

Luther.

Flexible Staffing

Qin Anqi, September 3, 2021

Content

1. Various Forms of flexible Hiring
2. Working Hours
3. Remuneration Arrangement



Various Forms of flexible Hiring

Various Forms of Flexible Hiring

Project-based Labour Contract

➤ Legal Basis

Article 15 of Labour Contract Law

“....An employer and an employee may, though mutual consultation and agreement, conclude a labour contract with a term that expires upon the completion of certain assignments.”

➤ Key Points Need to Know

- Clarifying the nature of the contract: a contract which expires upon the completion of assignments
- Formulating a clear definition of the agreed assignments/projects: scope, contents, tasks etc.
- Special situation: assignments/projects on client's site

Various Forms of Flexible Hiring

Part-time Labour Contract

➤ Legal Basis

Article 68 of Labour Contract Law

“The term “part-time employment” refers to a form of employment for which the employee’s remuneration is calculated on an hourly basis, and where the employees generally work for the same employer for not more than four hours per day on average and not more than 24 cumulative hours per week.”

➤ Flexibility Enjoyed

- No mandatory requirement for written contract
- Employer may terminate the contract at will
- Optional social insurance contribution

➤ Risk Control

“Red Line” 

the cross of “Red Line” may lead to full-time employment

- No probation period
- Upper limit for daily and weekly working hours
- Payroll cycle shall not exceed 15 days

Various Forms of Flexible Hiring

Labour Outsourcing

- Legal Basis: **PRC Civil Code** instead of Labour Law or Labour Contract Law
- Contract relationship between the company (which uses the labour sources) and the service provider
- No labour relationship between the company and those staff under labour outsourcing

Risk of being regarded as de facto labour relationship : How to avoid?

- No labour management or personal management over the staff under labour outsourcing
- Assessment only based on the completion of labor services
- No requirements on the involved personnel

Working Hours

Working Hours

Flexible scheduling under standard working hours system

- Standard working hours system

daily working hours shall not exceed 8 hours, and average weekly working hours shall not exceed 40 hours.

- How to make the scheduling flexible?
 - Mutual consensus under the daily and weekly working hours limits
 - At least 1 day as rest day per week
 - OT calculation basis

Working Hours

Special working hours systems



Approval from the labour authority is a **MUST!**



Flexible working hours system

No attendance requirements;

- Flexible arrangements by employees;
- Benefits on OT
- Only applicable to certain group of employees
- Consent from employees concerned is required



Comprehensive working hours system

- Only applicable to certain employees
- Calculating the working hours in a comprehensive cycle
- Average working hours to be limited
- OT calculations
- Consent from employees concerned is required



Case Study-OT

Agreement to waive the OT payments- Valid? - No

OT against internal policies- Pay? Or Not? - Pay

OT payments included into the salary- Valid? - No



Case Study-Labor Outsourcing

Salary and social insurance paid by labor outsourcing company- Safe? - No

What should I pay attention to? Qualification of labor outsourcing company - Business scope

Selection and recruiting of outsourced staff - By labor outsourcing company

No labor management!

Written labor contract with labor outsourcing company

Calculation and payment of service fees - Based on actually rendered services

Remuneration Arrangement

Remuneration Arrangement

Salary and Bonus

- Composition of Salary (monthly fixed salary, performance salary etc.)
- Calculation and payment of overtime salary
- How to maximize the incentive effect of bonuses?
 - Performance based annual bonus
 - Retention bonus
 - lump-sum bonus payable upon the completion of project
 - ...



Q&A

Your Contact



Anqi Qin

Senior Associate

Luther Law Office | 陆德劭和律师事务所
10F, Jin Mao Tower | 上海市浦东新区
88 Century Avenue | 世纪大道88号
Pudong New Area, Shanghai | 金茂大厦10层
Postal Code | 邮政编码 200121
Phone | 电话 +86 21 5010 6018
Fax | 传真 +86 21 5010 6590
Mobile | 手机 +86 138 1870 3914
qinanqi@cn.luther-lawfirm.com
www.luther-lawfirm.com



post_shanghai@cn.luther-lawfirm.com

Thank You!

Luther.

The information given in this presentation is exclusively intended for the named event. The disclosure of this presentation shall only apply to the internal use of the addressee and texts or graphics compiled here, have been used within the scope of the presentation and do not fully document the event.

The presentation does not constitute the provision of legal or tax advice. This must be effected individually, taking into account the circumstances of the case, and in accordance to our engagement letters. Dissemination, citation and duplication – also in extracts – of the content of the presentation for the purpose of passing-on to third parties is only permitted with prior agreement.

Luther.

**Bangkok, Berlin, Brussels, Cologne, Delhi-Gurugram, Dusseldorf, Essen, Frankfurt a.M.,
Hamburg, Hanover, Kuala Lumpur, Jakarta, Leipzig, London, Luxembourg, Munich,
Shanghai, Singapore, Stuttgart, Yangon**

You can find further information at:

www.luther-lawfirm.com

www.luther-services.com