



PRC Labor and Employment Law Newsflash

June, 2014

False Expense Claims and Serious Violation of Disciplines

Our labor law team recently dealt with several cases concerning employers dismissing their employees due to false expense claims. Such cases occur universally, in which the employees involved can be categorized as follows:

1. Senior Executives

Senior executives are dismissed mainly for two reasons in the application for expense claims:

a. changing relevant personnel or practicing office politics

It is usually an efficient, faster and easier strategy to change senior executives without making it public by studying their expense claims. Ordinarily, everyone gets along quite well. However, once the head office or the parent company, shareholders, or the board of directors intend to change senior executives, the financial department including the internal audit department of the company, will audit every invoice submitted by those senior executives. Once the senior executives are found to have violated the regulations, they will be threatened or induced (given that the potential employer will do background checks) to resign.

b. Senior executives themselves seek personal interests by taking advantage of their position.

As senior executives hold many resources of their company, they will usually seek personal interests by taking advantage of their positions if they bear poor professional ethics, such as applying for reimbursing inexistent expenses. Undoubtedly, the company will dismiss them under this circumstance.

2. Salespersons

Salespersons apply for false reimbursement mainly for the following four reasons:

a. selling by granting sales commission

When pricing the products, some companies have taken into account the “commercial bribery” for transfer payment made by the salespersons. After achieving the sales budget, the company will grant bonuses to their employees at a certain ratio based on the sales volume that has been achieved. The salespersons have to provide invoices stipulated by the company when acquiring such bonuses. To gain their bonus, some salespersons will collect false invoices by any means, and thus apply for expense claims.

b. fixed amount of subsidy

For the purpose of avoiding paying heavy individual taxes, some companies encourage their employees to gain the amount of subsidy by applying for expense claims, which should have been paid as salary.

c. increasing the internal audit standards

In the huge storm of anti-bribery and anti-corruption, many companies increase the audit standards for expense claims, in which the invoices that could have been permitted are now rejected by companies and regarded as false expense claims because “the invoices does not conform to the items declared” .

d. misappropriating the company’s properties maliciously

For the sake of increasing their income, some salespersons will defraud the company of its property in the application for expense claims by fabricating nonexistent project expenses or exaggerating the actual expense.

False expense claims include providing false invoices, exaggerating the amount of expenses, conspiring with a third party and so on. What's more, there are various forms of false invoices, which will not be detailed here. Some companies set false expense claims as one serious violation of discipline in the handbook and give the severest punishment, namely immediate dismissal. Even though many more companies fail to specifically set out “false expense claims”, they can also cite the following provisions concerning serious violation of discipline:

- Deceiving the company;
- Seeking personal interests by taking advantage of the position;
- Misappropriating the company’s property;
- Violating specific rules and regulations of the company;
- Violating laws and regulations;
- Being engaged in commercial bribery; and
- Damaging the social image of the company.

If the amount of false expense claims is relatively large, the acts of the employee involved may constitute misappropriation and the employee may be investigated for criminal activity. The Supreme People’s Procuratorate and the Ministry of Public Security provides that, if the amount involved in the misappropriation crime is more than 5,000 RMB~10,000 RMB (as the case may be), the case shall be placed on file and the person involved shall be prosecuted. Beijing and Shanghai have set out specific standards for filing cases concerning misappropriation crime.

Case Study: Termination due to False Expense Claims

Mr. Wang took the post of sales representative in a medical company in 2001, and concluded a non-fixed term labor contract with the company in 2009. In 2013, his monthly average salary was 45,300 RMB (pre-tax). Before being dismissed, Mr. Wang took the position of regional sales manager. In September 2013, the medical company arranged medical experts and chief physicians to hold a two-day academic conference in Beijing, which was organized by a conference company. Mr. Wang conspired with the conference company to maliciously raise the conference cost and use the part of fees exceeding the normal cost to entertain 5 chief physicians. In December 2013, the medical company found out in the internal audit that the conference cost was extremely high. Upon investigation of all staff engaged in the conference, the medical company firmly believed that Mr. Wang violated the company's policy that "It is prohibited to bribe or entertain clients without permission" and thus dismissed Mr. Wang in January 2014. Upon receipt of the notification on dismissal, Mr. Wang applied for labor arbitration immediately, with claims of the labor dispute arbitration committee holding the termination of labor contract to be illegal and the company to make compensation.

In the court hearing, Mr. Wang argued that the academic conference was arranged and all conference expenses were reimbursed by the medical company, and violated no rules or regulations as a person in charge. But, after finishing the court hearing, the arbitral tribunal held that, all entertainment services other than the academic conference are not included in the academic conference agenda, while the entertainment expenses were covered by the conference fees rather than reimbursed separately, and that Mr. Wang was fully aware of the company's policy of prohibiting bribery and prohibiting entertaining clients alone, and that the company is entitled to dismiss Mr. Wang in accordance with laws as he has violated the company's regulations.

Through dealing with this case, I realized that bribery occurs in various forms and is becoming more covert. It's necessary for companies to fix evidences at any time when investigating such violations in order to dig into the inside story of expense claims. In addition, during the court hearing, combining present political and social situations, lawyers should better state to arbitrators and judges the significant harm caused by commercial bribery.

This newsflash is prepared by the Labor Law Team of Dacheng Law Offices. Members of the Labor Law Team: Maggie Kong, Shane Luo, Susan Shan, Kent Xu, Grace Yang, Anderson Zhang and John Zhou. If you have any inquiries regarding the PRC employment law matters, please contact us at laborlaw@dachenglaw.com.

Disclaimer: this newsflash is for reference only and does not constitute any legal advice. Readers may contact us for legal advice on any particular issues. The copyright of the entire content is owned by our team. Reproduction and distribution of this newsflash in whole or in part without the written permission of our team is expressly prohibited and we reserve all legal rights.

Dacheng Law Offices
24/F, Shanghai World Financial Center
100 Century Avenue, Shanghai 200120, P. R. China
Tel: 86-21-5878 5888 Direct: 86-21-2028 3597
Fax: 86-21-2028 3853 Mobile: 86-188 0176 6837
www.dachenglaw.com



中国劳动法资讯速递
二零一四年六月刊

虚假报销与严重违纪

本团队近期办理了多起用人单位因员工虚假报销而辞退员工的案件。这类案件具有普遍性，涉案的员工主要有以下两类：

1、高级管理人员

高级管理人员因报销事宜被解聘又有两个主要原因：

（1）腾笼换鸟或办公室政治

为了有效、快速更换高级管理人员，且让被更换者不敢声张，比较好的一种策略是从费用报销环节着手。在平常时期，大家都相安无事，但一旦上级公司或母公司、股东、董事会希望更换高管时，公司的财务部或内审部就会仔细审查原高管提交的每一张发票，一旦发现违规，就威胁加利诱（后续潜在雇主的背景调查等），迫使原高管就范，从而实现高管职位的人员更迭。

（2）高管自身确实借此谋取私利

高级管理人员原本就掌握了公司的很多资源，如果其自身的职业道德不佳，往往会利用职权谋取私利，要求公司报销并未实际发生的费用。这种情况下公司将其辞退就理所应当了。

2、销售人员

销售人员虚假报销的原因大致有如下四类：

（1）带金销售

一些企业在产品定价时，就已经考虑到销售员需要“转移支付”的“商业贿赂”，销售人员在完成销售额后，公司会根据销售额的大小，按一定比例向员工支付销售奖金，但员工在领取奖金时必须提供公司规定种类的发票。销售人员为了取得奖金，通过各种方式取得假发票，并向公司以费用名义报销。

（2）定额的补贴

为了避免高额的个人所得税，有些企业鼓励员工通过费用报销的方式取得原本应作为工资发放的补贴。

（3）内审标准的提高

在反腐、反贿赂风暴越演愈烈的当下，很多公司提高了费用报销的审核标准，原本可以被放行的发票，被公司剔除出来，以“发票与申报项目不完全相符”等理由认定虚假报销。

（4）恶意侵占公司财产

有些销售员为了增加收入，捏造未发生的项目费用，或夸大实际发生的费用，以发票报销的方式骗取公司的财产。

虚假报销包括提供假发票、夸大费用的金额、与第三方串通等多种方式，其中仅假发票的表现形式就有很多种，在此不一一列举。一些公司也在员工手册中将虚假报销作为严重违

纪的一种，给予最严厉的处罚——立即辞退。但更多的公司并未明确列明“虚假报销”这个具体方式，但公司仍可援引以下严重违纪的具体条款，如：

- 欺骗公司；
- 利用职务之便谋取个人利益；
- 侵占公司财产；
- 违反公司具体的规章和制度；
- 违反法律法规；
- 商业贿赂；
- 损害公司的社会形象。

虚假报销的金额如果很大，涉案的员工有可能构成职务侵占罪而被追究刑事责任。最高人民检察院、公安部规定，职务侵占金额达到 5,000 元至 10,000 元以上的，将被立案追诉；北京、上海等地都对职务侵占罪有明确的刑事立案标准。

案例分析：虚假报销导致劳动合同解除

王某于 2001 年进入某医药公司担任销售代表，2009 年与医药公司签订无固定期限劳动合同，2013 年度月平均工资为 45300 元（税前），被辞退前的职务是地区销售经理。2013 年 9 月，医药公司组织医药专家和主任医生在北京召开学术会议，会议期限是 2 天。该学术会议由一家会务公司具体承办。王某伙同会务公司，恶意抬高会务费用，将超出正常费用的预算为 5 名主任医生安排了极其奢华的娱乐性服务。2013 年 12 月，医药公司在内审时发现会务费用畸高。在调查了参与该次会议的全部员工后，医药公司认定王某违反了公司“不得贿赂或单独招待客户”的政策，于 2014 年 1 月辞退了王某。王某在收到辞退通知后立即提起了劳动仲裁，要求认定违法解除劳动合同、支付赔偿金。

在庭审中，王某认为学术会议由医药公司安排、会务费用已经由医药公司报销，其作为经办人并无任何违纪。但仲裁庭经审理后认为，学术会议以外的娱乐性服务并不在学术会议日程范围内，娱乐费用也并未单独报销，而是包含在会务费中，且王某明知公司禁止贿赂和单独招待客户的政策，因此，王某的行为违反了公司的制度，公司有权依法辞退王某。本律师办理该案的体会是，当今贿赂的形式越来越多样，也更加隐蔽。公司在调查类似违纪行为时，务必随时固定证据，深入挖掘费用报销的内幕。另外，在庭审时，律师要善于结合当前的政治、社会形势，向仲裁员和法官充分阐明商业贿赂的严重危害

本资讯速递系大成劳动法团队撰拟，责任编辑：孔琪、罗欣、单训平、徐智强、杨傲霜、张根旺和周军。期待我们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。

声明：本资讯速递仅供参考，不构成法律意见。读者如有任何具体问题，应及时联系本团队以征询适当的法律意见。本资讯速递所有内容均由本团队创作、编辑、翻译或整理，本团队对该等内容享有著作权。未经本团队书面明示同意，任何个人或实体不得转载或以其他方式使用本资讯速递内容之任何部分，否则我们将追究其法律责任。

大成律师事务所

上海市世纪大道 100 号环球金融中心 24 层（200120）

电话：86-21-5878 5888 直线：86-21-2028 3597

传真：86-21-2028 3853 手机：86-188 0176 6837

www.dachenglaw.com