

海问劳动法双月报
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本期摘要
Summary

- ◇ 法规解读：人社部、最高法等部门陆续发文保障新冠肺炎康复者等劳动者的平等就业权
Interpretation of Laws and Regulations: The Ministry of Human Resources and Social Security, the Supreme People's Court and other Departments Successively Issued Documents to Protect the Equal Employment Rights of Laborers Including those Recovering from COVID-19
- ◇ 法规解读：深圳市修订工资支付条例，调整奖金发放规则等
Interpretation of Laws and Regulations: Shenzhen Municipality Revised Wage Payment Regulation to Adjust Bonus Payment and Other Rules
- ◇ 法规解读：上海、江苏、浙江和安徽人社部门联合印发《长三角地区劳务派遣合规用工指引》，提示劳务派遣认定标准、劳务派遣与劳务外包的区别
Interpretation of Laws and Regulations: The Human Resources and Social Security Departments of Shanghai, Jiangsu, Zhejiang and Anhui Jointly Issued the “Guidelines on Labor Dispatching Compliance in the Yangtze River Delta Region” to Indicate the Identification Standards of Labor Dispatching and the Difference between Labor Dispatching and Labor Outsourcing
- ◇ 新规速递：四部门、各地陆续发布关于阶段性缓缴职工基本医疗保险单位缴费的通知，北京市调整医疗保险个人账户资金使用规则，山东省修订《人口与计划生育条例》
Quick View of New Regulations: Four Departments and Multiple

Regions Successively Issued Notice on Phrased Deferred Payment of Basic Medical Insurance for Employees; Beijing Adjusted the Rules for the Use of Funds in Individual Medical Insurance Accounts; Shandong Revised the Regulations on Population and Family Planning

- ◇ 典型案例：最高人民法院发布第 32 批指导性案例，重庆市第五中级人民法院发布 2019—2021 年度劳动争议典型案例，江苏省淮安市中级人民法院发布十起劳动争议典型案例，杭州互联网法院发布个人信息保护十大典型案例

Exploration of Typical Cases: The Supreme People's Court Released the 32nd Batch of Guiding Cases; Chongqing Fifth Intermediate People's Court Released Typical Cases of Labor Disputes from 2019 to 2021; Huai'an Intermediate People's Court of Jiangsu Province Released 10 Typical Cases of Labor Disputes; Hangzhou Internet Court Released 10 Typical Cases of Personal Information Protection

一、法规解读：人社部、最高法等部门陆续发文保障新冠肺炎康复者等劳动者的平等就业权

Interpretation of Laws and Regulations: The Ministry of Human Resources and Social Security, the Supreme People's Court and other Departments Successively Issued Documents to Protect the Equal Employment Rights of Laborers Including those Recovering from COVID-19

为应对近期部分地方、单位出现的对新冠肺炎康复者实施就业歧视问题，依法保障新冠肺炎康复者平等就业权益，人力资源社会保障部（“人社部”）、国家卫生健康委员会于2022年7月29日联合发布《关于坚决打击对新冠肺炎康复者就业歧视的紧急通知》（“《紧急通知》”），人社部、最高人民法院于2022年8月10日联合发布《关于加强行政司法联动保障新冠肺炎康复者等劳动者平等就业权利的通知》（“《通知》”）。

In order to tackle with the recent employment discrimination against laborers recovering from COVID-19 in some regions and employing entities, and to protect the equal employment rights and interests of employees recovering from COVID-19 in accordance with laws and regulations, the Ministry of Human Resources and Social Security (the “MOHRSS”) and the National Health Commission jointly issued the Emergency Notice on Resolutely Solving Employment Discrimination against Laborers Recovering from COVID-19 (the “Emergency Notice”) on 29 July 2022; the MOHRSS and the Supreme People's Court jointly issued the Notice on Strengthening Administrative and Judicial Coordination to Protect the Equal Employment Rights for Laborers Recovering from COVID-19 (the “Notice”) on 10 August 2022.

两通知严格禁止歧视新冠肺炎康复者等劳动者，打击用人单位以下行为：（1）以曾经核酸检测阳性等为由拒绝招用新冠肺炎康复者，（2）发布含有新冠肺炎核酸检测历史阳性等歧视性内容的招聘信息，（3）在入职和用工过程中对新冠肺炎康复者实施就业歧视，（4）除疫情防控需要外，擅自非法查询新冠病毒核酸检测结果，（5）随意违法辞退、解聘新冠肺炎康复者等。

The two notices strictly prohibit discrimination against laborers including those recovering from COVID-19, and the following behaviors of employers are forbidden: (1) refuse to recruit laborers recovering from COVID-19 on the ground that they have ever tasted positive in nucleic acid testing; (2) release recruitment notice with discriminatory content including the past positive result in nucleic acid testing for COVID-19; (3) discriminate employees recovering from COVID-19 during recruitment and employment; (4) query the result of nucleic acid testing for COVID-19 without authorization unless for epidemic prevention and control needs; (5) dismiss employees recovering from COVID-19 arbitrarily and illegally.

人社部等部门将加强排查检查，对违反前述要求的用人单位、人力资源服务机构或其他单位和个人，采取行政约谈、通报曝光、行政处理、行政处罚等有力举措。对于权利受到侵害的劳动者而言，除劳动仲裁、诉讼外，还可以侵害平等就业权、个人信息权益等为由提起民事诉讼。

The MOHRSS and other departments will strengthen the investigation and inspection, and take strong measures such as administrative admonition, notification and exposure, administrative treatment and administrative punishment to employers, human resource service agencies or other entities and individuals who violate the foregoing requirements. In addition to lodging labor arbitration and litigation, employees whose rights have been infringed can also file civil lawsuits on the ground of infringement of equal employment right or personal information right.

海问建议: 用人单位需要注意梳理评估自身存在的违法违规风险, 避免在招聘信息发布、员工入职和用工管理、劳动关系解除等各个环节出现前述歧视新冠肺炎康复者等劳动者的行为, 规范新冠病毒核酸检测查询, 除因疫情防控需要并科学合理设置新冠病毒核酸检测信息查询期限外, 避免擅自非法查询相关检测结果。

Haiwen Suggestions: Employers need to pay attention to identifying and assessing risks of violating laws and regulations, to avoid the aforementioned behaviors of discriminating against laborers including those recovering from COVID-19 in the process of releasing recruitment notice, employee onboarding and employment management, and terminating labor relations. Employers also need to standardize query of the result of nucleic acid testing for COVID-19, to avoid unauthorized and illegal query of relevant test results, except for the need for epidemic prevention and control and scientific and reasonable setting of query for information in nucleic acid testing for COVID-19.

二、法规解读: 深圳市修订工资支付条例, 调整奖金发放规则等

Interpretation of Laws and Regulations: Shenzhen Revised Wage Payment Regulation to Adjust Bonus Payment and Other Rules.

深圳市人民代表大会常务委员会于 2022 年 8 月 4 日发布关于修改《深圳市员工工资支付条例》(“《原条例》”)的决定, 本次修订(“《新条例》”)共涉及 16 项, 主要集中在如下几个方面:

On 4 August 2022, the Standing Committee of the People’s Congress of Shenzhen issued a decision on revising the Regulation of Shenzhen on the Wage Payment to Employees (the “**Original Regulations**”). The revision (the “**New Regulations**”) involves 16 items, focusing on the following aspects:

1. 调整奖金发放规则。

Adjust bonus payment rules.

《新条例》第十四条规定, 支付周期未满足的月度奖、季度奖、年终奖的计发规则应当按照以下顺次确定 (1) 劳动合同约定; (2) 集体合同约定; (3) 规章制度规定; (4) 没有约定或规定的按员工实际工作时间折算。与《原条例》对于该部分奖金直接要求按照员工实际工作时间折算计发相比, 本次修订充分体现了对奖金激励作用的确认以及对劳资双方意思自治和用人单位经营自主权的尊重。在深用人单位可以根据实际情况和劳动者协商修改本单位的劳动合同、集体合同和/或规章制度中关于奖金发放的具体规则或进行补充规定, 明确计发

规则，保护双方利益。

According to Article 14 of the New Regulations, where an employee's monthly bonus, quarterly bonus and year-end bonus have not become due, the calculation and distribution rules shall be determined in accordance with the following sequence: (1) labor contract; (2) collective contract; (3) internal rules and regulations of employer; (4) If no agreement or stipulation, calculation and payment shall be based on the actual working hours of the employee. Compared with the Original Regulation requiring this part of bonus to be paid according to the actual working hours of employees, this revision fully reflects the recognition of the incentive role of the bonus, and the respect for the autonomy of employee and employer, and the autonomy in management of the employer. In Shenzhen, the employer may negotiate with the employee to modify the rules on bonus payment in the labor contract, collective contract and/or rules and regulations of employer according to the actual situation, or reach supplementary agreement in this regard, so that the calculation and payment rules can be clarified and interests of both the employer and the employee can be protected.

2. 调整工资台账保存期限、工资单形式和签收要求。

Adjust rules on retention period of payroll sheet, the form of payroll and the requirement of signing receipt.

《新条例》第十五条将用人单位工资支付台账的保存期限由两年变更为三年，规定工资单可以电子形式呈现，且不再要求员工签收。

Article 15 of the New Regulations extend the employer's obligation of keeping the payroll sheet of employees from two years to three years, stipulates that individual payroll can be presented to employees electronically and employees' signature for receipt is no longer required.

工资支付台账保存期限的延长意味着司法实践中用人单位对工资信息举证责任期限的相应延长，在深用人单位应避免因工资台账保存期限低于法定要求从而导致举证不能的法律后果。The extension of the retention period of payroll sheet may also means the corresponding extension of the period of the employer's burden of proof for wage information in judicial practice. In Shenzhen, employers shall pay attention to the extended retention period of payroll sheet and avoid the legal consequence of inability to bear the burden of proof as required.

3. 修改违纪经济处罚条款，增加书面告知义务。

Remove the economic punishment for violating rules and regulations of employer, add the obligation of informing employee in writing.

《新条例》第三十四条删除了用人单位可以依规章制度对员工进行违纪经济处罚，扣减工资的条款，增加用人单位于扣减工资前书面告知员工的义务。

Article 34 of the New Regulations deletes the rule that employer can impose economic punishment on employee violating rules and regulations of employer by deducting the employee's salary, and adds the obligation of employer to notify employee in writing before making any permitted wage deduction.

关于经济处罚条款，《广东省劳动保障监察条例》第五十条明确规定用人单位规章制度不得

规定罚款，本次《新条例》修改虽与广东省规定对齐，但《深圳经济特区和谐劳动关系促进条例》第十六条关于用人单位可以“依照规章制度对劳动者实施经济处分”仍然有效。考虑到《立法法》赋予深圳市经济特区有权对法律、行政法规、地方性法规作变通规定，且明确规定出现冲突时应适用经济特区法规，我们理解《深圳经济特区和谐劳动关系促进条例》应当先于《广东省劳动保障监察条例》。不过可以预见，由于《新条例》和《深圳经济特区和谐劳动关系促进条例》在用人单位经济处罚权方面的立场差异，未来深圳地区的司法实践中就该问题将存在较大争议。

Regarding the economic punishment clause, Article 50 of the Regulations on Labor Security Supervision of Guangdong Province clarifies that the rules and regulations of employer shall not entitle the employer to discipline an employee by levying a fine. Although the provision in the New Regulations is in line with the regulations of Guangdong Province, Article 16 of the Regulations on Promoting Harmonious Labor Relations of Shenzhen Special Economic Zone that the employer may “impose economic punishment on laborers in accordance with the rules and regulations of employer” is still valid. Considering that the Legislation Law authorizes the Shenzhen Special Economic Zone has the right to modify laws, administrative regulations and local laws and regulations according to its actual situation, and clearly stipulates that the laws and regulations of special economic zone shall prevail in the event of conflict. We suppose the Regulations on Promoting Harmonious Labor Relations of Shenzhen Special Economic Zone shall preempt the Regulations on Labor Security Supervision of Guangdong Province. However, it is foreseeable that due to the different positions on the right to economic punishment of employer in the New Regulations and the Regulations on Promoting Harmonious Labor Relations of Shenzhen Special Economic Zone, it would be a highly controversial issue in the judicial practice of Shenzhen in handling further disputes.

《新条例》其他修改还涉及首月工资发放时间、停工停产情形下一个工资周期起算时间以及部分措辞修改、罚款金额调整等细节内容。

Other revisions in the New Regulations relate to the payout time of wage payment for the first month, the starting time of a wage period in the case of stop work and production, as well as revisions of several wordings and adjustments of fine amount, and other details.

海问建议：深圳的用人单位应及时落实上述规范要求，并审查本单位相关规章制度的合规性。如需对规章制度进行修订，则应当注意民主讨论程序和公示程序的规范性，避免相关规章制度的效力因程序瑕疵而被否定。

Haiwen Suggestions: Employers in Shenzhen shall implement the above requirements promptly, and review the compliance of the relevant internal rules and regulations. If rules and regulations need to be revised, employer shall also ensure the compliance of democratic discussion procedure and proclamation procedure, in order to avoid the validity of relevant rules and regulations being denied due to procedural flaws.

三、法规解读：上海、江苏、浙江和安徽人社部门联合印发《长三角地区劳务派遣合规用工指引》，提示劳务派遣认定标准、劳务派遣与劳务外包的区别

Interpretation of Laws and Regulations: The Human Resources and Social Security Departments of Shanghai, Jiangsu, Zhejiang and Anhui Jointly Issued the “Guidelines on Labor Dispatching Compliance in the Yangtze River Delta Region” to Indicate the

Identification Standards of Labor Dispatching and the Difference between Labor Dispatching and Labor Outsourcing

为进一步规范劳务派遣用工行为，引导用工单位依法依规使用被派遣劳动者、劳务派遣单位依法依规开展劳务派遣经营活动，江苏省、上海市、浙江省和安徽省人力资源和社会保障部门于2022年7月18日联合发布《长三角地区劳务派遣合规用工指引》（“《指引》”）。

In order to further regulate the practices of labor dispatch, guide employers to use the dispatched workers according to laws and regulations and labor dispatch entities to carry out labor dispatch service activities according to laws and regulations, the human resources and social security departments of Jiangsu, Shanghai, Zhejiang and Anhui jointly issued the Guidelines for Compliance of Employment by way of Labor Dispatch in Yangtze River Delta (the “Guidelines”).

《指引》从用工单位、劳务派遣单位、劳动纠纷处理三个维度提出二十二个规范要点，涉及用工单位和劳务派遣单位应重点注意的事项，包括但不限于：

The Guidelines proposes 22 normative points that the employer and the labor dispatch entities shall notice, including but not limited to:

1. 进一步明确“辅助性岗位”界定的程序要求

Further clarify the procedural requirements for defining “auxiliary positions”

《指引》中对辅助性界定的民主公示程序的要求与《劳务派遣暂行规定》第三条第二款的规定相一致，对该程序的步骤要求进一步明确为：“第一步，用工单位决定使用被派遣劳动者的辅助性岗位，制定辅助性岗位目录清单，提交职工代表大会或者全体职工讨论，提出方案和意见；第二步，与工会或者职工代表平等协商，确定辅助性岗位；第三步，在本单位内公示。”

The requirements of the democratic proclamation procedure for defining “auxiliary” in the Guidelines are consistent with the 2nd sub-paragraph of Article 3 in the Interim Provisions on Labor Dispatch. The steps of such procedure are further clarified as follows: “the first step is to determine the auxiliary positions for which dispatched workers will be used, compile a directory of auxiliary positions, and submit the directory of auxiliary positions to employees’ congress or all employees for discussion and to put forward plans and opinions; the second step is to determine the auxiliary positions through equal consultation with labor union or employees’ representatives; the third step is to announce the auxiliary positions within the entity.”

2. 汇总列举不得使用劳务派遣的具体岗位

List the specific positions where labor dispatch is not allowed

对于不得使用劳务派遣的具体岗位，之前散见于《煤矿整体托管安全管理办法（试行）》、《关于加强非煤矿山安全生产工作的指导意见》等法律法规当中，《指引》对此进行了汇总和列举，明确“对事关国家和人民生命财产的重点行业及涉密、核心技术等岗位，用工单位要按照要求采用直接用工方式，直接与从业人员签订劳动合同，不得使用劳务派遣，如专职消防员等安全生产岗位，煤矿、非煤矿山井下岗位，化工生产岗位等”。

For the specific positions that are not allowed to use labor dispatch, it was previously scattered in laws and regulations such as Measures for Safety Management of Overall Custody of Coal Mines

(Trial) and Guiding Opinions on Strengthening Safety Production of Non-coal Mines. The Guidelines summarized and enumerated these positions, and made it clear that “for the key industries, confidential and core technical positions that are related to the life and property of the state and people, employers should adopt direct employment methods and sign labor contracts directly with employees as required, and labor dispatch is not allowed, such as full-time firefighters and other safety production positions, underground positions in coal mines and non-coal mines, and chemical production positions.”

3. 细化用工总量计算方式

Refine the calculation method of total headcount

《指引》明确“集团公司应按照所属的企业单独核算用工比例，不可以整个集团公司打包核算”，再次强调了计算劳务派遣 10%的比例的用工总量是可以与劳动者订立劳动合同的用人单位，禁止了集团公司打包核算用工比例的漏洞。但对于总分公司之间的打包核算，《指引》并未提出明确规定。

The Guidelines clearly stated that “each affiliate of a group company should calculate the its headcount separately, and it is not allowed to compute the headcount based on group companies in the context of determining the permitted rate of dispatching employees.” It reemphasized that calculating 10% of the total employment of labor dispatch is an employer that can conclude labor contracts with workers, and closed the loophole of package calculation of the employment ratio of group companies. However, there is no clear provision in the Guidelines for the package calculation between head offices and branches.

4. 具体阐述劳务派遣和劳务外包的区别

Elaborate the difference between labor dispatching and labor outsourcing

《指引》从主体资质、岗位要求、法律关系、支配与管理、工作成果衡量标准等方面，对劳务派遣和劳务外包之间的区别进行了具体阐述，并进一步提示用工单位在劳务外包时，应注意上述区别，避免出现名为劳务外包实为劳务派遣的情形。

The Guidelines elaborates the differences between labor dispatching and labor outsourcing from the aspects of subject qualification, job requirements, legal relationship, control and management, measurement standards of work results, etc. and further suggests that employers shall pay attention to the above differences when outsourcing labor, so as to avoid the situation that labor outsourcing is actually labor dispatch.

海问建议：该《指引》的出台提示用人单位需要严格遵守使用劳务派遣岗位的性质、比例，梳理评估自身劳务派遣用工的合规性。如涉及到劳务外包安排，应当事先谨慎评估合规风险，并从服务协议的内容和实际服务管理方式上，全面防控被认定为“假外包真派遣”的法律风险。

Haiwen Suggestions: The promulgation of the Guidelines suggests that employers need to strictly abide by the nature and proportion of using labor dispatch positions, and sort out and evaluate the compliance of their own labor dispatch employment. If labor outsourcing arrangements are involved, the compliance risks should be carefully assessed in advance, and the legal risks identified as “fake outsourcing and real dispatch” should be fully prevented and controlled from the contents of service agreements and the actual service management methods.

四、新规速递：四部门、各地陆续发布关于阶段性缓缴职工基本医疗保险单位缴费的通知，北京市调整医疗保险个人账户资金使用规则，山东省修订《人口与计划生育条例》

Quick View of New Regulations: Four Departments and Multiple Regions Successively Issued Notice on Phrased Deferred Payment of Basic Medical Insurance for Employees by Employer; Beijing Adjusted the Rules for the Use of Funds in Individual Medical Insurance Accounts; Shandong Revised the Regulations on Population and Family Planning

1. 四部门、各地陆续发布关于阶段性缓缴职工基本医疗保险单位缴费的通知

Four Departments and Multiple Regions Successively Issued Notice on Phrased Deferred Payment of Basic Medical Insurance for Employees by Employer

为助力企业纾困解难，2022年6月30日，国家医疗保障局、国家发展和改革委员会、财政部、国家税务总局等四个部门联合发布《关于阶段性缓缴职工基本医疗保险单位缴费的通知》（“《通知》”）。北京、天津、深圳、江苏、河北、安徽等地陆续发布地方性文件，落实《通知》相关要求。

To help enterprises overcome difficulties, the National Health Insurance Bureau, the National Development and Reform Commission, the Ministry of Finance and the National Taxation Administration jointly issued the Notice on Phased Deferred Payment of Basic Medical Insurance for Employees by Employer (the “Notice”) on 30 June, 2022. Beijing, Tianjin, Shenzhen, Jiangsu, Hebei, Anhui and other places have successively issued local documents to implement the relevant requirements of the Notice.

《通知》明确，对中小微企业实施阶段性缓缴职工医保单位缴费政策。统筹基金累计结存可支付月数大于6个月的统筹地区，自2022年7月起，对中小微企业、以单位方式参保的个体工商户缓缴3个月职工医保单位缴费，缓缴期间免收滞纳金。

The Notice makes it clear that the policy of phased deferred payment of basic medical insurance for employees will be implemented for micro, small and medium-sized enterprises. The co-ordination areas where the accumulated balance of the co-ordination fund can be paid for more than 6 months defer the payment medical insurance by micro, small and medium-sized enterprises and individual businesses participating in the insurance by means of employer for 3 months since July 2022, and no overdue fine shall be charged during the moratorium period.

2. 北京市调整医疗保险个人账户资金使用规则

Beijing Adjusted the Rules for the Use of Funds in Individual Medical Insurance Accounts

北京市医疗保障局于2022年8月12日发布《关于调整本市城镇职工基本医疗保险有关政策的通知》（“《通知》”），涉及8项北京医保政策修改事项。其中，《通知》特别明确，自2022年9月1日起，个人账户资金专款专用，参保人员不可支取；自2022年12月1日起，参保人员个人账户可用于支付直系亲属发生的相关费用；自明年起，参保人员发生的符合规定的门（急）诊费用，在最高支付限额2万元以上的，由大额医疗费用互助资金支付60%，上不封顶。

On 12 August, 2022, Beijing Medical Security Bureau issued the Notice on Adjusting the Relevant

Policies of Basic Medical Insurance for Urban Employees in the City (the “**Notice**”), which involved eight amendments to Beijing’s medical insurance policies. Among them, the Notice particularly clarifies that since 1 September, 2022, personal account funds are earmarked for special purposes, and insured persons cannot withdraw them; Since 1 December, 2022, the personal account of the insured person can be used to pay the related expenses incurred by immediate family members; Since next year, if the outpatient (emergency) consultation expenses of the insured meet the requirements, and the maximum payment limit is more than 20,000 yuan, 60% of it will be paid by the mutual fund of large medical expenses, which will not be capped.

3. 山东省修订《人口与计划生育条例》，调整婚育假期配置 Shandong Revised the Local Regulations on Population and Family Planning

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，山东省人民代表大会常务委员会于 2022 年 7 月 28 日发布修订后的《山东省人口与计划生育条例》（“《**条例**》”）。In order to implement the relevant provisions of the newly revised Population and Family Planning Law on 20 August, 2021, the Standing Committee of Shandong Provincial People’s Congress issued the revised Population and Family Planning Regulations of Shandong Province (the “**Regulations**”) on 28 July, 2022.

新修订的《条例》对陪产假、育儿假作出较大调整，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）](#)，[《海问·研究 | 海问劳动法双月报》（2022 年 3-4 月）](#)，[《海问·研究 | 海问劳动法双月报》（2022 年 5-6 月）](#)）。

The newly revised regulations has made significant adjustments to the leaves related to marriage and childbirth, and the leave settings before and after the revision are as follows (for more information about revisions and adjustments to marriage and childbirth related leaves in other regions, please refer to the “[Haiwen Research: Haiwen Labor Law Bi-monthly Newsletter \(November-December 2021\)](#)”, [Haiwen Research: Haiwen Labor Law Bi-monthly Newsletter \(January-February 2022\)](#)”, [Haiwen Research: Haiwen Labor Law Bi-monthly Newsletter \(March-April 2022\)](#)”, [Haiwen Research: Haiwen Labor Law Bi-monthly Newsletter \(May-June 2022\)](#)”).

地区 Regions	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
山东省 Shandong	2022.7.28 发布， 2022.11.1 生效 Promulgated on 2022.7.28 and effective on 2022.11.1	婚假 marriage leave	夫妻双方 couple	3 日 3 days	3 日 3 days
		延长产假 extended maternity leave	女方 female	60 日 60 days	60 日 60 days
		陪产假 paternity	男方 male	7 日 7 days	15 日 15 days

		leave			
		育儿假 parental leave	夫妻双方 couple	/	三周岁以下婴幼儿父母各享受每年累计不少于十日育儿假 Each parent of infants under the age of three is entitled to no less than 10 days' parental leave each year

山东地区的用人单位应当充分了解当地现行规则，在此基础上对内部规章制度进行及时更新完善，保护员工休息休假的权益。

Employers in Shandong should fully understand the local rules in force, and on this basis, update and improve the internal rules and regulations in a timely manner to protect the rights and interests of employees on rest and leave.

五、典型案例：最高人民法院发布第 32 批指导性案例，重庆市第五中级人民法院发布 2019—2021 年度劳动争议典型案例，江苏省淮安市中级人民法院发布十起劳动争议典型案例，杭州互联网法院发布“个人信息保护十大典型案例”

Exploration of Typical Cases: The Supreme People's Court Released the 32nd Batch of Guiding Cases; Chongqing Fifth Intermediate People's Court Released Typical Cases of Labor Disputes from 2019 to 2021; Huai'an Intermediate People's Court of Jiangsu Province Released 10 Typical Cases of Labor Disputes; Hangzhou Internet Court Released "10 Typical Cases of Personal Information Protection"

1. 最高人民法院发布第 32 批指导性案例

The Supreme People's Court Released the 32nd Batch of Guiding Cases

最高人民法院于 2022 年 7 月初发布第 32 批共 7 件指导性案例，主要为保护劳动者合法权益类案例，对该批指导案例的详细分析以及用工实务建议请参见 [《海问·观察 | 基于最高院第 32 批指导性案例的分析及用工实务建议》](#)。

The Supreme People's Court released the 32nd batch of seven guiding cases in early July, 2022, mainly for the protection of employees' legitimate rights and interests. For a detailed analysis of these guiding cases and practical suggestions on employment, please refer to [Haiwen Observation: Analysis and Practical Suggestions on Employment Based on the 32nd Batch of Guiding Cases of the Supreme People's Court](#).

2. 重庆市第五中级人民法院发布 2019—2021 年度劳动争议典型案例

Chongqing Fifth Intermediate People's Court Released Typical Cases of Labor Disputes from 2019 to 2021

重庆市第五中级人民法院于 2022 年 8 月发布 6 件年度劳动争议典型案例，涉及自愿放弃社会保险费用缴纳的行为无效、停工停产时经济补偿计算应以正常情况下劳动者的平均工资作为计算标准、工伤赔偿和侵权损害赔偿竞合等问题。

Chongqing Fifth Intermediate People's Court released six typical cases of labor disputes in August, 2022, involving the invalidation of voluntary waiver of social insurance contributions, using employees' salary under normal circumstances to calculate severance where the company has ceased production, and the coincidence of compensation for work-related injuries and infringement damages.

其中案例二值得注意，该案例认定职工因工伤认定伤残八级主动提出解除劳动合同，重庆法院认为上述情形应当属于《劳动合同法》第 38 条规定的劳动者被迫解除劳动合同的情形之一，因此用人单位应当支付经济补偿。就该问题目前各地裁判观点并不一致。

Among them, the second case is noteworthy. In that case the employee constructively terminated the employment contract because he was identified as level eight disability due to work-related injury. The court held that this situation shall be deemed as one of the circumstances stipulated in Article 38 of the Labor Contract Law where the employee was forced to terminate the employment contract, and therefore the employer shall pay economic compensation to the employee. At present, there are different opinions among local judges on this issue.

另外，根据案例四，因用人单位原因停工停产，法院认为应当以解除劳动合同前 12 个月中正常生产情况下劳动者的平均工资作为计算经济补偿的工资标准。目前就该此种情况下经济补偿的计算各地存在不同标准，重庆的该口径对于劳动者较为有利。

In addition, according to the fourth Case, the court held that the average wage of employees in normal production in the 12 months before the termination of the labor contract should be taken as the wage standard for calculating economic compensation. At present, there are different standards for the calculation of economic compensation in this situation, and this standard in Chongqing is more favorable to employees.

3. 杭州互联网法院发布“个人信息保护十大典型案例”

Hangzhou Internet Court Released “10 Typical Cases of Personal Information Protection”

杭州互联网法院于成立五周年之际，特别发布“个人信息保护十大典型案例”，涉及银行征信、公共出行服务、网购平台向内嵌支付机构提供用户信息、APP 自动化推荐应用等多个场景的诉讼案件。

On the occasion of the fifth anniversary of its establishment, Hangzhou Internet Court released “Ten Typical Cases of Personal Information Protection”. Those cases relate to bank credit reporting, public travel service, online shopping platforms providing user information to embedded payment institutions, APP automatic recommendation applications, etc.

自 2021 年《民法典》和《个人信息保护法》出台以来，实践层面对于个人信息的保护力度持续加大，除了行政监管和处罚案件持续升温，民事诉讼和刑事案件也渐次进入司法程序。对于各行业的企业而言，除了在对外的业务场景下需加紧完成数据合规体系外，也需重视内部员工个人信息管理模式的评估、完善与落实。

Since the introduction of the Civil Code and the Personal Information Protection Law in 2021, the protection of personal information at the practical level has been increasing. In addition to a continued increase in administrative supervision and penalty cases, civil litigation and criminal cases have also gradually entered the judicial procedure. For enterprises in all industries, in

addition to completing the data compliance system under the external business scenarios, it is also necessary to attach importance to the evaluation, improvement and implementation of the management mode of the personal information of internal employees.

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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.*

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