

What should the employer do against the ban on cross-city social security contribution?



1. DEFINITION OF CROSS-CITY SOCIAL SECURITY CONTRIBUTION

Cross-city social security contribution refers to the operation where a company asks a third company (usually a local employment agent such as FESCO) to pay social security for its own employees who work outside of its registration location. In order to do so, the local agent declares and pays the local contributions of the company's employees from its own national insurance number as if they were its own employees. This is a common practice for companies with operations throughout China and with employees physically based in different parts of China, but without a local legal structure for its employees to declare social security contributions locally.

It cannot be denied that cross-city social security contribution indeed facilitates the field employees' access to various local benefits which would otherwise not be accessible to them since they are limited to the employees who pay their social security contribution locally. These benefits include the possibility to buy an apartment, a car, to send their children to public schools, to see a doctor without having to pay in advance, and to obtain a local residence permit or «hukou» (local family record book). However, on the other hand, this system does not comply with the law, which requires the employer to pay social security contributions for its employees, which it can only do with the relevant bodies in his own place of registration.

Due to the inconsistency between the employer and social security contribution entity, cross-city social security contribution may lead to some risks for the employer such as when the field employee is injured at work. In order to benefit from the insurance for accidents at work, the local agent must declare the accident and show a fictitious employment contract with the employee in order to obtain the allowances. The same applies to an employee on maternity leave, the local agent will have to prove the employment relationship with the employee in order to be entitled to maternity insurance and the corresponding benefits.

In order to achieve cost savings, it is not rare to see that the employer pays social security for its employees in another city where the social security contributions are lower. In such cases, they voluntarily choose to use a local agent located in a city where the contribution rates are lower than those charged in their place of registration. In such case, the field employee is entitled to claim the difference of social security treatments arising from the difference of social security contribution basis and ratio between the registration place of the employer and the social insurance contribution place. However, this article focus only on the cross-city social security contribution due to the employer's business need.

2. BAN ON CROSS-CITY SOCIAL SECURITY CONTRIBUTION

In recent years, cross social security contribution is being banned by an increasing number of cities. Last summer, on June 30, 2020, Beijing Social Insurance Center issued the *Notice on a number of issues relating to the affiliation of labor dispatch agencies and human resources services companies to social insurance funds*, which provides that as from July 5, 2020, the labor dispatch companies and human resources service companies registered in Beijing are no longer able to:

- Dispatch employees to non-Beijing registered companies and pay social security for these employees in Beijing, and
- Accept a commission from non-Beijing registered company to pay social insurance in Beijing for employee working physically in Beijing but hired by this non-Beijing registered company.

This notice was issued due to the occurrence of several social security fraud cases committed by some Beijing registered companies which paid social security for individuals who have no employment relationship with them so as to allow these individuals to enjoy social security treatments such as reimbursement of medical expenses and the payment of maternity benefits.

Guangzhou (capital city of Guangdong province), Hangzhou (capital city of Zhejiang province) and Nanchang (capital city of Jiangxi province) have all launched similar bans on cross-city social security contributions. We believe that more and more cities' authorities will do the same in the coming years. We therefore advise the companies concerned to think now about the solutions they can put in place to overcome this ban.

3. SOLUTIONS

With the ban on cross-city social security contribution, in order to ensure the field employees' local benefits such as medical care, purchase of an apartment or a car, school, household registration (hukou) of their employees, the employer may consider the following temporary measures.

- Labor service outsourcing: this consists of having the employees concerned hired by a third-party company, and then signing a service contract with this third-party company, which will then make these employees available to the company to provide the agreed services. The major disadvantage of this solution, apart from its high cost, is that employees will lose any sense of belonging to the company as they will have to change employers, and may feel very insecure.
- Labor secondment: the employer needs to pay attention to the legal requirements which are very strict, namely on (a) the employment proportion of seconded employees, i.e. the number of the seconded employees shall not exceed 10% of the total number of employees, and (b) the use of seconded employees is only possible for temporary, auxiliary or replacement positions.

As the government policy changes, the employer might need to consider the following fundamental options.

	Option 1 - pay the social security contributions of field employees to the insurance funds of the place of registration of the company	Option 2 - create a branch/subsidiary in each city where field employees are located, and continue to pay social security charges locally but now directly in the name of the branch/subsidiary
Advantage	These two solutions are compliant with legal requirements	
Disadvantage	<ul style="list-style-type: none"> o Employee turnover - The employee may resign because of the change of social security contribution place; o The employees may face difficulties in their daily lives: medical care, hukou application, children's education, house and car purchase, retirement, etc... 	<ul style="list-style-type: none"> o Costs related to the running of the branch/subsidiary, such as the costs of the registered office o Administrative formalities of constitution and maintenance (tax declaration, annual inspection, etc.)
Comment	<ul style="list-style-type: none"> o Although this option does not require the prior agreement of the employee, it is absolutely necessary to communicate fully with the employee to explain the reasons for this decision and the consequences for the employee; o The use of medical and supplementary pension insurance may be considered to compensate for the employee's losses 	<ul style="list-style-type: none"> o To conduct a comprehensive cost estimation before considering this option. o Identify the places where there is a real need for this solution, taking into account the number of employees concerned, their situation and whether or not they hold a local hukou

4. RECOMMENDATIONS

It is clear that cross-city social security contribution is not compliant with legal regulations. We therefore recommend the employers to:

- Firstly, check for how many employees' social insurance is paid locally through an agent, and check the personal situation of each employee concerned and the impact on him or her of the change in the place of contribution;
- Implement, on a case-by-case basis and depending on the evolution of regulations, one of the corrective measures proposed above;
- Inform new field employees that their social security as well as housing fund will be paid in the registration location of the employer;
- In the event that the field employee insists on a cross-city social security contribution and the employer wants to keep this talent, request the employee to sign a statement that such operation is based on his or her express request and personal interests;
- Finally, make sure you work with reliable local agents, if you decide to continue using the inter-provincial social contribution system.



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