

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

2022年 5-6月  
2022 May – June

本期摘要  
**Summary**

- ◇ **新规速递：证券基金行业发布多项监管规则，规范从业人员绩效薪酬管理等问题**  
Quick View of New Regulations: Multiple Regulatory Rules Issued in Securities and Fund Industries to Regulate Issues Regarding Management of Performance-Based Remuneration of Employees
- ◇ **新规速递：各部门、各地出台通知，扩大阶段性缓缴社保政策实施范围**  
Quick View of New Regulations: Various Departments and Multiple Regions Released Notices to Expand the Applicable Scope of the Policy of Phased Deferred Payment of Social Security
- ◇ **新规速递：各部门、各地发布住房公积金阶段性支持政策，受疫情影响单位可申请缓缴**  
Quick View of New Regulations: Various Departments and Multiple Regions Released Phased Support Policies for Housing Funds, Enterprises Affected by the Epidemic Can Apply for Deferment of Payments
- ◇ **新规速递：各地陆续发布 2021 年社会平均工资，社保、公积金缴费基数上下限随之调整**  
Quick View of New Regulations: Multiple Regions Published the Average Social Wages in 2021, Social Security, Upper and Lower Limits of Social Security and Housing Fund Contribution Base Adjusted Accordingly

- ◇ 新规速递：陕西、新疆修订《人口与计划生育条例》，天津发布育儿假、护理假等相关实施办法  
Quick View of New Regulations: Shaanxi and Xinjiang Revised Regulations on Population and Family Planning, and Tianjin Released Relevant Implementing Measures for Parental Leave, Carer's Leave, etc.
  
- ◇ 典型案例：江苏、广东、天津发布劳动人事争议典型案例  
Exploration of Typical Cases: Jiangsu, Guangdong and Tianjin Released Typical Cases of Labor Disputes

## 一、新规速递：证券基金行业发布多项监管规则，规范从业人员薪酬管理等问题

### **Quick View of New Regulations: Multiple Regulatory Rules Issued in Securities and Fund Industries to Regulate Issues Regarding Management of Performance-Based Remuneration of Employees**

金融行业从业人员的绩效薪酬，受制于特殊的行业监管要求。继银行、保险公司等机构已逐步建立了较为成熟的绩效薪酬管理机制之后（参见[《海问·观察 | 新规解读：银保机构绩效薪酬追索扣回机制 – 监管视角与劳动法视角》](#)），证券和基金行业也逐步明确了相似的绩效薪酬管理要求。

The performance-based remuneration of employees in the financial industry is subject to special industry regulatory requirements. Following the establishment of management mechanism of performance-based remuneration in banks and insurance industries, (for more information you may refer to the [“Haiwen Observation | Interpretation of New Regulations: Performance-based Remuneration Recovery and Deduction System for Banks and Insurance Institutions - Regulatory Perspective and Labor Law Perspective”](#)), securities and fund industries are also being ordered to set up similar performance-based remuneration management on a gradual basis.

中国证券监督管理委员会（“证监会”）2022年2月18日发布了《证券基金经营机构董事、监事、高级管理人员及从业人员监督管理办法》（于2022年4月1日生效），在宏观层面规范了对证券公司和公开募集证券投资基金（“公募基金”）管理公司董、监、高人员的管理。对于公募基金管理公司，证监会于2022年5月20日发布了《公开募集证券投资基金管理人监督管理办法》（于2022年6月20日生效），明确了对公募基金管理公司关键岗位从业人员薪酬的管理细则。为响应和配合证监会出台的监管规则，证券业协会和基金业协会作为行业性自律组织就薪酬管理制度也分别制定了适用于各自行业的框架性指引，如2022年5月13日证券业协会发布的《证券公司建立稳健薪酬制度指引》以及2022年6月10日基金业协会发布的《基金管理公司绩效考核与薪酬管理指引》（主要适用于公募基金）。

On February 18, 2022, the China Securities Regulatory Commission (the “CSRC”) issued the Measures for the Supervision and Administration of Directors, Supervisors, Senior Executives and Practitioners of Securities and Fund Operators (effective on April 1, 2022) which aims to impose macro-regulation on the management of directors, supervisors and senior executives of securities companies and publicly-offered securities investment fund management companies (the “Public Fund”). On May 20, 2022, the CSRC issued the Measures for Supervision and Administration of Publicly-Offered Securities Investment Funds Managers (effective on June 20, 2022), which clarifies the rules of the remuneration management of practitioners in key positions in Public Fund Managers. In response to and in line with the regulatory rules issued by the CSRC, the Securities Association of China and the Asset Management Association of China, as industry-based self-discipline organizations, have also formulated framework guidelines on remuneration management applicable to their respective industries, such as the Guidelines on Establishing Sound Remuneration Systems for Securities Companies issued by the Securities Association of China on May 13, 2022 and the Guidelines on Performance Evaluation and Remuneration Management for Fund Management Companies issued by the Asset Management Association of China on June 10, 2022 (mainly applicable to Public Funds).

上述监管规则强调了证券公司和公募基金管理公司应当建立科学的薪酬管理制度和考

核机制，合理确定薪酬结构，规范薪酬支付行为；对于核心和关键岗位人员，应当建立绩效薪酬递延支付机制，并建立问责机制及停发、退还绩效薪酬的追索扣回制度。

The above regulatory rules emphasize that securities companies and Public Fund management companies should establish a scientific remuneration management system and performance evaluation mechanism, to reasonably determine the remuneration structure and regulate the remuneration payment. For employees in key positions, it is necessary to establish a mechanism for deferred payment of the performance-based remuneration and accountability mechanism, and performance-based remuneration recovery and deduction system.

其中，《基金管理公司绩效考核与薪酬管理指引》在证监会发布的监管规则的基础上，明确了更具体特定的薪酬管理指标。例如，绩效薪酬的递延支付期限不少于3年，高级管理人员、基金经理等关键岗位人员递延支付的金额原则上不少于40%；以及高级管理人员、主要业务部门负责人应当将不低于当年绩效薪酬的20%（基金经理应将不低于当年绩效薪酬的30%）购买本公司管理的公募基金。该等规定引起了行业的高度关注。

Among them, the Guidelines on Performance Evaluation and Remuneration Management for Fund Management Companies stipulates specific and detailed supervisory indicators on remuneration management based on the regulatory rules issued by the CSRC. For example, the deferred payment period for performance-based remuneration shall be no less than three years, and the amount of deferred payment for senior executives, fund managers and other key positions shall be no less than 40% in principle; and senior executives and heads of major business departments shall use no less than 20% of the performance-based remuneration of the year (and fund managers shall use no less than 30% of the performance-based remuneration of the year) to purchase Public Funds managed by the company. These regulations have attracted great attention from the industry.

证券、基金行业的用人单位应密切关注出台的监管规则和措施，对从业人员的管理应符合监管要求和公司实际情况，尤其应当注意完善薪酬管理和绩效考核制度，建立薪酬递延支付和追索扣回制度，促进稳健经营和可持续发展。

Employers in the securities and fund industry should pay close attention to the regulatory rules and measures introduced, and the management of employees shall be in line with the regulatory requirements and the actual situation of the company. Employers shall pay particular attention to improving the remuneration management and performance evaluation system, establishing deferred payment system and performance-based remuneration recovery and deduction system to ensure sound operation and sustainable development.

## 二、新规速递：各部门、各地出台通知，扩大阶段性缓缴社保政策实施范围

### **Quick View of New Regulations: Various Departments and Multiple Regions Released Notices to Expand the Applicable Scope of the Policy of Phased Deferred Payment of Social Security**

2022年5月31日，人力资源和社会保障部、国家发展和改革委员会、财政部、国家税务总局等四部门联合发布《关于扩大阶段性缓缴社会保险费政策实施范围等问题的通知》（“《通知》”），明确在原有的餐饮、零售、旅游、民航、公路水路铁路运输等5个特困行业实施阶段性缓缴养老、失业、工伤保险费政策的基础上，进一步扩大实施范围，增加汽车制造业、通用设备制造业、医药制造业等17个其他特困行业。

On May 31, 2022, four departments, including the Ministry of Human Resources and Social

Security, the National Development and Reform Commission, the Ministry of Finance, and the State Taxation Administration, jointly issued the Notice on Expanding the Applicable Scope of the Policy of Phased Deferred Payment of Social Security Premiums and Other Issues (the “**Notice**”). It provides that the 5 industries in dire straits that originally implemented the phased deferred payment of pension, unemployment and work injury insurance premiums (that is the catering, retail, tourism, civil aviation, highway, waterway and railroad transport), are further expanded to 22 industries (other 17 industries are newly added in to the list) in dire straits such as automotive, general equipment and pharmaceutical manufacturing.

缓缴扩围行业所属困难企业，可申请缓缴三项社保费单位缴费部分。其中养老保险费缓缴实施期限到 2022 年年底，工伤、失业保险费缓缴期限不超过 1 年。原明确的 5 个特困行业缓缴养老保险费期限相应延长至 2022 年年底。申请缓缴的企业应符合受疫情影响生产经营出现暂时困难、处于亏损状态等条件；但为简化申报之便，企业可出具书面承诺，以替代适用条件的在先审查。

Enterprise in dire straits in deferred payment expansion industries, can apply for deferral of the employer’s portion of three social security premiums. Among them, the implementation period of deferred payment of pension premiums will be prolonged until the end of 2022; the implementation period of deferred payment of work injury, unemployment insurance premiums shall not exceed 1 year. The original five industries in dire straits deferred payment of pension premiums period correspondingly extended to the end of 2022. Enterprises applying for the deferment should meet the conditions of temporary difficulties in production and operation affected by the epidemic and in a state of loss. However, to simplify the reporting, enterprises may provide a written commitment, in lieu of a prior examination of applicable conditions.

《通知》提出进一步发挥失业保险稳岗作用，具体包括：第一、加大稳岗返还支持力度，将大型企业稳岗返还比例由 30%提至 50%；第二、拓宽一次性留工培训补助受益范围，包括从中高风险疫情地区的中小微企业扩大至该地区大型企业，以及有条件的省份可将范围进一步拓展至低风险疫情地区的餐饮等 5 个特困行业企业；第三、企业与毕业年度高校毕业生签订劳动合同并参加失业保险的，可按每人不超过 1500 元的标准发放一次性扩岗补助，实施期限截至 2022 年年底。

The Notice proposes to further make use of the unemployment insurance in stabilizing jobs, specifically including: Firstly, strengthening the support for job stabilization rebate, raising the proportion of job stabilization rebate for large enterprises from 30% to 50%; Secondly, broadening the applicable scope of the one-time job retention training subsidy, from medium- and small-sized businesses in high risk areas to cover large enterprises in such areas; five industries in dire straits such as catering in low risk areas in provinces with conditions may also enjoy the preferential policy; Thirdly, enterprises that sign labor contracts with college graduates in the graduation year and make contributions to the unemployment insurance for such college graduates can be granted a one-time position expansion subsidy at a rate of no more than 1,500 yuan per person, with the implementation period ending at the end of 2022.

《通知》发布后，北京、上海、天津、重庆、广东、海南、安徽、山东等地相继出台地方性法规，制定具体实施办法，明确缓缴期限、资格认定、办理流程等。所属特困行业企业可根据当地具体实施办法申请缓缴，缓解受疫情影响导致的企业资金压力。

After the release of the Notice, Beijing, Shanghai, Tianjin, Chongqing, Guangdong, Hainan, Anhui, Shandong and other regions have released local regulations and formulated specific

implementation measures to clarify the period of deferred payment, eligibility, and processing procedures. Enterprises in industries dire straits can apply for deferred payment according to the specific local implementation measures to ease the financial pressure on enterprises caused by the epidemic.

### 三、新规速递：各部门、各地发布住房公积金阶段性支持政策，受疫情影响单位可申请缓缴

#### **Quick View of New Regulations: Various Departments and Multiple Regions Released Phased Support Policies for Housing Funds, Enterprises Affected by the Epidemic Can Apply for Deferment of Payments**

为进一步加大住房公积金助企纾困力度，住房和城乡建设部、财政部、中国人民银行于2022年5月20日发布《关于实施住房公积金阶段性支持政策的通知》（“《通知》”），明确了三项纾困政策。第一，受新冠肺炎疫情影响的企业，可按规定申请缓缴住房公积金，到期后进行补缴；第二，缓缴期间，员工可以正常提取和申请住房公积金贷款；第三，受新冠肺炎疫情影响的缴存人如不能正常偿还住房公积金贷款，不作逾期处理，不形成逾期记录报送征信部门。

In order to further strengthen the efforts of housing fund to help enterprises to relieve their difficulties, the Ministry of Housing and Urban-Rural Development, the Ministry of Finance and the People's Bank of China issued the Notice on the Implementation of Phased Support Policies for Housing Fund (the “Notice”) on May 20, 2022, specifying three relief policies. Firstly, enterprises affected by the Covid-19 epidemic may apply for a deferment of housing fund payments in accordance with the regulations and make retroactive payments upon expiration. Secondly, during the deferment period, employees may withdraw and apply for housing fund loans normally. Thirdly, depositors who cannot repay their housing fund loans normally due to the impact by the Covid-19 epidemic will not be treated as overdue and no overdue records will be generated and reported to the credit authorities.

《通知》出台后，北京、上海、广州、浙江、海南等地已陆续发布地方性规定，以落实《通知》要求，根据本地实际情况确定具体实施方式。

After the introduction of the Notice, Beijing, Shanghai, Guangzhou, Zhejiang, Hainan and other regions have released local regulations, to meet the Notice's requirements and lay down specific implementation methods according to the actual local situation.

### 四、新规速递：各地陆续发布2021年社会平均工资，社保、公积金缴费基数上下限随之调整

#### **Quick View of New Regulations: Multiple Regions Published the Average Social Wages in 2021, Social Security, Upper and Lower Limits of Social Security and Housing Fund Contribution Base Adjusted Accordingly**

自2022年6月以来，北京、上海、广州、深圳等地2021年社会平均工资的统计数据陆续发布，相应的社保、公积金缴费基数的上、下限随之调整。（需注意的是，在存在不同工资统计口径的地区，不同使用场景下可能需适用不同口径的工资数据，具体应以当地政策为准。）

Since June 2022, the statistics of 2021 average social wages in Beijing, Shanghai, Guangzhou

and Shenzhen have been released successively, and the corresponding upper and lower limits of social security and housing fund contribution bases have been adjusted accordingly. (Please note that in areas with different wage statistics standards, different wage data may need to be applied in different usage scenarios, and it should be subject to specific local policies.)

近期各地公布的 2021 年社会平均工资总结请见如下：

Please see the following summary of the recently published average social wages for 2021 released by various regions.

(单位/Unit: 元/¥)

地区 / District	城镇非私营单位 就业人员年平均 工资 / Average Annual Wage of <u>Employed</u> <u>Persons</u> in Urban <u>Non-Private</u> Enterprises	城镇非私营单位 在岗职工年平均 工资 / Average Annual Wage of <u>Active Workers</u> in Urban <u>Non-Private</u> Enterprises	城镇私营单位 就业人员年平均 工资 / Average Annual Wage of <u>Employed</u> <u>Persons</u> in Urban <u>Private</u> Enterprises	全口径城镇单 位就业人员年 平均工资 / Average Annual Wage of <u>Employed</u> <u>Persons</u> in <u>All</u> <u>Urban</u> <u>Enterprises</u>
北京 Beijing	/	201,504	/	166,513
上海 Shanghai	/	/	/	136,752
广州 Guangzhou	139,802	144,288	74,452	/
深圳 Shenzhen	153,471	155,563	85,239	/
东莞 Dongguan	88,535	88,965	75,440	/
佛山 Foshan	103,417	104,280	70,649	/
厦门 Xiamen	115,538	119,483	/	/
福州 Fuzhou	105,051	108,133	/	/
重庆 Chongqing	101,670	106,966	59,307	/
天津 Tianjin	123,528	/	65,272	/
大连 Dalian	103,934	107,390	58,715	/
长春 Changchun	97,134	/	/	/

#### 五、新规速递：陕西、新疆修订《人口与计划生育条例》，天津发布育儿假、护理假等相关实施办法

##### **Quick View of New Regulations: Shaanxi and Xinjiang Revised Regulations on Population and Family Planning, and Tianjin Released Relevant Implementing Measures for Parental Leave, Carer's Leave, etc.**

为落实 2021 年 8 月 20 日新修订的《人口与计划生育法》相关规定，各省市陆续修订当地《人口与计划生育条例》或形成配套规定，以落实和细化产假、育儿假、护理假等相关要求。

In order to implement the relevant provisions of the newly revised Population and Family Planning Law on August 20, 2021, various provinces and municipalities successively revised their local Regulations on Population and Family Planning or formed supporting regulations to implement and refine the relevant requirements for maternity leave, parental leave, carer's leave, etc.

#### 1. 陕西、新疆修订《人口与计划生育条例》，调整婚育假期配置

## Shaanxi and Xinjiang Revised Regulations on Population and Family Planning to Adjust Marriage and Childbirth Related Leaves

陕西省人大常委会和新疆维吾尔自治区人大常委会分别于2022年5月25日和6月4日发布了修订后的《陕西省人口与计划生育条例》和《新疆维吾尔自治区人口与计划生育条例》，对育儿假、陪护假等作出较大调整。修订前后假期设置如下（其他地区对于婚育假期的修改和调整请参见[《海问·研究 | 海问劳动法双月报》（2021年11-12月）](#)、[《海问·研究 | 海问劳动法双月报》（2022年1-2月）](#)及[《海问·研究 | 海问劳动法双月报》（2022年3-4月）](#)）：

The Standing Committee of People’s Congress of Shaanxi Province promulgated the revised Regulations of Shaanxi Province on Population and Family Planning on May 25, 2022, and the Standing Committee of People’s Congress of Xinjiang Uygur Autonomous Region promulgated the revised Regulations of Xinjiang Uygur Autonomous Region on Population and Family Planning on June 4, 2022, making significant adjustments to parental leave and paternity leave. The settings of leaves before and after the adjustment are as follows (for more information about revisions and adjustments to marriage and childbirth related leaves in other regions, you may refer to the [“Haiwen Research: Haiwen Labor Law Bi-Monthly Newsletter” \(2021 November – December\)](#), [“Haiwen Research: Haiwen Labor Law Bi-Monthly Newsletter” \(2022 January – February December\)](#) *and* [“Haiwen Research: Haiwen Labor Law Bi-Monthly Newsletter” \(2022 March – April\)](#)).

地区 Region	条例的修订情况 Effective Date	假期种类 Types of Leave	适用主体 Applicable Body	修改前 Before Revision	修改后 After Revision
陕西 Shaanxi	2022.5.25 发布， 2022.5.25 生效 Promulgated and effective on 2022.5.25	婚假 marriage leave	夫妻双方 couple	13日 13 days	13日 13 days
		延长产假 extended maternity leave	女方 female	60日 60 days	60日 60 days
		陪产假 paternity leave	男方 male	15日 15 days	15日 15 days
		育儿假 parental leave	夫妻双方 couple	/	夫妻双方可在子女3周岁以内每年各享累计10日 Each parent entitled to 10 days of parental leave per year before the child reaches the age of 3
		陪护假 carer’s leave	独生子女 the only child of a family	/	每年累计不超过15个工作日 No more than 15 working days per year in total
新疆 Xinjiang	2022.6.4 发布， 2022.6.4	婚假 marriage leave	夫妻双方 couple	23日 23 days	23日 23 days
		延长产假	女方	60日	60日



生效 Promulgated and effective on 2022.6.24	extended maternity leave	female	60 days	60 days
	陪产假 paternity leave	男方 male	15 日 15 days	20 日 20 days
	育儿假 parental leave	夫 妻 双 方 couple	/	夫妻双方 在子女 0-3 周岁期间 每年各享 受不少于 10 日 Each parent entitled to no less than 10 days each year before the children reach the age of 3

## 2. 天津发布育儿假、护理假等假期休假实施办法

### Tianjin Released Relevant Implementing Measures for Parental Leave, Carer's leave, etc.

天津地区继 2021 年 11 月 29 日发布《天津市人口与计划生育条例》对相关假期政策进行了原则性调整后（即婚假调整为十日，延长产假调整为六十日，陪产假调整为十五日，增设十日育儿假、独生子女二十日护理假及非独生子女十日护理假），天津市人民政府办公厅于 2022 年 5 月 17 日发布《关于婚假生育假（产假）陪产假育儿假护理假等假期休假的实施办法》（“《办法》”）（追溯自 2021 年 11 月 29 日起开始生效），对常见的育儿假等相关问题进行了厘清，以进一步指导企业和员工对前述假期的管理和使用。In Tianjin, after the promulgation of the Tianjin Regulations on Population and Family Planning on November 29, 2021 making general adjustments to relevant leave policies (i.e. marriage leave was adjusted to 10 days, extended maternity leave was adjusted to 60 days, paternity leave was adjusted to 15 days, added 10 days of parental leave, 20 days of carer's leave for only child and 10 days of carer's leave for non-only child), the General Office of the Tianjin Municipal People's Government issued the Implementing Measures for Marriage Leave, Maternity Leave, Paternity Leave, Parental Leave, Carer's Leave and Other Vacations (the “Measures”) (retroactively effective from November 29, 2021), clarifying common parental leave questions to further guide enterprises and employees on the management and use of the aforementioned leave.

育儿假方面，《办法》明确应按照夫妻生育的子女数量计算，多子女家庭夫妻的假期天数分别累计叠加。休假周期以子女的实际年龄计算。育儿假当年未休的，一般不再延续至下一年。如因用人单位原因员工未能及时享受育儿假等假期的，用人单位应当安排补休。夫妻离婚的，抚养子女的一方享受育儿假。养父母、继父母抚育养子女、继子女的，应当享受育儿假。育儿假为工作日，不应包括法定节假日和休息日。

The Measures clarified that parental leave shall be calculated according to the number of children the couple gives birth to, and the number of days of parental leave granted to a couple with many children shall be calculated on an accumulative basis. The leave cycle shall be calculated according to the actual age of the children. Parental leave not taken in the current year shall generally not be carried forward to the next year. If an employee fails to timely take parental leave or other leaves due to the employer's reason, the employer shall arrange for compensatory time-off. In case of divorce, the parent who is bringing up the child

(children) is entitled to parental leave. Adoptive parents or stepparents who are bringing up a child or stepchild shall be entitled to parental leave. Parental leave shall be working days and shall not include statutory holidays and off days.

护理假方面，《办法》明确六十周岁以上的老年人患病住院的，其子女所在单位给予独生子女每年累计二十日、非独生子女每年累计十日的护理假，具体以老年人实际住院天数计算。如子女死亡或者生活不能自理的，子女的配偶应当享受相应的护理假。养子女、继子女照料由其赡养的养父母、继父母的，应当享受护理假。

With regard to the carer's leave, the Measures clarifies that if an elderly above 60 years old is hospitalized due to illness, the employer of his/her children shall grant carer's leave of 20 days each year to the only child of such elderly and 10 days each year to the non- only child of such elderly; the carer's leave shall be determined according to the actual days of hospitalization. Where their children die or are unable to take care of themselves, the spouses of the children shall be entitled to corresponding carer's leave. The adopted child or stepchild who takes care of the adoptive parent (s) or stepparent (s) under his/her support shall be entitled to carer's leave.

用人单位应当及时了解当地现行规则，修订完善内部规章制度，充分保护员工休息休假的权益。

Employers are advised to learn local existing rules in a timely manner, revise and improve internal rules and regulations, and fully protect employees' rights and interests to rest and vacation.

## 六、典型案例：江苏省、广东省和天津市发布劳动人事争议典型案例

### **Exploration of Typical Cases: Jiangsu, Guangdong and Tianjin Released Typical Cases of Labor Disputes**

2022年4月28日，江苏省法院发布2021年度全省法院审结的劳动人事争议十大典型案例。同日，广东省高级人民法院发布劳动争议十大典型案例。2022年4月29日，天津市高级人民法院发布九个劳动人事争议典型案例。前述典型案例涉及劳动关系、劳动报酬、经济补偿、女职工产假、规章制度解释等内容，涵盖传统劳动争议、新业态用工纠纷以及疫情期间劳资纠纷等方面。

On April 28, 2022, The People's Court of Jiangsu Province released ten typical labor dispute cases concluded by all courts in the province in 2021. On the same day, Guangdong Higher People's Court released 10 typical labor dispute cases. On April 29, 2022, Tianjin Higher People's Court released 9 typical labor dispute cases. The aforementioned typical cases involve labor relations, labor remuneration, economic compensation, maternity leave of female employees and interpretations of rules and regulations, etc., covering the discussion of traditional labor disputes, disputes over employment in new business form, and labor disputes during the epidemic.

前述典型案例中法院的裁判思路和说理，可以为用人单位合理应对劳动用工中出现的相似情形提供有益参考。其中以下案例中体现的裁判要点值得注意：

The judgment views and reasoning of the courts in the aforementioned typical cases can provide useful reference for employers to reasonably deal with similar situations in

employment management. Among them, the main points of adjudication in the following cases are worth noting:

1. 江苏：用人单位假借疫情，利用放长假等形式变相逼迫劳动者离职的，符合《劳动合同法》第三十八条规定的用人单位“未按照劳动合同约定提供劳动保护或者劳动条件的”情形，劳动者据此解除劳动合同并主张经济补偿的，人民法院应予支持。

**Jiangsu: If the employer, under the pretext of the epidemic, uses long leave and other forms to force the employee to leave can amount to constructive dismissal stipulated in Article 38 of the Labor Contract Law that the employer “fails to provide labor protection or working conditions in accordance with the labor contract”. If the employee terminates the labor contract on this ground and claims economic compensation, the people’s court shall support it.**

某公司在员工因社保问题向有关部门投诉后，单独向该员工发送针对其个人的放长假通知，表示因受疫情影响安排其休假三个月，休假期间工资按当地最低工资的80%发放，远低于员工原收入水平。江苏省苏州市中级人民法院认为，公司无正当理由针对该员工个人“放长假”的做法，属于未按约定为劳动者提供劳动条件，劳动者以此为由被迫解除劳动合同，用人单位应当支付经济补偿金。

After an employee complained to the relevant departments due to social security issues, the company sent a separate notice to the employee for his personal long vacation, stating that he will be arranged for three months’ vacation due to the impact of the epidemic and wages will be paid at 80% of the local minimum wage during the vacation which is far lower than the original income level of the employee. The Intermediate People’s Court of Suzhou City, Jiangsu Province held that the company’s practice of “arranging for a long vacation” for the employee without justifiable reasons was a failure to provide working conditions for the employee as agreed and when the employee was forced to terminate the labor contract on this ground, the employer shall pay economic compensation.

2. 江苏：规章制度条款存在冲突，用人单位和劳动者发生争议时，劳动者主张适用对其有利的解释的，人民法院应予支持。

**Jiangsu: When there is a conflict between clauses of the company internal rules and regulations, and if the employer has disputes with the employee, the people’s court shall support the employee’s claim to apply a favorable interpretation.**

某公司《员工手册》第72条和第75条均规定了公司可以解除劳动合同的情形，从文义来看，第75条规定的公司可作出解除劳动合同处理的条件对用工单位的要求更高，公司现依据对其要求较低的第72条解除劳动合同。江苏省盐城市中级人民法院认为，考虑到解除劳动合同是用人单位对劳动者最严厉的惩戒措施等因素，在双方对条文的理解产生分歧时，应作有利于劳动者的解释，在对员工作出解除劳动合同决定时应当适用解除条件更为严苛、更为具体的第75条规定，故判决公司向蔡某支付违法解除劳动合同的赔偿金。

Articles 72 and 75 of a company’s Employee Handbook both provide the circumstances in which the company can terminate the labor contract. From the perspective of the

context, the conditions provided in Article 75 for the company to terminate the labor contract require higher requirements for the employer. Now the company terminates the labor contract according to Article 72, which has lower requirements for termination. The Intermediate People's Court of Yancheng City, Jiangsu Province held that, considering that the termination of the labor contract is the most severe disciplinary measure taken by the employer against the employees and other factors, when the two parties have different understandings of the provisions, an explanation in favor of the employees shall be adopted. The more stringent and specific provision (Article 75) of the termination conditions should be applied when making a decision on the termination of the labor contract, so the company was ordered to pay compensation to Cai for the illegal termination of the labor contract.

3. 广东：用人单位不能因员工疫情停工期间的兼职自救行为解除劳动关系  
**Guangdong: The employer cannot terminate the labor relationship only because of the employee's involvement in side work during the epidemic shutdown period.**

某纺织公司因疫情影响安排员工侯某在 2020 年 1 月至 6 月期间放假并自 2020 年 4 月起按最低工资标准的 80% 发放工资。2020 年 5 月开始，侯某在案外人公司兼职并缴纳社会保险。公司发现上述情况后于 2020 年 5 月 26 日向侯某发出通知，要求其马上改正否则后果自负。2020 年 7 月 1 日，侯某回到公司上班，公司以《劳动合同法》第三十九条第四项“劳动者同时与其他用人单位建立劳动关系，……经用人单位提出，拒不改正”情形下的单方解除权为依据，与侯某解除劳动关系。

Due to the epidemic situation, a textile company arranged for the employee Hou to take a leave from January to June 2020 and paid 80% of the minimum wage from April 2020. Beginning in May 2020, Hou involved in side work at a company (the third party) and paid social security through the third party. After discovering the above situation, the company sent a notice to Hou on May 26, 2020, asking him to correct it immediately or face the consequences. Hou did not return to work in the company until July 1 2020, and the company terminated the labor relationship with Hou on the basis of the Article 39.4 of the Labor Contract Law, providing that “the employer is entitled to terminate the employees who establishes labor relations with other employers at the same time ... but refuses to make corrections after being proposed by the employer”.

广东省中山市中级人民法院认为，双方之间的劳动合同因用人单位的原因不能正常履行，侯某在放假期间临时到案外人公司兼职，系侯某在特殊时期的自救行为，不会对侯某完成公司的工作任务产生任何影响。公司据此解除劳动关系依据不足，应向侯某承担相应的责任。

The Intermediate People's Court of Zhongshan City, Guangdong Province held that the labor contract between the two parties could not be performed normally due to the employer's reasons. Hou temporarily took a part-time job in an outsider company during the holiday period, which was Hou's self-help behavior in a special period and would not have any impact on Hou's completion of the company's work tasks. The company's termination decision is groundless and should bear corresponding responsibilities to Hou.

4. 天津：用人单位撤销岗位录用通知需承担缔约过失责任，赔偿数额应以实际损失为基础进行综合考量

**Tianjin: The employer shall bear the liability for contracting negligence when canceling the job offer, and the compensation amount shall be comprehensively considered based on the actual loss.**

天津某酒店在面试后电话告知王某被录用，并出具了录取确认函。王某根据酒店要求，从原单位办理了离职手续和社保转出，并提交了离职证明和相关入职资料。后该酒店以岗位取消为由，拒绝与王某建立劳动关系。

After the interview, a hotel in Tianjin telephoned Wang that he would be hired, and issued a confirmation letter of admission. According to the requirements of the hotel, Wang went through the resignation formalities and social security transfer from the original employer, and submitted the resignation certificate and related employment information to the hotel. After that, the hotel refused to establish labor relations with Wang on the grounds of post cancellation.

天津市南开区人民法院认为，生效的录用通知不得随意撤销，酒店取消录用的行为构成缔约过错，应依法承担责任。由于王某因酒店的行为已经处于失业状态，法院结合该酒店承诺支付王某的工资标准、王某停止工作的期间及因停止工作造成的损失，酌情确定该酒店补偿王某 11,000 元，相当于王某在原单位 1.375 个月的工资收入。

Tianjin Nankai District People's Court held that the effective employment notice could not be revoked at will, and the hotel's cancellation of employment constituted a contracting fault, so it should bear the liability according to law. As Wang was already unemployed due to the hotel's behavior, the court determined that the hotel would compensate Wang for 11,000 yuan, equivalent to 1.375 months' salary in the original employer, in consideration of the salary level that the hotel committed to Wang, the length of period during which Wang stopped working and the losses caused by stopping working.

\*\*\*

*\*声明：本文所载信息仅供参考之用，并不代表我们的法律建议或法律意见。如您需要进一步讨论，请联系您在本所的日常联系人或联系海问劳动法团队的以下人员。*

*\*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: [liuyuxiang@haiwen-law.com](mailto:liuyuxiang@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