

HAIWEN & PARTNERS

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Author: LIU, Yuxiang WU, Qiong



Summary



Interpretation of Laws and Regulations: Draft Amendments to the Criminal Law (XII) Issued, Adding Crimes Related to Breach of Trust and Dereliction of Duty by Personnel of Non-State-Owned Enterprises, and Adjusting the Penalties for Bribery-Type Crimes



Quick View of New Regulations: Extension of Two Preferential Policies on Individual Income Tax and Increase of Three Additional Special Deduction Standards for Individual Income Tax



Quick View of New Regulations: Beijing Adjusted Minimum Wage Standard; Tianjin Updated Labor Implementation Rules for the Labor Contract Law; Hangzhou Issued Implementation Measures for Childcare Subsidies; Five Departments Issue Reference Texts for System to Prevent and Eliminate

Mismanagement Risks and Hazards



Exploration of Typical Cases: The Supreme People's Court Releases Typical Cases on Focusing Justice and Efficiency and Practicing Socialist Core Values



Exploration of Typical Cases: Tongzhou District People's Court of Beijing Released Three Typical Cases of Labor Disputes



Exploration of Typical Cases: Changping District People's Court of Beijing Released the White Paper on Labor Disputes Trial and Integrity Construction



Exploration of Typical Cases: Suzhou Intermediate People's Court Released the White Paper on Trial of Cases of Disputes Involving New Work Models and Ten Typical Cases in 2018-2022



I. Interpretation of Laws and Regulations: Draft Amendments to the Criminal Law (XII) Issued, Adding Crimes Related to Breach of Trust and Dereliction of Duty by Personnel of Non-State-Owned Enterprises, and Adjusting the Penalties for Bribery- Crimes

The Draft Amendments to the Criminal Law of the PRC (XII) (“[Draft](#)”) was issued on July 27, 2023 for public consultation. The Draft proposed to amend seven penal provisions, covering the following two areas:

1. Extending the subject matter of the Crime of Illegally Engaging in

Similar Businesses, Crime of Illegally Seeking Profits for Relatives and Friends, and Crime of Practicing Favoritism by Converting Shares at Low Prices or Selling State-Owned Assets, to Non-State-Owned enterprises

The Draft extended the subject matter of Crime of Illegally Engaging in Similar Businesses as stipulated in Article 165, Crime of Illegally Seeking Profits for Relatives and Friends as stipulated in Article 166, and Crime of Practicing Favoritism by Converting Shares at Low Prices or Selling State-Owned Assets as stipulated in Article 169 of the current Criminal Law, from state-owned enterprises to non-state-owned enterprises, and also extended personnel's breach of trust and dereliction of duty of the foreign-funded enterprises and other enterprises into the scope of criminal law.

2. The penalty provisions for bribery crimes were revised and improved, and the criminal liability for such crimes was adjusted.

The Draft enhanced the penal provisions for bribery, with the inclusion of six aggravating circumstances. Some examples included offering multiple bribes, bribery towards multiple persons or state officials. Additionally, the penalty grades and maximum penalties for bribery penal provisions had been modified, with the Crime of Taking Bribes by Entities, Crime of Offering Bribes to an Entity, and Crime of Offering Bribes by an Entity being raised from a single grade of penalty to two. Maximum penalties had also been increased accordingly.

Haiwen Suggestions: Starting in May 2023, fourteen state ministries and commissions jointly issued the Points for Rectifying Unethical Medical Procurement and Sales and Services in 2023, the Disciplinary Committee of the Communist Party, National Supervisory Commission of the PRC held a mobilization meeting to coordinate Disciplinary Inspections and Supervisory Organizations in targeting corruption. Local anti-corruption efforts in the medical field had also been expedited. Combined with revising the breach of trust and dereliction of duty related to the Draft, enterprises should focus on enhancing prevention measures and internal governance systems to prevent employees from crossing the criminal law red line.



II. Quick View of New Regulations: Extension of Two Preferential Policies on Individual Income Tax and Increase of Three Additional Special Deduction Standards for Individual Income Tax

The Ministry of Finance (MOF) and the State Administration of Taxation (SAT) issued an announcement on August 18, 2023, extending the implementation of the Policy on Individual Income Tax on Annual Lump-sum Bonus until the end of 2027. The policy permitted annual lump-sum bonuses to remain excluded from the current year's consolidated income and enforced monthly separate taxation.

The MOF and the SAT issued an Announcement on August 18, 2023, extending the implementation of the Policy on the Continuation of the Implementation of Individual Income Tax Policies on Equity Incentives for Listed Companies until the end of 2027. The policy ensured that equity incentives for listed companies would not be merged with the consolidated income of the current year, and full-amount separate taxation would instead apply.

The State Council issued a Notification regarding the Increment of Special Additional Deductions Standard for Individual Income Tax on August 28, 2023. This increment had raised the standard of special additional deductions for infants and young children under the age of 3, children's education, and support for the elderly by ¥1,000 per month. These new standards had been enforced since 1 January 2023.



III. Quick View of New Regulations: Beijing Adjusted Minimum Wage Standard; Tianjin Updated Labor Implementation Rules for the Labor Contract Law; Hangzhou Issued Implementation Measures for Childcare Subsidies; Five Departments Issue Reference Texts for System to Prevent and Eliminate Mismanagement Risks and Hazards

1. Beijing Adjusted Minimum Wage Standard

On July 11, 2023, the Beijing MOHRSS issued a notice regarding the minimum wage standard in Beijing for 2023. Effective from September 1, 2023, the minimum wage standard in Beijing has been raised from not less than ¥13.33 per hour and ¥2,320 per month to not less than

¥13.91 per hour and ¥2,420 per month. Among them, items such as overtime pay owed to employees, and various employee social insurance contributions and housing fund payments were not included in the minimum wage standard. Employers must pay these separately in accordance with regulations.

2. Tianjin Updated Labor Implementation Rules for the Labor Contract Law

On August 1, 2023, the Implementation Rules for the Labor Contract Law issued by the Tianjin MOHRSS became effective. Compared to the version issued by the Tianjin MOHRSS in 2018, the new rules had clarified that (1) where an employer recruits and manages an employee through internet platforms, if the employer conducts management on employee and puts forward clear requirements for work, it would be deemed that there is a labor relationship based on the actual employment situation. and (2) the employer and the employee could enter into an e-labor contract by consensus, which must comply with the Labor Contract Law, Electronic Signature Law and other legally required standards. (3) the basis for calculating overtime pay, as agreed between the employer and the employee, shall not be lower than the wage due to the employee's position.

3. Hangzhou Issued Implementation Measures for Childcare Subsidies

On August 7, 2023, the Hangzhou Municipal Health Committee and the Finance Bureau issued the Implementation Measures for Childcare Subsidies in Hangzhou (Trial), which adopted the form of one-time cash payment to provide maternity subsidies and childcare subsidies to Hangzhou households with two or three children, with the standard of maternity subsidies being ¥2,000 for two children and ¥5,000 for three children, and the standard of childcare subsidies being ¥5,000 for two children and ¥20,000 for three children.

4. Five Departments Issued Reference Texts for System to Prevent and Eliminate Mismanagement Risks and Hazards

On August 14, 2023, the MOHRSS and five other departments issued the System for Preventing and Eliminating the Hidden Risks of Improper Management in the Workplace (Reference Text) (“[Reference Text](#)”). The Reference Text emphasized that employers should truthfully inform employees of work-related situations, not withhold credentials, not ask for guarantees, not require additional labor or impose fines on employees for handling disciplinary actions, and pay wages and compensation in one lump sum upon termination of the labor contract in accordance with the law and issue a certificate of termination of the labor contract at the same time. Although the reference text is not an official source of law, it has certain reference value for enterprises to establish relevant internal systems and implement compliance management.



IV . Exploration of Typical Cases: The Supreme People's Court Released

Typical Cases on Focusing Justice and Efficiency and Practicing Socialist Core Values

On August 2, 2023, the Supreme People's Court held a press conference to issue fifteen typical cases of the People's Courts in focusing justice and efficiency and practicing socialist core values. Two of the cases related to labor and employment reflected the following adjudication views:

In Case 4, the employee paid the social insurance contribution on his own due to the employer's failure to make the contribution, and thus the employee requested the employer to return the payment. The court held that the case fallen within the scope of cases that should be accepted by the people's court in accordance with the law, and ruled that the employer should return the amount of the employee's advance payment for the interrupted social pension insurance and the amount of late payment fees.

In Case 5, the employee's family decided to donate his human organs after he was diagnosed with brain death, and the Lincang MOHRSS, based on the death certificate issued by the hospital, made a decision not to recognize the work-related injury in light of the time from the employee's sudden illness to his death after being rescued had exceeded 48 hours. The court held that, in the case of human organ donation, the time of death should be based on the time of brain death confirmed by the hospital, and ruled that the Lincang MOHRSS's decision on not to recognize work-related injuries should be reversed and the Lincang MOHRSS should be required to take a new decision.



V . Exploration of Typical Cases: Tongzhou District People's Court of Beijing Released Three Typical Cases of Labor Disputes

On August 3, 2023, Tongzhou District People's Court of Beijing (Tongzhou Court") held a press conference on Trials of Cases of Labor Disputes, inventorying the trials of labor disputes in the Tongzhou Court

in the past three years and specific measures taken to handle labor disputes properly, and releasing three typical cases.

The first case is a dispute regarding separation of a senior executive. A group company intended to employ the employee as a professional management talent, to compensate the employee for his departure from the former employer and incentivize his commitment to serve in the group company for more than 10 years, the group company paid the employee ¥150 Million as compensation, and thus the employee established a labor relationship with the group company. Subsequently, the labor relationship between the group company and the employee was terminated (the reason for which was not specified). After the trial, Tongzhou Court held that, among the ¥150 Million compensation paid to the employee, ¥ 88 Million is not required to be returned since it was to make up for the loss caused by the employer's departure from the former employer. However, for the rest of the compensation (¥ 62 Million) which was to ensure the long-term and stable employment between the group company and the employee, the court pro-rated it based on the employee's service period with the group company, retirement age and other factors, and ordered the employee to return more than ¥49 Million the group company. This case is of a novel type, and the amount involved in is hundreds of millions, which has a reference significance for the balanced protection of the interests of employees and employers.

In the second case, the worker was engaged in takeaway delivery and registered as an individual business as requested by the company. In consideration of the work content, the company's business scope, the company's operation and management, and the entity paid salary, etc., the court determined that an employment relationship existed between the parties.

In the third case, the worker was engaged in network live-streaming in a company, and the two parties had not signed an employment contract. In consideration of the fact that the company's recruitment officer had clearly stated that the worker was an employee of the company and other evidence, the court determined that an employment relationship existed between the two parties.





VI. Exploration of Typical Cases: Changping District People's Court of Beijing Released the White Paper on Labor Disputes Trial and Integrity Construction

On July 18, 2023, Changping District People's Court of Beijing released the White Paper on Labor Dispute Trial and Integrity Construction (2018-2022), inventorying the overall picture of labor dispute cases in the past five years, and circulating ten typical labor dispute cases.

The judicial opinions in the typical cases are as follows:

In the case that the employer applied for Beijing Hukou quota for the employee and agreed on a service period, and the employee failed to file the Hukou due to his resignation in advance, the employee was ordered to compensate the employer for the loss of ¥50,000 in human resource cost;

The employer was considered to have the right to terminate the employment contract on the grounds of serious violation of rules and regulations in the case that the employee provided false leave certificates;

The court ascertained that the employer has tampered with the employee's commencement date and upheld the amount of severance for termination of the employment contract claimed by the employee;

The employee's promise of waiving the payment of social insurance was held invalid, and the employer shall compensate for the employee's social security benefits loss if the social insurance has been unable to be applied;

In the case that a non-competition restriction was agreed upon in the employment contract with no non-competition compensation, and the employee had fulfilled the non-competition obligation, the employer should pay non-competition compensation on a monthly basis at the rate of 30% of the average salary of twelve months prior to the termination of the employment;

The employee had promised no further disputes upon the termination of

employment, but claimed compensation from the employer later. The court rejected such claim of the employee;

The employee was dismissed the following day after signing an employment contract, and the employer should pay compensation for wrongful termination of the employment contract;

The employer signed a Contract of Service with the employee to cover up the employment relationship, and the employee's claim for overtime pay was upheld;

The employee falsified the job application resume by falsifying a bachelor's degree despite the fact that his/her actual academic qualification is a technical secondary school. The employer terminated the employment contract on the ground that the employee did not satisfy the employment conditions during the probationary period, and the termination was deemed lawful;

In the case that a staff of a public institution violated the engagement agreement by resigning prior to the expiration of his/ her engagement term, he/she shall pay liquidated damages to the public institution.



VII. Exploration of Typical Cases: Suzhou Intermediate People's Court Released the White Paper on Trial of Cases of Disputes Involving New Work Models and Ten Typical Cases in 2018-2022

On 12 July 2023, Suzhou Intermediate People's Court held a symposium, releasing the White Paper on the Trial of Cases of Disputes Involving over New Work Models (2018-2022) (the "White Paper") as well as ten typical cases involving new work models.

The White Paper inventoried the overall picture of the trial of cases involving new work models in Suzhou in the past five years. According to statistics, the courts in Suzhou concluded a total of 862 disputes involving new work models, mainly involving four groups: takeaway riders, couriers, streamers, and online car-hailing service drivers. The white paper clarified the judicial principle of protecting both the platform economic development and employees' rights and interests, the general principle of priority of facts in judicial review, and the method of identifying employment relationship by analyzing the elements and the subordination, etc.

The main judicial views in the ten typical cases are as follows:

Cases 1-4 are cases regarding confirmation of employment relationship, and the labor arbitration committees determined that there was employment relationship between the employee and the employer in three of the cases based on the facts of the cases.

In Case 5, the labor arbitration committee determined that as the platform enterprise unilaterally changed the rules without obtaining the workers' consent and infringed the workers' lawful rights and interests, the rules were not legally binding on the workers, accordingly the platform enterprise should compensate for the losses caused.

In Case 6, the car renter caused damage to a third person in a traffic accident while driving a vehicle rented from an Internet car rental platform, the car rental platform should bear corresponding compensation liability as it was at fault for failing to properly perform the risk control duty.

Cases 7-9 identified the main subject of the tort liability when employees in new work models caused damage to a third party in performance of their work.

In Case 10, if the employer with qualification of employing outsources the relevant business or operation to an entity without qualification of employing and caused work-related injury or death to the workers hired, the party issuing outsourcing shall bear the responsibility for work injury insurance.

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