

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

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Summary

本期摘要

新规速递：《最高人民法院关于审理劳动争议案件适用法律问题的解释（二）》发布

Snapshot of New Regulations: The Interpretation of the Supreme People's Court on the Application of Law in the Trial of Labor Dispute Cases (II) was Released

新规速递：人社部发布《超龄劳动者基本权益保障暂行规定（公开征求意见稿）》；人社部办公厅发布《企业实施竞业限制合规指引》

Snapshot of New Regulations: The Ministry of Human Resources and Social Security ("MOHRSS") Released the Interim Provisions on the Protection of Basic Rights and Interests of Over-Age Employees (Public Exposure Draft); The General Office of the MOHRSS Issued the "Compliance Guidelines on the Implementation of Non-Competition Restrictions by Enterprises"

新规速递：北京、上海、天津陆续调整最低工资标准

Snapshot of New Regulations: Beijing, Shanghai, Tianjin Adjust Minimum Wage Standards

典型案例：人民法院案例库新增2件劳动争议案例

Exploration of Typical Cases: 2 New Labor Dispute Cases Added to the People's Court Case Database

典型案例：北京市、重庆市发布竞业限制相关案例

Exploration of Typical Cases: Beijing and Chongqing Released Cases Related to Non-compete Restrictions

一、新规速递：《最高人民法院关于审理劳动争议案件适用法律问题的解释（二）》发布

[Snapshot of New Regulations: The Interpretation of the Supreme People's Court on the Application of Law in the Trial of Labor Dispute Cases \(II\) was Released](#)

2025年7月31日，《最高人民法院关于审理劳动争议案件适用法律问题的解释（二）》（法释〔2025〕12号，“《司法解释二》”）发布，并于2025年9月1日起正式施行。作为劳动法领域的重要司法依据，《司法解释二》历经长期且广泛的征求意见过程后，终于正式落地。

On July 31, 2025, the Interpretation of the Supreme People's Court on the Application of Law in the Trial of Labor Dispute Cases (II) (法释〔2025〕12号, "the [Judicial Interpretation \(II\)](#)") was released, and officially came into effect on September 1, 2025. As an important judicial reference in the labor law field, the Judicial Interpretation (II) was formally enacted following an extensive and prolonged process of public consultation.

相较于《最高人民法院关于审理劳动争议案件适用法律问题的解释（二）（征求意见稿）》（“《[征求意见稿](#)》”）的27条，《司法解释二》最终确定为21条，删除了《征求意见稿》中关于股权激励案件定性、未休年休假补偿时效等争议性较大的条款；对其余条款进行形式或实质性调整，对于竞业限制无效情形、混同用工的责任划分、劳动合同不能继续履行的情形、社保免缴约定的后果、二次固定期限合同认定等难点问题明确了裁判口径。

Compared to the 27 articles in Interpretation of the Supreme People's Court on the Application of Law in the Trial of Labor Dispute Cases (II) (Exposure Draft) (the "[Exposure Draft](#)"), the finalized Judicial Interpretation (II) has been streamlined to 21 articles, which removed several controversial provisions: such as those concerning the nature of equity incentive cases and the statute of limitations for compensation for unused annual leave from the Exposure Draft. The remaining provisions have undergone formal or substantive revisions in the Judicial Interpretation (II) which clarifies on challenging issues including the circumstances where non-compete agreements are deemed invalid, liability allocation in cases of mixed employment, situations where labor contracts cannot continue to be performed, consequences of agreements to exempt the employer from contribution of social security, and the recognition of a second fixed-term contract.

与此同时，最高院一同发布了与《司法解释二》配套的6个劳动争议典型案例，涵盖企业混同用工、竞业限制纠纷等热点问题，直观诠释了《司法解释二》确立的相关规则。《司法解释二》及典型案例的发布，对统一全国劳动争议案件的裁判尺度、明晰法律适用规则具有重要的指导意义。

In the meanwhile, six typical cases concerning labor disputes were released together by the Supreme People's Court ("SPC") as supporting references for the Judicial Interpretation (II), which covers widely heated-discussed questions such as mixed employment and disputes over non-compete agreements, providing concrete illustrations of the relevant rules established in the Judicial Interpretation (II). The release of both Judicial Interpretation (II) and the typical cases is considered to be of significant guidance for unifying the adjudication standards of labor dispute cases nationwide and clarifying the application of legal principles.

我们近期从相关背景以及引申与提示等角度对《司法解释二》进行了逐条解读，具体内容请参见[《海问·观察 | 劳动争议《司法解释二》分析解读（第1-10条）》](#)和[《海问·观察 | 劳动争议《司法解释二》分析解读（第11-21条）》](#)。

Recently, we have conducted a clause-by-clause interpretation of the Judicial Interpretation (II) from perspectives including its relevant background, implications, and practical insights. For more detailed information, please refer to: "[Haiwen Observations: Analysis of the Judicial Interpretation \(II\) on Labor Disputes \(Articles 1-10\)](#)" and "[Haiwen Observations: Analysis of the Judicial Interpretation \(II\) on Labor Disputes \(Articles 11-21\)](#)".

二、新规速递：人社部发布《超龄劳动者基本权益保障暂行规定（公开征求意见稿）》； 人社部办公厅发布《企业实施竞业限制合规指引》

Snapshot of New Regulations: The Ministry of Human Resources and Social Security ("MOHRSS") Released the Interim Provisions on the Protection of Basic Rights and Interests of Over-Age Employees (Public Exposure Draft); The General Office of the MOHRSS Issued the "Compliance Guidelines on the Implementation of Non-Competition Restrictions by Enterprises"

1. 人社部发布《超龄劳动者基本权益保障暂行规定（公开征求意见稿）》

The Ministry of Human Resources and Social Security ("MOHRSS") Released the Interim Provisions on the Protection of Basic Rights and Interests of Over-Age Employees (Public Exposure Draft)

2025年7月31日，人力资源社会保障部（“人社部”）发布《超龄劳动者基本权益保障暂行规定（公开征求意见稿）》（“《公开征求意见稿》”）向社会征求意见。此举旨在应对人口老龄化趋势，减少劳资双方的争议，保障超龄劳动者的合法权益。该规定在权益配置上特点鲜明，具体而言：

On July 31, 2025, the Ministry of Human Resources and Social Security (“MOHRSS”) released the Interim Provisions on the Protection of Basic Rights and Interests of Over-Age Employees (Public Exposure Draft) (the “Public Exposure Draft”) to seek public opinion, which aims to address the trend of populating aging, reduce labor disputes, as well as safeguard the lawful rights and interests of over-age employees. The Public Exposure Draft is distinctive in its equity allocation. Specifically:

(1) 《公开征求意见稿》明确了适用对象的范围。对于超过法定退休年龄的劳动者（“超龄劳动者”），无论是否享受养老保险，均纳入《公开征求意见稿》的保护范畴中。

The Public Exposure Draft clarifies the scope of application. Employees who have exceeded the statutory retirement age (“over-age employees”), irrespective of their eligibility for or receipt of pension insurance benefits, are included within the protective scope of the Public Exposure Draft.

(2) 《公开征求意见稿》切实考虑超龄劳动者的基本权益和企业用工成本。规定了用人单位应当合理安排超龄劳动者的工作时间和休息休假、提供不低于最低工资标准支付工资报酬、按照国家规定为超龄劳动者参加工伤保险并缴纳工伤保险费等内容。

The Public Exposure Draft are designed to protect the basic rights of over-age employees while giving due consideration to the labor costs incurred by enterprises. It set out that employers shall reasonably arrange working hours and rest for over-age employees, as well as provide remuneration not lower than the minimum wage standard, and participate in work-related injury insurance and contribute work-related injury insurance for them in accordance with national provisions.

(3) 《公开征求意见稿》体现了自愿性、协商性的原则。明确提出超龄劳动者和用人单位可以根据合法、公平、平等自愿、诚实信用的原则，协商一致确定双方的权利和义务。

The Public Exposure Draft reflects the principles of voluntariness and negotiation. It explicitly states that over-age employees and employers may determine their respective rights and obligations through mutual agreement based on the principles of legality, fairness, equality, voluntariness, and good faith.

总体而言，在现行人力资源社会保障立法的总体格局下，《征求意见稿》对超龄劳动者权益保障进行了具体规则设计，为各地用人单位在处理超龄劳动者用工相关问题方面，提供了实质性的参考与指引。

In a conclusion, under the current overall framework of human resources and social legislation, the Public Exposure Draft specific regulatory designs for protecting the rights and interests of over-age employees, which offers substantive reference and guidance for employers across regions in handling employment-related matters concerning over-age employees.

2. 人社部办公厅发布《企业实施竞业限制合规指引》

The General Office of the MOHRSS Issued the "Compliance Guidelines on the Implementation of Non-Competitor Restrictions by Enterprises"

2025年9月4日，人社部办公厅正式印发《企业实施竞业限制合规指引》（人社厅发〔2025〕40号）

（“《指引》”），《指引》聚集竞业限制制度常见问题，细化了竞业限制合规实施的具体要求，一定程度上回应了实践中诸多长期引发争议的疑难问题，对于企业实施竞业限制具有重要的指导意义。《指引》主要有下述新关注要点：

On September 4, 2025, the General Office of the MOHRSS officially released the Compliance Guidelines on the Implementation of Non-Competition Restrictions by Enterprises (人社厅发〔2025〕40号, the "[Guidelines](#)"). The Guidelines focus on common issues related to the non-competition restriction system, elaborate on detailed compliance requirements for implementing non-compete clauses, response to many controversial and difficult issues in practice to a certain extent, and hold significant guiding importance for enterprises implementing non-compete restrictions. The key points in the Guidelines are as follows:

(1) 明确实施竞业限制的前提条件

Specify the preconditions for implementing non-compete restrictions

在《劳动合同法》的基础上，《指引》进一步明确实施竞业限制的人员范围，对于仅掌握行业通用的专业知识和技能劳动者，工作中接触到的仅为企业一般经营信息，不属于负有保密义务的人员。企业与其他负有保密义务的人员约定竞业限制义务的，要提前告知理由，说明需要保守的商业秘密的具体内容。

On the basis of the Labor Contract Law, the Guidelines further clarify the scope of personnel subject to non-compete obligations, and employees who only possess generalized industry expertise and have access to routine business information in their work shall not be deemed to bear statutory confidentiality obligations. Where an enterprise proposes to impose non-compete obligations on other employees who do hold confidentiality obligations, it must clearly notify them in advance of the rationale and specify the concrete contents of the trade secrets to be protected.

(2) 明确实施竞业限制应遵循必要、合理原则

Clarify that the implementation of non-compete obligations must adhere to the principles of necessity and reasonableness

《指引》强调竞业限制的必要、合理原则，引导企业可优先采取有效措施管控商业秘密知悉权限、加密商业秘密数据、合理设置脱密期等商业秘密保护措施，实施竞业限制应开展必要性评估。

The Guidelines emphasize that non-compete obligations must adhere to the principles of necessity and reasonableness. Enterprises are encouraged to prioritize effective measures to protect the trade secrets such as controlling access to trade secrets, encrypting confidential data, and implementing reasonable declassification periods. Before imposing any non-compete restrictions, a necessity assessment shall be conducted.

(3) 明确企业与实施竞业限制劳动者应公平合理约定权利义务

Ensure that enterprises and employees subject to non-compete agreements negotiate rights and obligations fairly and reasonably

● 关于经济补偿的支付标准，《指引》第十三条规定，企业支付给劳动者的月经济补偿一般不低于劳动者在劳动合同解除或终止前12个月平均工资的30%，且不低于劳动合同履行地最低工资标准；对于竞业限制期限超过1年的，月经济补偿一般不宜低于劳动者在劳动合同解除或终止前12个月平均工资的50%。

As for payment standard of compensation, according to Article 13, the monthly economic compensation shall generally not be less than 30% of the employee's average wage in the 12 months prior to the termination of employment, and shall also not be less than the minimum wage standard of the place where the labor contract is performed; if the non-compete period exceeds one year, the monthly compensation should generally be no less than 50% of the employee's average monthly wage in the 12 months preceding the termination of the labor contract.

● 关于竞业限制义务的违约金，《指引》第十四条规定，违约金的数额要根据劳动者泄露商业秘密可能造成的经济损失、企业支付给劳动者的竞业限制经济补偿的数额合理确定，一般不宜超过约定竞业限制经济补偿总额的5倍。

As for liquidated damages for violation of non-compete obligations, Article 14 states that the amount shall be reasonably determined based on the potential economic losses resulting from the employee's disclosure of trade secrets and the amount of economic compensation paid by the enterprise. In practice, the damages typically should not exceed five times the total agreed non-competition economic compensation.

● 关于履行竞业限制义务的例外情形。《指引》第十七条规定，企业未及时足额支付经济补偿超过1个月经劳动者提醒后仍未支付的，或超过3个月未支付的，劳动者可以不再履行竞业限制义务。

As exceptions to the non-compete obligation, according to Article 17, an employee may cease performance of the non-compete obligation if the employer (a) fails to pay compensation for over one month after the employee has given a reminder, or (b) fails to pay for more than three months.

海问建议：《司法解释二》、《公开征求意见稿》及《指引》均会影响到企业劳动用工的各个方面，对于企业管理行为提出了更高的要求。企业应当在用工管理的过程中重视上述事项，确保符合最新的法律要求。

Haiwen Suggestions: Judicial Interpretation (II), the Public Exposure Draft, and the Guidelines will all affect all aspects of employment in enterprises, and will impose higher requirements on the management practices of enterprises. Enterprises should pay attention to the matters mentioned in the above provisions in the process of labor management and ensure alignment with the latest legal requirements.



三、新规速递：北京、上海、天津陆续调整最低工资标准

Snapshot of New Regulations: Beijing, Shanghai, Tianjin Adjust Minimum Wage Standards

近日，全国多地陆续调整2025年最低工资标准（需注意的是，在存在不同统计口径的地区，不同使用场景下可能需适用不同口径的数据，具体应以当地政策为准）。就各地近期出台的规定，请见我们的总结如下：

Recently, many cities have adjusted the local minimum wage of the year of 2025. (It should be noted that when publishing the wage data, some cities may adopt different approaches which should be applicable to different legal scenarios. Please follow the specific local rules.) Regarding the regulations recently issued by various localities, please see our summary as follows:

(单位/Unit: 元/¥)				
城市/City	施行日期/ Effective Date	调整最低工资标准的通知/ Notice of Adjusting Minimum Wage Standard	月最低工资标准 (全日制用工) / Monthly Minimum Wage(Full-Time Employee)	小时最低工资标准 (非全日制用 工) / Hourly Minimum Wage (Part-Time Employee)
北京 Beijing	自 2025 年 9 月 1 日起施 行/ Effective September 1, 2025	《北京市人力资源和社会保障局、 北京市总工会、北京企业联合会/北 京市企业家协会、北京市工商业联 合会关于调整北京市 2025 年最低 工资标准的通知》/ Notice on Adjusting the Minimum Wage Standards in Beijing for 2025 issued by Beijing Municipal Human Resources and Social Security Bureau, Beijing Federation of Trade Unions, Beijing Enterprise Confederation / Beijing Entrepreneurs Association, Beijing Federation of Industry and Commerce (京人社劳发 [2025] 7 号)	2540 元/Yuan	27.7 元/Yuan
上海	自 2025 年 7 月 1 日起施	《关于调整本市最低工资标准的通知 》 /Notice of Shanghai Municipal Human Resources and Social Security Bureau on	2740 元/Yuan	25 元/Yuan

Shanghai	行 Effective July 1, 2025	and Social Security Bureau on Adjusting the City's Minimum Wage Standards (沪人社规 〔2025〕10号)	2140 元/Yuan	25 元/Yuan
天津 Tianjin	自 2025 年 9 月 1 日起施 行/ Effective September 1, 2025	《市人社局关于调整天津市最低工 资标准的通知》/Notice of Tianjin Municipal Human Resources and Social Security Bureau on Adjusting the Municipal Minimum Wage Standard (津人 社规字〔2025〕1号)	2510 元/Yuan	26.6 元/Yuan



四、典型案例：人民法院案例库新增2件劳动争议案例

Exploration of Typical Cases: 2 New Labor Dispute Cases Added to the People's Court Case Database

自2025年6月至8月以来，人民法院案例库新收录2件劳动争议案件，涉及工时制度的认定和劳动关系解除相关责任等问题。截至目前，案例库收录的劳动争议案件总数已达61件，人事争议共1件。就2件新增入库案例包含的裁判典型观点，我们梳理如下：

From June to August 2025, the People's Courts Case Database has newly included 2 labor dispute cases, involving issues such as the determination of working hour systems and liabilities related to the termination of labor relations. Up to now, the total number of labor dispute cases included in the database has reached 61, with 1 personnel dispute case. We have summarized the typical judicial views contained in the 2 newly added cases as follows:

1. 在辽宁某商业管理有限公司诉陈某振劳动争议案中，综合考虑劳动合同约定为标准工时制、公司未向劳动行政部门办理不定时工时制的审批手续等事实，法院认定未向劳动行政部门办理审批手续的“上一休一”特殊工作制，不能当然认定为不定时工作制。在此情形下，对于劳动者加班费数额的认定，应当根据证据体现的加班频率、工作内容、工作时间等因素予以综合考虑。

In the labor dispute case of *a certain commercial management company in Liaoning v. Chen Mouzhen*, after comprehensively considering the facts that the labor contract stipulated the standard working system and the company failed to go through the approval procedures for the flexible working system with the labor administrative department, the court held that the special “work one day and rest one day” working system for which no approval procedures were completed with the labor administrative department cannot be deemed as the flexible working system by default. Under such circumstances, the amount of overtime pay for the employee shall be determined by comprehensively considering factors such as the frequency of overtime work, work content, and working hours as reflected in the evidence.

2. 在高某红诉某食品有限公司北京分公司劳动争议案中，用人单位将离职劳动者的工作安排给工作量本已饱和的其他劳动者而被拒绝，因而单方解除其与该其他劳动者的劳动合同。法院认定构成违法解除劳动合同，应当支付违法解除劳动合同赔偿金。

In the labor dispute case of *Gao Mouhong v. Beijing branch of a certain food company*, the employer assigned the work of a resigned employee to another employee whose workload was already saturated, and when the latter refused, the employer unilaterally terminated the labor contract with this employee. The court held that the employer has constituted illegal termination of the labor contract and that the employer should pay compensation for unlawful termination of the labor contract.

此外，对案例库中其他劳动争议案件详细分析以及用工实务建议，可参见 [《海问·观察 | 基于最高院第32批指导性案例的分析及用工实务建议》](#)、[《海问·研究 | 海问劳动法双月报（2024年1-2月）》](#)、[《海问·研究 | 海问劳动法双月报（2024年7-8月）》](#) 和 [《海问·研究 | 海问劳动法双月报（2025年5-6月）》](#)。

In addition, for the detailed analysis of other labor dispute cases in the database and practical suggestions on employment management, please refer to [Analysis Based on the 32nd Batch of Guiding Cases of the Supreme People's Court and Practical Suggestions on Employment Management](#), [Haiwen Labor Law Bi-Monthly Newsletter \(January-February 2024\)](#), [Haiwen Labor Law Bi-Monthly Newsletter \(July-August 2024\)](#) and [Haiwen Labor Law Bi-Monthly Newsletter \(May-June 2025\)](#).



五、典型案例：北京市、重庆市发布竞业限制相关案例

Exploration of Typical Cases: Beijing and Chongqing Released Cases Related to Non-compete Restrictions

1. 2025年7月3日，重庆高院发布2025年度涉竞业限制类劳动争议典型案例，聚焦竞业限制协议的解除条件、竞业限制的主体范围及竞业限制协议的效力等问题，其中，我们认为值得重点提示的裁审观点有：

On July 3, 2025, the Higher People's Court of Chongqing released typical labor dispute cases involving non-compete restrictions in 2025, focusing on issues such as the conditions for terminating non-compete agreements, the scope of subjects bound by non-compete restrictions, and the validity of non-compete agreements. Among them, the judicial views that we believe are worthy of key attention are as follows:

- 用人单位应以明示方式作出解除竞业限制协议的意思表示；在其未明示表示解除，而劳动者遵守诚信原则履行了竞业限制义务的情况下，用人单位应当履行支付竞业限制补偿的义务。

An employer shall express its manifestation of intention to terminate a non-compete agreement in an explicit manner; if the employer fails to express such intention explicitly, while the employee has performed the non-compete obligations in accordance with the principle of good faith, the employer shall fulfill its obligation to pay non-compete compensation.

- 用人单位不得以签订在后的竞业限制条款约束劳动者先前的行为。员工入职某公司时担任工程监理，双方未签订劳动合同。后员工与某公司补签书面劳动合同并约定竞业限制条款，公司主张员工违反竞业限制义务，法院不予支持。

An employer may not restrict an employee's prior acts by means of a later-signed non-compete clause. For example, an employee was employed as an engineering supervisor by a company without signing a labor contract. Later, the employee and the company supplemented and signed a written labor contract which included a non-compete clause. When the company claimed that the employee had violated the non-compete obligations, it was not supported by the court.

- 用人单位在劳动者离职后对竞业限制协议进行签章且主张竞业限制协议有效的，法院认定公司签章行为已明显超出合理期限，因此不予支持。

Where an employer affixes its seal to the non-compete agreement only after the employee's resignation and claims that the non-compete agreement is valid, the court shall hold that the employer's act of affixing the seal has obviously exceeded a reasonable time limit and thus shall not be supported.

- 离职员工虚假报告竞业限制期内的任职情况，未履行竞业限制义务的，应当承担违约责任。

When a resigned employee falsely reports his/her employment status during the non-compete period and fails to perform the non-compete obligations, he/she shall bear the liability for breach of contract.

2. 2025年7月29日，北京市一中院发布六起涉竞业限制劳动争议典型案例，其中体现了与《司法解释二》中竞业限制相关规定较为一致的司法裁判导向。其中，以下裁判观点值得重点关注：

On July 29, 2025, Beijing First Intermediate People's Court released 6 typical labor dispute cases related to non-compete restrictions, which reflect a judicial orientation relatively consistent with the provisions on non-compete restrictions in the Interpretation (II) by the Supreme People's Court of Issues Concerning the Application of Law in the Trial of Labor Dispute Cases. Among them, the following judicial views are worthy of key attention:

- 对竞业限制人员范围的认定。用人单位主张劳动者属于其他负有保密义务的人员，但是劳动者不认可的，应当由用人单位举证证明劳动者知悉用人单位的商业秘密或与知识产权相关的保密事项。

Determination of the scope of employee subject to non-compete restrictions. If an employer claims that an employee falls under the scope of “other employees under an obligation of confidentiality”, but the employee does not recognize such a claim, the employer shall bear the burden of proof to demonstrate that the employee has knowledge of the trade secrets and confidential matters related to intellectual property of the employer.

- 对竞争关系的认定。劳动者是否违反竞业限制义务，不能仅以竞业限制协议中约定的公司名称作为判断依据，而应综合新老用人单位的经营范围、实际经营业务、市场定位、目标市场及受众等多方面因素进行认定。

Determination of competitive relations. Whether an employee has violated the non-compete obligations shall not be determined merely based on the list of companies agreed in the non-compete agreement; instead, it shall be determined by comprehensively considering multiple factors such as the business scope, actual business operations, market positioning, target market and audience of both the new employer and the original employer.

- 竞业限制经济补偿的时效计算。用人单位按月支付竞业限制经济补偿，并不意味着将总体的经济补偿分割为多笔独立的债务，仍应将给予劳动者的经济补偿理解为同一笔债务。劳动者向用人单位主张竞业限制经济补偿的仲裁时效，应当统一从整个竞业限制期限届满之日起算。

Calculation of the limitation period for claiming non-compete compensation. The fact that an employer pays non-compete compensation on a monthly basis does not mean that the total compensation is divided into multiple independent debts; instead, the compensation paid to the employee shall still be regarded as a single debt. The limitation of arbitration for an employee to claim non-compete compensation from the employer shall be uniformly calculated from the date on which the entire non-compete period expires.

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