

海问劳动法双月报 (Haiwen Labor Law Bi-Monthly Newsletter)

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一、新规速递：上海市《关于加强企业职工疾病休假管理保障职工疾病休假期间生活的通知》失效，影响病假待遇标准

Snapshot of New Regulations: Shanghai Notice on Sick Leave Administration Has Expired, Affecting the Standards of Sick Leave Benefits

2026年8月15日，《上海市劳动局关于加强企业职工疾病休假管理保障职工疾病休假期间生活的通知》（沪劳保发〔1995〕83号）（“《通知》”）的有效期届满，现已失效。该文件曾长期作为上海确定病假工资及疾病救济费计算标准的主要依据，该等地方性标准不同于国家层面的规定。

On August 15, 2026, the Notice of the Shanghai Municipal Labor Bureau on Strengthening the Administration of Enterprise Employees' Sick Leave to Safeguard the Living of Such Employees during Sick Leave (“Notice”) expired and ceased to be effective. This document had long served as the primary basis for determining sick pay and illness relief allowances in Shanghai, and such local standards are different from the national regulations.

对于《通知》失效后上海市病假待遇的确定标准，目前上海市人社局的咨询解答口径为：《通知》失效后，上海地区病假期间工资待遇按照国家层面的规定执行，即员工在法定医疗期内的病假工资或疾病救济费不得低于当地最低工资标准的80%。在此基础上，企业可以通过依法制定的规章制度，进一步明确具体计算基数、支付比例及计算方式；如企业希望继续沿用《通知》原有的工龄分档及支付标准，也可以将其转化为本企业的制度安排，但应严格履行民主协商及公示告知程序。

Regarding the standards of sick leave benefits in Shanghai following the lapse of the Notice, the current consultation opinion of the Shanghai Municipal Human Resources and Social Security

Bureau is: After the invalidation of the Notice, sick leave benefits shall follow the national regulations; specifically, sick pay or illness relief allowances during the statutory medical treatment period shall not fall below 80% of the local minimum wage. In practice, companies may further prescribe specific calculation bases, payment ratios, and methodologies through duly established internal policies. Companies intending to retain the former seniority-based tiers and payment standards under the Notice may codify such standards into their internal policies, provided that proper democratic consultation and notification procedures are strictly observed.

二、新规速递：网信办发布《数据出境安全管理政策法规问答（2026年7月）》，涉及员工信息出境的告知同意义务

Snapshot of New Regulations: CAC Issued Q&A on Cross-Border Data Transfer Security (July 2026), Clarifying Notice and Separate Consent Requirements

2026年7月24日，国家互联网信息办公室发布《数据出境安全管理政策法规问答（2026年7月）》（“《问答》”），涉及个人信息出境的告知同意义务、安全评估有效期的延期条件和招聘场景出境必要性问题。

On July 24, 2026, the Cyberspace Administration of China released the Q&A on Policies and Regulations Governing Cross-Border Data Transfer Security (July 2026) (“Q&A”), addressing notice and separate consent obligations for personal information exports, extension conditions for security assessment validity, and necessity determinations in recruitment scenarios.

《问答》第一点提示，个人信息出境应当遵守《个人信息保护法》第三十九条的规定，履行告知、取得个人单独同意等义务。同时，根据《个人信息保护法》第三十条规定，如向境外提供的是敏感个人信息，还应当向个人告知出境敏感个人信息的必要性以及对个人权益的影响。

Point One of the Q&A notes that personal information export shall comply with Article 39 of the Personal Information Protection Law (“PIPL”), fulfilling obligations to notify and obtain separate consent from individuals. Additionally, under Article 30 of the PIPL, where sensitive personal

information is provided overseas, the individual shall also be informed of the necessity of exporting such sensitive personal information and the impact on their rights and interests.

取得个人单独同意的方式可参考GB/T 42574-2023《信息安全技术个人信息处理中告知和同意的实施指南》，采用书面签署、弹窗确认、邮件短信回复等方式开展。个人信息出境活动属于《个人信息保护法》第十三条第一款第二项至第七项规定情形的，不需取得个人同意，但仍应履行个人信息出境告知义务。

The manner of obtaining separate consent may refer to GB/T 42574-2023, Information security technology - Implementation guidelines for notices and consent in personal information processing, by means of written signature, pop-up confirmation, email or SMS reply, etc. Where personal information export falls under any of the circumstances specified in Article 13, Paragraph 1, Items 2 through 7 of the PIPL, separate consent is not required, but the obligation to notification remains.

《问答》第三点提示，招聘场景下，将境内求职者简历等个人信息提供给境外的集团总部或者关联机构，应当从出境活动与招聘事项关联度、涉及自然人数量规模、出境个人信息数据项范围等方面判断必要性。如境外总部或者关联机构不参与境内应聘人员录用决策，数据出境不具备必要性。如境外总部或者关联机构直接参与境内应聘人员录用决策，出境应聘人员规模为满足境外决策所需的最小数量，出境个人信息数据项为满足境外决策所需的最小范围，相关个人信息出境活动应当按照《促进和规范数据跨境流动规定》要求，采取申报数据出境安全评估、订立个人信息出境标准合同、通过个人信息出境认证等方式合规开展，并按照法律、行政法规的规定告知并取得个人单独同意，开展个人信息保护影响评估等。

Point Three of the Q&A notes that in recruitment scenarios, providing personal information such as resumes of domestic job applicants to an overseas group headquarters or affiliate shall be assessed for necessity from the perspectives of the relevance of the export activity to the recruitment matter, the number and scale of natural persons involved, and the scope of personal information exported. Where the overseas headquarters or affiliate does not participate in the hiring decision for domestic applicants, the data export is not necessary. Where the overseas headquarters or affiliate directly participates in the hiring decision, the scale of applicants' data exported shall be the minimum necessary for the overseas decision-making, and the personal

information data items exported shall be the minimum scope necessary for such decision-making. Such personal information export activities shall be conducted in compliance with the Provisions on Promoting and Regulating Cross-Border Data Flows by filing a data export security assessment, concluding standard contracts for personal information export, or obtaining personal information export certification, and shall notify and obtain separate consent from individuals in accordance with laws and administrative regulations, and conduct personal information protection impact assessments, among other requirements.

三、典型案例：最高人民法院发布《关于事业单位工作人员脱产参加全日制学历教育后违反服务期约定有关问题的批复》及相关典型案例

Exploration of Typical Cases: The Supreme People's Court Released the Reply on Issues Concerning Staff Members of Public Institutions Violating Agreed Service Periods After Leaving Their Posts to Participate in Full-time Academic Education, Together with Relevant Typical Cases

1. 最高人民法院发布《关于事业单位工作人员脱产参加全日制学历教育后违反服务期约定有关问题的批复》

The Supreme People's Court Issued the Reply on Issues Concerning Staff Members of Public Institutions Violating Agreed Service Periods After Leaving Their Posts to Participate in Full-time Academic Education

2026年7月29日，最高人民法院发布《关于事业单位工作人员脱产后违反服务期约定有关问题的批复》，明确：

On July 29, 2026, the Supreme People's Court issued the Reply on Issues Concerning Staff Members of Public Institutions Violating Agreed Service Periods After Leaving Their Posts to Participate in Full-time Academic Education, clarifying that:

（1）事业单位与工作人员就其脱产参加全日制学历教育约定服务期，属于有效约定：工

作人员仅以约定服务期限、违约金违反劳动合同法第二十二条、第二十五条规定为由请求确认约定无效的，人民法院不予支持。

(1) an agreement between a public institution and its staff member on a service period in connection with the staff member's taking leave to pursue full-time academic education constitutes a valid agreement. Where a staff member requests the court to declare such agreement invalid solely on the ground that the agreed service period or the liquidated damages violate the provisions of Article 22 or Article 25 of the Labor Contract Law, the court shall not uphold such request.

(2) 约定的服务期限应当合理：工作人员以约定的服务期限不合理为由，请求确认超过合理比例部分的约定无效的，人民法院应当综合考量事业单位支付的相关费用、学习时间，以及工作人员因接受该学历教育所获得的学历、学位等因素，确定约定的服务期限是否合理及依法应否予以支持。

(2) the agreed service period shall be reasonable. Where a staff member requests the court to declare invalid the portion of the agreement exceeding a reasonable ratio on the ground that the agreed service period is unreasonable, the court shall, by comprehensively taking into account factors such as the relevant expenses paid by the public institution, the duration of study, and the academic credential and degree obtained by the staff member through such education, determine whether the agreed service period is reasonable and whether it should be upheld.

(3) 违反服务期约定的，应当承担与其违约行为相对应的违约责任，不受“不得超过服务期尚未履行部分所应分摊的培训费用”的限制：工作人员违反服务期约定，事业单位请求其依约承担违约责任的，人民法院依法予以支持。工作人员主张约定的违约金明显高于违约造成的损失，请求予以适当减少的，人民法院可以综合考虑实际损失、已经履行的年限、过错等因素，根据公平原则和诚信原则，确定其应当承担的责任。工作人员主张全日制学历教育属于《事业单位人事管理条例》第二十三条或者劳动合同法第二十二条规定的培训范围、违约金应以劳动合同法第二十二条第二款规定的培训费用为限的，人民法院不予支持。

(3) a party who breaches the agreed service period shall bear liability for breach of contract commensurate with its breach, and is not subject to the restriction that “the liquidated damages may not exceed the training expenses attributable to the unperformed portion of service period”.

Where a staff member breaches the agreed service period and the public institution requests that the staff member bear the liability, the court shall uphold such request in accordance with the law. Where a staff member claims that the agreed liquidated damages are significantly higher than the losses caused by the breach and requests an appropriate reduction, the court may, by comprehensively considering factors such as the actual losses, the number of years already performed, and the degree of fault, and in light of the principles of fairness and good faith, determine the liability to be borne by the staff member. Where a staff member claims that full-time academic education falls within the scope of training as provided in Article 23 of the Regulations on Personnel Management of Public Institutions or Article 22 of the Labor Contract Law, and that the liquidated damages should be capped at the training expenses stipulated under Paragraph 2 of Article 22 of the Labor Contract Law, the court shall not uphold such claim.

2. 最高人民法院同步发布《事业单位工作人员脱产参加全日制学历教育后违反服务期约定纠纷典型案例》

The Supreme People's Court Simultaneously Released the Typical Cases Concerning Disputes Over Breach of the Agreed Service Period by Public Institution Staff after Taking Leave for Full-Time Academic Education

最高人民法院同步发布两则典型案例：

The Supreme People's Court simultaneously released two typical cases:

在案例一中，某医院工作人员魏某脱产就读研究生，与医院约定：读研期间医院发放工资和其他福利；若服务期未满提出工作调动或辞职，全额赔偿奖励的学费和就读期间发放的工资，并5倍赔偿就读期间发放的绩效工资和其他福利待遇。魏某读研后未回医院工作。

In Case 1, Wei Mou, a staff member of a hospital, took leave to pursue a postgraduate degree. Wei agreed with the hospital that: during his postgraduate studies, the hospital would pay his/her wages and other benefits; if Wei requested a job transfer or resigned before the service period expired, Wei would fully reimburse the rewarded tuition fees and the wages paid during the study period, and pay five times the performance-based wages and other welfare benefits paid during the study period. After completing his studies, Wei did not return to work at the hospital.

就魏某是否应当承担违约责任，以及违约责任内容，法院认为：工作人员基于自身提高学历需要参加研究生学习，经协商一致后，事业单位准许其深造，更侧重于满足个人需求，不属于《中华人民共和国劳动合同法》第二十二条规定的专业技术培训，员工违反服务期约定应当承担违约责任；基于兼顾事业单位有序发展和人才合理流动的考量，将违约金由过高的5倍奖金调整为3倍，员工无偿取得的其他费用及五险一金应当全额返还。

With respect to whether Wei should bear liability for breach of contract and the content of such liability, the court held that a staff member who pursues postgraduate studies to meet his/her own need to upgrade his academic credentials, and is permitted by the public institution to pursue further study upon mutual consultation, primarily satisfies his/her personal needs, which does not constitute the specialized technical training as provided in Article 22 of the Labor Contract Law; therefore, the employee shall bear liability for breach of contract for violating the agreed service period. Taking into account the need to balance the orderly development of the public institution and the reasonable flow of talent, the court adjusted the liquidated damages from the excessively high five times the bonus to three times, and held that the other expenses and the social insurance and housing fund obtained by the employee for free should be fully returned.

在案例二中，杨某在某学院工作期间，读取全日制博士研究生，与某学院约定：学习期间的工资待遇不变，杨某取得学历学位后全额报销各项学习费用；杨某学习期间不得申请调离，积极协助某学院共同申报科研项目，服务年限不少于8年；如杨某违约，应按已发工资和其他福利待遇总额的1.5倍支付违约金，退还某学院为杨某支付的所有学习费用。杨某毕业后未回岗工作。

In Case 2, during the employment with a research institution, Yang Mou pursued a full-time doctoral degree, and agreed with the institution that: Yang's wage would remain unchanged during the study period, and all study expenses would be fully reimbursed after Yang obtained the academic credential and degree; Yang might not apply for a job transfer during his/her studies and should actively assist the institution in jointly applying for research projects, with a service period of no less than eight years; if Yang breached the agreement, he/she should pay liquidated damages equal to 1.5 times the total wages and other welfare benefits already paid, and refund all study expenses paid by the college for Yang. After graduation, Yang did not return to his/her post in the institution.

就违约责任，法院认为：案涉协议有关违反服务期则返还脱产期间工资、社会保险费等约定系双方真实意思表示，属《事业单位人事管理条例》第十七条“双方对解除聘用合同另有约定”的范畴，合法有效，杨某应承担违约责任；由于读博期间仍参与完成多项科研课题及发明专利，可认定此期间为某学院提供部分劳动，综合考虑服务期限、违约程度等，按读博期间某学院支付工资、福利待遇总额的70%酌情认定违约金474,076.55元。

With respect to the liability for breach of contract, the court held that the provisions in the agreement concerning the return of wages and social insurance premiums during the leave period upon breach of the service period represented the true intention of both parties, fell within the scope of “where the parties have otherwise agreed regarding termination of the employment contract” under Article 17 of the Regulations on Personnel Management of Public Institutions, and were lawful and valid; therefore, Yang should bear liability for breach of contract. Since Yang still participated in and completed multiple research projects and invention patents during his doctoral studies, it could be determined that he provided partial labor to the college during this period; taking into account the service period, the degree of breach and other factors, the court, at its discretion, determined the liquidated damages to be RMB 474,076.55, calculated at 70% of the total wages and welfare benefits paid by the college during the doctoral study period.

四、典型案例：人民法院案例库新增1件劳动争议案例

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

2026年7月27日，人民法院案例库收录了1件劳动争议典型案例，明确：劳动者因近亲属病危去世请假奔丧，未获批准即离岗的，应结合请假手续、离岗事由、离岗时长、造成的损失等因素，判断是否构成严重违反用人单位规章制度。

On July 27, 2026, a typical labor dispute case was added to the People's Court Case Database, clarifying that: where an employee applies for leave to attend the funeral of a critically ill or deceased close family member and leaves the post without approval, whether such conduct constitutes a material breach of the company's rules and regulations should be determined by

taking into account factors such as the leave application procedures, the reasons for leaving the post, the duration of absence, and the losses caused.

该案中，员工乔某伟因哥哥病危，向经理请假15天，经理以假期过长为由拒绝，乔某伟表示可申请不带薪事假。后8月20日哥哥去世，乔某伟微信请假，并于21日回乡奔丧。25日，乔某伟在返京途中联系经理，被告知无需再回公司。28日，公司以在请假未获批准的情况下于8月21日至25日擅自离岗、严重违反规章制度为由，解除劳动合同。

In this case, Qiao Mouwei applied to the manager for 15 days' leave because his/her brother was critically ill. The manager rejected the application on the ground that the leave was too long, and Qiao expressed that he/she could apply for unpaid personal leave. On August 20, Qiao's brother passed away; Qiao applied for leave via WeChat and returned to hometown on August 21 to attend the funeral. On August 25, while on the way back to Beijing, Qiao was told by the manager that he/she no longer needed to return to the company. On August 28, the company terminated the employment contract on the ground that Qiao had, without leave approval, been absent from work without authorization from August 21 to 25, which constituted a material breach of the rules and regulations.

就解除合法性，法院认为，用人单位以劳动者请假未获批准即离岗、构成严重违反规章制度为由解除劳动合同，劳动者主张解除合同行为违法的，应当结合劳动者是否履行请假手续、离岗事由、离岗时长，以及劳动者离岗是否造成用人单位严重损失等因素，综合判断劳动者行为是否达到严重违反规章制度的程度，同时考量用人单位具体适用规章制度的合理性，进而评判解除劳动合同是否违法。本案中，乔某伟已履行事先告知义务，在请假未获批准后又申请不带薪事假，其离岗事由具有紧迫性和合理性，符合人之常情和善良风俗。其在料理完丧事后即行返岗，离岗时长在合理范围之内，且并无证据证明乔某伟的离岗行为给单位造成了严重损失，因此不属于严重违纪。认定公司构成违法解除。

With respect to the legality of the termination, the court held that where a company terminates an employment contract on the ground that an employee's unauthorized absence constitutes a material breach of rules and regulations, and the employee challenges such termination as unlawful, the adjudication must comprehensively examine whether the employee's conduct rises to the level of a material breach. Relevant factors include whether the employee sought leave, the reasons for and duration of the absence, and whether the absence caused material loss to the

company, together with a reasonableness review of the company's application of its rules. In this case, Qiao gave prior notice, subsequently applied for unpaid leave after his/her initial request was denied, and the reasons for absence were urgent, reasonable, and consistent with common human sentiment and public morality. Qiao returned to work promptly upon completion of the funeral, and the absence was of reasonable duration, with no evidence of material loss. Accordingly, Qiao's conduct did not constitute a material breach, and the termination was deemed unlawful.

五、典型案例：北京市房山区人民法院发布涉隐蔽用工类劳动争议纠纷典型案例

Exploration of Typical Cases: Beijing Fangshan District People's Court Released Typical Cases Concerning Labor Disputes Involving Concealed Employment

2026年7月16日，北京市房山区人民法院发布涉隐蔽用工类劳动争议纠纷典型案例，涉及以承揽合同掩盖劳动关系、名为外包实为派遣、委托第三方代发报酬、实习期满未续签劳动合同等问题。典型案例裁审观点如下：

On July 16, 2026, Beijing Fangshan District People's Court released typical cases concerning labor disputes involving concealed employment, covering issues such as using work contracting agreements to disguise employment relationships, nominally outsourcing but actually dispatching, entrusting a third party to pay remuneration on its behalf, and failure to renew the employment contract upon expiration of the internship period. The adjudication opinions of the typical cases are as follows:

(1) 案例一中，公司与于某约定，于某以个体工商户身份承揽配送业务。于某主张双方存在劳动关系并要求支付经济补偿金，法院认为，判断劳动关系是否成立应遵循实质性审查标准。该案件中，双方具备劳动关系主体资格；公司认可于某在站点从事配送业务，于某的配送业务属于公司业务的组成部分；于某按照公司要求注册派单平台，公司对骑手进行排班，可以控制骑手接单量，还可单独派单。因此双方构成事实劳动关系。

In Case 1, the company agreed with Yu that Yu would undertake delivery services in the capacity of an individually-owned business. Yu claimed the existence of an employment relationship and sought economic compensations. The court held that the determination of employment relationship must follow a substantive review standard. The parties satisfied the statutory qualifications for labor relations; the company acknowledged Yu's performance of delivery services at its stations, which formed an integral part of the company's business operations; Yu registered on the company's platform as required, and the company exercised control over rider scheduling, order volume, and exclusive task assignment. Accordingly, an employment relationship exists between the two parties.

(2) 案例二中，甲、乙公司签订《劳务外包合作协议》，李某与甲公司签订劳动合同、被安排至乙公司担任销售员。后李某被以严重违纪为由退回，甲公司据此解除劳动合同。就解除合法性，法院认为，李某在乙公司的劳动场所、接受乙公司的管理、指挥，且乙公司与甲公司之间约定，由乙公司确认、结算和支付李某的工资、福利等，因此二公司构成“假外包、真派遣”。乙公司作为用工单位，未证明退回依据，因此甲公司在乙公司将李某退回后，径行解除劳动关系，系违法解除，应支付赔偿金。

In Case 2, Company A and Company B entered into a Labor Outsourcing Cooperation Agreement. Li executed a labor contract with Company A and was assigned to work as a salesperson at Company B. Li was subsequently returned to Company A on grounds of serious misconduct, and Company A terminated the labor contract accordingly. On the lawfulness of termination, the court held that Li performed his/her duties at Company B's premises and was subject to its management and direction. Furthermore, the agreement between the two companies stipulated that Company B was responsible for verifying, settling, and paying Li's wages and benefits. Accordingly, the arrangement constituted a nominally outsourcing but actually dispatching. As the actual employing entity, Company B failed to substantiate the grounds for returning Li. Company A's subsequent termination upon such return was therefore unlawful, entitling Li to statutory severance damages.

(3) 案例三中，暴某由某快递公司工作人员安排，从事外卖骑手工作，双方未签订书面劳动合同。后因工伤认定产生争议，暴某诉请确认劳动关系。公司主张已将业务外包、由第三方向劳动者发放费用。法院认为，暴某系快递公司全职骑手，配送业务属于公司业务组

成部分，由站点站长进行工作监督、考勤管理，受到快递公司的实质管理，人格从属性较强；第三方公司虽向暴某发放劳务报酬，但资金来自快递公司，第三方仅为代发。因此认定双方构成事实劳动关系。

In Case 3, Bao was assigned by personnel of a courier company to work as a food delivery rider, with no written labor contract executed. A dispute arose regarding work-related injury recognition, and Bao filed suit seeking confirmation of a labor relationship. The company argued that it had outsourced the business and that remuneration was paid by a third party. The court held that Bao served as a full-time rider for the courier company, that delivery operations constituted an integral part of the company's business, and that Bao was subject to supervision and attendance management by the station manager, evidencing strong personal subordination to the company. Although a third-party entity disbursed remuneration to Bao, the funds originated from the courier company, with the third party acting merely as a payment agent. Accordingly, an employment relationship exists between the two parties.

(4) 案例四中，张某在实习期与某公司签订《劳动合同》，后张某以实习期满未再签订劳动合同为由要求未签劳动合同二倍工资差额。张某提交的《劳动合同》仅载明实习期，公司提交的《劳动合同》另有公司负责人手写的一年固定期限。张某主张公司未告知添加该条款。法院认为，实习期满不代表劳动合同自动续延，用人单位如需继续用工，应当依法重新签订或续签书面劳动合同，因此判令公司支付未签劳动合同二倍工资差额。

In Case 4, Zhang entered into a Labor Contract with a company during the internship. Zhang subsequently claimed double wages for failure to execute a new labor contract upon expiration of the internship period. The contract submitted by Zhang specified only the internship period, whereas the version submitted by the company included a one-year fixed term handwritten by the company's responsible officer. Zhang contended that he/she was not notified of the added clause. The court held that expiration of an internship does not automatically extend the labor contract, and that an employer must execute or renew a written labor contract in accordance with the law to continue employment. Accordingly, the company was ordered to pay Zhang the double wage differential for the period of non-execution.

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