

## Haiwen Labor Law Bi-Monthly Newsletter

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### Summary



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## I. Quick View of New Regulations: Multiple Regulatory Rules Issued in Securities and Fund Industries to Regulate Issues Regarding Management of Performance-Based Remuneration of Employees

The performance-based remuneration of employees in the financial industry is subject to special industry regulatory requirements. Following the establishment of management mechanism of performance-based remuneration in banks and insurance industries, (for more information you may refer to the [“Haiwen Observation | Interpretation of New Regulations: Performance-based Remuneration Recovery and Deduction System for Banks and Insurance Institutions - Regulatory Perspective and Labor Law Perspective”](#)), securities and fund industries are also being ordered to set up similar performance-based remuneration management on a gradual basis.

On February 18, 2022, the China Securities Regulatory Commission (the “CSRC”) issued the Measures for the Supervision and Administration of Directors, Supervisors, Senior Executives and Practitioners of Securities and Fund Operators (effective on April 1, 2022) which aims to impose macro-regulation on the management of directors, supervisors and senior executives of securities companies and publicly-offered securities investment fund management companies (the “Public Fund”). On May 20, 2022, the CSRC issued the Measures for Supervision and Administration of Publicly-Offered Securities Investment Funds Managers (effective on June 20, 2022), which clarifies the rules of the remuneration management of practitioners in key positions in Public Fund Managers. In response to and in line with the regulatory rules issued by the CSRC, the Securities Association of China and the Asset Management Association of China, as industry-based self-discipline organizations, have also formulated framework guidelines on remuneration management applicable to their respective industries, such as the Guidelines on Establishing Sound Remuneration Systems for Securities Companies issued by the Securities Association of China on May 13, 2022 and the Guidelines on Performance Evaluation and Remuneration Management for Fund Management Companies issued by the Asset Management Association of China on June 10, 2022 (mainly applicable to Public Funds).

The above regulatory rules emphasize that securities companies and Public Fund management companies should establish a scientific remuneration management system and performance evaluation mechanism, to reasonably determine the remuneration structure and regulate the remuneration payment. For employees in key positions, it is necessary to establish a mechanism for deferred payment of the performance-based remuneration and accountability mechanism, and performance-based remuneration recovery and deduction system.

Among them, the Guidelines on Performance Evaluation and Remuneration Management for Fund Management Companies stipulates specific and detailed supervisory indicators on remuneration management based on the regulatory rules issued by the CSRC. For example, the deferred payment period for performance-based remuneration shall be no less than three years, and the amount of deferred payment for senior executives, fund managers and other key positions shall be no less than 40% in principle; and senior executives and heads of major business departments shall use no less than 20% of the performance-based remuneration of the year (and fund managers shall use no less than 30% of the performance-based remuneration of the year) to purchase Public Funds managed by the company. These regulations have attracted great attention from the industry.

Employers in the securities and fund industry should pay close attention to the regulatory rules and measures introduced, and the management of employees shall be in line with the regulatory requirements and the actual situation of the company. Employers shall pay particular attention to improving the remuneration management and performance evaluation system, establishing deferred payment system and performance-based remuneration recovery and deduction system to ensure sound operation and sustainable development.



## II. Quick View of New Regulations: Various Departments and Multiple Regions Released Notices

## **to Expand the Applicable Scope of the Policy of Phased Deferred Payment of Social Security**

On May 31, 2022, four departments, including the Ministry of Human Resources and Social Security, the National Development and Reform Commission, the Ministry of Finance, and the State Taxation Administration, jointly issued the Notice on Expanding the Applicable Scope of the Policy of Phased Deferred Payment of Social Security Premiums and Other Issues (the “[Notice](#)”). It provides that the 5 industries in dire straits that originally implemented the phased deferred payment of pension, unemployment and work injury insurance premiums (that is the catering, retail, tourism, civil aviation, highway, waterway and railroad transport), are further expanded to 22 industries (other 17 industries are newly added in to the list) in dire straits such as automotive, general equipment and pharmaceutical manufacturing.

Enterprise in dire straits in deferred payment expansion industries, can apply for deferral of the employer’s portion of three social security premiums. Among them, the implementation period of deferred payment of pension premiums will be prolonged until the end of 2022; the implementation period of deferred payment of work injury, unemployment insurance premiums shall not exceed 1 year. The original five industries in dire straits deferred payment of pension premiums period correspondingly extended to the end of 2022. Enterprises applying for the deferment should meet the conditions of temporary difficulties in production and operation affected by the epidemic and in a state of loss. However, to simplify the reporting, enterprises may provide a written commitment, in lieu of a prior examination of applicable conditions.

The Notice proposes to further make use of the unemployment insurance in stabilizing jobs, specifically including: Firstly, strengthening the support for job stabilization rebate, raising the proportion of job stabilization rebate for large enterprises from 30% to 50%; Secondly, broadening the applicable scope of the one-time job retention training subsidy, from medium- and small-sized businesses in high risk areas to cover large enterprises in such areas; five industries in dire straits such as catering in low risk areas in provinces with conditions may also enjoy the preferential policy; Thirdly, enterprises that sign labor contracts with college graduates in the graduation year and make contributions to the unemployment insurance for such college graduates can be granted a one-time position expansion subsidy at a rate of no more than 1,500 yuan per person, with the implementation period ending at the end of 2022.

After the release of the Notice, Beijing, Shanghai, Tianjin, Chongqing, Guangdong, Hainan, Anhui, Shandong and other regions have released local regulations and formulated specific implementation measures to clarify the period of deferred payment, eligibility, and processing procedures. Enterprises in industries dire straits can apply for deferred payment according to the specific local implementation measures to ease the financial pressure on enterprises caused by the epidemic.



### **III. Quick View of New Regulations: Various Departments and Multiple Regions Released Phased Support Policies for Housing Funds, Enterprises Affected by the Epidemic Can Apply for Deferment of Payments**

In order to further strengthen the efforts of housing fund to help enterprises to relieve their difficulties, the Ministry of Housing and Urban-Rural Development, the Ministry of Finance and the People’s Bank of China issued the Notice on the Implementation of Phased Support Policies for Housing Fund (the “[Notice](#)”) on May 20, 2022, specifying three relief policies. Firstly, enterprises affected by the Covid-19 epidemic may apply for a deferment of housing fund payments in accordance with the regulations and make retroactive payments upon expiration. Secondly, during the deferment period, employees may withdraw and apply for housing fund loans normally. Thirdly, depositors who cannot repay their housing fund loans normally due to the impact by the Covid-19 epidemic will not be treated as overdue and no overdue records will be generated and reported to the credit authorities.

After the introduction of the Notice, Beijing, Shanghai, Guangzhou, Zhejiang, Hainan and other regions have released local regulations, to meet the Notice’s requirements and lay down specific implementation methods according to the

actual local situation.

IV. Quick View of New Regulations: Multiple Regions Published the Average Social Wages in 2021, Social Security, Upper and Lower Limits of Social Security and Housing Fund Contribution Base Adjusted Accordingly

Since June 2022, the statistics of 2021 average social wages in Beijing, Shanghai, Guangzhou and Shenzhen have been released successively, and the corresponding upper and lower limits of social security and housing fund contribution bases have been adjusted accordingly. (Please note that in areas with different wage statistics standards, different wage data may need to be applied in different usage scenarios, and it should be subject to specific local policies.)

Please see the following summary of the recently published average social wages for 2021 released by various regions.

(单位/Unit: 元/¥)

| 地区 / District | 城镇非私营单位就业<br>人员年平均工资 /<br>Average Annual<br>Wage of Employed<br>Persons in Urban<br>Non-Private<br>Enterprises | 城镇非私营单位在岗<br>职工年平均工资<br>/Average Annual<br>Wage of Active<br>Workers in Urban<br>Non-Private<br>Enterprises | 城镇私营单位就业<br>人员年平均工资/<br>Average Annual<br>Wage of<br>Employed<br>Persons in Urban<br>Private<br>Enterprises | 全口径城镇单位就<br>业人员年平均工资<br>/ Average Annual<br>Wage of<br>Employed<br>Persons in All<br>Urban<br>Enterprises |
|---------------|----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| 北京 Beijing    | /                                                                                                              | 201,504                                                                                                     | /                                                                                                           | 166,513                                                                                                   |
| 上海 Shanghai   | /                                                                                                              | /                                                                                                           | /                                                                                                           | 136,752                                                                                                   |
| 广州 Guangzhou  | 139,802                                                                                                        | 144,288                                                                                                     | 74,452                                                                                                      | /                                                                                                         |
| 深圳 Shenzhen   | 153,471                                                                                                        | 155,563                                                                                                     | 85,239                                                                                                      | /                                                                                                         |
| 东莞 Dongguan   | 88,535                                                                                                         | 88,965                                                                                                      | 75,440                                                                                                      | /                                                                                                         |
| 佛山 Foshan     | 103,417                                                                                                        | 104,280                                                                                                     | 70,649                                                                                                      | /                                                                                                         |
| 厦门 Xiamen     | 115,538                                                                                                        | 119,483                                                                                                     | /                                                                                                           | /                                                                                                         |
| 福州 Fuzhou     | 105,051                                                                                                        | 108,133                                                                                                     | /                                                                                                           | /                                                                                                         |
| 重庆 Chongqing  | 101,670                                                                                                        | 106,966                                                                                                     | 59,307                                                                                                      | /                                                                                                         |
| 天津 Tianjin    | 123,528                                                                                                        | /                                                                                                           | 65,272                                                                                                      | /                                                                                                         |
| 大连 Dalian     | 103,934                                                                                                        | 107,390                                                                                                     | 58,715                                                                                                      | /                                                                                                         |
| 长春 Changchun  | 97,134                                                                                                         | /                                                                                                           | /                                                                                                           | /                                                                                                         |

V. Quick View of New Regulations: Shaanxi and Xinjiang Revised Regulations on Population and Family Planning, and Tianjin Released Relevant Implementing Measures for Parental Leave, Carer's Leave, etc.

In order to implement the relevant provisions of the newly revised Population and Family Planning Law on August 20, 2021, various provinces and municipalities successively revised their local Regulations on Population and Family Planning or formed supporting regulations to implement and refine the relevant requirements for maternity leave, parental leave, carer's leave, etc.

1. Shaanxi and Xinjiang Revised Regulations on Population and Family Planning to Adjust Marriage and Childbirth Related Leaves

The Standing Committee of People's Congress of Shaanxi Province promulgated the revised Regulations of Shaanxi Province on Population and Family Planning on May 25, 2022, and the Standing Committee of People's Congress of Xinjiang Uygur Autonomous Region promulgated the revised Regulations of Xinjiang Uygur Autonomous Region on

Population and Family Planning on June 4, 2022, making significant adjustments to parental leave and paternity leave. The settings of leaves before and after the adjustment are as follows (for more information about revisions and adjustments to marriage and childbirth related leaves in other regions, you may refer to the “[Haiwen Research: Haiwen Labor Law Bi-Monthly Newsletter](#)” (2021 November – December), “[Haiwen Research: Haiwen Labor Law Bi-Monthly Newsletter](#)” (2022 January – February) and “[Haiwen Research: Haiwen Labor Law Bi-Monthly Newsletter](#)” (2022 March – April)).

| 地区<br>Region   | 条例的修订情况<br>Effective Date                                               | 假期种类<br>Types of Leave           | 适用主体<br>Applicable Body            | 修改前 Before<br>Revision | 修改后 After Revision                                                                                                              |
|----------------|-------------------------------------------------------------------------|----------------------------------|------------------------------------|------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| 陕西<br>Shaanxi  | 2022.5.25 发布，<br>2022.5.25 生效<br>Promulgated and effective on 2022.5.25 | 婚假<br>marriage leave             | 夫妻双方<br>couple                     | 13 日<br>13 days        | 13 日<br>13 days                                                                                                                 |
|                |                                                                         | 延长产假<br>extended maternity leave | 女方<br>female                       | 60 日<br>60 days        | 60 日<br>60 days                                                                                                                 |
|                |                                                                         | 陪产假<br>paternity leave           | 男方<br>male                         | 15 日<br>15 days        | 15 日<br>15 days                                                                                                                 |
|                |                                                                         | 育儿假<br>parental leave            | 夫妻双方<br>couple                     | /                      | 夫妻双方可在子女 3 周岁以内每年各享累计 10 日<br>Each parent entitled to 10 days of parental leave per year before the child reaches the age of 3  |
|                |                                                                         | 陪护假<br>carer's leave             | 独生子女<br>the only child of a family | /                      | 每年累计不超过 15 个工作日<br>No more than 15 working days per year in total                                                               |
| 新疆<br>Xinjiang | 2022.6.4 发布，<br>2022.6.4 生效<br>Promulgated and effective on 2022.6.24   | 婚假<br>marriage leave             | 夫 妻 双 方<br>couple                  | 23 日<br>23 days        | 23 日<br>23 days                                                                                                                 |
|                |                                                                         | 延长产假<br>extended maternity leave | 女方<br>female                       | 60 日<br>60 days        | 60 日<br>60 days                                                                                                                 |
|                |                                                                         | 陪产假<br>paternity leave           | 男方<br>male                         | 15 日<br>15 days        | 20 日<br>20 days                                                                                                                 |
|                |                                                                         | 育儿假<br>parental leave            | 夫 妻 双 方<br>couple                  | /                      | 夫妻双方可在子女 0-3 周岁期间每年各享受不少于 10 日<br>Each parent entitled to no less than 10 days each year before the children reach the age of 3 |

## 2. Tianjin Released Relevant Implementing Measures for Parental Leave, Carer's leave, etc.

In Tianjin, after the promulgation of the Tianjin Regulations on Population and Family Planning on November 29, 2021 making general adjustments to relevant leave policies (i.e. marriage leave was adjusted to 10 days, extended maternity leave was adjusted to 60 days, paternity leave was adjusted to 15 days, added 10 days of parental leave, 20 days of carer's leave for only child and 10 days of carer's leave for non-only child), the General Office of the Tianjin Municipal People's Government issued the Implementing Measures for Marriage Leave, Maternity Leave, Paternity Leave, Parental Leave, Carer's Leave and Other Vacations (the “[Measures](#)”) (retroactively effective from November 29, 2021), clarifying common parental leave questions to further guide enterprises and employees on the management and use of the aforementioned leave.

The Measures clarified that parental leave shall be calculated according to the number of children the couple gives birth to, and the number of days of parental leave granted to a couple with many children shall be calculated on an accumulative basis. The leave cycle shall be calculated according to the actual age of the children. Parental leave not

taken in the current year shall generally not be carried forward to the next year. If an employee fails to timely take parental leave or other leaves due to the employer's reason, the employer shall arrange for compensatory time-off. In case of divorce, the parent who is bringing up the child (children) is entitled to parental leave. Adoptive parents or stepparents who are bringing up a child or stepchild shall be entitled to parental leave. Parental leave shall be working days and shall not include statutory holidays and off days.

With regard to the carer's leave, the Measures clarifies that if an elderly above 60 years old is hospitalized due to illness, the employer of his/her children shall grant carer's leave of 20 days each year to the only child of such elderly and 10 days each year to the non- only child of such elderly; the carer's leave shall be determined according to the actual days of hospitalization. Where their children die or are unable to take care of themselves, the spouses of the children shall be entitled to corresponding carer's leave. The adopted child or stepchild who takes care of the adoptive parent (s) or stepparent (s) under his/her support shall be entitled to carer's leave.

Employers are advised to learn local existing rules in a timely manner, revise and improve internal rules and regulations, and fully protect employees' rights and interests to rest and vacation.



## **VI. Exploration of Typical Cases: Jiangsu, Guangdong and Tianjin Released Typical Cases of Labor Disputes**

On April 28, 2022, The People's Court of Jiangsu Province released ten typical labor dispute cases concluded by all courts in the province in 2021. On the same day, Guangdong Higher People's Court released 10 typical labor dispute cases. On April 29, 2022, Tianjin Higher People's Court released 9 typical labor dispute cases. The aforementioned typical cases involve labor relations, labor remuneration, economic compensation, maternity leave of female employees and interpretations of rules and regulations, etc., covering the discussion of traditional labor disputes, disputes over employment in new business form, and labor disputes during the epidemic.

The judgment views and reasoning of the courts in the aforementioned typical cases can provide useful reference for employers to reasonably deal with similar situations in employment management. Among them, the main points of adjudication in the following cases are worth noting:

**1. Jiangsu: If the employer, under the pretext of the epidemic, uses long leave and other forms to force the employee to leave can amount to constructive dismissal stipulated in Article 38 of the Labor Contract Law that the employer "fails to provide labor protection or working conditions in accordance with the labor contract" . If the employee terminates the labor contract on this ground and claims economic compensation, the people's court shall support it.**

After an employee complained to the relevant departments due to social security issues, the company sent a separate notice to the employee for his personal long vacation, stating that he will be arranged for three months' vacation due to the impact of the epidemic and wages will be paid at 80% of the local minimum wage during the vacation which is far lower than the original income level of the employee. The Intermediate People's Court of Suzhou City, Jiangsu Province held that the company's practice of "arranging for a long vacation" for the employee without justifiable reasons was a failure to provide working conditions for the employee as agreed and when the employee was forced to terminate the labor contract on this ground, the employer shall pay economic compensation.

**2. Jiangsu: When there is a conflict between clauses of the company internal rules and regulations, and if the employer has disputes with the employee, the people's court shall support the employee's claim to apply a favorable interpretation.**

Articles 72 and 75 of a company's Employee Handbook both provide the circumstances in which the company can terminate the labor contract. From the perspective of the context, the conditions provided in Article 75 for the company to terminate the labor contract require higher requirements for the employer. Now the company terminates the labor contract according to Article 72, which has lower requirements for termination. The Intermediate People's Court of Yancheng City, Jiangsu Province held that, considering that the termination of the labor contract is the most severe disciplinary measure taken by the employer against the employees and other factors, when the two parties have different understandings of the provisions, an explanation in favor of the employees shall be adopted. The more stringent and specific provision (Article 75) of the termination conditions should be applied when making a decision on the termination of the labor contract, so the company was ordered to pay compensation to Cai for the illegal termination of the labor contract.

**3. Guangdong: The employer cannot terminate the labor relationship only because of the employee's involvement in side work during the epidemic shutdown period.**

Due to the epidemic situation, a textile company arranged for the employee Hou to take a leave from January to June 2020 and paid 80% of the minimum wage from April 2020. Beginning in May 2020, Hou involved in side work at a company (the third party) and paid social security through the third party. After discovering the above situation, the company sent a notice to Hou on May 26, 2020, asking him to correct it immediately or face the consequences. Hou did not return to work in the company until July 1, 2020, and the company terminated the labor relationship with Hou on the basis of the Article 39.4 of the Labor Contract Law, providing that "the employer is entitled to terminate the employees who establishes labor relations with other employers at the same time ... but refuses to make corrections after being proposed by the employer".

The Intermediate People's Court of Zhongshan City, Guangdong Province held that the labor contract between the two parties could not be performed normally due to the employer's reasons. Hou temporarily took a part-time job in an outsider company during the holiday period, which was Hou's self-help behavior in a special period and would not have any impact on Hou's completion of the company's work tasks. The company's termination decision is groundless and should bear corresponding responsibilities to Hou.

**4. Tianjin: The employer shall bear the liability for contracting negligence when canceling the job offer, and the compensation amount shall be comprehensively considered based on the actual loss.**

After the interview, a hotel in Tianjin telephoned Wang that he would be hired, and issued a confirmation letter of admission. According to the requirements of the hotel, Wang went through the resignation formalities and social security transfer from the original employer, and submitted the resignation certificate and related employment information to the hotel. After that, the hotel refused to establish labor relations with Wang on the grounds of post cancellation.

Tianjin Nankai District People's Court held that the effective employment notice could not be revoked at will, and the hotel's cancellation of employment constituted a contracting fault, so it should bear the liability according to law. As Wang was already unemployed due to the hotel's behavior, the court

determined that the hotel would compensate Wang for 11,000 yuan, equivalent to 1.375 months'salary in the original employer, in consideration of the salary level that the hotel committed to Wang, the length of period during which Wang stopped working and the losses caused by stopping working.

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