

海问劳动法双月报（2024年5-6月）

作者：刘宇翔 吴琼



Summary

本期摘要



新规速递：《国有企业管理人员处分条例》发布，规范对国有企业管理人员的处分事宜

Quick View of New Regulations: Regulation on Disciplinary Actions Against the Management Personnel of State-Owned Enterprises was Issued to Regulate Disciplinary Actions Against Managers of State-Owned Enterprises



新规速递：最高院发布《法答网精选问答（第六批）》，天津、山东发布涉及工伤保险支付待遇的地方性规定

Quick View of New Regulations: The Supreme People's Court Released the Sixth Batch of Selected Q&As, Tianjin Municipality and Shandong Province Issued Local Regulations Involving Payment Methods and Insurance Benefits Regarding Work-Related Injury Insurance



典型案例：北京市海淀法院及西城法院发布劳动人事纠纷典型案例

Exploration of Typical Cases: Beijing Haidian District People's Court and Xicheng District People's Court Released Typical Cases of Labor and Personnel Disputes

典型案例：广东省深圳中院及广州中院发布劳动争议案件典型案例

Exploration of Typical Cases: Shenzhen Intermediate People's Court of Guangdong Province and Guangzhou Intermediate People's Court Released Typical Cases of Labor and Personnel Disputes

典型案例：最高检、天津、上海等多地发布劳动争议相关的典型案例

Exploration of Typical Cases: The Supreme People's Procuratorate, Tianjin Municipality and Shanghai Municipality and other Several Different Regions Released Typical Labor Dispute Cases

一、新规速递：《国有企业管理人员处分条例》发布，规范对国有企业管理人员的处分事宜

[Quick View of New Regulations: Regulation on Disciplinary Actions Against the Management Personnel of State-Owned Enterprises was Issued to Regulate Disciplinary Actions Against Managers of State-Owned Enterprises](#)

2024年5月21日，国务院公布《国有企业管理人员处分条例》（“《条例》”），自2024年9月1日起施行。

《条例》全文共7章52条，规定进一步建立健全国有企业管理人员监督制约机制，规范对国有企业管理人员的处分事宜。具体而言：

On May 21, 2024, the State Council issued the Regulation on Disciplinary Actions Against the Management Personnel of State-owned Enterprises ("[Regulation](#)"), which will take effect on September 1, 2024. The Regulation, consisting of seven chapters and 52 articles, aims to regulate the disciplinary action for those personnel in managerial positions of state-owned enterprises ("[SOE](#)") ("[SOE Management Personnel](#)"). Specifically:

1 . 《条例》明确了适用对象的范围，沿用《中华人民共和国监察法实施条例》对国有企业管理人员的界定。本规定适用于“国有企业管理人员任免机关、单位”按照干部管理权限对国有企业管理人员作出的处分，有别于监察机关对国有企业管理人员作出的政务处分。

The Regulation clarified the scope of application, following the definition of SOE Management Personnel set out in the Regulation on the Implementation of the Supervision Law of the PRC. The Regulation applies to the disciplinary action made by

the “SOE Management Personnel appointment and removal organs and institutions”, which is different from the disciplinary actions made by the supervisory organ.

2. 《条例》规定了对国有企业管理人员处分的种类及处分期等内容。《条例》第七条和第八条对处分的种类及处分期加以明确，包括以下六类：警告，6个月；记过，12个月；记大过，18个月；降职，24个月；撤职，24个月；开除。对于“处分期”，根据《条例》第三十七条，国有企业管理人员受到开除以外的处分，在处分期内有悔改表现且没有“再犯”情形的，处分期满后处分自动解除，考核、晋升等不再受影响；但降级、撤职解除后，不恢复原职务、职级、级别、岗位和职员等级、职称、薪酬待遇等级等。

The Regulation set out the types and the periods of disciplinary action against SOE Management Personnel. Article 7 and 8 of the Regulation specified the types and periods of disciplinary action, including the following six categories: warning for 6 month, recording of a demerit for 12 months, recording of a serious demerit for 18 months; demotion for 24 months; removal from office for 24 months; and discharge from employment. For the "disciplinary period", according to Article 37 of the Regulation, where a SOE Management Personnel subject to disciplinary action (other than discharge from employment) shows repentance during the period of disciplinary action, without committing another violation, the disciplinary action will be automatically lifted upon expiration of the period of disciplinary action. After a disciplinary action is lifted, promotion to a higher grade of the salary scale, a higher rank or post shall no longer be affected by the former disciplinary action. However, the lift of a disciplinary action for demotion to a lower rank or removal from office shall not thus be deemed as the reinstatement in the former rank or post.

3. 在有关国有企业管理人员违法和追责方面，《条例》将原散见于法律法规、党政文件中的主要规定进行了梳理和分类。《条例》将《政务处分法》第三章关于违反政治要求（第二十八条）、违反组织程序（第三十条）、违反廉洁要求（第三十三条）、违反薪酬管理制度（第三十五条）、违规从事或者参与营利性活动（第三十六条）、侵犯服务对象合法权益或者社会公共利益（第三十八条）以及违反工作要求（第三十九条）等七类违法情形，具化为51项违法行为；并将《关于规范中央企业贸易管理严禁各类虚假贸易的通知》不准参与特定利益关系企业间开展的无商业目的的贸易业务（第二条）、不准开展任何形式的融资性贸易（第四条）等违法情形在条例中进行了呼应和明确。

Regarding the illegal activities and accountability of SOE Management Personnel, the Regulation organized and categorized the main provisions previously scattered across laws, regulations, and party and government documents. The Regulation set out 51 specific illegal behaviors based on the seven

types of violations outlined in Chapter 3 of the Law on Administrative Sanctions for Public Officials, including violations of political requirements (Article 28), organizational procedures (Article 30), integrity requirements (Article 33), salary management systems (Article 35), engaging in or participating in profit-making activities (Article 36), infringing on the legitimate rights and interests of service recipients or the public interest (Article 38), and work requirements (Article 39). Additionally, the Regulation echoed and clarified the illegal activities specified in the Notice on Regulating Trade Management of Central Enterprises and Prohibiting Various Forms of False Trade, such as prohibiting trade activities with no commercial purpose between enterprises with specific interest relationships (Article 2) and prohibiting any form of financing trade (Article 4).

值得关注的是，为了在落实《条例》的过程中确保不违反《劳动合同法》等相关法律法规，国有企业可以考虑参照《条例》规定的违法行为以及对应的处分后果，在用人单位内部规章制度中予以规定，以与劳动法规中关于员工严重违反用人单位规章制度可以解除劳动合同的规定相衔接。

It is noteworthy that, to ensure the compliance of the Labor Contract Law and other relevant labor laws during the implementation of the Regulation, SOEs may consider incorporating (or referring to) the illegal behaviors and corresponding sanctions stipulated in the Regulation into their internal rules and policies, in order to align with the rules under the labor laws that permit the termination of employment for serious violations of the employer's policies.



二、新规速递：最高院发布《法答网精选问答（第六批）》，天津、山东发布涉及工伤保险支付待遇的地方性规定

[Quick View of New Regulations: The Supreme People's Court Released the Sixth Batch of Selected Q&As, Tianjin Municipality and Shandong Province Issued Local Regulations Involving Payment Methods and Insurance Benefits Regarding Work-Related Injury Insurance](#)

1. 最高人民法院发布《法答网精选问答（第六批）》

[The Supreme People's Court Released the Sixth Batch of Selected Q&As](#)

2024年6月13日，最高院发布《法答网精选问答（第六批）》，其中问题2为“用人单位与劳

劳动者连续两次订立固定期限劳动合同，期满后用人单位对续订无固定期限劳动合同是否享有选择权？”最高法的答疑意见认为，在已具备劳动合同法第十四条规定的应当订立无固定期限劳动合同条件的情况下，劳动者续订无固定期限劳动合同的权利应予保障，如果用人单位不同意续订合同，应当承担违法解除或继续履行的法律后果。

The Supreme People's Court released the sixth batch of selected Q&As on June 13, 2024, in which Question 2 was "if employers and employees have concluded two consecutive fixed-term employment contracts, does the employer have the right to choose to renew the open-ended employment contract after the expiration of the term?" Reply of the Supreme People's Court considered that the right of employees to renew an open-ended employment contract should be protected when the conditions for concluding an open-ended employment contract as stipulated in Article 14 of the Employment Contracts Law have been met, and that if the employer does not agree to the renewal of the contract, the employer shall bear the legal consequences of unlawful termination or continuation of the performance of the contract.

2. 天津发布涉及工伤保险支付待遇的地方性规定

Tianjin Municipality issued local regulations on the payment methods and insurance benefits related to work-related injury insurance

天津市人社局于2024年6月印发了《关于进一步明确工伤保险待遇支付有关问题的通知》（“《通知》”）。通知聚焦工伤保险待遇支付常见问题，供天津市处理工伤保险待遇纠纷案件时作为参考。

The Tianjin MOHRSS issued the Notice on Further Clarifying Issues Relating to the Payment of Work-Related Injury Insurance Benefits ("[Notice](#)") in June 2024. The Notice focuses on common issues regarding the payment of work-related injury insurance benefits, and is intended to be used as a reference for dealing with work-related injury insurance benefit dispute cases in Tianjin.

《通知》对用人单位未按时为职工办理工伤保险参保、职工参加工伤保险后用人单位间断缴费、用人单位未依法足额缴纳工伤保险费、工伤职工复查鉴定伤残等级发生变化时如何调整工伤保险待遇、职工多次发生工伤时的工伤保险待遇以及工伤保险待遇中“本人工资”的计算等问题进行了详细说明，《通知》为天津市用人单位在处理工伤保险待遇及相关问题方面，提供了实质性的参考与指引。

The Notice provided detailed explanations on several issues, including employers'

failure to timely participate in work-related injury insurance for its employees, employers' suspension on the contribution of work-related injury insurance after its employees are covered by the work-related injury insurance, employers' failure to fully / timely contribute work-related injury insurance as required by law, adjustments to work-related injury insurance benefits when the disability grade of an injured employee changes upon re-examination, benefits for employees who suffer multiple work-related injuries, and the calculation of "individual wages" in work-related injury insurance benefits. The Notice offered substantial guidance and reference for employers in Tianjin in handling work-related injury insurance benefits and related matters.

3. 山东发布特定从业人员单险种参加工伤保险的地方性规定

Shandong Province issued local provisions on participation in work-related injury insurance for specific employees with the single insurance type

2024年5月30日，山东省人社厅等7部门印发了《超龄人员和实习学生等特定从业人员参加工伤保险办法（试行）》（“《办法》”），进一步分散各类用人单位工伤风险，推进职业人群工伤保险全覆盖，将从2024年7月1日起实施。《办法》将超龄人员、年满16周岁的职业院校实习学生及见习单位见习人员、住院规培医学在读研究生、家政服务人员等4类人员纳入工伤保险保障范围。

On May 30, 2024, the Shandong MOHRSS and seven other departments issued the Measures for the Participation of Specific Workers such as Over-Age Personnel and Intern Students in Work-Related Injury Insurance (“Measures”), to further spread the risk of work-related injuries in various types of employers and to promote the full coverage of work-related injury insurance for the occupational groups, which will be implemented as of July 1, 2024. The Measures include four categories of personnel under the coverage of work-related injury insurance, including over-age personnel, internship students of vocational colleges/universities and trainees of apprenticeship units over the age of 16, postgraduate students undergoing resident standardization training, and domestic helpers.

此外，浙江省、上海市、海南省、重庆市以及安徽省等地也就非劳动关系人员参加工伤保险出台了类似的政策。（参见[《海问·研究 | 海问劳动法双月报》（2023年11-12月）](#)）

In addition, Zhejiang Province, Shanghai Municipality, Hainan Province, Chongqing Municipality, and Anhui Province have also issued similar policies on the participation of non-labor relations in industrial injury insurance, and you may refer to the “[Haiwen-](#)

[*Research / Haiwen Labor Law Bi-Monthly Newsletter \(November-December 2023\)*](#)".



三、典型案例：北京海淀区法院及西城法院发布劳动人事纠纷典型案例

[Exploration of Typical Case: Beijing Haidian District People's Court and Xicheng District People's Court Release Typical Cases of Labor and Personnel Disputes](#)

2024年5月16日，北京海淀区法院召开“劳动人事争议审判白皮书（2020年度-2023年度）”发布会，发布了2020年度至2023年度八件劳动人事争议的典型案例。案例涉及裁审衔接、台港澳在内地就业是否构成劳动关系的认定、劳动者离岗前职业健康检查、预告解除劳动合同、居家办公、医疗期满解雇劳动者以及用人单位与劳动者竞业限制约定等常见问题。其中，我们认为可以重点提示的案例有：

On May 16, 2024, Beijing Haidian District People's Court held a press conference on "White Paper on Labor and Personnel Dispute Trials (2020-2023)". During the event, eight typical cases of labor and personnel disputes from 2020 to 2023 were presented. The cases involved common issues such as the connection between adjudication and trial, the determination of whether the employment in Mainland of China by individuals from Taiwan, Hong Kong and Macao constitutes a labor relationship, pre-departure occupational health examinations for employees, advance notice for termination of labor contracts, remote work, dismissal of employees after the expiration of medical leave, and non-compete agreements between employers and employees. Among these, we believe the following cases merit special attention:

1. [劳动者预告解除期满，用人单位拖延办理工作交接，劳动者有权要求确认劳动关系已经解除](#)。劳动者提前30日向某公司提交辞职报告后，某公司拖延办理工作交接，劳动者发出的30天预告解除期满之日届至时，发生双方劳动关系解除的法律后果。

[Upon the expiration of the notice period for termination initiated by the employee, if the employer delays the handover process, the employee has the right to request confirmation that the labor relationship has been terminated.](#) After the employee submitted a resignation letter to a company 30 days in advance, the company delayed the handover process. When the 30-day notice period expired, the legal consequence of the termination of the labor relationship between the two parties occurred.

2. 用人单位享有用工管理权，居家办公情况下，劳动者仍应服从用人单位的依法用工管理，在工作时间内正常提供劳动。某公司安排全体员工居家办公，劳动者未遵守某公司关于“工作时间在办公软件中即时回复公司信息，超过2次书面警告将予以辞退”的规定，法院认定用人单位以严重违反公司劳动纪律为由与劳动者解除劳动关系合理合法。

The employer has its right to manage the employment, and employees working from home are still required to comply with the employer's lawful management of employment and provide labor normally during working hours. A company arranged for all employees to work from home. An employee failed to comply with the company's regulation that required "immediate response to company messages on the office software during working hours, with dismissal after more than two written warnings." The court found that the employer's termination of the labor relationship with the employee on the grounds of serious violation of company labor discipline was reasonable and lawful.

3. 劳动者因患病或非因工负伤，医疗期满后不能从事原工作时，用人单位应先根据劳动者的身体状况给劳动者另行安排工作岗位。某公司在劳动者医疗期满后未另行安排工作岗位，仅以劳动者存在医疗期满后继续提交假条的行为，直接推定劳动者必然不能从事用人单位另行安排的工作，径行辞退劳动者，构成违法解除劳动关系。

When employees are unable to perform their original job due to illness or non-work-related injury after the expiration of the medical treatment period, the employer should first arrange another job position for the employee based on their physical condition. A company, after the expiration of the employee's medical treatment period, did not arrange another job position and directly presumed that the employee could not perform the newly arranged job based solely on the employee's continued submission of medical leave notes. The company then proceeded to dismiss the employee, which constitutes an unlawful termination of the labor relationship.

此外，2024年7月1日北京市西城法院审结了首例适用2023年的修订《公司法》（“**新公司法**”）加速到期规则案件，该案根据《最高人民法院关于适用〈中华人民共和国公司法〉时间效力的若干规定》，依法适用新公司法第54条的规定，在公司不能清偿到期债务的情形下，公司或者已到期债权的债权人有权要求已认缴出资但未届出资期限的股东提前缴纳出资。新公司法加速到期规则在该案中的适用，体现出我国在依法保护债权人利益，平衡债权人和股东权益上的重大进步。

In addition, on July 1, 2024, Beijing Xicheng District People's Court concluded the first case applying the accelerated maturity rule under the 2023 revised Company Law ("[New Company Law](#)"). The case was adjudicated in accordance with the Several Provisions of the Supreme People's Court on the Temporal Effect of the Application of the Company Law of the People's Republic of China, and applied Article 54 of the New Company Law. Under this provision, in situations where a company is unable to repay its due debts, the company or the creditors of the due debts have the right to demand that shareholders who have subscribed but not yet paid their capital contributions to pay their contributions in advance. The application of the accelerated maturity rule under the New Company Law in this case demonstrates significant progress in China's efforts to legally protect creditors' interests and balance the rights of creditors and shareholders.



四、典型案例：广东省深圳中院及广州中院发布劳动争议案件典型案例

[Exploration of Typical Case: Shenzhen Intermediate People's Court of Guangdong Province and Guangzhou Intermediate People's Court Released Typical Cases of Labor and Personnel Disputes](#)

2024年5月1日，广东省深圳中院发布了六个劳动争议典型案例。2024年5月16日，广东省广州中院召开“广州法院劳动争议案件审判白皮书暨典型案例”新闻发布会，并发布了劳动争议纠纷十大典型案例。其中，我们认为可以重点提示的案例有：

On May 1, 2024, Shenzhen Intermediate People's Court of Guangdong Province released six typical labor dispute cases. On May 16, 2024, Guangzhou Intermediate People's Court of Guangdong Province held a press conference to release the "White Paper on the Adjudication of Labor Dispute Cases by Guangzhou Courts and Typical Cases," and published ten typical labor dispute cases. Among these, we believe the following cases merit special attention:

1. 某物产公司《司机管理制度》载明司机累计收到公司警告信三次（含）以上的属于严重违反公司规章制度。该公司以某驾驶员入职后近4年存在拒绝公司出车安排等行为共收到3次警告信为由解除了劳动合同。法院认为时间要件是“累加式处罚”制度能够成立的必要条件，而该制度未设置处罚期限、未给予劳动者改正和消除过错的机会，过于严苛，故认定公司属于违法解除劳动合同。

The Driver Management System of a materials company stipulates that drivers who receive three or more warning letters from the company cumulatively are considered to have seriously violated the company's rules and regulations. The company terminated the labor contract with a driver who had received three warning letters over nearly four years for refusing dispatch orders of the company and other behaviors. The court held that the temporal requirement is a necessary condition for the "cumulative punishment" system to be valid. Since the system did not set a punishment period and did not provide the employee with an opportunity to correct and eliminate the misconduct, it was deemed excessively harsh. Therefore, the court determined that the company had unlawfully terminated the labor contract.

2. 某公司使用员工的个人身份信息注册及实名认证了自媒体平台账户，公司以该员工离职后未向公司交还该账号为由主张赔偿经济损失。法院认定账户系员工使用个人信息实名认证，公司应当首先办理涉案账户实名认证的变更手续或重新开立新的商事主体账户并完成账户内容的迁移，员工为保障自身权益及避免法律风险而未将涉案账号交予公司具有正当理由并无过错，无需向公司赔偿经济损失。

A company used an employee's personal identification information to register and verify a social media platform account. The company claimed compensation for economic losses on the grounds that the employee did not return the account to the company after resignation. The court determined that the account was verified by using the employee's personal information. The company should first handle the change of real-name verification for the account in question or open a new commercial entity account and complete the migration of account content. The employee had justifiable reasons and no fault for not handing over the account to the company, as it was to protect his own rights and avoid legal risks. Therefore, the employee is not required to compensate the company for economic losses.

3. 员工在离职前特意询问了公司财务部上年度是否有年终奖，在财务部明确答复没有年终奖之后员工与公司签署《解除劳动合同协议书》。但在员工离职后，公司向员工原部门的在职员工发放了上年度的年终奖。法院认为《解除劳动合同协议书》中“不存在其他未支付款项”的约定，系员工基于公司误导后产生的错误认识，属于重大误解，判决撤销该约定条款，公司需向员工支付上年度的年终奖。

Before resigning, an employee specifically inquired with the company's finance department about whether there was a year-end bonus for the previous year. After the

finance department explicitly replied that there was no year-end bonus, the employee signed the "Agreement on Termination of Labor Contract" with the company. However, after the employee's resignation, the company issued the previous year's year-end bonus to the employees who remained in the employee's original department. The court held that the clause in the "Agreement on Termination of Labor Contract" stating "there are no other unpaid amounts" was based on the employee's misunderstanding induced by the company's misleading information, constituting a significant misunderstanding. The court ruled to rescind this clause, and the company was required to pay the employee the previous year's year-end bonus.



五、典型案例：最高检、天津、上海等多地发布劳动争议相关的典型案例

[Exploration of Typical Case: The Supreme People's Procuratorate, Tianjin Municipality and Shanghai Municipality and other Several Different Regions Released Typical Labor Dispute Cases](#)

2024年5月21日，最高检《检察日报·明镜周刊》发布了三起民企关键岗位人员侵害企业利益，被判处职务侵占罪的案例。案例中体现出员工以虚假合同及委托付款方式侵占公司财物，以虚设公司、虚增交易环节的方式套取公司款项，以及通过“低买高卖”赚差价的行为，严重侵害了企业的利益，构成职务侵占罪。

On May 21, 2024, "Procuratorate Daily Mirror Weekly" of the Supreme People's Procuratorate published three cases where key personnel in private enterprises were convicted of the crime of embezzlement for infringing on the interests of their companies. The cases demonstrated that employees embezzled company assets through false contracts and entrusted payment methods, siphoned company funds by setting up fictitious companies and inflating transaction steps, and engaged in "buy low and sell high" schemes to earn price differences. These actions severely infringed on the interests of the enterprises and constituted the crime of embezzlement.

2024年6月6日，天津高院与天津市人社局联合发布劳动人事争议典型案例，涉及新入职员工当年度的带薪年假、确认劳动关系案件的仲裁时效、未与人事行政专员续订书面劳动合同的二倍工资认定、劳动者休息日线上工作的加班认定、违反竞业限制义务的认定标准，以及网络主播的劳动关系认定事项。

On June 6, 2024, the Tianjin Higher People's Court and the Tianjin MOHRSS jointly

released typical cases of labor and personnel disputes. These cases involve issues such as paid annual leave for new employees in their first year, the arbitration limitation period for cases confirming labor relationships, the determination of double wages for failing to renew a written labor contract with a HR and administrative officer, the recognition of overtime for employees working online on rest days, the criteria for determining violations of non-compete obligations, and the recognition of labor relationships for online streamers.

2024年6月13日，上海高院发布“2023年度上海法院十大涉民生典型案例”，其中案例1中，公司因员工乙肝取消录用侵犯了员工的平等就业权，构成就业歧视；案例6中，劳动者和公司约定分期支付工资但公司方在审理中不认可的，可以使用债务加速到期制度。

On June 13, 2024, the Shanghai Higher People's Court released the "Top Ten Typical Cases Involving People's Livelihood in Shanghai Courts for 2023." In Case 1, a company was found to have committed employment discrimination by canceling the employment of an employee due to hepatitis B, thereby infringing on the employee's right to equal employment. In Case 6, where the employee and the company had agreed on installment payments of wages but the company did not acknowledge this agreement during the trial, the debt acceleration rule could be applied.

2024年6月21日，江苏昆山法院召开2023年度劳动人事争议审判十大典型案例新闻发布会，涵盖了就业歧视、劳动报酬标准认定、调整上班地点的合理边界，以及适用竞业限制义务的适格主体等内容。

On June 21, 2024, Kunshan People's Court of Jiangsu Province held a press conference to release the "Top Ten Typical Cases of Labor and Personnel Dispute Adjudication for 2023," covering issues such as employment discrimination, the determination of labor remuneration standards, the reasonable boundaries for adjusting work locations, and the eligible subjects for applying non-compete obligations.

2024年6月27日，西安中院联合市人社局、市总工会共同发布劳动争议典型案例，涉及用人单位延长试用期属于违法约定试用期，以及劳动者提供虚假信息入职，单位应在合理期限内及时核查等关键劳动法问题。

On June 27, 2024, Xi'an Intermediate People's Court, in conjunction with the Xi'an MOHRSS and the Municipal Federation of Trade Unions, jointly released typical labor dispute cases. These cases involve key labor law issues such as the illegality of

employers extending the probation period beyond the agreed terms, and the requirement for employers to promptly verify false information provided by employees within a reasonable period.

2024-07-17