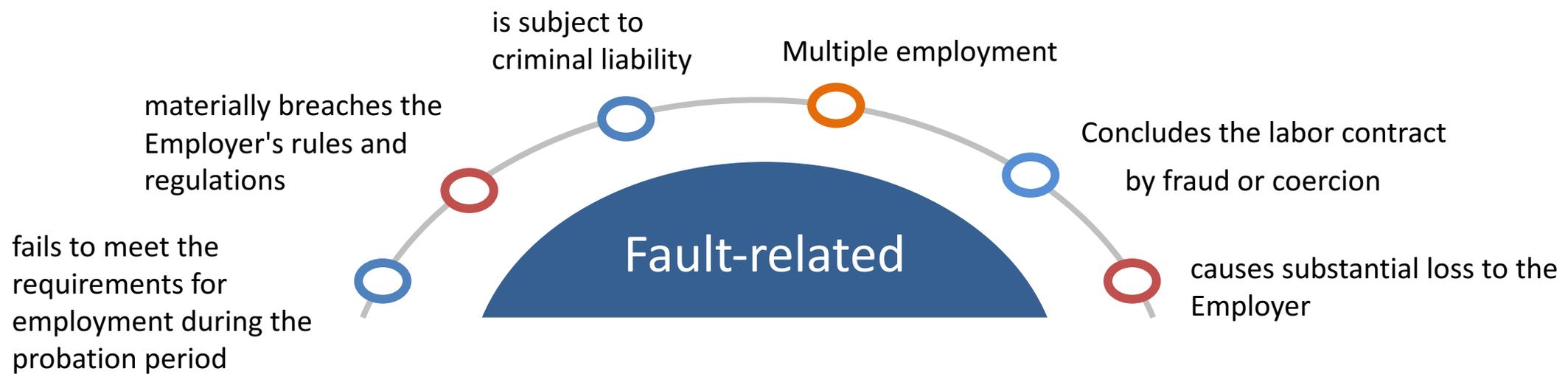
Advanced-notice Termination

No compensation

Article 37 (Resignation)

- 30 days
- 3 days

Terminated by Employer



- No restrict procedure requirements
- No economic compensation
- Employee shall pay liquidated damages as stipulated in special agreements (such as training agreement)

Fault-related Termination

Procedures to terminate labor contract when employee violates company's regulations



Collect all documents and information, Employee's statement and signature.

Notify the Trade Union with the reason;
Get opinion from Trade Union;
Inform the Trade Union the final decision.

Employee's signature on the receipt;
Or EMS

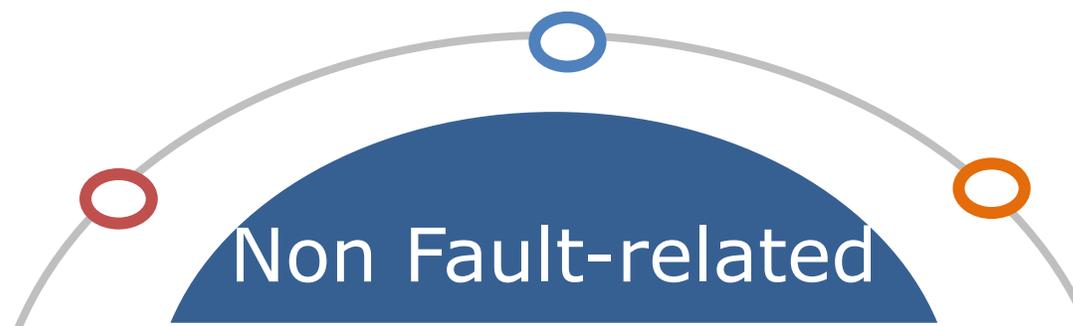
Put into the employee's personal file.

Terminated by Employer

where the employee is unable to resume his original work nor engage in other work arranged for him by the Employer after the expiration of the prescribed medical treatment period for an illness or non-work-related injury

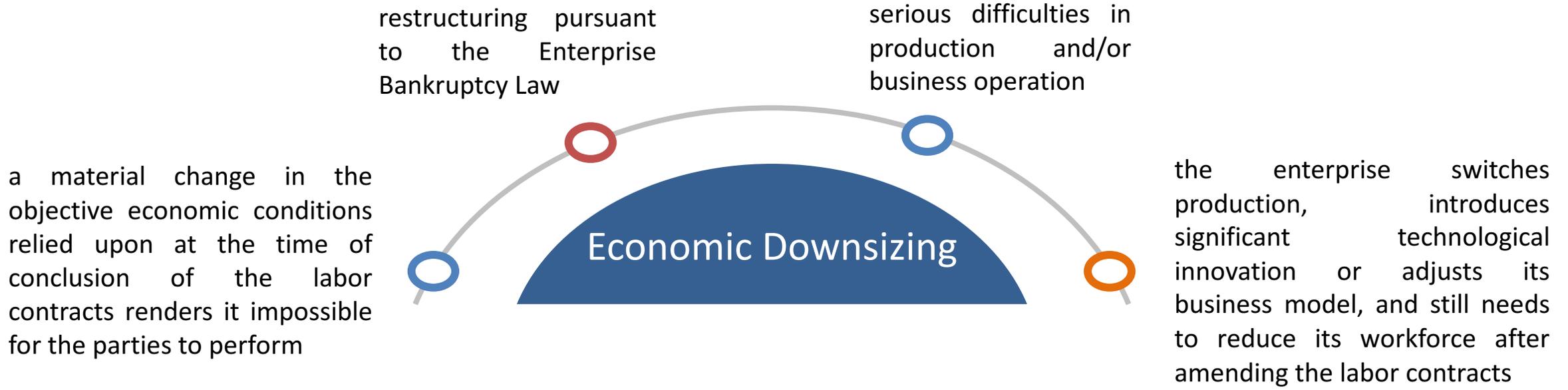
where the employee is incompetent and remains incompetent after training or adjustment of his position

a material change in the objective circumstances relied upon at the time of conclusion of the labor contract renders it impossible for the parties to perform and, after consultation, the Employer and the employee are unable to reach an agreement on amending the labor contract



- 30 days in advance in written / or extra one month's salary
- Economic compensation

Terminated by Employer



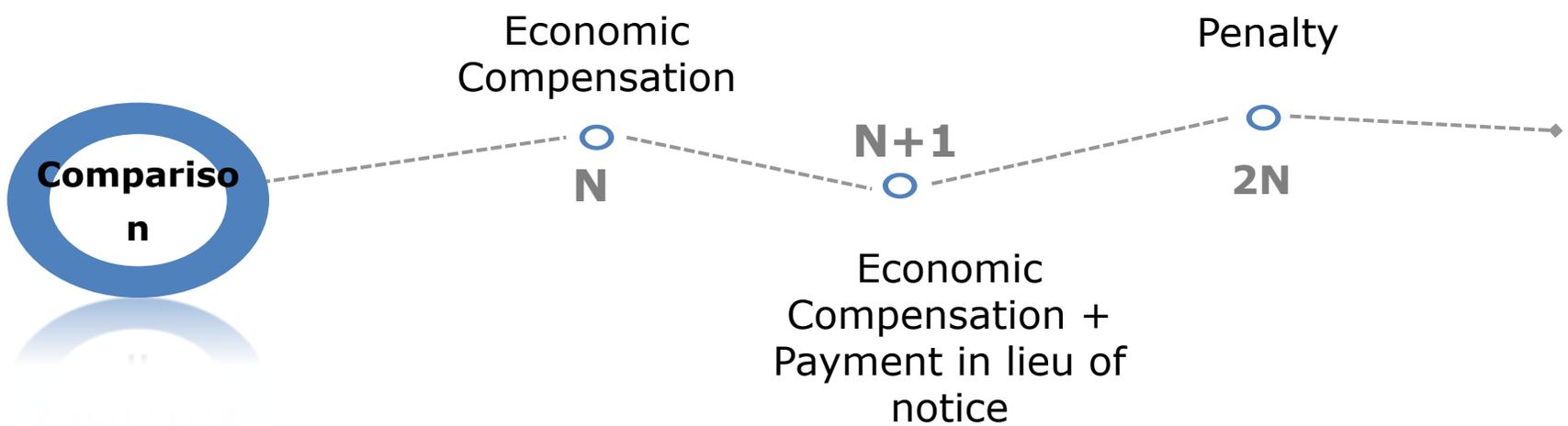
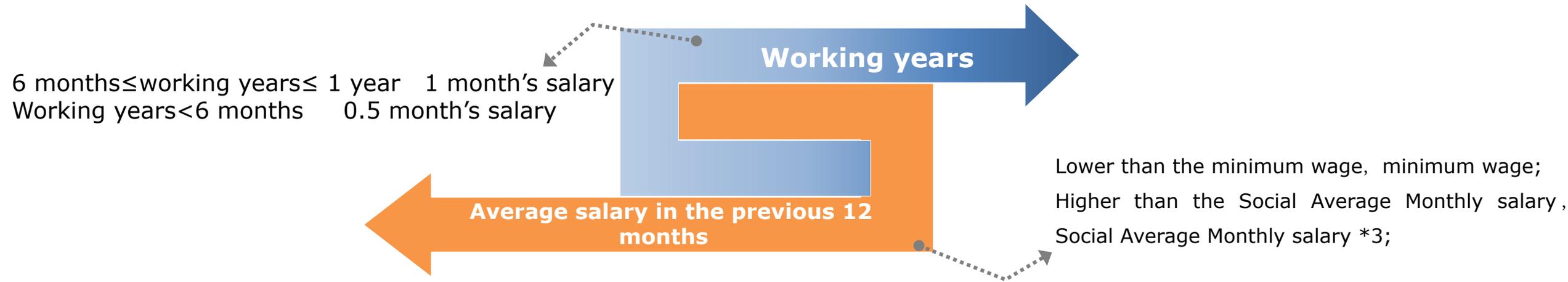
- Economic Downsizing : more than 20 employees or more than 10% of the total headcount.

Legal Termination





Economic Compensation





**Part
04**

4

Labor Dispatch

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Labor Dispatch

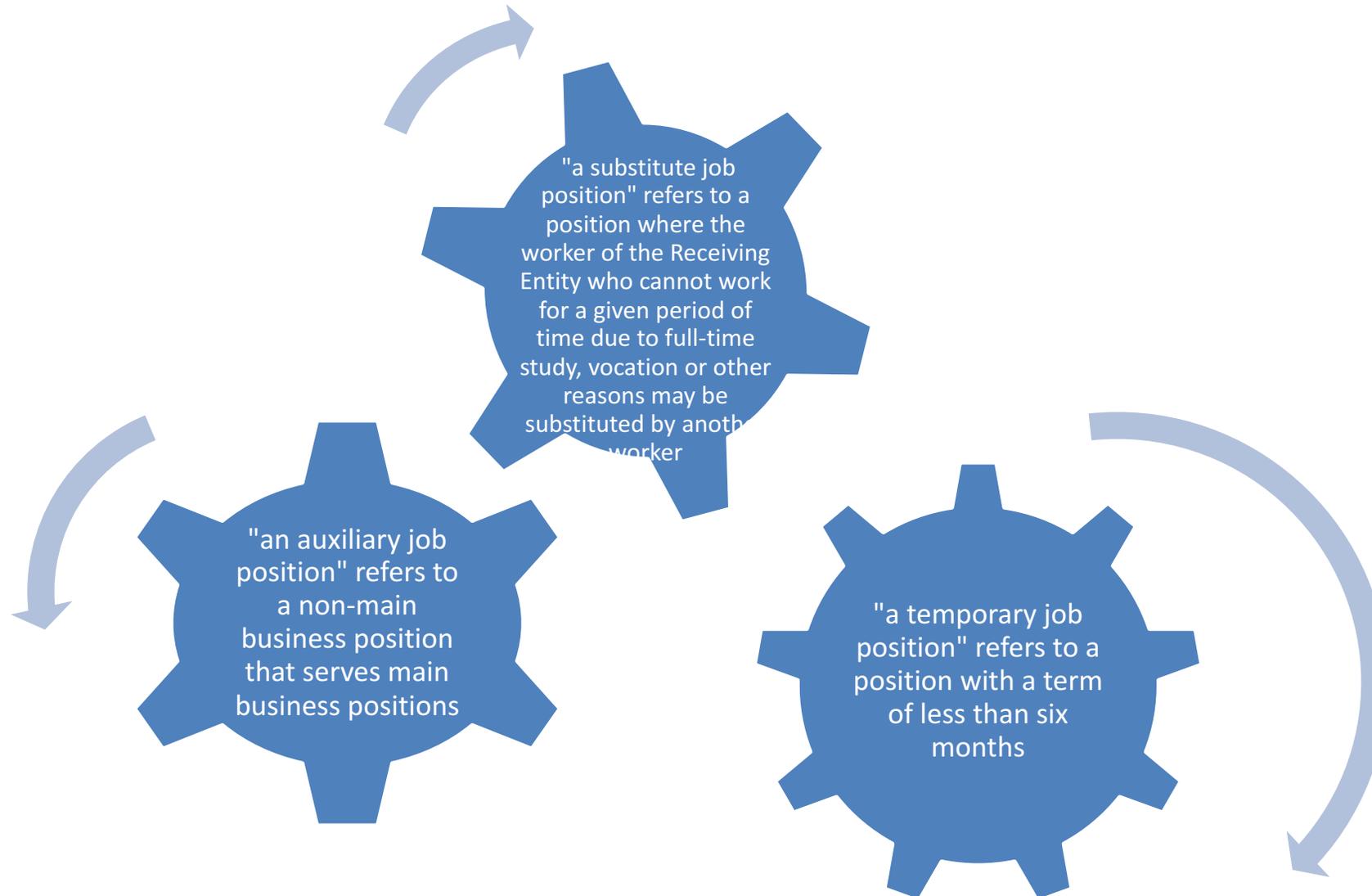
◆ Scope of Application

◆ Legal Limitation

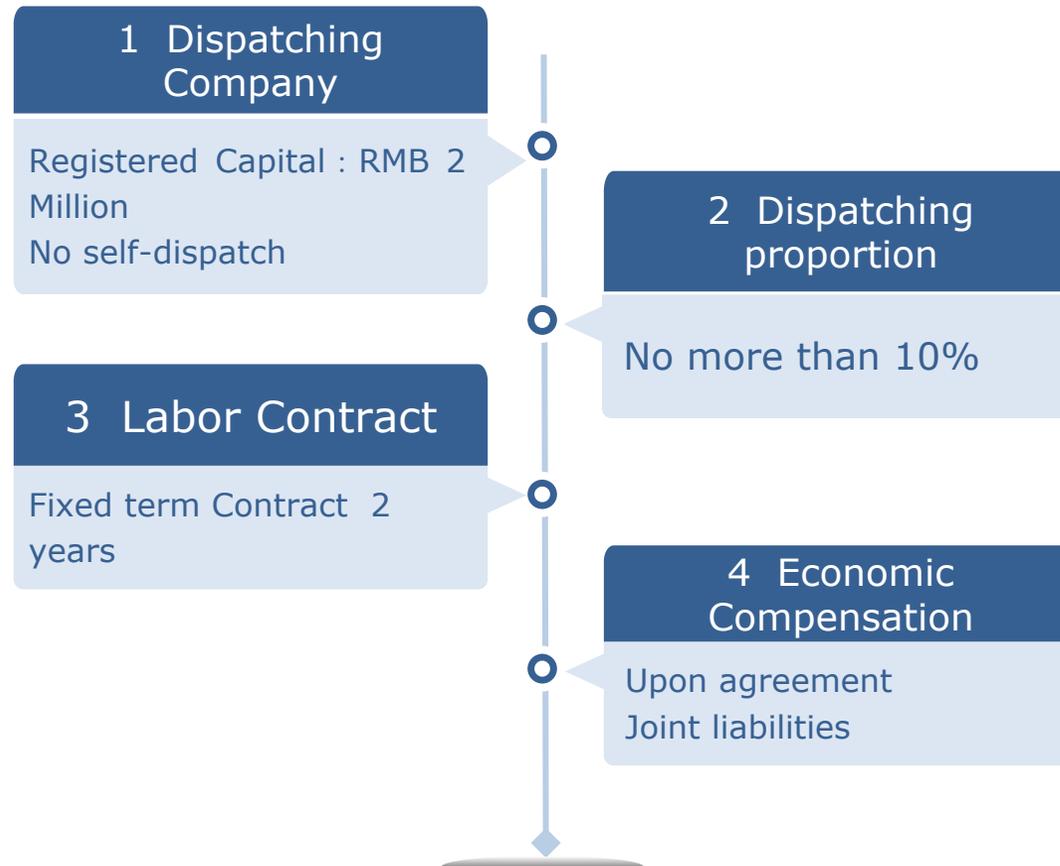
Scope of Application



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Legal Restrictions



Suggestion: DO NOT sign any agreement with dispatched workers directly.



**Part
05**

5

Dispute Resolution

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Dispute Resolution

- ◆ Pre-placement of Arbitration
- ◆ Limitation for Arbitration
- ◆ Burden of Proof
- ◆ Regional Practice

Pre-placement of Arbitration

1. disputes arising from the confirmation of labor relations;
2. disputes arising from the conclusion, performance, alteration and termination of labor contracts;
3. disputes arising from name removal, dismissal, resignation or leaves and holidays;
4. disputes arising from working hours, rest days and leave days, social insurance, fringe benefits, training and labor protection;
5. disputes arising from labor remunerations, work injury medical expenses, economic compensation or damages; or
6. other labor disputes prescribed by laws and regulations.

Exceptions

Directly to the Court:

- 1、 Salary dispute with “white split” as evidence
- 2、 Employee claims for compensation for not being able to enjoy social insurance due to Employer’s fault
- 3、 Employer doesn’t perform the Settlement Agreement and the Payment Order procedure is terminated by the court.
- 4、 disputes arising out of the restructuring by the enterprise
- 5、 Employer doesn’t pay the due penalty
- 6、 Arbitration Committee fails to accept or rule within the term stipulated by law
(Accepted within 5 days ; Rules within 45 days+15days)
- 7、 Additional claim in a lawsuit
- 8、 Foreigners without Work Permit (Labor Service Relationship)

Related Authorities:

Dispute arising from Social Insurance and Housing Fund

Time Limitation of Arbitration

1 year, know or should have known

Exception

Where a dispute arises within the subsistence of labor relations due to labor remunerations in arrears, the employee that applies for arbitration shall not be restricted by the time limitation.

Interrupted where

- ① Either party claims its rights against the other party;
- ② Either party requests right relief to relevant authorities
- ③ The other party agrees to perform its obligations

Suspended where

force majeure or other proper reasons

Reverse of Burden of Proof

- With respect to a labor dispute arising due to a decision of an employer on expulsion, removal, dismissal, rescission of labor contract, reduction of labor remuneration, or calculation of the number of working years, the **employer** shall assume the burden of proof.
- Salary payment or record (payroll of employees), and record of payment of social insurance premium; "registration form" and "application form" of the employer filled by the employee; attendance record, shall be provided by the **employer**.
- Where the employee fails to give evidence in relation to the arbitration request handled and managed by the employer, the arbitral tribunal may request the employer to provide such evidence within the prescribed time limit. Where the **employer** fails to provide such evidence within the prescribed time limit, it shall assume the unfavorable consequences.

Regional Practice

	Shanghai	Chengdu	Chongqing
Overtime Pay for Flexible Working Hour on Statutory Holidays?	300%	NO	NO, but compensatory rest
Does Non fixed term labor contract apply to Dispatched workers?	No, only fixed term labor contract.(+2years)	No, only fixed term labor contract.(+2years)	Yes
Does Labor Contract Law apply to foreign employees?	No (But there are some cases supporting)	Yes	Yes
Does the employer have to pay social insurance for foreign employees?	Not mandatory	Yes	Yes

Thanks!



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