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海问劳动法双月报

作者：刘宇翔 吴琼

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一、新规速递：人社部发布《关于<新就业形态劳动者权益保障办法（征求意见稿）>公开征求意见的通知》

Snapshot of New Regulations: MOHRSS Issued the Notice on Soliciting Public Comments on the Measures for Safeguarding the Rights and Interests of Workers in New Forms of Employment (Draft for Comments)

2026年10月8日，人社部发布《关于<新就业形态劳动者权益保障办法（征求意见稿）>公开征求意见的通知》（“征求意见稿”），以保障新就业形态劳动者合法权益，明确平台企业、平台用工合作企业、新就业形态劳动者的权利和义务，推动新就业形态健康发展。

On October 8, 2026, the Ministry of Human Resources and Social Security (“MOHRSS”) issued the Notice on Soliciting Public Comments on the Measures for Safeguarding the Rights and Interests of Workers in New Forms of Employment (Draft for Comments) (“Draft Measures”), with a view to protecting the lawful rights and interests of workers in new forms of employment, clarifying the rights and obligations of platform enterprises, platform employment partners and such workers, and promoting the sound development of new forms of employment.

《征求意见稿》主要涉及以下方面：

The Draft Measures mainly address the following aspects:

（1）基本权益：新就业形态劳动者的基本权益包括劳动报酬不低于当地最低工资标准、连续工作4小时应保障适当的休息时间、法定节假日工作应当支付高于正常工作时间劳动报酬的合理报酬、平台企业按照规定参加新就业形态人员职业伤害保障等。

Basic rights and interests: Workers in new forms of employment are entitled to remuneration no lower than the local minimum wage, appropriate rest after four consecutive hours of work, and reasonable remuneration for work on statutory holidays higher than that for normal working hours. Platform enterprises shall participate in occupational injury protection for workers in new forms of employment in accordance with applicable requirements.

（2）劳动规则：对照劳动关系中的规章制度，新就业形态劳动规则是指公司进行工作调度和组织劳动管理时所依据的规章制度、算法、预先拟定的合同条款，包括劳动者进入退出规则、工作任务分配规则、报酬规则、工作时间规则、考核评价规则、申诉规则等，并应履行民主和公示程序。同时要求公司禁止算法歧视和自动作出重大决定：不得在获得任务机会、报酬方面实施算法歧视；在作出停止派单、封禁账号、数额较大的赔偿等涉及劳动者重大利益的决定时不得由算法自动决定，应当进行人工审核；对于事关公共安全、公共利益的重大紧急情况确需由算法自动决定的，应当及时人工复核。

Work rules: Comparable to workplace rules in an employment relationship, work rules for new forms of employment refer to the rules and regulations, algorithms and pre-formulated contractual terms on which companies rely to schedule work and organize and manage workers. These include rules on workers' entry and exit, task allocation, remuneration, working hours, performance assessment and complaints, and shall be subject to democratic consultation and disclosure procedures. The Draft Measures also prohibit algorithmic discrimination and automated significant decisions: companies may not discriminate through algorithms in access to work opportunities or remuneration. Decisions materially affecting workers' interests, such as suspending task assignments, blocking accounts or requiring substantial compensation, may not be made automatically by algorithms and shall be subject to human review. Where automated decisions are necessary in major emergencies involving public safety or public interests, a timely human review shall be conducted.

（3）用工形式：新就业形态劳动者受平台企业支配性劳动管理，或平台用工合作企业招募、组织和管理新就业形态劳动者完成平台工作任务或者参与平台业务，符合劳动关系情形的，应当签订劳动合同；不符合劳动关系情形的，应当签订书面用工协议。

Forms of engagement: Where workers in new forms of employment are subject to the platform enterprise's controlling management, or a platform employment partner recruits, organizes and manages such workers to perform platform tasks or participate in platform operations, a labor contract shall be concluded if the circumstances constitute an employment relationship; otherwise, a written engagement agreement shall be concluded.

《征求意见稿》体现相关部门对新就业形态劳动者权益保障的重视，明确了平台企

业和平台用工合作企业的义务和法律责任。我们将跟进《征求意见稿》的后续进展。

The Draft Measures reflect the authorities' attention to the protection of workers in new forms of employment and clarify the obligations and legal liabilities of platform enterprises and platform employment partners. We will continue to monitor further developments.

二、新规速递：广州市人社局发布《劳动用工规范化管理指南》

Snapshot of New Regulations: Guangzhou Human Resources and Social Security Bureau Issued the Guidelines for Standardized Employment Management

2026年9月11日，广州市人社局发布《劳动用工规范化管理指南》（“指南”），以帮助企业把握劳动法律法规政策，完善内部规章制度，有效前置化解用工法律风险，降低企业涉诉成本与争议发生率。

On September 11, 2026, the Guangzhou Municipal Human Resources and Social Security Bureau issued the Guidelines for Standardized Employment Management (“Guidelines”) to help enterprises understand labor laws, regulations and policies, improve internal rules and regulations, address employment-related legal risks at an early stage, and reduce litigation costs and the incidence of disputes.

《指南》正文分十一个板块，分别为招聘与录用、劳动合同、工资福利、工时与休息休假、社会保险、住房公积金、规章制度、专项培训与竞业限制、离职管理、多元化用工、劳动关系管理，覆盖劳动者从入职到离职的全周期，并涉及劳务派遣、非全日制用工、实习见习、超龄劳动者用工等用工形态。每一板块下分“要点提示”“操作规范”和“常见风险和法律责任”，分别阐述合规要求、做法建议和违规后果。后附日常用工参考文书范本，包括《劳动合同》《竞业限制协议》《超龄劳动者书面用工协议》等。

The Guidelines comprise eleven sections: recruitment and hiring; labor contracts; wages and benefits; working hours, rest and leave; social insurance; housing provident fund; rules and regulations; specialized training and non-compete restrictions; departure management; diverse forms of engagement; and labor relations management. They cover the full employment lifecycle from onboarding

to departure and arrangements such as labor dispatch, part-time employment, internships and traineeships, and engagement of workers beyond the statutory retirement age. Each section contains “Key Points”, “Operational Standards” and “Common Risks and Legal Liabilities”, addressing compliance requirements, recommended practices and consequences of non-compliance, respectively. The Guidelines also append sample documents for everyday employment management, including a labor contract, a non-compete agreement and a written engagement agreement for workers beyond the statutory retirement age.

《指南》不具有强制约束力，但可作为提示性和示范性文本以供参考。企业可参考《指南》中的提示，结合自身情况和制度进行细化和合规排查，提高用工管理的专业化、规范化、标准化水平。

The Guidelines are not legally binding but provide an illustrative reference. Enterprises may use the guidance in light of their own circumstances and internal policies to develop detailed measures and conduct compliance reviews, thereby improving the professionalism, consistency and standardization of employment management.

《指南》全文可在广州市人社局官网查看

（https://rsj.gz.gov.cn/ywzt/ldgx/tzgg/content/post_11001479.html）。

The full text of the Guidelines is available on the Guangzhou Municipal Human Resources and Social Security Bureau’s official website

(https://rsj.gz.gov.cn/ywzt/ldgx/tzgg/content/post_11001479.html).

三、典型案例：上海市松江区人民法院涉商业秘密保护与竞争限制纠纷典型案例

Exploration of Typical Cases: The Shanghai Songjiang District People’s Court Released Typical Cases Concerning Trade Secret Protection and Non-Compete Disputes

2026年9月21日，上海市松江区人民法院涉商业秘密保护与竞争限制纠纷典型案例，明确：

On September 21, 2026, the Shanghai Songjiang District People’s Court released

typical cases concerning trade secret protection and non-compete disputes, clarifying that:

（1）员工离职期间擅自将公司商业秘密信息转发至个人邮箱构成商业秘密侵害：在案例一中，员工在办理离职手续的过程中，擅自将含有经营信息秘密的文件通过电子邮件发送至其私人邮箱。公司起诉要求停止侵害、继续履行义务并赔偿损失，法院认为该行为使得相关商业秘密脱离公司的原始控制，属于“以盗窃手段获取权利人商业秘密”，判令删除文档、继续履行保密义务，酌定赔偿60,000元。

An employee’s unauthorized forwarding of a company’s trade secrets to a personal email account during the departure process constitutes infringement of trade secrets: In Case 1, while completing departure formalities, an employee emailed documents containing confidential business information to a personal account without authorization. The company brought an action seeking cessation of the infringement, continued performance of confidentiality obligations and compensation. The court held that the conduct removed the trade secrets from the company’s original control and constituted “acquiring the rights holder’s trade secrets by theft”. It ordered the employee to delete the documents, continue to perform the confidentiality obligations and pay damages of RMB 60,000 as determined at the court’s discretion.

（2）未知悉、接触用人单位商业秘密的劳动者，不属于竞业限制主体范围，即使签订了竞业限制协议也不受其约束：在案例二中，员工担任路试驾驶员，负责在道路上驾驶、测试公司的车辆，记录行驶的时间、里程、车辆状况等信息，其离职后入职另一家公司从事相同工作。公司以该员工违反竞业限制约定为由，要求支付违约金，法院认为员工所掌握的只是工作方法，并非给公司带来独特优势竞争地位的技术信息和经营信息，不属于竞业限制适用主体范围，无需履行竞业限制义务。

An employee who has not known or accessed the employer’s trade secrets is not among the persons subject to non-compete restrictions, even if a non-compete agreement has been signed: In Case 2, a road test driver, responsible for driving and testing the company’s vehicles on public roads and recording information such as driving time, mileage and vehicle conditionjoined another company in the same role after leaving. The former employer sought liquidated damages for breach of the non-compete agreement. The court held that the employee possessed only working methods, rather than technical or business information conferring a unique competitive advantage on the company. The employee therefore fell outside the scope of persons subject to non-compete restrictions

and was not required to perform the non-compete obligation.

（3）“接触+交易”不足以证明“使用”了权利人的深度经营信息，权利人应当就侵权人使用其商业秘密的具体内容、方式及因果关系等承担相应的举证责任：在案例三中，员工离职后入职竞争公司，原公司以员工知晓其客户信息+竞争公司与对应客户发生交易并采取低价策略为由，主张员工侵害其商业秘密。法院认为，“接触过信息＋发生交易”不足以证明员工披露、使用或允许他人使用原公司的秘密信息：竞争公司提交了会员服务协议、付款凭证及项目汇总表，说明其获取客户联系方式存在正当来源；第三人公司也陈述通常在展会上发放名片，无法排除竞争公司通过公开渠道获取客户联系方式的可能。

“Access plus transactions” is insufficient to establish “use” of the rights holder’s detailed business information; the rights holder bears the burden of proving, among other things, the specific content and manner of the alleged use and the causal link: In Case 3, an employee joined a competitor after leaving the former employer. The former employer claimed that the employee infringed its trade secrets on the grounds that the employee knew its customer information and the competitor had transacted with those customers using a low-price strategy. The court held that: access to information combined with subsequent transactions was insufficient to establish that the employee disclosed, used or permitted others to use the former employer’s confidential information; the competitor produced membership service agreements, payment records and project summaries to demonstrate legitimate sources of customer contact information; a third-party company also stated that it commonly distributed business cards at trade shows; thus, the possibility that the competitor obtained the contacts through public channels could not be ruled out.

（4）劳动者通过配偶及其他近亲属等代持股权、挂名任职、间接经营同类业务且未如实申报的，应认定违反竞业限制约定。在案例四中，员工签订《合规声明》，约定员工利用职务之便直接或间接（如通过亲友、协议控制等）以任何形式支持竞争公司的业务应事先向公司披露，违反约定的以存在竞争的业务交易额的30%作为赔偿。员工在职期间，其亲属任职于竞争公司。法院认为员工违反竞业限制义务，综合约定金额、相关产品营收和成本、持续时间、员工收入及主观故意程度、对公司的实际影响等因素，酌定赔偿71,400元。

An employee who holds equity through a nominee, holds nominal appointments or indirectly operates a competing business through a spouse or other close relatives, without truthful disclosure, should be found to have breached the non-

compete agreement. In Case 4, an employee signed a Compliance Statement requiring prior disclosure of any direct or indirect support for a competitor's business by using the employee's position, including through relatives, friends or contractual control. A breach would give rise to compensation equal to 30% of the value of the competing transactions. During the employee's employment, a relative held a position at a competitor. The court found a breach of the non-compete obligation and, taking into account the agreed amount, revenue and costs of the relevant products, duration, the employee's income and degree of intent, and the actual impact on the company, determined damages of RMB 71,400 at its discretion.

（5）协助同业竞争主体与公司客户交易牟利属于侵害商业秘密的行为，明知该协助人侵害商业秘密仍然联络配合构成共同侵权。在案例五中，员工在职期间，将公司的客户信息披露给经营竞争公司的亲友，促成交易并收受回扣。法院认为，员工构成窃取、披露商业秘密，其亲友明知员工掌握商业秘密并负有保密义务，仍与其配合，主观上具有共同侵权故意，客观上相互配合，构成共同侵权，应当对公司的经济损失和合理开支承担连带赔偿责任。

Assisting a competitor in transacting with the company's customers for profit constitutes trade secret infringement; knowingly cooperating with such person who infringes trade secrets constitutes joint infringement. In Case 5, during employment, an employee disclosed the company's customer information to relatives who operated a competing company, facilitated transactions and received kickbacks. The court held that the employee had stolen and disclosed trade secrets. The relatives knowingly cooperated with the employee despite knowing that the employee possessed trade secrets and owed confidentiality obligations. Their shared intent and coordinated conduct constituted joint infringement, and they were jointly and severally liable for the company's economic losses and reasonable expenses.

四、典型案例：重庆市高级人民法院发布2025年度劳动争议审判十大典型案例

Exploration of Typical Cases: The Chongqing High People's Court Releases the Top Ten Typical Labor Dispute Cases of 2025

2026年9月24日，重庆市高级人民法院发布2025年度劳动争议审判十大典型案例，涉及劳动合同续签、奖金支付、劳动者失职造成损失的赔偿责任等。我们将值得注意的观点整理如下：

On September 24, 2026, the Chongqing High People's Court released its top ten typical labor dispute cases of 2025, addressing issues including labor contract renewal, bonus payment and liability for losses caused by employee misconduct. We summarize the noteworthy points asbelow:

（1）符合订立无固定期限劳动合同条件，用人单位以调岗争议为由到期终止劳动合同构成违法终止。在案例四中，员工第二次固定期限劳动合同到期，公司多次表示续签无固定期限劳动合同，但拟订文本将专业岗改为销售岗。员工多次回复同意续签，但要求按原条件续签，公司以员工不同意续签为由终止劳动合同。法院认为，在双方对续约权利义务内容协商不一致时，应维持原合同约定或实际履行条件；本案中销售岗与原专业岗在工作性质、工作内容、考核规则及绩效收入稳定性方面明显不同，公司未充分证明撤销原岗确有客观必要性，故构成违法终止劳动合同，应支付赔偿金。

Where the conditions for concluding an open-ended labor contract are met, an employer's termination of the contract upon expiry on the grounds of a dispute over reassignment is unlawful. In Case 4, upon expiry of an employee's second fixed-term labor contract, the company repeatedly proposed renewal on an open-ended basis, but changed the employee's professional position to a sales position in the proposed contract. The employee repeatedly agreed to renewal but requested the original terms. The company terminated the contract on the grounds that the employee had not agreed to renew. The court held that, where the parties cannot agree on their respective rights and obligations upon renewal, the original contractual terms or actual working conditions should be maintained. The sales position differed materially from the original professional position in job nature, duties, assessment rules and stability of performance-based income. The company failed to adequately prove an objective need to abolish the original position. The termination was therefore unlawful, and the company was required to pay compensation.

（2）用人单位作出的年度奖金承诺，不因劳动者离职而免除支付义务。在案例六中，员工获评2023年度荣誉并获得奖金，后于2024年7月离职，公司以规章制度规定

奖金发放仅限在岗员工为由拒不发放奖金。法院认为，该奖金对应的劳动已全部完成，该奖金属于劳动报酬的组成部分，公司以规章制度条款对抗已公开作出的承诺系违背诚信原则，因此判决公司全额支付奖金。

An employer's obligation to pay a promised annual bonus is not extinguished by the employee's departure. In Case 6, an employee received a 2023 annual honor and an associated bonus, and left in July 2024. The company refused to pay the bonus, citing an internal rule limiting bonus payments to employees still on staff. The court held that the work corresponding to the bonus had been fully performed and the bonus formed part of the employee's remuneration. Invoking an internal rule to override a publicly made promise breached the principle of good faith. The court therefore ordered the company to pay the bonus in full.

（3）劳动者的重大过失间接结合致用人单位财产损失，应按各方过错程度承担相应赔偿责任。在案例八中，员工杨某与接班人员何某办理货品交接，核对无误后何某离岗；杨某未对案涉黄金饰品快递妥善存放，擅自将其放置于柜台后方垃圾桶盖上；员工黄某开展店内清洁作业，未执行"丢弃垃圾前检查盒内物品"的岗位操作要求，直接将该装有黄金饰品的纸盒打包归入垃圾袋；杨某将该垃圾袋交由商场保洁人员处理，造成案涉黄金饰品随垃圾被丢弃。公司诉请三员工赔偿案涉货品对应的经济损失，法院认为，杨某违规放置系损害发生的首要原因，何某清点货品后未跟进后续处置属于未尽审慎注意义务，黄某未落实检查流程，三人的过失行为间接结合，共同造成损害后果，应当按照各自过错程度承担赔偿责任。

Where employees' grossly negligent acts indirectly combine to cause property loss to an employer, each shall bear liability according to the degree of fault. In Case 8, employee Yang handed over goods to He, the incoming employee, who left after checking the goods. Yang failed to properly store a parcel containing gold jewelry and placed it on the lid of a rubbish bin behind the counter. While cleaning the store, employee Huang failed to follow the requirement to check the contents of boxes before discarding rubbish and placed the box containing the jewelry in a rubbish bag. Yang handed the bag to the shopping mall's cleaning staff, and the jewelry was discarded with the rubbish. The company sought compensation from all three employees. The court held that Yang's improper placement was the primary cause of the loss; He failed to exercise due care by not following up on the subsequent handling after checking the goods; and Huang failed to carry out the required inspection. Their combined negligent acts caused the loss, and each should bear compensation liability according to their

respective degree of fault.

五、典型案例：重庆市第三中级人民法院发布超龄劳动者权益保护典型案例

Exploration of Typical Cases: The Chongqing Third Intermediate People's Court Releases Typical Cases on the Protection of Overage Workers

2026年10月31日，重庆市第三中级人民法院发布超龄劳动者权益保护典型案例，涉及超龄劳动者工伤保险待遇等。我们将值得注意的观点整理如下：

On October 31, 2026, the Chongqing Third Intermediate People's Court released typical cases concerning the protection of overage workers, covering work-related injury insurance benefits and other issues. We summarize the noteworthy points as below:

（1）超龄务工人员被认定工伤后，停工留薪期工资、住院护理费、工伤保险基金不予报销的合理医疗费，由用人单位承担：在案例二中，法定退休年龄的农村务工人员发生工伤，员工在申领工伤保险待遇后，就未能由社保基金报销的部分医疗费等工伤待遇申请仲裁，仲裁机构以其已超法定劳动年龄不予受理。员工起诉主张未报销医疗费、停工留薪期工资、护理费、交通费等，公司以超龄人员全部工伤待遇应当由工伤保险基金承担为由抗辩，法院认为，超龄务工人员被认定工伤后，工伤保险基金承担法定报销项目，停工留薪期工资、住院护理费、基金不予报销的合理医疗费，仍由用人单位承担。

Where an overage worker is recognized as having sustained a work-related injury, the employer bears wages during the paid work suspension period, inpatient nursing expenses and reasonable medical expenses not reimbursed by the work-related injury insurance fund: In Case 2, a rural migrant worker who had reached the statutory retirement age sustained a work-related injury. After applying for work-related injury insurance benefits, the worker sought arbitration for benefits including medical expenses not reimbursed by the social insurance fund. The arbitration body declined to accept the case because the worker was beyond the statutory working age. The worker then brought a claim for unreimbursed medical expenses, wages during the paid work suspension period,

nursing and transportation expenses. The company argued that all work-related injury benefits for an over-age worker should be borne by the insurance fund. The court held that the fund bore the items eligible for statutory reimbursement, while the employer remained responsible for wages during the paid work suspension period, inpatient nursing expenses and reasonable medical expenses not reimbursed by the fund.

（2）超龄劳动者在用工期间受伤被认定工伤，用人单位未参保，应当承担全部工伤保险待遇：在案例四中，超龄劳动者发生工伤，公司主张双方不存在劳动关系等事由，拒不足额赔偿医疗费、伤残津贴、生活护理费、丧葬补助金133万余元。法院认为，超龄劳动者在用工期间受伤被认定工伤，用人单位未参保，应当承担全部工伤保险待遇；劳动者死亡前已经确定的工伤保险待遇，继承人有权依法主张。最终判决公司支付各项费用共计129万余元。

Where an overage worker sustains an injury recognized as work-related during an engagement and the employer has not obtained insurance coverage, the employer shall bear all work-related injury insurance benefits: In Case 4, an overage worker sustained a work-related injury. The company disputed the existence of an employment relationship and refused to pay compensation in full for medical expenses, disability allowance, living care expenses and funeral grant totaling more than RMB 1.33 million. The court held that, where an overage worker’s injury during an engagement is recognized as work-related and the employer has not obtained insurance coverage, the employer shall bear all work-related injury insurance benefits. The worker’s heirs may claim, in accordance with the law, benefits that had been determined before the worker’s death. The court ultimately ordered the company to pay over RMB 1.29 million in total.

本文作者



刘宇翔 (LIU Yuxiang)

合伙人 Partner

liuyuxiang@haiwen-law.com

扫描二维码查阅律师简历
Scan QR Code for Attorney Profile



吴 琼 (WU Qiong)

合伙人 Partner

wuqiong@haiwen-law.com

扫描二维码查阅律师简历
Scan QR Code for Attorney Profile

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