

海问劳动法双月报（2024年7-8月）

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一、新规速递：广东省印发“互联网+仲裁”三个规则；浙江省发布《浙江省生育保险办法》

Quick View of New Regulations: Guangdong Released Three Regulations Regarding Arbitrations on Internet Platforms; Zhejiang Released the Provisions of Zhejiang on Maternity Insurance

1. 广东省印发“互联网+仲裁”三个规则

Guangdong Released Three Regulations Regarding Arbitrations on Internet Platforms

2024年7月19日，广东省劳动人事争议仲裁委员会印发《“互联网+仲裁”在线庭审规则（试行）》《“互联网+仲裁”异步审理规则（试行）》《“互联网+仲裁”电子劳动合同争议处理规则（试行）》等三个规则（“**三个规则**”）。三个规则针对“互联网+仲裁”活动中的身份认证、异步审理机制、在线仲裁庭设置、电子劳动合同证据规则、电子送达、电子卷宗等前沿问题，明确了核心环节的法律效力和审核规则，划定了相关程序的适用边界，并就维护数据信息安全、确保技术中立和平台中立提出要求，对于规范“互联网+仲裁”流程、提升庭审效率、促进新技术与仲裁庭审程序融合发展具有积极意义。

On July 19, 2024, Guangdong Labor and Personnel Dispute Arbitration Committee released three regulations regarding arbitrations on Internet platforms, including Regulations on Online Hearing (Trial), Regulations on Online Asynchronous Hearing (Trial) and Regulations on Electronic Labor Contract Disputes Settlement (Trial) (“**Three Rules**”). Three Rules focus on frontline issues in arbitrations on Internet platforms, such as identity authentication, asynchronous hearing procedure, online arbitration tribunal arrangement, rules of evidence for electronic labor contracts, electronic mode of service, electronic documentation, etc.. Three Rules clarify the legal effect and audit rules of the key steps, define the application scope of the procedures, and clarify the requirements on protection of data and information, assurance the neutrality of technology and platform, which are of positive significance for standardizing the process of arbitrations at Internet platforms, enhancing the efficiency of hearings, and promoting the development of new technologies and arbitration procedures.

2. 浙江省发布《浙江省生育保险办法》

Zhejiang Released the Provisions of Zhejiang on Maternity Insurance

2024年7月1日，浙江省人民政府网站发布《浙江省生育保险办法》（“**《办法》**”）。《办法》明确：（1）参加职工基本医疗保险的在职职工（含灵活就业人员）、领取失业保险金人员同步参加生育保险；（2）生育保险待遇包括生育医疗费用和产假期间的生育津贴，确保待遇水平不低于当地职工基本医疗保险待遇水平；（3）职工申领生育津贴待遇时未在参保地连续缴费满6个月的可根据实际待其缴费满6个月后，进行回溯支付；（4）生育津贴按照职工生育或者终止妊娠时所在用人单位上年度职工月平均工资除以30天，再乘以应当享受的产假天数计发。

On July 1, 2024, the website of the People's Government of Zhejiang Province released the Provisions of Zhejiang on Maternity Insurance (“**Provisions**”). The Provisions clarify that: (1) active employees (including flexibly workers) who participate in the employee basic medical insurance and those who entitle to unemployment insurance treatments shall participate in maternity insurance simultaneously; (2) maternity insurance treatments shall include maternity medical expenses and maternity allowances during the maternity leave period, and the treatment level shall not be lower than the level of the local employee basic medical insurance; (3) if an employee does not have 6 months of continuous contributions in the place where he/she participates in the insurance when he/she applies for the maternity allowance treatments, the maternity insurance treatments can be applied and retroactively

paid after 6 months of continuous contributions; and (4) the maternity allowance shall be calculated based on the average monthly wage of all staffs of employee's employer when giving birth or terminating a pregnancy (which shall be divided by 30 days and multiple by the number of maternity leave days).



二、典型案例：人民法院案例库新增9件劳动争议案例

Exploration of Typical Cases: Nine Labor Dispute Cases Added to the People's Court Case Database

自人民法院案例库（“[案例库](#)”）上线并向社会开放以来，已收录50件劳动争议案件，其中9件于2024年8月新收录入库。新入库的9件劳动争议案例主要涉及劳动关系认定、竞业限制、劳动关系解除的责任承担等多个方面。就其中包含的裁审典型观点，我们梳理如下：

Since the Peoples Court Case Database (“[Case Database](#)”) was officially online and accessible to society, 50 labor dispute cases have been recorded, including 9 new cases added in August 2024. These newly added cases mainly involve the identification of employment relationship, non-compete restriction, and the responsibilities upon the termination of employment relationship. We summarize the key judicial perspectives from these new cases as follows:

1. 4件案例涉及确认劳动关系，认定的核心为人格、经济及组织从属性。

Four cases involve the confirmation of employment relationship, with the core focus on personal, economic, and organizational subordination.

在某高纤公司诉崔某案中，法院根据生产线员工的工作内容、报酬领取方式以及对规章制度的遵守情况，认定该员工与公司之间存在从属性，用人单位不能通过签订承包合同来规避劳动关系的成立。在圣某诉某网络科技有限公司案中，虽然劳动者登记为个体工商户，但因其需接受平台用工合作企业的实质管理，且报酬由平台用工合作企业确定和支付，法院判定双方存在劳动关系。

In the case of *High Fiber Company v. Mr. Cui*, the court determined that there was an subordination between the employee and the employer based on the nature of the work performed by the employee, the method of remuneration, and compliance with employer' rules and regulations, and held that the

employer could not circumvent the establishment of employment relationship by signing an outsourcing agreement. In the case of *Mr. Sheng v. Technology Company*, the court ruled that although Mr. Sheng was registered as an individual entrepreneur, the fact that he was under substantial management by the platform's partner, Technology Company, and that remuneration was determined and paid by the Technology Company indicated an employment relationship.

但在王某诉某文化传媒公司案件中，法院认定该网络主播与经纪公司之间不存在劳动法意义上的从属性；秦某诉某汽车公司案件中，亦认定该代驾司机与平台企业不存在劳动法意义上的支配性用工和劳动管理，不构成劳动关系。

However, in the case of *Mr. Wang v. Cultural Media Company*, the court found that the network streamer was not subject to the subordination typically associated with an employment relationship under labor law. Similarly, in the case of *Mr. Qin v. Automobile Company*, the court ruled that Mr. Qin, a driver providing online appointment chauffeur services, was not subject to the control and management associated with an employment relationship under labor law, and thus, no employment relationship was established.

2. 2件案例涉及竞业限制违约行为的认定。

Two cases involve the determination of breach of non-compete obligation.

某生物公司诉李某案件中，法院指出，竞业限制协议不能限制非负有保密义务劳动者的自主择业权。员工李某的岗位为推拿师，法院认定该员工不属于“高级管理人员”和“高级技术人员”，其掌握的客户资料、报价方案以及培训课程等信息属于用人单位的一般经营信息，亦不属于“其他负有保密义务人员”。

In the case of *Biotechnology Company v. Mr. Li*, the court emphasized that a non-compete agreement cannot restrict the right of employees who do not have confidentiality obligations to independently choose their career. Mr. Li as a massage therapist was found not to fall under the categories of “senior manager” or “senior technical personnel”. The information Mr. Li had access to, such as client lists, pricing schemes, and training courses, was deemed general business information of the employer, not classified as confidential.

张某诉某体育公司案件中，法院认定劳动者在竞业限制期通过配偶投资经营与原用人单位存在竞争关系的企业，属于违反竞业限制的行为。

In the case of *Mr. Zhang v. Sports Company*, the court ruled that Mr. Zhang violated the non-compete obligation by investing through his spouse in a business that competed with his former employer during the non-compete period.

3. 3件案例涉及劳动关系的订立及解除问题。

Three cases involve the establishment and termination of employment relationship.

- 费某诉某人力资源公司案件中，费某为该公司员工的配偶，该公司签订虽与费某签署劳务合同，但费某并未提供实际劳动，法院认定未建立真实劳动关系不能享受社会保险待遇。

In the case of *Mrs. Fei v. Human Resources Company*, Mrs. Fei is the spouse of an employee of the HR Company who signed a service contract with the HR Company but did not perform any actual work. The court ruled that there was no real employment relationship was established and that Mrs. Fei was not entitled to social insurance benefits.

- 郭某等诉某科技公司案件中，法院综合企业资金运转困难及劳动和合法权益及时兑现等事项，通过组织达成用人单位分期履行因解除劳动合同而达成的欠付工资和经济补偿金协议的调解方案。

In the case of *Mr. Guo. v. Technology Company*, the court mediated an agreement allowing employer to pay overdue wages and economic compensation in installments due to financial difficulties, ensuring the protection of employees' legal rights and interests.

- 某科技公司诉李某案件中，研发人员李某未提前三十日通知公司即自行离职，且辞职后拒不交接工作，用人单位通过启用备用方案、招聘人员、委托设计等措施补救，且因延误向第三方承担了违约责任。法院认定劳动者给用人单位造成损失，应当承担损失赔偿责任，综合考量研发时间、离职时间、员工工资等因素酌定赔偿5万元。

In the case of *Technology Company v. Mr. Li*, Mr. Li, as a R & D personnel resigned without giving 30 days' notice, refused to hand over work and caused the employer to incur breach of contract penalties due to delays. The court held that Mr. Li was liable for the employer's damages, and awarded damages of RMB 50,000, considering the development time, resignation date, and the employee's salary.

此外，对案例库中其他劳动争议案件详细分析以及用工实务建议，可参见[《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》](#)和[《海问·研究 | 海问劳动法双月报 \(2024年1-2月\) 》](#)。

For further detailed analysis of other labor dispute cases in the Case Database and practical employment recommendations, 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](#) and [Haiwen Research | Haiwen Labor Law Bi-Monthly Newsletter \(January-February 2024\)](#).



三、典型案例：全国总工会、上海市发布涉劳动争议典型案例

Exploration of Typical Cases: All-China Federation of Trade Unions and Shanghai Released Typical Labor Dispute Cases

2024年8月19日至20日，全国总工会发布了全国工会职工法律援助十大典型案例，涵盖追讨欠薪、工亡赔偿、违法解除劳动合同、新就业形态劳动者权益保障等多个方面。其中，以下裁审观点值得重点关注：

From August 19 to 20, 2024, the All-China Federation of Trade Unions released the Ten Typical Cases of Legal Aid Provided by Trade Unions for Employees, covering issues such as wage arrears, compensation for work-related death, unlawful termination of employment contracts, and the protection of legal rights and interests of workers in new forms of employment. The following judicial opinions are particularly noteworthy:

1. 郑某入职某农产品销售公司从事主播工作，公司以经营困难为由通知员工停止上班。仲裁裁决采纳了工会为该员工安排的法律援助律师的意见，认为公司具有用人单位主体资格，郑某服从公司工作安排且郑某工作内容符合公司业务范围，存在劳动关系。

Mr. Zheng joined an Agricultural Product Sales Company as a livestream host, and the employer notified employees to stop working due to production and operation difficulties. The arbitration award adopted the opinion of the legal aid lawyer arranged by the trade union for Mr. Zheng, determining that the Company had the status of an employer, that Mr. Zheng complied

with the Company's work arrangements, and that his job duties fell within the scope of the Company's business, thus confirming the existence of an employment relationship.

2. 从事外卖工作的解某在送餐途中突发疾病抢救无效死亡。法院采纳了工会为该员工安排的法律援助工作者的意见，认定公司具有用人单位主体资格，解某根据公司要求进行上岗前培训、打卡考勤，并通过公司APP接收订单，配备统一服饰及配送箱开展配送业务，以计件提成方式支付薪酬，符合一般劳动关系特征，判决认定存在劳动关系。

Mr. Xie, who worked as a food deliveryman, suddenly fell ill and died while delivering an order. The court accepted the opinion of the legal aid counsel provided by the trade union and recognized that the Company had the status of an employer, that Mr. Xie had received pre-employment training, clocked in for attendance, received orders via the Company's APP, wore a uniform, and used a company-provided delivery box to carry out his works, receiving remuneration based on a piece-rate system. These factors met the characteristics of a general employment relationship, and the court ruled that an employment relationship existed.

2024年7月2日，上海市嘉定区人民法院发布《上海法院数字经济司法研究及实践（嘉定）基地白皮书》，并发布了十大典型案例。在“涉平台经营者法定义务及相关主体权益保护的案件”部分，以下裁审观点值得重点关注：

On July 2, 2024, the Jiading District People's Court of Shanghai released the White Paper on Judicial Research and Practice in the Digital Economy by Shanghai Courts (Jiading Base) and announced ten typical cases. In the section on “Cases Involving the Statutory Duties of Platform Operators and the Protection of Related Subjects' Rights and Interests”, the following judicial opinions are noteworthy:

3. 运输公司和平台科技公司签订《共享经济客户服务协议》，刘某与平台科技公司签订了《共享经济合作协议》，明确刘某是平台科技公司为运输公司匹配的个体工商户，不构成劳动或劳务关系。法院认为，因刘某由运输公司进行管理，具有较弱的人身依附性；刘某的报酬实质由运输公司支付，具有一定经济从属性，判决运输公司与刘某构成劳务关系。因平台科技公司和刘某不构成劳务关系，对刘某事故也不存在过错，判决运输公司需对提供劳务时受伤所致的合理损失中承担5万元的赔偿责任。

A Transport Company and a Platform Company signed a “Shared Economy Service Agreement”, Mr. Liu and the Platform Company signed a “Shared Economy Partner Agreement”, clearly stating that Mr. Liu was an individual entrepreneur matched by the Platform Company to the Transport Company, and that no employment or service relationship was established. Given that Mr. Liu was managed by the Transport Company, he had weak personal dependency; his remuneration was essentially paid by the Transport Company, demonstrating a certain level of economic subordination, the court ruled that a service relationship existed between the Transport Company and Mr. Liu. Since there was no service relationship between the Platform Company and Mr. Liu, and the Platform Company was not at fault in Mr. Liu’s accident, the court ordered the Transport Company to bear RMB 50,000 as compensation for the reasonable losses incurred in provision of services.

4. 王某在传媒公司提供的直播场地，利用公司提供的设备从事娱乐主播，并因此获取打赏收益。法院认定，王某的工作内容属于传媒公司的业务组成部分，收益分配方式上符合劳动关系中按月支付劳动报酬的特征，且王某服从传媒公司的日常管理等，判决确认王某与传媒公司之间存在劳动关系。

Mr. Wang worked as an entertainment host at a livestreaming venue provided by a Media Company, using equipment supplied by the Company, and earned tips as a result. The court found that Mr. Wang’s job duties were part of the Media Company’s business production and operation, that the revenue-sharing model aligned with the characteristic of monthly wage payments in an employment relationship, and that Mr. Wang was subject to the daily management of the Media Company. The court ruled that an employment relationship existed between Mr. Wang and the Media Company.



四、典型案例：北京市发布涉多元用工劳动争议典型案例

Exploration of Typical Cases: Beijing Released Typical Labor Disputes Concerning Diversified Employment Models

2024年7月9日，北京市朝阳区人民法院发布了7起涉多元用工劳动争议典型案例，涉及企业间混同用工的责任承担、众包用工中举证责任分配、平台用工纠纷调处举措等。其中，

以下裁审观点值得重点关注：

On July 9, 2024, Beijing Chaoyang District People's Court released seven typical cases of labor disputes concerning diversified employment models, involving the responsibility for mixed employment between enterprises, the burden of proof in crowdsourcing employment, and mediation of disputes on employment through platforms. Among them, the following judicial opinions are noteworthy:

1. 在认定用人单位是否存在混同用工情形时，应从事实劳动过程出发，从劳动者与不同单位间体现的依附性与从属性等角度进行综合判断，对于确实存在混同用工情形的，应在尊重当事人意思的前提下，判令多个用工主体承担连带责任。

To determine whether there is mixed employment among the employers, it shall be comprehensively judged based on the actual labor process, and from the subordination shown between the worker and different employer. And if it turns out that there is mixed employment, the multiple employers shall be determined to bear joint and several liabilities as claimed by the employee.

2. 用工单位以经营困难为由退回派遣员工不符合劳动法下可以退回的法定情形，构成违法退回；派遣单位在此情形下不加核实直接解除与派遣员工的劳动关系，属于违法解除，派遣单位应与用工单位共同承担赔偿责任。

Return of a dispatched employee due to difficulty of business operation does not comply with the statutory grounds, and shall constitute a wrongful return. In that case, if the labor dispatch service provider directly terminates the labor relationship with the employee without any verification, it shall be deemed as a wrongful termination, and the labor dispatch service provider and the end user shall be jointly liable for the compensation.

3. 用人单位从平台承包配送业务后实际负责配送运营管理工作的，不得仅以存在“外包合同”后再次转包为由，否认与劳动者之间存在劳动关系。

For the employer in charge of the operation and management of the distribution business after contracting such business from the platform, the employer shall not deny the labor relationship with the workers merely based on the argument that such business is subcontracted again.

4. 用人单位通过设立关联企业，与劳动者签订劳动合同时交替变换合同主体的行为，存在规避劳动合同法第十四条的情形，工作年限和订立固定期限劳动合同的次数仍应连续计

算，用人单位应与员工订立无固定期限劳动合同。

If an employer establishes an affiliated enterprise and changes the subject of the labor contract with employees to the affiliated enterprise, it shall be deemed as a circumvention of statutory obligations. In this case, the employee's service year and the number of times of entering into fixed-term labor contracts shall be calculated consecutively, and the employer shall enter into an open-ended labor contract with the employee.

5. 派遣单位与用工单位未为符合条件的员工缴纳住房公积金的特定事项的责任承担问题达成明确约定而产生纠纷时，应结合《民法典》的规定以及双方过错程度，确定派遣单位和用工单位应当承担的责任。

If any dispute arises due to lack of clear agreement between the labor dispatch service provider and the end user on specific matters such as bearing of housing fund contributions for eligible employees, the liability of the labor dispatch service provider and the end user shall be determined based on the degree of fault of the two parties according to the Civil Code.



五、典型案例：四川高院等三部门发布劳动争议案件典型案例

Exploration of Typical Cases: Sichuan High Court and Three Departments Released Typical Labor Dispute Cases

2024年7月12日，四川高院、省司法厅、省人力资源社会保障厅共同召开“行政审判树优提质”活动首场院厅联席会，联合发布“人力资源社会保障行政执法、行政复议、行政审判典型案例”。其中，以下裁判观点值得重点关注：

On July 12, 2024, the Sichuan High Court and three departments held the first joint meeting of the “Administrative Trial Quality Improvement” campaign and jointly released “Typical Cases of Administrative Law Enforcement, Administrative Reconsideration, and Administrative Trials in Human Resources and Social Security”. The following judicial opinions are particularly noteworthy:

1. 工伤职工对劳动能力初次鉴定结论不服的法定救济渠道是向省级劳动能力鉴定委员会申请再次鉴定，而非行政诉讼。劳动者在工作中受到事故伤害，认定为工伤，伤残等级鉴定

为八级，劳动者不服该鉴定结论并向法院提起行政诉讼，请求撤销该鉴定结论。法院认定劳动能力鉴定委员会不是行政机关，其所作出的劳动能力鉴定是技术性等级鉴定不是行政行为，不属于行政诉讼的受案范围。如对初次鉴定结论不服的，申请鉴定的单位或者个人可以向省、自治区、直辖市劳动能力鉴定委员会提出再次鉴定申请。

The statutory remedy for work-related injured employee who disagrees with the initial assessment of their labor ability is to apply for a re-assessment by the Provincial Labor Ability Assessment Committee, rather than pursuing an administrative lawsuit. In this case, the employee was injured in a workplace accident, recognized as a work-related injury, and assessed with a disability rating of Grade 8. The employee disagreed with this assessment and filed an administrative lawsuit. The court ruled that the Labor Ability Assessment Committee is not an administrative authority, and the assessment is a technical grade evaluation rather than a specific administrative decision, thus falling outside the scope of administrative litigation. If the initial assessment is disputed, the employer and employee can apply to the Provincial Labor Ability Assessment Committee for a re-assessment.

2. 已领取城镇职工基本养老保险待遇的人员，在招用单位已按建设工程项目参保等方式为其缴纳工伤保险费的情况下，也应适用《工伤保险条例》，可以享受工伤保险待遇。

Workers receiving basic pension benefits under the basic pension insurance for urban workers remain entitled to work-related injury insurance benefits under the Regulation on Work-Related Injury Insurance, provided that the employer has contributed work-related injury insurance (e.g. through construction project insurance) for them.

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