

Haiwen Labor Law Bi-Monthly Newsletter——2025 November – December

Author: LIU, Yuxiang WU, Qiong

Summary

本期摘要



新规速递：人力资源社会保障部印发《关于执行<工伤保险条例>若干问题的意见（三）》；最高人民法院正式发布《关于修改<民事案件案由规定>的决定》

Snapshot of New Regulations: The MOHRSS Issued "Opinions on Several Issues Concerning the Implementation of the Regulations on Work-related Injury Insurance (III)"; the Supreme People's Court Issued Decision of the Supreme People's Court on Amending the Provisions on Causes of Action in Civil Cases



新规速递：四川修订《人口与计划生育条例》、深圳发布《优化职工生育津贴发放方式的通知》、湖北印发《湖北省审理劳动人事争议仲裁案件若干问题规范指引（二）》的通知

Snapshot of New Regulations: Sichuan Revised Regulations on Population and Family Planning; Shenzhen Issued Notice on Optimizing the Payment Methods of Employees' Maternity Allowance; Hubei Issued Hubei Provincial Normative Guidelines on Several Issue Concerning Adjudication of Labor and Personnel Disputes Arbitration Cases (II)



典型案例：最高人民法院发布2个劳动争议相关典型民事案例

Exploration of Typical Cases: The Supreme People's Court Issued 2 Typical Civil Cases Involving Labor Disputes



典型案例：北京市人社局发布2025年北京市劳动人事争议仲裁十大典型案例

Exploration of Typical Cases: Beijing Municipal Human Resources and Social Security Bureau Issued 10 Typical Labor and Personnel Dispute Arbitration Cases of Beijing in 2025



典型案例：上海市发布劳动争议典型案例

Exploration of Typical Cases: Shanghai Issued Typical Labor Dispute Cases



典型案例：重庆、湖南等地陆续发布劳动争议典型案例

Exploration of Typical Cases: Chongqing, Hunan Released Typical Cases of Labor and Personnel Disputes in Succession



团队动态：海问劳动法团队受邀撰写Lexology中国篇内容

Team & Practice Updates: The Labor Law Team of Haiwen & Partners Was Invited to Contribute the China Chapter for Lexology In-Depth: Labor and Employment Disputes

一、新规速递：人力资源社会保障部印发《关于执行〈工伤保险条例〉若干问题的意见（三）》；最高人民法院正式发布《关于修改〈民事案件案由规定〉的决定》

Snapshot of New Regulations: The MOHRSS Issued “Opinions on Several Issues Concerning the Implementation of the Regulations on Work-related Injury Insurance (III)”; The Supreme People’s Court Issued Decision of the Supreme People’s Court on Amending the Provisions on Causes of Action in Civil Cases

1. 人力资源社会保障部印发《关于执行〈工伤保险条例〉若干问题的意见（三）》

The MOHRSS Issued “Opinions on Several Issues Concerning the Implementation of the Regulations on Work-related Injury Insurance (III)”

2025年11月13日，《人力资源和社会保障部关于执行〈工伤保险条例〉若干问题的意见（三）》（人社部发〔2025〕62号，“[《意见（三）》](#)”）发布并生效。《意见（三）》共十二条，在2013年发布的《人力资源和社会保障部关于执行〈工伤保险条例〉若干问题的意见》、2016年发布的《人力资源和社会保障部关于执行〈工伤保险条例〉若干问题的意见（二）》的基础上，进一步明确了2003年发布的《工伤保险条例》（“[《条例》](#)”）中工伤保险制度有关规定的理解适用。2024年底和2025年初，最高院曾以发布会议纪要和举办行政审判课程的形式，就工伤保险制度相关问题进行指导和解读，相关会议纪要和法官答疑内容与《意见（三）》存在诸多一致，现人力资源和社会保障部正式以《意见（三）》的出台结合过往相关裁判文书就《条例》在实践中产生的诸多问题从行政角度进行了明确规定。

On November 13, 2025, Opinions of the MOHRSS on Several Issues Concerning the Implementation of the Regulations on Work-related Injury Insurance (III) (人社部发〔2025〕62号, “[Opinions \(III\)](#)”) was issued and took effect. Comprising twelve articles, Opinions (III) further clarifies the interpretation and application of relevant provisions in the work-related injury insurance system under the Regulation on Work-Related Injury Insurances issued in 2003 (“[Regulation](#)”), building upon the 2013 and 2016 Opinions. In late 2024 and early 2025, the Supreme People’s Court provided guidance and interpretation on issues related to the work-related injury insurance system through the release of meeting minutes and administrative adjudication training sessions. The content of these meeting minutes and judicial Q&A align closely with Opinions (III). Now, the MOHRSS has formally issued Opinions (III), integrating past adjudication and review experiences to provide clear administrative regulations on various practical issues arising from the implementation of the Regulations.

我们近期基于实务经验和调研情况等角度对《意见（三）》进行了逐条解读，具体内容请参见[海问·观察 | 《关于执行〈工伤保险条例〉若干问题的意见（三）》实务探析](#)。

Recently, we have conducted a clause-by-clause interpretation of Opinions (III) based on practical experience and judicial research. For detailed analysis, please refer to [Haiwen Observation: A Practical Analysis of the Opinions on Several Issues Concerning the Implementation of the Regulations on Work-Related Injury Insurance\(III\)](#).

2. 最高人民法院正式发布《关于修改〈民事案件案由规定〉的决定》

The Supreme People’s Court Issued Decision of the Supreme People’s Court on Amending the Provisions on Causes of Action for Civil Cases

2025年12月17日，最高人民法院正式发布《关于修改〈民事案件案由规定〉的决定》（法〔2025〕226号）、《关于印发修改后的〈民事案件案由规定〉的通知》（法〔2025〕227号），对《民事案件案由规定》作第三次修正。上述两个文件自2026年1月1日起施行。其中劳动争议相关的案由发生了重要变化：（1）将第一级案由中的“劳动争议、人事争议”变更为“劳动争议、人事争议、新就业形态用工纠纷”；（2）在第二级案由“劳动争议”项下增加“208.超龄劳动者用工纠纷”“209.承包人、被挂靠人用工主体责任纠纷”；（3）增设了第二级案由“新就业形态用工纠纷”，并在其项下增加“214.新就业形态用工合同纠纷”、“215.新就业形态社会保险纠纷”、“216.新就业形态职业伤害保障纠纷”三项第三级案由。

On December 17, 2025, the Supreme People’s Court officially issued the Decision of the Supreme People’s Court on Amending the Provisions on Causes of Action for Civil Cases (法〔2025〕226号) and the Notice of the Supreme People’s Court on Issuing the Amended Provisions on Causes of Action for Civil Cases (法〔2025〕227号), thereby implementing the third revision to the Provisions on Causes of Action in Civil

Cases. The above two documents came into effect on January 1, 2026. Significant changes have been made to the causes of action related to labor disputes: (1) the first-level cause of action "Labor Disputes and Personnel Disputes" has been revised to "Labor Disputes, Personnel Disputes, and New Forms of Employment Disputes"; (2) under the second-level cause of action "Labor Disputes", adding the following two sub-causes of action: "208. Employment Disputes Involving Over-Age Workers" and "209. Disputes Over the Employment Subject Liability of Contractors and Debtors-in-Guarantee"; and (3) adding a second-level cause of action, "New Forms of Employment Disputes", along with three third-level causes of action thereunder: "214. New Forms of Employment Contract Disputes," "215. New Forms of Employment Social Insurance Disputes," and "216. New Forms of Employment Occupational Injury Protection Disputes" .



二、新规速递：四川修订《人口与计划生育条例》、深圳发布《优化职工生育津贴发放方式的通知》、湖北印发《湖北省审理劳动人事争议仲裁案件若干问题规范指引（二）》的通知

[Snapshot of New Regulations: Sichuan Revised Regulations on Population and Family Planning; Shenzhen Issued Notice on Optimizing the Payment Methods of Employees' Maternity Allowance; Hubei Issued Hubei Provincial Normative Guidelines on Several Issue Concerning Adjudication of Labor and Personnel Disputes Arbitration Cases\(II\)](#)

1. 四川修订《人口与计划生育条例》

Sichuan Revised Regulations on Population and Family Planning

2025年11月26日，四川省人大常委会通过了《关于修改〈四川省人口与计划生育条例〉的决定》（“[决定](#)”），对婚假和育儿假有所调整，主要调整方面包括：（1）将四川省的婚假标准从五日延长至二十日（参加婚前医学检查的，再增加五日，即最长二十五日）；（2）符合本条例规定生育的夫妻，女方可享受延长生育假90日；生育第三个子女的女方，经本人申请及所在单位同意，还可以再延长生育假30日；（3）男方享受护理假30日。四川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。

On November 26, 2025, the Standing Committee of the Sichuan Provincial People's Congress passed the Decision on Amending the Sichuan Provincial Regulations on Population and Family Planning (“[Decision](#)”), adjusting marriage leave and parental leave, primarily in the following aspects: (1) extended the standard of marriage leave in Sichuan Province from five days to twenty days (with an additional five days for those who participate in pre-marital medical examinations, i.e., twenty-five days at the most). (2) Where a couple gives birth in compliance with the regulation, the female spouse is entitled to 90 days of extended maternity leave. For those giving birth to a third child, an additional 30 days may be granted upon the employee's application and with the employer's approval. (3) Male employees are entitled to 30 days of paternity leave. Employers in Sichuan 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.

2. 深圳发布《优化职工生育津贴发放方式的通知》

Shenzhen Issued Notice on Optimizing the Payment Methods of Employees' Maternity Allowance

深圳市医疗保险基金管理中心于2025年11月28日发布《深圳市医疗保险基金管理中心关于优化企业职工生育津贴发放方式的通知》（“[通知](#)”），明确了自2025年12月1日起，深圳市企业职工生育津贴[直接发放至个人](#)。2025年12月1日前生育或施行计划生育手术的，生育津贴仍由用人单位申领。

On November 28, 2025, Shenzhen Medical Insurance Fund Management Center issued the Notice on Optimizing the Payment Methods of Employees' Maternity Allowances (“[Notice](#)”), specifying that maternity allowances for employees in Shenzhen [shall be directly paid to](#)

employees starting from December 1, 2025. For those who gave birth or underwent family planning procedures before December 1, 2025, the maternity allowance shall still be applied for and received by the employer.

3. 湖北印发《湖北省审理劳动人事争议仲裁案件若干问题规范指引（二）》的通知

Hubei Issued Hubei Provincial Normative Guidelines for on Several Issue Concerning Adjudication of Labor and Personnel Disputes Arbitration Cases (II)

2025年10月31日，湖北省人力资源和社会保障厅印发《湖北省审理劳动人事争议仲裁案件若干问题规范指引（二）》的通知，明确了劳动仲裁受理范畴、确认劳动关系、订立、解除劳动合同相关争议、因劳动报酬、工伤医疗费、停工留薪期、经济补偿金和赔偿金等发生的争议等问题，对于湖北地区用人单位的劳动用工合规管理具有重要的参考价值。

On October 31, 2025, Hubei Province Human Resources and Social Security Department issued Hubei Provincial Normative Guidelines on Several Issue Concerning Adjudication of Labor and Personnel Disputes Arbitration Cases (II), focusing on the application scope of labor arbitration, confirmation of employment relationship, disputes concerning termination of labor contracts, as well as controversies arising from labor remuneration, work-related injury medical expenses, suspension of work period pay, economic compensation and indemnity, providing an important reference value for Hubei employers in labor and employment compliance management.



三、典型案例：最高人民法院发布2个劳动争议相关典型民事案例

Exploration of Typical Cases: The Supreme People's Court Issued 2 Typical Civil Cases Involving Labor Disputes

2025年12月16日，最高人民法院发布第四批人民法院大力弘扬社会主义核心价值观典型民事案例，其中包括以下2个劳动争议案例，旨在倡导职场文明：

On December 16, 2025, the Supreme People's Court issued the fourth batch of typical civil cases to promote core socialist values, including 2 labor dispute cases advocating workplace civility:

1. 用人单位发录用通知后无故取消录用导致劳动者从原单位离职后失业的，应当承担赔偿责任。在案例二中，员工收到某科技公司的录用通知书后，从原任职的人才服务公司辞职。随后，该科技公司以财务困难为由撤销了录用通知。该员工遂起诉该公司，索赔 6 万元。法院认为，员工基于合理信赖该录用通知才辞职，公司撤销通知的行为违反诚实信用原则，构成缔约过失责任。法院综合考虑员工此前收入水平、另寻工作的合理期间以及公司过错程度等因素，判决某科技公司赔偿2万元。

An employer that arbitrarily revokes an issued employment, resulting in an employee's unemployment after resigning from their original position, shall be liable for compensation. In case 2, the employee resigned from a talent service company after receiving an offer letter from a technology company. The technology company later revoked the offer citing financial difficulties. The employee sued for RMB 60,000 in compensation. The court held the employee reasonably relied on the offer to resign, the company's revocation breached good faith and constituted pre-contractual liability, and ordered the company to pay RMB 20,000, considering the employee's income, job-seeking period and the company's fault.

2. 劳动者有职场性骚扰行为的，用人单位可依法解除劳动关系。在案例三中，公司《员工手册》明确性骚扰行为属于严重违反公司规章制度可解除劳动关系的情形。5名员工的面谈记录显示员工吴某对女员工有不当行为。吴某本人在面谈记录中承认休息时将头靠在女员工陈某身上，受到陈某责骂。公司以吴某在职期间多次对女员工进行性骚扰为由解除劳动合同，吴某诉请违法解除劳动合同赔偿金和失业岗位补贴。法院认为，该解除行为并不违法，且有利于对女员工合法权益的保护。

An employer may legally terminate the employment if an employee commits workplace sexual harassment. In case 3, the company handbook stipulates sexual harassment as a serious rule violation for dismissal. 5 employees' interview records and Wu's admission of inappropriate conduct (leaning on a female colleague's shoulder) showed his offenses. The company dismissed Wu for repeated sexual harassment. Wu sued for unlawful termination compensation and unemployment subsidies, but the court ruled the dismissal lawful and affirmed the protection of female employees' rights.



四、典型案例：北京市人社局发布2025年北京市劳动人事争议仲裁十大典型案例

Exploration of Typical Cases: Beijing Municipal Human Resources and Social Security Bureau Issued 10 Typical Labor and Personnel Dispute Arbitration Cases of Beijing in 2025

2025年12月26日，北京市人社局发布2025年北京市劳动人事争议仲裁十大典型案例，涉及劳动关系认定、用工合规及权益保护等劳动争议相关裁审观点：

On December 26, 2025, Beijing Municipal Human Resources and Social Security Bureau issued 10 Typical Labor and Personnel Dispute Arbitration Cases of Beijing in 2025, regarding the arbitration and trial views on labor disputes including determination of employment relationship, employment compliance and protection of rights and interests:

1. 员工从某集团公司转入其控股子公司，与某集团公司签订协议约定双方劳动关系到期终止并无其他经济纠纷（未明确约定是否需要支付经济补偿金）。仲裁委认为前后岗位、地点、管理主体及工资支付、社保缴纳等实际用工管理具有延续性与关联性，裁决工作年限连续计算。

An employee was transferred from a group company to its holding subsidiary, and entered into an agreement with the group company stipulating that the former employment relationship shall terminate upon expiration with no other economic disputes (without explicit agreement on whether economic compensation is payable). The Arbitration Commission held that there were continuity and relevance in the actual employment management aspects such as the position, workplace, management entity, salary payment and social insurance contribution before and after the transfer, and ruled that the years of service shall be calculated on a continuous basis.

2. 员工于实习期间从大学毕业，仲裁委认为应当自获得毕业证书起认定为劳动关系。

The employee graduated from the university during the internship period. The Arbitration Commission held that an employment relationship shall be deemed to have been established as of the date when the employee obtained the graduation certificate.

3. 《解除劳动关系协议书》约定自公司账户解封之日起五日内支付经济补偿金，四年后公司仍以账户未解封为由不予支付。仲裁委认为该支付条款的设置使得劳动者债权的实现完全依赖于用人单位单方控制的因素，且无法通过自身努力推动权利实现，因此是无效条款，裁决公司支付经济补偿金。

The Agreement on Termination of Employment Relationship stipulated that the economic compensation be paid within 5 days of the company's account unblocking. Four years later, the company still withheld payment citing unresolved blockage. The Arbitration Commission deemed the clause invalid as it rendered the employee's creditor's rights completely dependent on the employer-controlled conditions, preventing the employee from advancing rights realization through his/her own efforts, and therefore ordered payment.

4. 用人单位为产假员工申报生育津贴并领取后未向员工支付，该员工以未及时足额支付劳动报酬为由提出解除劳动关系，申

请仲裁请求公司支付经济补偿金，仲裁委予以支持。

An employer applied for and received maternity allowance on behalf of an employee on maternity leave, but didn't pay the allowance to the employee. The employee proposed to terminate the employment relationship for the company failing to timely pay the full amount of remunerations, and applied for arbitration requesting the company to pay economic compensation, which was supported by the Arbitration Commission.

5. 员工在工作时间私自找人替岗，仲裁委认为即使未造成经济损失且公司规章制度并未明确禁止替岗，该行为已构成对基本劳动纪律的违反，公司以违纪为由与其解除劳动合同合法。

An employee arranged for a substitute to take his/her position during working hours without permission. The Arbitration Commission held that even if no economic loss was caused and the company's rules and regulations did not explicitly prohibit job substitution, such behavior had constituted a violation of basic labor discipline, and the company's termination of the labor contract with the employee on the ground of disciplinary violation was lawful.

6. 公司以AI替代人工，以《劳动合同法》第四十条第三项为由解除对应岗位员工的劳动合同。仲裁委认为，引入AI技术完全属于企业的自主经营决策范畴，不具有不可抗力、不可预见性，不属于“客观情况发生重大变化”，认定公司违法解除劳动合同。

A company replaced human labor with AI, and terminated the labor contracts of employees in corresponding positions on the ground of Article 40 (3) of the Labor Contract Law. The Arbitration Commission held that the introduction of AI technology fell within the scope of the company's independent business decision-making, lacked irresistibility and unpredictability, and didn't constitute "major changes in objective circumstances". Therefore, the company's termination of the labor contract was ruled unlawful.

7. 公司在未与员工协商确定退休时间，且员工未主动选择弹性提前退休的情况下，单方面按照延迟退休政策实施前的退休年龄为员工办理劳动合同终止手续，仲裁委认为构成违法终止。

Without negotiating with the employee to determine the retirement time and in the absence of the employee's active choice of flexible early retirement, a company unilaterally processed employment termination based on the retirement age applicable before the implementation of the delayed retirement policy. The Arbitration Commission held that such act constituted unlawful termination of the labor contract.

8. 公司发出的竞业限制协议要求员工定期提供本人佩戴工牌的自拍原图以及每月至少两次的钉钉定位信息等材料，以履行报告义务，否则视为实质性违约。仲裁委认定该条款无效，理由是其与竞业限制的关联性薄弱，违反了《中华人民共和国个人信息保护法》的最小必要原则，且混淆了竞业限制的程序性义务与核心义务。

The company's Non-Competition Agreement required employees to submit ID-badge selfies and Ding Talk location data twice monthly to fulfill reporting obligations, otherwise shall be deemed a material breach. The Arbitration Commission held the clause invalid as it had weak relevance to non-competition, violated the data minimization principle under Personal Information Protection Law, and confused procedural and core obligations of non-competition.

9. 仲裁委通过与法院、司法局、工会等机构的多元调解，化解了涉外企业的绩效发放相关纠纷，既为劳动者争取现实权益，也为企业纾困转型留出必要空间。

Through multi-party mediation together with courts, judicial bureaus, trade unions and other institutions, the Arbitration Commission resolved a performance bonus dispute of a foreign-related enterprise, securing employees' rights and interests while reserving space for the enterprise to relieve difficulties and transform.

10. 事业单位因机构调整而安排王某待岗，后以“试用期不胜任工作”为由单方解除与王某的聘用合同，但未能提供待岗状态工作质量的认定标准。王某认为该不胜任评价缺乏依据，遂申请仲裁要求经济补偿。仲裁委认为，事业单位的人员安置必须严格依据《事业单位人事管理条例》《关于在事业单位试行人员聘用制度的意见》及北京市相关政策。由于本案中单位主动提出解除合同，王某申请仲裁请求支付经济补偿金，故仲裁委认定本案系协商一致解除聘用关系，裁决单位依法支付经济补

偿。

A public institution arranged for Wang to be on a waiting assignment due to organizational restructuring, and subsequently unilaterally terminated the employment contract with him/her for “being incompetent for the position during the probation period”, without providing work performance assessment criteria for the suspension period. Wang contended such assessment of incompetence not supported by sufficient evidence, thus claiming economic compensation. The Arbitration Commission held that public institutions must manage personnel strictly per the Regulations on Personnel Management of Public Institutions, the Opinions on Trial Implementation of the Employment System in Public Institutions and Beijing Municipality’s relevant policies. As the employer initiated termination and Wang claimed economic compensation, the Commission ruled it a consensual termination and ordered the public institution to pay compensation legally.



五、典型案例：上海市发布劳动争议典型案例

Exploration of Typical Cases: Shanghai Issued Typical Labor Dispute Cases

1. 上海市第一中级人民法院发布涉新业态劳动争议典型案例

Shanghai First Intermediate People’s Court Issued Typical Labor Dispute Cases Involving New Forms of Employment

近年来，依托于互联网平台产生的新就业形态从业规模不断扩大，因其用工方式灵活、管理数字化等特征，给传统的劳动法律关系认定与权益保障体系带来了全新挑战。为此，2025年12月22日，上海市第一中级人民法院召开新就业形态劳动权益保障白皮书新闻发布会，会上发布六件典型案例，其中涉及裁审观点如下：

In recent years, Internet platform-based new employment, with flexible and digital traits, has challenged traditional employment relationship and rights protection systems. Therefore, on December 22, 2025, Shanghai First Intermediate People’s Court held a press conference on the White Paper on Protection of Labor Rights and Interests in New Forms of Employment and issued six typical cases, involving the key judicial viewpoints as follows:

- **(1) 新业态外卖骑手劳动关系认定，应结合用工管理与劳动从属性综合判断。**在案例一中，上海一中院以员工从事的工作是公司主营业务，且公司通过晨会点名、违规罚款、固定上下班时间等行为实施日常用工管理，符合人身从属性特征为由，认定双方存在劳动关系。

The determination of the employment relationship of food delivery riders in employment in new forms shall be made comprehensively by taking employment management and labor subordination into account.In case 1, Shanghai First Intermediate People’s Court held that the work undertaken by the employee constituted the company’s core business, and the company exercised daily employment management through measures such as morning roll calls, fines for violations, and fixed working hours, which conformed to the characteristics of personal subordination. Therefore, the court ruled that an employment relationship existed between the two parties.

- **(2) 网络主播竞业限制协议约定内容应当明确具体。**在案例二中，竞业限制协议对“主播达人号”的指向和账号粉丝数的统计方式约定不明，上海一中院认为，在竞业限制条款文义存在歧义的情况下，应当以词句的通常含义为基础，结合相关条款的性质和目的、账号归属、使用主体等因素确定。

The terms stipulated in the Non-compete Agreement for livestream hosts shall be clear and specific.In case 2, the Non-compete Agreement failed to clearly define the reference of the “host’s account” and the method for counting the number of account followers.

Shanghai First Intermediate People's Court held that where the wording of a non-compete clause is ambiguous, its interpretation shall be based on the ordinary meaning of the terms, combined with factors such as the nature and purpose of the relevant clauses, account ownership, and the entity using the account.

- **(3) 竞业限制主体认定应以“接触商业秘密”为核心标准。**在案例三中，上海一中院认为，员工工作期间可获取该直播间的销售数据、客户偏好、大促活动安排，上述信息经公司采取保密措施，且能为公司带来竞争优势，属商业秘密，故该员工符合竞业限制主体要求。

The determination of the subject bound by non-compete obligations shall take access to trade secrets as the core criterion. In case 3, Shanghai First Intermediate People's Court held that during the employee's tenure, he/she had access to the live streaming room's sales data, customer preferences, and arrangements for major promotion activities. The aforesaid information constituted trade secrets as the company had taken confidentiality measures for them and they could bring competitive advantages to the company. Therefore, the court ruled that the employee met the requirements of a subject bound by non-compete obligations.

- **(4) 形式业务分包不能掩盖实质劳动关系。**在案例四中，杜某为S公司提供配送服务，S公司与H公司签订配送业务分包的《平台服务协议》、与杜某经营的个体工商户签订《项目转包协议》但未实际履行，上海一中院认为杜某的工作地点、管理主体、报酬标准由S公司决定，H公司仅按为S公司指令代发工资，未实际履行分包义务，《项目转包协议》仅为形式协议，故认定杜某与S公司存在劳动关系。

Formal business subcontracting shall not cover up the actual employment relationship. In case 4, Du provided delivery services for Company S. Company S signed a Platform Service Agreement for subcontracting of delivery business with Company H, and a Project Subcontract Agreement with the individual industrial and commercial household operated by Du, neither of which was actually performed. Shanghai No.1 Intermediate People's Court held that Du's workplace, management entity, and remuneration standards were all determined by Company S, while Company H only paid wages on behalf of Company S in accordance with its instructions and did not actually perform subcontracting obligations. The Project Subcontract Agreement was merely a formal agreement. Therefore, the court ruled that an employment relationship existed between Du and Company S.

- **(5) 穿透关联公司混同用工的“面纱”识别真实用工主体。**在案例五中，员工与L公司的子公司签订《自由职业者服务合作协议》，法院认为该协议为L公司为规避劳动关系而安排的形式协议，认定员工与实际进行入职、管理、报酬等用工管理的L公司存在劳动关系。

Piercing the veil of affiliated companies with mixed employment to identify the real employer. In case 5, the employee signed a Freelance Service Cooperation Agreement with the subsidiary of Company L. The court held that the agreement was formally made by Company L to evade the establishment of an employment relationship, and ruled that an employment relationship existed between the employee and Company L, which was the entity actually responsible for recruitment, management, and remuneration payment.

- **(6) 外卖骑手自主接单的高度自由性或将否定劳动关系。**在案例六中，上海一中院以如下理由认定外卖骑手路某与外卖平台承接方D公司不存在劳动关系：路某对工作内容、工作平台具备高度自主选择权，对D公司不具有人身从属性；路某的报酬按单结算且无固定底薪，自行购买生产资料并承担保险费用，缺乏经济从属性；路某与D公司、Z公司签订《共享经济合作伙伴服务协议三方协议》，应尊重意思自治。

The high degree of freedom of food delivery riders in accepting orders independently may negate the existence of an employment relationship. In case 6, Shanghai First Intermediate People's Court ruled that no employment relationship existed between food delivery rider Lu and Company D, the undertaking party of the food delivery platform, for the following reasons: Lu had full autonomy over work content and platforms, with no personal subordination to Company D. Paid on a per-order basis without a fixed base salary, and independently purchasing means of production and paying insurance premiums, Lu lacked economic subordination. The Tripartite Agreement on Sharing Economy Partner Service with Companies D and Z shall respect the principle of autonomy of will.

近年来，用人单位越来越注重运用竞业限制举措维护自身竞争优势和合法权益。为了依法保障用人单位商业秘密防护权益的同时，兼顾劳动者的择业自由权，2025年11月20日，上海市徐汇区人民法院发布《2020-2024年度涉竞业限制纠纷审判白皮书》，其中涉及关键性裁判观点如下：

In recent years, employers have paid increasing attention to using non-compete measures to safeguard their competitive advantages and legitimate rights and interests. To legally protect employers' rights to defend trade secrets while balancing employees' right to freedom of occupation choice, on November 20, 2025, Xuhui District People's Court of Shanghai issued the White Paper on the Trial of Non-compete Disputes (2020-2024). The key arbitration and trial viewpoints involved are as follows:

- **(1) 接触、掌握商业秘密的劳动者可以约定竞业限制义务。**在案例一中，法院认为，尽管谢某不属于高级管理人员或高级技术人员，但谢某日常需要对接众多客户，确有可能掌握客户信息，劳动合同中亦有保密条款，故认定其属于负有保密义务的劳动者。

Employees who have access to and possess trade secrets are subject to non-compete obligations.In case 1, the court held that though Xie was neither a senior manager nor technician of the company, his/her duties involved daily customer contact, implying access to customer information. The labor contract had confidentiality clauses, so Xie was deemed an employee bound by confidentiality obligations.

- **(2) 离职前设立同业公司并持续经营被认定违反竞业限制义务。**在案例二中，孙某在B公司北京分公司任职期间，设立经营范围高度重合的C公司并担任法定代表人，离职后仍持续经营该公司，法院判决孙某支付竞业限制违约金。

Establishing and continuously operating a competing company before resignation constitutes a violation of non-compete obligations.In case 2, during his tenure at the Beijing Branch of Company B, Sun established Company C whose business scope highly overlapped with that of Company B and served as its legal representative, and continued to operate the company after resigning from Company B. The court ruled that Sun should pay non-compete liquidated damages.

- **(3) 竞业限制违约金应根据公平原则合理酌定。**在案例三中，唐某与公司约定竞业限制义务，约定竞业限制补偿金标准为离职前12个月平均工资的30%，违约金为50万元。唐某离职后，D公司按每月3893.98元标准支付唐某某4个月补偿金共计19,469.90元。后唐某违约，法院综合唐某某离职前的职务、收入情况、可能掌握的信息秘密范围、违约情形、竞业限制期限以及行业性质等，调整违约金至27万元。

The amount of non-compete liquidated damages shall be reasonably determined in accordance with the principle of fairness.In case 3, Tang signed a non-compete agreement with the company, with compensation at 30% of his/her average monthly salary in the 12 months pre-resignation and liquidated damages at RMB 500,000. Company D paid him RMB 19,469.90 total as compensation at the monthly rate of RMB 3,893.98 for four months. Tang breached the agreement, and the court adjusted the damages to RMB 270,000 after considering his position, income, trade secret scope, violation details, non-compete term and industry nature.

- **(4) 穿透第三方公司代缴社保及发放工资，认定违约行为。**在案例四中，刘某与E公司签有竞业限制协议，离职后向E公司提供与F公司的劳动合同和工资支付凭证。后经调查，F公司仅为其代缴社保，刘某实际已入职与E公司存在竞争关系的企业。法院认为在员工通过第三方公司代缴社保及代发工资的情形下，举证责任倒置，认定刘某违反了竞业限制义务。

Piercing the veil of social insurance payment and salary disbursement through a third-party company to identify violations. In case 4, Liu signed a non-compete agreement with Company E. After resignation, he/she provided labor contract and salary vouchers from Company F. Investigation showed that F just paid the social insurance for Liu; he/she actually joined a company which was E's competitor. The court applied burden of proof inversion and ruled him in breach of the agreement.

- **(5) 教培企业资深教师离职后在社交网络平台进行有偿授课，违反竞业限制义务。**在案例五中，英语教师范某从 G 教培公司离职后，被禁止开展英语辅导培训或售卖英语音视频课程。范某通过网络平台开展有偿英语授课，并

起诉 G 公司索要补偿金，法院认定其违反了竞业限制义务。

A senior teacher of an education and training enterprise who provides paid courses on social media platforms after resignation constitutes a violation of non-compete obligations. In case 5, after resigning from Education and Training Company G, English teacher Fan was barred from English tutoring/training or selling English audio-video courses. He taught paid online English courses and sued G for compensation, but the court ruled him in breach of non-compete obligations.



六、典型案例：上海市通报商业秘密案件审判情况并发布典型案例

Exploration of Typical Cases: Chongqing, Hunan Released Typical Cases of Labor and Personnel Disputes in Succession

1. 重庆第五中院发布2025年度劳动争议典型案例

Chongqing Fifth Intermediate People's Court Released Typical Labor Dispute Cases for the Year 2025

重庆第五中级人民法院于2025年12月16日发布7个2025年度劳动争议典型案例，涵盖新就业形态人员职业伤害保障和基本劳动权益保护、超龄劳动者基本权益保障、劳动者平等就业权维护、竞业限制协议履行、人事争议服务期违约金等多个领域。

On December 16, 2025, Chongqing Fifth Intermediate People's Court released seven typical cases of labor disputes for the year 2025, focusing on occupational injury protection and fundamental labor rights of workers in new forms of employment, protection of the basic rights of overage employees, protection of employees' equal employment rights, enforcement of non-compete agreements, and liquidated damages in personnel disputes related to service periods.

其中，案例一值得注意。该案中，三位个人与某传媒公司签订独家经济协议，约定在传媒公司指定的直播平台，从事网络直播工作，并因此获取打赏收益。法院认为，三人并未举证证据证明与重庆某传媒公司存在支配性劳动管理之情形，三人与传媒公司从入职程序、报酬性质、工作管理及收入标准和来源等均不具备劳动关系实质要件，最终认定三人与某传媒公司不存在劳动关系。

Among them, case 1 is noteworthy. In this case, three individuals entered into exclusive economic agreements with a media company, agreeing to work as online streamers on live streaming platforms designated by the media company and receive income from virtual gifts. The court held that three individuals failed to provide evidence demonstrating that they were subject to the dominant labor management of the media company. Moreover, aspects such as their employment procedures, the nature of their compensation, work management, income standards, and sources of income did not meet the substantive requirements for establishing an employment relationship. Therefore, the court ultimately confirmed that three individuals did not establish employment relationships with the media company.

在案例六中，劳动者在超过法定退休年龄后入职某公司从事台面板员工作，后因工作时受到工伤由某公司承担工伤主体责任，劳动者要求某公司支付拖欠工资和高薪津贴。法院最终认为，应当依法保障劳动者通过劳动获得劳动报酬的基本权利，遂判决某公司向劳动者支付拖欠工资及高薪津贴。

In Case 6, the employee was employed by a company as a panel operator after exceeding the statutory retirement age. He later suffered a work-related injury during work, for which the company bore primary liability. The employee demanded the company pay his overdue wages and high-temperature allowance. The court finally held that employee's fundamental rights to remuneration for labor must be protected in accordance with the law. It ruled that the company must pay the employee the overdue wages and high-temperature allowance.

在案例七中，刘某在2018年与重庆某高校签订了《事业人员聘用合同》，约定服务期为6年。刘某于2021年与重庆某学院及其内设美术学院三方签订《关于支持刘某在职攻读博士研究生的协议》，约定重庆某学院及美术学院同意刘某就读香港某大学博士研究生，三方自愿将服务期延长5年，刘某在毕业后的3个月内凭学位证等材料回学院报到，违约金为200,000元。因2023年刘某不能在约定期限内完成博士毕业且未能及时返岗，重庆某学院认为其构成违约要求其支付服务期违约金。法院认为，刘某因自身原因未能按时返岗，并因违反单位管理规定被解聘，不能完成服务期限，构成违约，应当承担违约责任，法院最终将违约金酌减为100,000元。

In case 7, Liu entered into a Personnel Employment Contract for Public Institution with a Chongqing college in 2018, with a mandatory service period of 6 years. In 2021, he signed a Tripartite Agreement on Supporting Liu's On-the-Job Doctoral Studies with the college, and its internal School of Fine Arts, stipulating that the college and the School of Fine Arts consented to Liu pursuing a doctoral degree at a Hong Kong university, and the parties voluntarily extended Liu's service period in the Chongqing college by an additional 5 years, and Liu must report back to the college within 3 months of graduation with his degree certificate and other required materials. The penalty for breach of contract was RMB 200,000. In 2023, Liu failed to complete his degree on time and did not return to his post. The college sought the penalty for breach of the service term. The court held Liu in breach for failing to return and fulfill the service period, and finally ordered him to pay a reduced liquidated damage of RMB 100,000.

2. 湖南高院发布劳动争议典型案例

Hunan Released Typical Cases of Labor and Personnel Disputes

2025年12月10日，湖南省高院发布5个劳动争议典型案例。以下裁判观点值得关注：

On December 10, 2025, the Hunan Provincial High People's Court released five typical labor dispute cases. Among them, the following judicial views are worthy of attention:

- (1) 工伤职工与用人单位签订的赔偿协议显失公平，劳动者可请求依法撤销。

Where a compensation agreement signed between an employee who has suffered a work-related injury and the employer is obviously unfair, the employee may request to rescind in accordance with the law.

- (2) 生育保险基金支付的生育津贴高于本人工资的，用人单位应当全额发放。

Where the maternity allowance paid by the maternity insurance fund exceeds the employee's own wage, the employer shall disburse the full amount to the employee.

- (3) 用人单位因业务缩减与劳动者协商调岗未达成一致后，劳动者无正当理由拒绝到岗，用人单位依据严重违纪解除劳动合同不属于违法解除。

Where an employer, due to business downsizing, proposes a job transfer to an employee, and the parties fail to reach an agreement thereon, and the employee refuses to report to the new position without justifiable cause. The employer's subsequent termination of the labor contract on grounds of serious misconduct shall be deemed lawful termination.

七、团队动态：海问劳动法团队受邀撰写Lexology《In-Depth:劳动与雇佣争议》中国篇内容

Team & Practice Updates: The Labor Law team of Haiwen & Partners was invited to contribute the China chapter for Lexology In-Depth: Labor and Employment Disputes

近日，全球法律资讯平台Lexology发布了《In-Depth:劳动与雇佣争议》，海问劳动法部门受邀撰写了中国篇的专章内容。该

篇章现已于Lexology平台上线，面向全球超过95万名订阅用户开放查阅。中国篇章是该全球指南的重要组成部分，该指南由多家国际领先律所联合撰写，涵盖多个司法管辖区的专业评论。我们非常高兴能为这一全球性法律资源平台贡献力量。

Recently, the renowned legal platform Lexology has published Lexology In-Depth: Labour and Employment Disputes. The Labor Law team of Haiwen & Partners were invited to contribute to the China chapter. The article is now available to over 950,000 global subscribers on the Lexology platform. The China chapter is an important part of this global guidance, which features expert commentary from leading law firms across multiple jurisdictions. We are pleased to contribute to this global resource platform.

详情请见：[海问·要闻 | 海问受邀撰写Lexology劳动与雇佣争议中国篇](#)。完整章节可通过点击[阅读原文](#)免费在线访问30天。

Please refer to the below link for details: [海问受邀撰写Lexology劳动与雇佣争议中国篇](#) The full chapter is available online with 30 days of complimentary access via “[read more](#)”.

2026-01-16