

海问劳动法双月报  
**Haiwen Labor Law Bi-Monthly Newsletter**

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一. 法规解读：多地修订《人口与计划生育条例》，调整婚育假期配置

**Interpretation of Laws and Regulations: Local Regulations on Population and Family Planning Amended in Multiple Regions to Adjust Marriage and Childbirth related Leaves**

为贯彻《关于优化生育政策促进人口长期均衡发展的决定》，全国人大常委会于2021年8月20日通过了修改《中华人民共和国人口与计划生育法》（“《人口与计划生育法》”）的决定，体现了优化生育政策的重大调整。新修订的《人口与计划生育法》在原第二十五条中增加了第二款，支持有条件的地方设立“父母育儿假”。

To implement the Decision on Optimizing the Family Planning Policy to Promote Long-term and Balanced Population Development, the Standing Committee of the National People's Congress adopted a decision to amend the Population and Family Planning Law of the People's Republic of China (the “**Population and Family Planning Law**”) on August 20, 2021, which reflects the major adjustment of optimizing the birth policy. The amended Population and Family Planning Law adds a second paragraph to Article 25 to support the establishment of “parental leave” in regions where conditions permit.

为落实《人口与计划生育法》的新修订内容，江苏、贵州、吉林、四川、山西、黑龙江等地相继结合当地情况对现行《人口与计划生育条例》进行修订。由于各地的基本情况不同，其人口和计划生育政策也存在区别。其中，与用人单位的用工管理关联性较强的主要为对假期种类和假期调整。本次修改和调整，各地与婚育相关的假期设置主要如下：

To implement the new amendments to the Population and Family Planning Law, Jiangsu, Guizhou, Jilin, Sichuan, Shanxi, and Heilongjiang have successively revised their existing Population and Family Planning Regulations in light of local conditions. Due to the different basic conditions in each place, there are differences in their population and family planning policies. Among them, those with strong relevance to the employment management of employers are mainly for the adjustment of leave types and length of holidays. After this revision and adjustment, the leave settings related to marriage and childbirth in various regions are mainly as follows.

地区 / Regions	婚假 / Marriage Leave	产假及护理假 / Maternity Leave and Paternity Leave	育儿假 / Parental leave
江苏 / Jiangsu	(无变化/ No-change) 在国家规定的婚假基础上延长10天 / Extension of 10 days over the nationally prescribed marriage leave	(延长/ Extend) 女方在享受国家规定产假的基础上，延长产假不少于三十天，男方享受护理假不少于十五天 / female employee granted with 30 additional days of maternity leave on top of the nationally prescribed amount; paternity leave for male employees shall not be less than 15 days	(新增/ Add) 推动实行父母育儿假制度，具体实施办法，由省人民政府制定 / Promote the implementation of a parental leave system, with specific implementation measures to be formulated by the provincial people's government
贵州 / Guizhou	(无变化/ No-change) 在国家规定的婚假基础上延长10天 / Extension of 10 days over the nationally prescribed marriage leave	(无变化 / No-change) 除享受国家规定的产假外，女方增加产假60天，男方享受护理假15天 / In addition to the nationally prescribed maternity leave, the woman will have an additional 60 days of maternity leave, and the man will have 15 days of paternity leave	(新增/ Add) 3周岁以下婴幼儿的父母双方每年享受育儿假各10天 / Parents of infant(s) under the age of three shall be entitled to parental leave for 10 days each year

四川 / Sichuan	(无变化/ No-change) 无延长婚假 / No extended marriage leave	(无变化 / No-change) 除法律、法规规定外，延长女方生育假60天，给予男方护理假20天 / In addition to the nationally prescribed maternity leave, the woman shall be entitled to an additional maternity leave of 60 days, and the man shall be entitled to a paternity leave of 20 days	(新增/ Add) 子女三周岁以下的夫妻，每年分别享受累计十天的育儿假 / Parents of child(ren) under the age of three shall be entitled to parental leave for 10 days each year
江西 / Jiangxi	(延长/ Extend) 除享受国家规定的假期外，增加婚假十五日/ Extension of 15 days over the nationally prescribed marriage leave	(延长/ Extend) 除享受国家规定的假期外，增加产假九十日，并给予男方护理假三十日 / In addition to the nationally prescribed maternity leave, the woman shall be entitled to an additional maternity leave of 90 days, and the man shall be entitled to a nursing leave of 30 days	(新增/ Add) 在子女三周岁以下期间，给予夫妻双方每年各十日育儿假 / Parents of children under the age of three shall be entitled to parental leave for 10 days each year
吉林 / Jilin	(无变化/ No-change) 享受婚假十五天 / 15 days' leave for marriage	(调整/ Adjust) 按政策生育子女的夫妻，可以获得延长生育假、护理假奖励，具体办法由省人民政府制定。女职工经本人申请，单位同意，可延长产假至一年，产假延长期间工资按原额的百分之七十五发放 / Couples who give birth to children in accordance with the policy may be rewarded with extended maternity leave and nursing leave, with specific measures to be formulated by the provincial people's government. Female employees may extend their maternity leave up to one year upon their application and the consent of employers, their wages during the extended maternity leave shall be paid at 75% of the original amount	(新增/ Add) 支持有条件的地区或企业事业单位设立父母育儿假 / Support the establishment of parental leave in areas or enterprises and institutions where conditions permit
黑龙江/ Heilongjiang	(无变化/ No-change) 享受婚假十五日，参加婚前医学检查的，增加婚假十日 / 15 days' leave for marriage, and 10 days' additional leave for attending premarital medical examination	(无变化 / No-change) 女职工享受产假一百八十日；男职工享受护理假十五日，特殊情况可以参照医疗单位意见适当延长 / Female employees are entitled to maternity leave for 180 days; male employees are entitled to nursing leave for 15 days, which may be appropriately extended in special circumstances with reference to the opinion of the medical treatment unit	(新增/ Add) 用人单位每年给予三周岁以下婴幼儿的父母各十日育儿假发 / Parents of infant child(ren) under the age of three shall be entitled to parental leave for 10 days each year

用人单位应当根据当地的人口与计划生育政策，合理保证员工的休息与休假权。此外部分地区还强调，不得因为女性生育而影响其奖金、福利待遇、晋升等就业权益。

Employers shall reasonably ensure the rights of employees to rest and leave in accordance with local population and family planning policies. Besides, some regions also emphasize that women's employment rights and interests, such as bonuses, benefits and promotions, shall not be affected because of the childbirth.

## 二. 法规解读：各地陆续出台新规，落实新就业形态劳动者权益保障

### **Interpretation of Laws and Regulations: New Regulations Issued in Various Regions to Implement the Protection of Rights and Interests of Workers in New Employment Type**

2021年7月16日，人力资源与社会保障部（“人社部”）、国家市场监督管理总局、中华全国总工会等部门联合发布《关于维护新就业形态劳动者劳动保障权益的指导意见》（“《意见》”）（参见《海问·研究 | 海问劳动法双月报》（7-8月））。自9月以来，北京、浙江、山东、重庆、贵州、湖南等地根据《意见》确定的规范新就业形态用工、维护劳动者权益的原则性政策，陆续出台实施意见。

On July 16, 2021, the Ministry of Human Resources and Social Security (“MOHRSS”), the State Administration of Market Regulation, the All-China Federation of Trade Unions and other departments jointly issued the “Guiding Opinions on Protecting the Labor Security Rights and Interests of Workers in New Work Forms” (the “Opinions”) (for more information you may refer to “*Haiwen Research: Haiwen Labor Law Bi-Monthly Newsletter*” (2021 July – August)). Since September, Beijing, Zhejiang, Shandong, Chongqing, Guizhou and Hunan have issued implementation opinions based on the principle policies specified in the Opinions to regulate the new types of employment and safeguard workers’ rights and interests.

2021年9月5日，北京率先出台《关于促进新就业形态健康发展的若干措施》；此后，浙江颁布《浙江省维护新就业形态劳动者劳动保障权益实施办法》；山东和重庆出台《关于维护新就业形态劳动者劳动保障权益的实施意见》；贵州发布《贵州省人力资源和社会保障厅关于开展维护新就业形态劳动者劳动保障权益专项行动的通知》；湖南则发布了《共享经济灵活用工平台服务规范》与《共享经济灵活用工平台管理规范》征求意见的通知。各地出台的新规中，对《意见》提出的指导性政策作出了不同程度的细化。上述地区的如下具体规定值得注意：

On 5 September 2021, Beijing took the lead in issuing “Several Measures on Promoting the Healthy Development of New Work Forms”. Since then, Zhejiang promulgated the “Implementation Measures for Safeguarding Labor Security Rights and Interests of Workers in New Work Forms in Zhejiang Province”; Shandong and Chongqing issued the “Implementation Opinions on Safeguarding Labor Security Rights and Interests of Workers in New Work Forms”; Guizhou issued the “Notice of Guizhou Human Resources and Social Security Department on Special Actions for Safeguarding Labor Security Rights and Interests of Workers in New Work Forms”; Hunan issued the notice of soliciting opinions on “Service Specification for Flexible Employment Platforms in the Sharing Economy” and “Management Specification for Flexible Employment Platforms in the Sharing Economy”. The new regulations issued by various regions contain different degrees of refinement to the guiding policies put forward in the Opinions. The following specific provisions in the aforementioned regions are worth noting.

#### 1. 浙江省八个部门联合发布的实施办法，提出了针对新就业形态劳动者权益保障较为具体的规则。例如：

The implementation measures jointly issued by eight departments in Zhejiang Province set out more specific rules for the protection of workers in new work forms. For example:

1. 将新就业形态劳动者与用工单位的关系区分为劳动关系、不完全符合劳动关系情形、民事关系三类，分别明确用工法律责任，对不完全符合劳动关系的情形，保障劳动者劳动权益的底线；

Distinguish the relationship between workers in new work forms and the employing units into three categories: employment relationships, situations that do not fully satisfy employment relationship, and civil relationship, and specify respectively the legal responsibilities for employment, and protect the bottom line of workers’ labor rights and interests in situations that do not fully satisfy employment relationship.

2. 平台企业应将劳动者签订的劳动合同或者协议，按规定实时汇聚到电子劳动合同（协议）在线平台，纳入统一监管；

Platform enterprises shall converge labor contracts or agreements signed with workers to the online platform of electronic labor contracts (agreements) in real time in accordance with the regulations, and bring them into unified management and supervision.

3. 企业确定的劳动定额应当使本企业同岗位90%以上的劳动者在法定工作时间内能够完成；

The production quotas determined by the enterprise shall enable more than 90% of the workers in the same position in the enterprise to complete their work within the statutory working hours.

4. 鼓励将对劳动者的扣款规则，调整为体现优绩优酬的正向激励措施；

- Encourage enterprises to turn to positive incentives that reflect merit pay instead of cutting payment.
5. 要求平台优化规则，对连续工作超过4小时的要安排工间休息；  
Require the platform to optimize rules, and arrange breaks for those who have worked continuously for more than 4 hours.
  6. 强调建立健全新就业形态劳动者单险种工伤保险制度等。  
Emphasize the establishment of the single-type work injury insurance system for workers in the new work forms.
2. 北京市就业工作领导小组发布的通知，将“新就业形态劳动者”分为三个类别，平台网约劳动者、平台个人灵活就业人员及平台单位就业员工，并分级分类对不同类别的新就业形态劳动者提出不同的保障措施；明确对“平台单位就业员工”的管理责任分配，要求在“平台单位就业员工”劳动权益受到损害的情况下，平台企业依法承担相应责任。  
The circular released by the Beijing Leading Group for Employment classifies “workers in new work forms” into three categories: platform online workers, platform individual flexible workers and platform enterprises’ employees, and sets out different protection measures for different categories of workers in new work forms in a hierarchical manner. It also clarifies the allocation of management responsibilities for “platform enterprises’ employees”, and requires platform enterprises to bear corresponding liabilities in accordance with the law in the event that the labor rights and interests of “platform enterprises’ employees” are damaged.
  3. 湖南市场监管局从共享经济灵活用工平台的服务和管理规范入手，发布了湖南省地方标准的征求意见稿。两项标准着力于解决共享用工平台的服务质量、管理水平、安全性等参差不齐的问题，增强平台本身的规范性。  
Administration for Market Regulation of Hunan Province issued the draft of Hunan’s local standard for public consultation with a view to standardizing the services and management of flexible employment platforms for sharing economy. The two standards focus on solving the uneven problems of service quality, management level, security, etc., of flexible employment platforms, and enhancing the standardization of the platform.
  4. 贵州省在通知中明确人力资源和社会保障厅应于2022年2月前制定外卖员、网约车司机劳动合同、书面协议等通用示范文本；推动建立平台企业用工情况报告制度和新就业形态劳动者劳动保障权益激励惩戒机制；并要求定期在省级人力资源社会保障部门网站公布一批合规用工企业名单。  
Guizhou Province specifies in the notice that the Human Resources and Social Security Department should formulate general model texts such as the labor contracts and written agreements of take-away workers and drivers of online car before February 2022; Promote the establishment of the employment reporting system of platform enterprises and the incentive and punishment mechanism for the labor security rights and interests of workers in new work forms; It is also required to regularly publish a list of enterprises whose employment complies with laws and regulations on the website of the provincial human resources and social security department.
  5. 北京、山东、重庆等地在《意见》的基础上，确定每项指导意见的牵头单位和参加单位，在明确分工的同时，也起到监督政策落地的作用。  
The circulars released by Beijing, Shandong, Chongqing and other regions, on the basis of the Opinions, determine the departments taking the lead and participating departments for each guiding policy, which, while clearly dividing the responsibilities, also has the function of supervising the implementation of policies.
  6. 在劳动争议处理方面，加班和拖欠劳动报酬问题受到格外关注。贵州省强调认真组织学习涉及超时加班劳动争议以及新就业形态劳动人事争议典型案例；北京市也明确劳动监察部门及其他主管部门应“加大拖欠劳动报酬、违法超时加班等突出问题的治理力度”。  
In the settlement of labor disputes, overtime work and arrears of labor remuneration have received particular attention. The circular of Guizhou Province emphasized the importance of carefully organizing the study of labor disputes involving overtime work and typical cases of labor disputes over new work forms; The circular of Beijing also specified that the labor inspection department and other competent authorities should “step up efforts to tackle outstanding problems such as delayed payment of labor remuneration and illegal overtime

work”.

平台企业在平台服务和管理建设，以及用工的过程中，应密切关注新就业形态劳动者保护的重点问题，结合各地的实施细则，规范用工管理。

Platform enterprises should pay close attention to the key issues of labor protection in new work forms in the process of platform service and management construction, as well as employment, and regulate workforce management in conjunction with local implementation rules.

- 三. 新规速递：校外培训机构从业人员管理办法施行；上海修订安全生产条例；江苏省修订工资支付条例

### **Quick View of New Regulations: Administrative Measures on Practitioners of Extracurricular Training Institutions Took Effect; Shanghai Released Revisions to the Production Safety Regulations; Jiangsu Province Revised Wage Payment Regulations**

1. 校外培训机构从业人员管理办法施行

#### **Administrative Measures on Practitioners of Extracurricular Training Institutions Took Effect**

继《关于进一步减轻义务教育阶段学生作业负担和校外培训负担的意见》（“双减政策”）出台以来，为了加强校外培训机构从业人员管理，教育部和人社部于2021年9月9日发布了《校外培训机构从业人员管理办法（试行）》（“《管理办法》”）。

Following the promulgation of the Opinions on Further Reducing the Burden of Homework and Off-campus Training of Students in Compulsory Education Stage (the “**Double Burden Reduction Policy**”), the Ministry of Education and the MOHRSS jointly issued Administrative Measures on Employees of Extracurricular Training Institutions (Trial) (the “**Administrative Measures**”) on September 9, 2021 to further strengthen the management of employees of extracurricular training institutions.

《管理办法》适用于校外培训机构中的教学人员、教研人员以及助教、带班人员等辅助人员；规定校外培训机构专职教学、教研人员原则上不低于机构从业人员总数的50%；并明确了校外培训机构对从业人员的管理规范，如聘用前先查询其犯罪信息、开展岗位培训、公示从业人员信息等。

The Administrative Measures apply to the teaching and research personnel, teaching assistants, class teacher and other supporting staff of extracurricular training institutions. It provides that the full-time teaching and research personnel of an extracurricular training institution shall, in principle, not be less than 50% of the total number of employees of such institution. The Administrative Measures also specifies the management standards of employees for extracurricular training institutions, such as checking their information on crimes before employment, carrying out on-the-job training, and publishing employees' information.

另外，《管理办法》要求对违反规范的从业人员建立全国统一监管平台的“校外培训机构从业人员黑名单”，列入“黑名单”的人员将不得再被聘用为校外培训机构的从业人员。

In addition, the Administrative Measures requires the establishment of a “blacklist of employees of extracurricular training institutions” on the national unified regulatory platform for employees that violate relevant regulations, and those who are included in the “blacklist” shall no longer be allowed to be employed as an employee of an extracurricular training institution.

2. 上海发布新修订的安全生产条例

#### **Shanghai Released Revised Production Safety Regulations**

上海人大常委会于2021年10月28日修行的《上海市安全生产条例》将于2021年12月1日生效。《上海市安全生产条例》的修改依托于新修订的《安全生产法》，对具体条款的修订思路也与《安全生产法》相一致（《安全生产法》的主要修订内容参见《海问·研究 | 海问劳动法双月报》（5-6月））。

The Production Safety Regulations of Shanghai revised by the Standing Committee of Shanghai Municipal People's Congress on October 28, 2021 will take effect on December 1, 2021. The revision of the Production Safety Regulations of Shanghai relies on the newly amended Production Safety Law, and the ideas for the revision of the specific provisions are also consistent with those of the Production Safety Law (for the main amendments of the Production Safety Law, please refer to “*Haiwen Research: Haiwen Labor Law Bi-Monthly Newsletter*” (2021 May – June)).

除了与《安全生产法》的规定保持一致外，《上海市安全生产条例》还明确了危险性较高

的生产经营单位应当加强安全生产的信息化管理，运用数字化技术开展安全风险管控、事故隐患排查治理、重大危险源监控等工作，按照要求向相关部门实时、准确、完整地报送相关数据。

In addition to being consistent with the Production Safety Law, the Production Safety Regulations of Shanghai also specified that producers and business operators with high risks shall strengthen the information management of production safety, use digitalized technologies to carry out safety risk management and control, accident potential check and solution, major hazard sources monitoring and other duty, and submit the relevant data to the relevant departments in a real-time, accurate and complete manner as required.

### 3. 江苏省修订工资支付条例 Jiangsu Province Revised Wage Payment Regulations

江苏省人大常委会于2019年9月29日修订《江苏省工资支付条例》。本次修改的条款较少，主要集中在对部分行政处罚条款的调整，主要包括修改罚款的金额范围、调整行政处罚的种类等。

The Standing Committee of Jiangsu Municipal People's Congress revised the Wage Payment Regulations of Jiangsu Province on September 29, 2019. There are a few provisions revised this time, mainly focusing on the adjustments to certain provisions on administrative penalties, which mainly include revising the scope of the amount of fines and adjusting the types of administrative penalties.

### 四. 典型案例：北京西城法院及海口中院发布劳动人事纠纷典型案例 Exploration of Typical Cases: Xicheng District People's Court of Beijing and Haikou Intermediate People's Court Released Typical Cases of Labor Disputes

2021年9月16日，北京西城法院召开“涉劳动者带薪年休假纠纷典型案例”新闻通报会，发布五个涉劳动者带薪年休假纠纷的典型案例。五个典型案例分别涉及劳动者未休年休假工资、年休假标准、劳动者不再享有年休假的法定情形以及疫情期间年休假安排等常见问题。

On September 16, 2021, Xicheng District People's Court of Beijing held a press conference on Typical Cases of Disputes over Paid Annual Leave of Employees, releasing five typical cases of disputes over paid annual leave of employees. The five typical cases respectively dealt with common issues, such as remuneration of employees' unused annual leave, annual leave standards, statutory circumstances under which employees are no longer entitled to annual leave and annual leave arrangement during the pandemic.

海口中院和海口市人社局于2021年9月23日联合发布十个劳动人事争议的典型案例，涉及劳动关系认定、加班、劳动合同签订、工资支付、调岗等各个方面。

On September 23, 2021, Haikou Intermediate People's Court and Haikou Municipal Human Resources and Social Security Bureau jointly released ten typical cases about labor disputes, involving a wide range of issues, including the identification of employment relationship, overtime work, conclusion of employment contracts, payment of salary, and transfer of employment posts.

两地发布的典型案例中，以下关于劳动者未休年休假工资的问题值得关注：

Among the typical cases released by both regions, the following issues concerning remuneration for employees' unused annual leave are worthy of attention:

#### 1. 劳动者未休年休假工资的仲裁时效 Limitation of Arbitration on Remuneration for Employees' Unused Annual Leave

对于该问题，不同地区的案例中呈现出法院所持的不同意见。

With regard to this issue, cases from different regions show different opinions held by the courts.

在北京西城法院发布的案例一中，劳动者以长期拖欠工资为由，向公司提出解除劳动合同，并于次日申请劳动仲裁，要求公司支付2017年至2020年未休年休假工资共计4万余元。法院认为，主张未休年休假工资的仲裁时效应当适用《劳动争议调解仲裁法》第二十七条第一款规定，从当事人知道或者应当知道其权利被侵害之日起计算，申请仲裁的时效期间为一年。因此，劳动者主张的2017年未休年休假工资已超过仲裁时效，故仅支持2018年至2020年未休年假工资。

In the first case released by Xicheng District People's Court of Beijing, an employee proposed to terminate his employment contract on the ground of long delay in payment of wage. And the next

day the employee applied for labor arbitration, claiming that the company should pay his remuneration for the unused annual leave from 2017 to 2020 totaling over RMB 40,000. The court held that the statute of limitations for arbitration of claims for unused annual leave remuneration should be applied to Article 27 Paragraph 1 of the Law on Mediation and Arbitration of Labor Disputes, which provides that the limitation period for application for arbitration of a labor dispute is one year and shall be calculated from **the date a party comes to know or should know the infringement of its rights**. Therefore, the limitation of arbitration on the claim of employee for unused annual leave from 2017 had expired. Therefore, only the remuneration for unused annual leave from 2018 to 2020 would be supported.

在海口中院发布的一个典型案例中，2008年至2011年期间及2017年度，单位未安排劳动者休年假也未支付未休年假工资。2017年8月31日，单位解除与劳动者的劳动合同。法院认为未休年假工资属于劳动关系存续期间的劳动报酬，其仲裁时效从双方劳动关系解除之日起算，因此，劳动者要求支付未休年假工资未过诉讼时效。与北京西城法院的观点恰好相反。

In a typical case released by Haikou Intermediate People's Court, from 2008 to 2011, and in 2017, the employer neither arranged for the employee to take annual leave nor paid the employee any remuneration for unused annual leave. On August 31, 2017, the employer terminated its employment contract with the employee. The court held that the payment for unused annual leave shall be classified into remuneration for the duration of employment, and the limitation of arbitration shall be calculated since **the termination date of the employment relationship**. Therefore, the employee's claim for remuneration for unused annual leave is still within the limitation of action. This opinion is just opposite to that of Xicheng District People's Court of Beijing.

## 2. 劳动合同解除方式对劳动者未休年假工资的影响

The impact of termination methods of employment contract on the remuneration for unused annual leave

对于劳动合同解除方式对劳动者未休年假工资的影响问题，不同地区的法院也存在不同的观点。

As for the impact of termination methods of employment contract on the remuneration for unused annual leave, the courts of different regions also hold different opinions.

例如，北京西城法院发布的案例二中，劳动者因家庭原因向公司提出辞职。辞职后，劳动者以公司未支付2019年度未休年假工资等事由诉至法院。法院认为，根据《企业职工带薪年休假实施办法》第十二条规定，无论哪一方提出解除或终止劳动合同，公司都应当按职工当年未休年假天数向其支付工资。

For example, in the second case released by Xicheng District People's Court of Beijing, an employee submitted his resignation to his employer due to family reason. After the resignation, the employee filed a lawsuit to the court citing that the employer failed to pay the unused annual leave remuneration of 2019. The court held that, according to Article 12 of the Implementation Measures on Paid Annual Leave for Employees of Enterprises, no matter which party requests to terminate the employment contract, the employer shall pay the employee remuneration calculated in accordance with the number of days of unused annual leave in the current year.

然而在上海地区，法院普遍认同在用人单位因劳动者严重违纪而合法解除与劳动者的劳动合同的情况下，公司无需向劳动者支付当年的未休年假工资。例如，在（2021）沪01民终2329号案例中，法院认为由于双方劳动合同因劳动者严重违纪行为而被解除，劳动者未休年假的责任应由其本人承担，因此，公司无需向其支付未休年假的工资。

However, in Shanghai, the courts generally agree that in a case where the employer legally terminates the employment contract due to the employee's serious violation of employer's rules and regulations, the employer need not pay the employee the remuneration for unused annual leave for that year. For example, in the case of (2021)沪01民终2329号, the court held that the employment contract was terminated due to the employee's serious violation of the company's rules and regulations, the employee shall bear the liabilities for the unused annual leave himself. Therefore, the company need not pay him the remuneration for the unused annual leave.

在劳动用工中，企业可以根据其所在的地区，具体判断是否以及如何向劳动者支付未休年假的工资。

In the course of labor management, the enterprise may, on the basis of the local rules, determine whether and how to pay the remuneration for unused annual leave.



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*\*Disclaimer: This newsletter is for general information only and does not constitute our legal advice or legal opinions. For further discussions, please consult your regular contact at our firm, or any of the following Haiwen Labor Law Team members.*

刘宇翔 LIU, Yuxiang

电子邮件Email: [liyuxiang@haiwen-law.com](mailto:liyuxiang@haiwen-law.com)

直线Direct line: (+86 10) 8564 0770

吴琼 WU, Qiong

电子邮件Email: [wuqiong@haiwen-law.com](mailto:wuqiong@haiwen-law.com)

直线Direct line: (+86 10) 8560 6827