



PRC Labor and Employment Law Newsflash

September, 2013

False Information Supplied by the Employee and Termination of Employment Contract

During the recruitment process, the employer often requires the employee to provide basic information which directly relates to the employment contract such as age, degree, English level, work experience, health condition, etc., and employees shall truthfully provide the same, and a failure to do so entitles the employer to terminate unilaterally the employment contract without severance pay.

1. The employee shall provide factual information. Article 3 and 8 of *the Employment Contract Law* states that the conclusion of employment contracts shall comply with the principle of good faith. An important aspect of the principle of good faith is that both parties to the employment contract have the right to know, namely having the right to know the opposite party and important information concerning the employment contract.

If the employee supplies false information or conceals the factual conditions which cause the enterprise to recruit him or her, which is contrary to the enterprise's true intent, pursuant to the regulation of Article 26 of *the Employment Contract Law*, this employment contract shall be invalid. Furthermore, in accordance with Article 39 of *the Employment Contract Law*, the enterprise can terminate the employment contract with the employee without severance pay.

2. The information required by the employer shall be relevant to the preformation of the employment contract. In practice, the employer may require information which is not absolutely necessary. Examples include information relating to the employee's parents, children and spouse or the medical history of the employee. The said information does not relate to the performance of the employment contract and may relate to personal privacy, which may lead that some employees provide false information or conceal factual conditions to protect their personal privacy. If the employer terminates the employment contract with the employee due to this false information irrelevant to the performance of the employment contract, it will be hard to be upheld by the judicial authority.

Except for the principle of good faith, the employer shall abide by the principle of equality of rights and obligations in regard to the false information supplied by the employee. In accordance with the criteria, namely directly relating to the performance of the employment contract, the employer needs to decide if supplying false information violates the principle of good faith. Terminating the employment contract against the principle of equality of rights and obligations bears the risk of being denied.

Case Study: The Employee Provides False Information and the Employer Can Unilaterally Terminate the Employment Relationship

An import and export company intended to hire a manager for the sales department since August, 2010, requiring a male between 30 to 40 years old with five years' experience of management and at least bachelor's degree. On October 16th, 2010, after two rounds' interviews, Mr. Zang was hired, filled in the application form of on-board, signed and received the staff handbook and signed the engagement confirmation letter and its attachments.

Article 12.2 of the staff book (version 1.0) regulates that providing false personal information, materials or other relevant documents required by the company (forging sick leave certificate, invoice or falsifying overtime work) will be deemed as grievous fault and the relevant discipline will be terminating the employment immediately. In the application form of on-board, Mr. Zang made a statement: "the information I fill in and relevant certificates I provide are complete, accurate and updated. I further declare that I do not have any criminal record and I fully understand that if the said information I supply is false or leads the company making wrong judgment, the company has the right to terminate the employment contract with me." Mr. Zang signed on the statement.

After three months of on-boarding, the company found out that Mr. Zang merely obtained a degree of junior college other than the bachelor's degree filled in by Mr. Zang in the application form of on-board. As a result, the company terminated the employment contract with him. Mr. Zang was dissatisfied with the termination of his contract and applied labor arbitration. He required the company to revoke the decision of termination and continue to perform the employment contract. The labor dispute commission held a trial but did not uphold his pleadings.

In this case, Mr. Zang did not provide factual information concerning his personal conditions, which led the company to hire him contrary to the company's true intent. On the above basis, the company can terminate the employment contract with him in accordance with Article 26 and 39 of the *Employment Contract Law* without severance pay.

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中国劳动法资讯速递

二零一三年九月刊

劳动者提供虚假信息与劳动合同解除

用人单位在招录员工时通常会要求劳动者提供年龄、学历、外语水平、工作经历、健康状况等与劳动合同直接相关的基本情况，根据《劳动合同法》的相关规定劳动者应当如实说明，否则用人单位可以依据相关法律规定解除劳动合同并无需承担经济补偿。

- 一、劳动者提供信息应当真实。《劳动合同法》第三条、第八条规定，劳动者与用人单位订立劳动合同，应当秉承诚实信用的原则。诚实信用原则的重要体现是双方在订立劳动合同时互相享有知情权，也就是了解对方以及劳动合同相关重要情况的权利。如果劳动者提供虚假信息或者隐瞒真实情况而导致企业违背真实意思将其录用，依据《劳动合同法》第二十六条的规定，此种劳动合同应当被认定无效，并可以根据《劳动合同法》第三十九条的规定，解除与该劳动者的劳动合同，且不用支付经济补偿金。外籍员工达到法定退休年龄时可享受的待遇
- 二、用人单位要求劳动者提供的信息应当与履行劳动合同相关。实践中存在用人单位过度要求劳动者提供信息的情形，比如用人单位要求提供劳动者父母、子女、配偶的信息以及劳动者病史等。有些信息与劳动合同的履行并无关联且可能涉及个人隐私，导致有些劳动者出于保护个人隐私的目的提供虚假信息或者隐瞒真实情况。若用人单位以劳动者提供的与劳动合同履行并无关联的虚假信息解除劳动关系，则难以获得司法机关的支持。

对于劳动者提供虚假信息，用人单位除应当遵守“诚实信用”的原则和相关法律规定外，还应当遵守“权利义务相一致”原则，依据与劳动合同履行直接相关的标准评判劳动者提供虚假信息的行为是否达到违反“诚实信用”的原则。违反“权利义务相一致”原则与劳动者解除劳动合同，存在不被认可的风险。

案例分析：劳动者提供虚假信息用人单位有权单方解雇

一家进出口公司自 2010 年 8 月起对外招聘销售部经理，明确要求 30 至 40 岁男性且有 5 年以上管理经验并具有本科以上学历。2010 年 10 月 16 日，臧某经过了两轮面试，填写了入职申请表、签收了《员工手册》，并签订了聘用确认书及其附件。

《员工手册》之 1.0 版本第 12 奖惩规定 12.2 处罚中 d 重大过失第 9 项：提供虚假个人信息、资料的以及其他公司要求提供的相关文件（伪造病假单、发票及虚报加班等）；具体处分如下：凡发生重大过失的，一律马上解除劳动合同。在臧某填写的入职申请表中附有一份声明：“本人上述所填资料的信息和所提供的相关证明是完整的，准确的和最新的。本人进一步声明本人没有任何犯罪记录，并了解如本人提供任何虚假或可导致公司判断失误的信息，公司有权立即无条件解雇本人。”臧某在该声明上签字。

臧某入职后 3 个月，经过公司核实，臧某获得某学院的“大专”文凭，而非臧某在入职申请表中所填写“大学本科”文凭。公司据此解除了与臧某的劳动合同。臧某不服，提起劳动仲裁，要求撤销公司解除劳动合同的决定，继续履行劳动合同。未获劳动争议仲裁委员会支持。

本案中，臧某没有如实说明自己的基本情况，致使公司违背自己的真实意思将其录用。根据上述分析，公司可依据《劳动合同法》第二十六条、第三十九条的规定，解除与臧某的劳动合同，

并且不用支付经济补偿金。

本资讯速递系大成劳动法团队撰拟，责任编辑：孙颖、徐智强、杨傲霜、张根旺、周军、孔琪、罗欣、单训平。期待您的资讯速递能对您有所裨益。若您有任何问题，请通过电邮 laborlaw@dachenglaw.com 联系我们团队。

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