

海问劳动法双月报（2025年5-6月）

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一、典型案例：新规速递：人社部、卫健委出台《劳动能力鉴定管理办法》，七部门联合发布《共同保障劳动者合法权益工作指引》

Snapshot of New Regulations: MOHRSS and the Health Commission Issued the Administrative Measures of Work Capacity Assessment; Seven Departments Jointly Released the Guidelines for Jointly Safeguarding the Legitimate Rights and Interests of Employees

1. 人社部、卫健委出台《劳动能力鉴定管理办法》

MOHRSS and the Health Commission Issued Administrative Measures of Work Capacity Assessment

2025年5月13日，人力资源社会保障部（“人社部”）、国家卫生健康委出台《劳动能力鉴定管理办法》（“《办法》”），对工伤职工、因病或非因工致残人员劳动能力鉴定进行统筹规范。《办法》于2025年7月1日生效。《办法》施行后，《工伤职工劳动能力鉴定管理办法》失效。

On May 13, 2025, the Ministry of Human Resources and Social Security (the “MOHRSS”) and the National Health Commission Issued Administrative Measures of Work Capacity Assessment (the “Measures”). The Measures comprehensively regulates the labor capacity assessment of work-related injured employees, and those disabled due to illness or non-work-related injuries. The Measures comes into force on July 1, 2025. Upon the implementation of the Measures, the Administrative Measures for Work Capacity Assessment of Work-Related Injured Employees shall be repealed.

2. 七部门联合发布《共同保障劳动者合法权益工作指引》

Seven Departments Jointly Released the Guidelines for Jointly Safeguarding the Legitimate Rights and Interests of Employees

2025年5月20日，全国总工会、最高人民法院、最高人民检察院、司法部、人力资源社会保障部、中华全国工商业联合会、中国企业联合会/中国企业家协会七个部门联合印发《共同保障劳动者合法权益工作指引》（“《工作指引》”）。

On May 20, 2025, seven departments, namely the All-China Federation of Trade Unions, the Supreme People’s Court, the Supreme People's Procuratorate, the Ministry of Justice, the MOHRSS, the All-China Federation of Industry and Commerce, and the China Enterprise Confederation/China Enterprise Directors Association, jointly released the Guidelines for Jointly Safeguarding the Legitimate Rights and Interests of Employees (the “Guidelines”).

《工作指引》明确了各部门在保障劳动者方面的协作机制和具体职责，强调将联合建立完善信息共享、联合调研、典型案例发布等制度；联合推动与劳动者权益密切相关的法律法规及政策文件的制定修改；并根据职能分工及时提供劳动法律政策咨询、法律援助等法律服务。

The Guidelines clarifies the cooperation mechanism and specific responsibilities of various departments in safeguarding employees' rights and interests, emphasizing that they will jointly establish and improve systems such as information sharing, joint research, and release of typical cases; jointly promote the formulation and revision of laws, regulations and policy documents closely related to employees' rights and interests; and, in accordance with their functional divisions, promptly provide legal services such as labor legal policy consultation and legal aid.



二、新规速递：北京市出台《用人单位岗位补贴和社会保险补贴经办规程（试行）》，湖北省人社厅、省总工会及妇联发布推行“妈妈岗”就业模式促进妇女就业的通知

Snapshot of New Regulations: Beijing Issued the Operating Procedures for Employer Post Subsidies and Social Insurance Subsidies (Trial); Hubei Province's Human Resources and Social Security Department, Provincial Federation of Trade Unions and Women's Federation Jointly Released the Notice on Promoting Women's Employment by Implementing the "Mom-friendly Job" Employment Model

1. 北京市出台《用人单位岗位补贴和社会保险补贴经办规程（试行）》

Beijing Issued the Operating Procedures for Employer Post Subsidies and Social Insurance Subsidies (Trial)

2025年6月13日，为规范用人单位岗位补贴和社会保险补贴的申请、审核、支付和监督等事项，北京市人力资源和社会保障局发布《用人单位岗位补贴和社会保险补贴经办规程（试行）》（“《补贴规程》”）。

On June 13, 2025, to standardize the application, review, payment and supervision of employer post subsidies and social insurance subsidies, the Beijing Municipal Human Resources and Social Security Bureau issued the Operating Procedures for Employer Post Subsidies and Social Insurance Subsidies (Trial) (the “Subsidy Procedures”).

《补贴规程》规定，如果用人单位招用19类人员，包括年满40周岁的女性就业困难人员和年满50周岁的男性就业困难人员、登记失业一年以上人员、低保人员、特定地区的农村劳动力等，可申请相应补贴。用人单位享受补贴的前提是，需与补贴对象依法签订一年及以上期限劳动合同（劳务派遣单位与派遣员工需签订两年及以上期限劳动合同），按规定缴纳职工社会保险，并按月足额发放不低于当年北京市职工最低工资标准1.2倍的工资。补贴资金将由区社保财务部门发放至用人单位。

The Subsidy Procedures stipulates that employers can apply for corresponding subsidies when hiring personnel falling within 19 specified categories, including: female unemployed persons aged 40 or above, male unemployed persons aged 50 or above, persons registered as unemployed for more than one year, persons receiving subsistence allowances, rural employees from specific areas, etc. The prerequisite for employers to enjoy the subsidies is that they shall sign a labor contract with the subsidy recipients for a term of one year or more in accordance with the law (labor dispatching enterprises and dispatched employees shall sign a labor contract for a term of two years or more), pay employee social insurance in accordance with regulations, and pay monthly wages not lower than 1.2 times the Beijing municipal minimum wage standard for the current year in full and on time. The subsidy funds will be issued to the employer by the district social security financial department.

2. 湖北省人社厅、省总工会及妇联发布推行“妈妈岗”就业模式促进妇女就业的通知

The Human Resources and Social Security Department, the Provincial Federation of Trade Unions and the Women's Federation of Hubei Province Released the Notice on Promoting Women's Employment by Implementing the “Mom-friendly Job” Employment Model

2025年5月28日，湖北省人社厅、省总工会及省妇联联合发布《关于推行“妈妈岗”就业模式促进妇女就业的通知》（“《通知》”），对于热点话题“妈妈岗”提出了指导意见。

On May 28, 2025, the Human Resources and Social Security Department, the Provincial Federation of Trade Unions and the Provincial Women's Federation of Hubei Province jointly released the Notice on Promoting Women's Employment by Implementing the “Mom-friendly Job” Employment Model (the “Notice”), which put forward guiding opinions on the hot topic of “Mom-friendly Job”.

《通知》提出开发设置“妈妈岗”。“妈妈岗”是指能够吸纳法定劳动年龄内对12周岁以下儿童负有抚养义务的妇女就业，工作时间、管理模式相对灵活，方便兼顾工作和育儿的就业岗位。《通知》倡导探索对“妈妈岗”设置灵活的弹性工作制，并合理设置非全日制岗位。《通知》提出可以对于安置育儿妇女数量多的企业配备人社服务专员，主动提供招用工服务，并提供和落实各类惠企补贴政策。

The Notice proposes to develop and set up “Mom-friendly Jobs”, which refer to the employment positions that can absorb women within the statutory working age who have the obligation to raise children under 12 years old, with relatively flexible working hours and management models, facilitating the balance between work and child care. The Notice advocates exploring the establishment of a flexible working system for “Mom-friendly Jobs” and reasonably setting up part-time positions. The Notice proposes that enterprises that employ a large number of women with children can be assigned human resources service specialists to actively provide recruitment services, and provide and implement various enterprise-benefiting subsidy policies.



三、典型案例：人民法院案例库新增工伤纠纷典型案例

[Exploration of Typical Cases: New Cases Related to Work-Related Injury Disputes Added to the People's Court Case Database](#)

2025年6月19日、6月24日，人民法院案例库陆续新增4起工伤纠纷典型案例，其中2个案例与工伤认定相关，2个案例与给付工伤保险金相关，体现了如下裁审观点：

On June 19 and June 24, 2025, 4 new typical cases of work-related injury disputes were added to the People's Court Case Database, among which 2 cases are related to the determination of work-related injuries and 2 cases are related to the payment of work-related injury insurance benefits, showing the following judicial views:

1. 对于工伤认定中的“上下班途中受到职工非本人主要责任的交通事故”问题，应结合事故发生时间、事故发生地点等实际情况综合认定，《交通事故责任认定书》不是认定工伤的必备要件或唯一要件，公安机关管理部门没有作出《交通事故责任认定书》或客观原因无法作出事故责任认定时，社保部门可以针对是否为“非本人主要责任”的事实进行调查核实，切实保障职工的合法权益。

Regarding the issue of “a traffic accident occurring on the way to or from work where the employee is not primarily responsible” in the determination of work-related injuries, it should be comprehensively determined based on the actual circumstances such as the time and location of the accident. The Traffic Accident Responsibility Identification Letter is not an essential or the only element when determining a work-related injury. When the public security management department has not issued a Traffic Accident Responsibility Identification Letter or cannot issue a liability identification due to objective reasons, the social security department can investigate and verify the fact of whether it is “not the employee’s primary responsibility” to effectively protect the legitimate rights and interests of employees.

2. 职工在工作时间和工作岗位突发疾病，未送医院抢救，发病后48小时内死亡的，应结合发病原因、未及时就医事由、救治过程等证据综合考量应否认定“视同工伤”。职工因连续工作导致身体不适，虽未径直送医，但48小时内抢救无效死亡的，应当认定为“视同工伤”。

If an employee suffers sudden illness during working hours and at the workplace, without sent to the hospital for rescue, and dies within 48 hours after the onset of the illness, whether such death shall “be deemed a work-related injury” should be comprehensively considered based on evidence such as the cause of the illness, the reason for not seeking medical treatment in a timely manner, and the treatment process. If an employee becomes unwell due to continuous work, and dies within 48 hours despite not being directly sent to the hospital, it should be “deemed as a work-related injury”.

3. 冒用他人身份的职工已与用人单位建立真实劳动关系，且用人单位以被冒用人身份为该职工参保并按时足额缴纳保费，该职工属于工伤保险法律保护的职工。社会保险行政部门已对职工依法认定工伤后，用人单位有权向经办机构申请核定工伤保险待遇、支付工伤保险费用。在已认定职工工亡的情形下，职工遗属有权要求工伤管理部门依法核定支付工伤保险待遇。

If an employee who uses another person's identity has established a real labor relationship with the employer, and the employer has insured the employee under the identity of the person whose identity was used and paid premiums in full and on time, such an employee is protected by the work-related injury insurance law. After the social insurance administrative department has legally identified the employee's work-related injury, the employer has the right to apply to the agency for the verification of work-related injury insurance benefits and the payment of work-related injury insurance expenses. In the case where the employee has been identified as work-related death, the employee's dependents shall have the right to request the work-related injury management department to legally verify and pay the work-related injury insurance benefits.



四、典型案例：北京市第三中级人民法院发布劳动争议纠纷典型案例、北京金融法院发布新业态保险纠纷典型案例

[Exploration of Typical Cases: Beijing Third Intermediate People's Court Released Typical Labor Dispute Cases](#)
[Beijing Financial Court Released Typical Cases of Insurance Disputes in New Work Forms](#)

2025年5月13日，北京市第三中级人民法院召开“构建和谐劳动关系、涉劳动者休息休假类案件审理情况”新闻发布会，并发布了涉休息休假权典型案例，涵盖了加班、年休假、病假、陪产假、育儿假等焦点问题。其中，案例一和案例五值得关注，体现出北京法院的下述裁判观点：

On May 13, 2025, the Beijing Third Intermediate People's Court held a press conference on "Hearing of Cases on Constructing Harmonious Labor Relationship and Involving Employees' Rest and Leave" and released typical cases involving the right to rest and leave, covering hot issues such as overtime work, annual leave, sick leave, paternity leave, and parental leave. Among them, Case 1 and Case 5 are worthy of attention, showing the following judicial views of the courts in Beijing:

案例一中，员工劳动合同约定为加班审批制，用人单位主张员工从未提交过加班申请，法院综合考虑新业态行业性质、员工岗位特点以及工作任务的周期性，确认存在加班事实，认定用人单位应向劳动者酌情支付加班工资。

In Case 1, the employee's labor contract stipulated an overtime approval system, and the employer claimed that the employee had never submitted an overtime application. The court comprehensively considered the nature of the new work forms, the characteristics of the employee's position, and the periodicity of work tasks, then confirmed the existence of overtime work and ruled that the employer should pay the employee overtime wages as appropriate.

案例五中，员工向用人单位发送正当休假请求，用人单位拒绝并诱导员工离职的，不能认定为员工主动辞职，法院综合考虑双方实际履行离职流程和过往沟通情况等事实，认定双方系协商一致解除劳动合同。

In Case 5, where an employee sent a legitimate request for leave to the employer, and the employer refused and induced the employee to resign, it cannot be deemed as the voluntary resignation of the employee. The court, considering the facts such as the actual performance of the resignation process and the past communication by both parties, ruled that the two parties terminated the labor contract based on mutual agreement.

此外，我们认为其他具有参考价值的裁审要点提示如下：

In addition, the following are other judicial views that we believe are of value for reference:

1. 用人单位不得通过自设的规章制度限制员工法定范围内的带薪年假权利，员工有权依照《职工带薪年休假条例》相关规定向用人单位主张相应补偿。

An employer may not restrict the employees' entitlement to statutory paid annual leave through rules and regulations established by itself. The employees have the right to claim for corresponding compensation from the employer in accordance with the relevant provisions of the Regulation on Paid Annual Leave for Employees.

2. 符合连续工作满12个月休假条件的劳动者，在试用期内亦依法享受带薪年假。

The employee who meets the requirements for 12 consecutive months' employment shall also be entitled to the paid annual leave during the probation period in accordance with law.

3. 员工因先兆流产迹象休病假合理合法，用人单位以旷工辞退构成违法解除。

It is reasonable and legitimate for an employee to take sick leave due to signs of threatened abortion, and if the employer terminates the employment contract on the grounds of absenteeism, it shall be deemed illegal.

4. 用人单位不得无故拒绝劳动者的合理陪产假申请，并应在陪产假期间内足额支付工资。

An employer shall not arbitrarily refuse an employee's reasonable applications for paternity leave and shall pay full wages during the paternity leave period.

2025年4月28日，北京金融法院召开“依法保障新业态劳动者保险权益”新闻发布会，发布新业态保险纠纷典型案例等内容，聚焦了新业态保险中实际投保人的认定、新职伤险与商业险之间以及各商业险之间的衔接互斥关系、保险公司的核保义务等社会关注度高的热点问题，并作出回应。我们认为案例一和案例二值得关注：

On April 28, 2025, the Beijing Financial Court held a press conference on “Legally Safeguarding the Insurance Rights and Interests of Employees in New Work Forms” and released typical cases of disputes in the insurance for new work forms, focusing on and responding to hot issues of high social concern, such as the identification of the actual policyholder in the insurance for new work forms the connection and mutual exclusion between the new occupational injury insurance and commercial insurance, and between various commercial insurances, and the underwriting obligations of insurance companies. We believe Case 1 and Case 2 are worthy of attention:

1. 在新业态保险中，保险公司的提示说明义务应向实际投保人履行。众包骑手意外险保险单记载的投保人系平台合作商而非骑手，但实际操作中保险公司已经就猝死保险金条款向保险经纪公司进行了提示说明。法院最终通过剖析保险交易架构中的多层商业嵌套，穿透认定实际投保人为众包骑手，猝死保证金条款为隐形免责条款，该免责提示对骑手不发生效力，判令保险公司赔偿骑手法定继承人保险金60万元。

In the insurance for new work forms, the insurance company's obligation to prompt and explain shall be performed to the actual policyholder. The insurance policy for the independent takeaway rider's accident insurance recorded that the policyholder was the platform's partner rather than the rider, but in practice, the insurance company had prompted and explained the sudden death insurance clause to the insurance brokerage company. The court finally analyzed the multi-layered commercial nesting in the insurance transaction structure, penetratingly identified the actual policyholder as the independent takeaway rider and the sudden death guarantee clause as a hidden exemption clause which had no effect on the driver, and ordered the insurance company to compensate the rider's legal heirs RMB 600,000 as insurance benefits.

2. 符合已经投保新就业形态就业人员职业伤害保障（“[新职伤](#)”）情形且已经享受新职伤险赔偿的新业态劳动者，可以同时主张商业意外险的赔付。

Employees in new work forms who are eligible for and have enjoyed compensation under the new occupational injury protection for employees in new work forms (the “[New Occupational Injury Insurance](#)”) can simultaneously claim compensation from commercial accident insurance.



五、典型案例：上海市发布《劳动人事争议多元化解工作白皮书》

[Exploration of Typical Cases: Shanghai Released the White Paper on the Diversified Resolution of Labor and Personnel Disputes](#)

2025年5月28日，上海市宝山区人民法院联合宝山区总工会、宝山区人社局发布《宝山区劳动人事争议多元化解工作白皮书（2021-2024）》，包含的裁审观点如下：

On May 28, 2025, the Shanghai Baoshan District People's Court, the Baoshan District Federation of Trade Unions and the Baoshan District Human Resources and Social Security Bureau jointly released the White Paper on the Diversified Resolution of Labor and Personnel Disputes in Baoshan District (2021-2024), which contains the following adjudication opinions:

1. 员工未经用人单位批准即离岗或未到岗不能直接认定为旷工，应结合员工请假缘由、用人单位假期审批权行使情况综合判断。孕期女员工因孕吐不适提交事假申请并告知上级后离岗，上级未明确回应，直接以员工旷工违纪作出单方解除决定。法院认为女员工存在孕吐反应请假具备合理性，已履行休假申请手续，用人单位未曾对请假材料提出异议的，属于未能及时合理行使假期审批权，构成违法解除。

When an employee leaves or fails to arrive at work without the employer's approval, it cannot be directly deemed as absenteeism, and should be comprehensively judged in combination with the reason for the employee's leave application and the employer's exercise of leave approval authority. A pregnant female employee left work after submitting a personal leave application due to morning sickness discomfort and informing her supervisor, but the supervisor did not respond clearly and directly made a unilateral termination decision on the grounds of the employee's absenteeism and disciplinary violation. The court held that the female employee's request for leave due to morning sickness was reasonable, she had fulfilled the leave application procedure, and the employer had not raised any objection to the leave materials, which meant that the employer failed to exercise the leave approval authority in a timely and reasonable manner, and it should be deemed illegal.

2. 已经签署劳动合同且持续在用人单位处工作的达到法定退休年龄的员工发生工伤时，用人单位不得与其另行签署劳务合同逃避法律责任。双方约定的劳动合同期限届满时，应当顺延至工伤鉴定结论作出后方可终止劳动关系。

When an employee who has reached the statutory retirement age, sustains a work-related injury while working under a signed labor contract with the employer, the employer shall not sign a separate service contract with him/her to evade legal liability. When the term of the labor contract agreed by both parties expires, it shall be extended until the work-related injury appraisal conclusion is made before the labor relationship can be terminated.

3. 离职员工通过外包关系从事隐蔽性竞业行为的，原用人单位应在其举证能力范围内举证并达到高度盖然性。该案中，用人单位提供了离职员工新单位实际从事人力资源外包服务而竞争公司为其客户的证明、离职员工以工作人员身份办理竞争企业所在园区的长期车位并多次出入该地点的记录、离职员工在异地酒店住宿后开具竞争企业抬头的发票等，形成一系列相互印证的证据链。

For a resigned employee who engages in concealed competitive behaviors through an outsourcing relationship, the former employer shall provide evidence within its burden of proof to a high degree of probability. In this case, the former employer provided evidence that the resigned employee's new employer was an HR outsourcing service company and the competing company was its client, records of the resigned employee renting a long-term parking space in the park where the competing company was located and entering and exiting the place many times, and invoices issued by the competing company after the resigned employee stayed in a hotel in another city. The court believed that such evidence has formed a series of mutually corroborating evidence chains.

4. 在员工工作岗位和内容均无变化的情形下，延长试用期实质属于二次约定试用期，应为无效。用人单位在首次试用期满后以员工试用期内不符合录用条件解除劳动关系的，构成违法解除。

If there is no change in the employee's job position and content, extending the probation period essentially constitutes a second agreement on the probation period, which shall be invalid. If the employer terminates the labor relationship after the initial probation period expires on the grounds that the employee does not meet the recruitment conditions during the probation period, it shall be deemed illegal.

5. 平台新业态用工情形下，用人单位与员工签订《合作协议》，法院在查明事实的基础上根据实际履行情况具体判断，认定双方未建立劳动关系。

In the case of platform employment in new work forms, where the employer and the employee signed a Cooperation Agreement, the court made a specific judgment based on the actual performance after finding out the facts, and determined that no labor relationship has been established between the two parties.

6. 对于加班或者值班的认定，主要判断依据为员工是否继续在原岗位上工作或是有具体的生产或经营任务。员工作为保安人员，其工作具有特殊性，相较其他岗位等待时间长，劳动强度较小，综合考虑员工用餐时长及休息情况，法院不予认定加班费主张。

The determination of overtime work or on-duty work mainly depends on whether the employee continues to work in the original position or has specific production or business tasks. As a security guard, the employee's work is special, with a longer waiting time and lower labor intensity compared to other positions. Considering the employee's meal time and rest situation, the court did not support the claim for overtime pay.

7. 用人单位未在规定的时限内提出工伤认定申请的,在此期间发生符合《上海市工伤保险实施办法》规定的工伤待遇等有关费用,由用人单位承担。

If the employer fails to submit an application for determination of work-related injury within the specified time limit, the relevant expenses such as work-related injury treatment that occur during this period and meet the provisions of the Implementation Procedures of Shanghai Municipality on Industrial Injury Insurance shall be borne by the employer.

8. 负有人事管理岗位职责的劳动者要求用人单位承担未签署劳动合同的二倍工资诉求的,法院不予支持。

Where an employee who is responsible for personnel management claims double wages from the employer for the failure to sign a labor contract, such a claim will not be upheld by the court.

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