

海问劳动法双月报（2023年9-10月）

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一、法规解读：《社会保险经办条例》发布，对用人单位的员工社会保险合规管理提出新要求

Interpretation of Laws and Regulations: Regulation on Provision of Social Insurance Services was released, Proposing New Requirements for Employers to Manage the Employee Social Insurance Compliantly

《社会保险经办条例》（“《条例》”）于近日公布，并将自2023年12月1日起施行。《条例》共七章63条，内容涉及社会保险登记和转移、社会保险待遇核定和支付、社会保险经办服务和管理、社会保险经办监督及相关法律责任等方面，对用人单位在劳动用工过程中的员工社会保险合规管理提出了新的要求。其中，以下要点值得关注：

Regulation on Provision of Social Insurance Services (the “Regulation”) was released recently, and will come into effect from 1 December 2023. The Regulation includes seven chapters and 63 articles, covering registration and transfer of social insurance, approval and payment of social insurance entitlements, the provision and management of social insurance services, supervision and relevant legal liabilities of social insurance services, etc., and proposed new requirements for employers to manage the employee social insurance compliantly in employment. Among them, the following points are worthy of attention:

1. 建立信息共享机制，便于社会保险机构掌握并比对参保信息：公司登记管理机关将与社会保险经办机构共享用人单位设立、变更、注销登记的信息，公安、民政、卫生健康、司法行政等部门将与社会保险经办机构共享个人的出生、死亡以及户口登记、迁移、注销等信息。

Establishing an information-sharing system to facilitate social insurance agencies in obtaining and comparing insured persons' information: company registration authorities shall share information on the establishment, change and de-registration of employers with social insurance agencies, while public security, civil affairs, health and justice administration departments shall share information on births and deaths, as well as the registration, relocation and de-registration of Hukou of individuals, etc., with social insurance agencies.

2. 强调用人单位及员工的失信风险：人社部门会同有关部门建立社会保险信用管理制度，明确社会保险领域严重失信名单认定标准。用人单位、个人等违反社会保险法律、法规等失信行为将会被记录。

Emphasizing the dishonesty risks of employers and employees: Human Resources and Social Security Department, in conjunction with relevant departments, will establish a credit management system for social insurance, and specify the criteria for identifying the list of subjects with serious dishonest acts concerning social insurance. Violation of social insurance laws and regulations and other dishonest acts of employers, individuals, or other subjects will be recorded.

3. 强调以各项手段骗取社会保险基金支出的法律责任：以欺诈、伪造证明材料或其他手段骗取社会保险基金支出的，相关待遇应责令退回，并处骗取金额2倍以上5倍以下的罚款。

Emphasizing the legal liabilities for defrauding expenditure of social security fund by various means: anyone who defraud expenditure of social security fund by way of fraud, forgery of proof materials or any other means shall be ordered to return the social security funds, and be subject to a fine ranging from two to five times the amount obtained by fraudulent means.

海问建议：用人单位在用工过程中，应重视员工社会保险的合规管理，及时、如实将自身或员工的参保信息变化告知社会保险经办机构，避免因违法违规行为而被列入失信名单或面临行政处罚。

Haiwen Suggestions: In the process of employment, employers shall pay attention to managing the employee social insurance compliantly, and inform the social insurance agencies of changes in their own or their employees' relevant information timely and truthful, so as to avoid being included in the list of subjects with serious dishonest acts or facing administrative penalties due to illegal or non-compliant behaviors.

二、新规速递：北京市朝阳区、海淀区将公布劳动人事争议仲裁裁决书

Quick View of New Regulations: Beijing's Chaoyang and Haidian Districts Will Release Arbitration Awards on Labor and Personnel Disputes

2017年3月21日，人社部发布《关于进一步加强劳动人事争议调解仲裁完善多元处理机制的意见》，其中指出实行“阳光仲裁”，逐步实行仲裁裁决书网上公开，接受社会监督。广东、江苏等地已于2019年发布了公布仲裁裁决书的相关规则，就劳动人事争议仲裁裁决书的公布也陆续开展。

On 21 March 2017, the Ministry of Human Resources and Social Security issued the Opinions on Further Enhancing the Mediation

and Arbitration of Labor Disputes and Improving the Multi-Dimensional Mechanism for Dispute Resolution, which stated that “‘sunshine arbitration’ shall be implemented, and the online release of the arbitration awards shall be gradually realized to invite social supervision.” Guangdong, Jiangsu and other regions have issued relevant rules on the publication of arbitral awards in 2019, and the publication of arbitral awards on labor and personnel disputes has been carried out successively .

近期，北京市朝阳区劳动人事争议仲裁委员会和北京市海淀区劳动人事争议仲裁委员会也相继印发《关于在互联网公布劳动人事争议仲裁裁决书的办法（试行）》（“《办法》”）。《办法》对劳动人事争议的仲裁裁决书公布事项作出如下规定：

Recently, the Beijing Chaoyang District Labor and Personnel Dispute Arbitration Committee and the Beijing Haidian District Labor and Personnel Dispute Arbitration Committee have also issued the Measures on Releasing Arbitration Awards on Labor and Personnel Disputes on the Internet (Trial) (“Measures”) in succession. The Measures provide for the publication of arbitration awards in respect of labor and personnel disputes (“Arbitration Awards”) as follows:

1. 裁决书将在朝阳区/海淀区人民政府网站设立的专栏统一公布，公布的裁决书包括已发生法律效力裁决书和裁决书的补正决定书。

The Arbitration Awards will be uniformly released in the section established on the website of the People's Government of Chaoyang/Haidian District, and the scope of disclosure will include Arbitration Awards which have entered into force and the decision on correction of the Arbitration Awards.

2. 裁决书应当在生效之日起90个自然日内在互联网公布。

The Arbitration Awards shall be released on the Internet within 90 calendar days from the date it entered into force.

3. 裁决书有涉及国家秘密、军事秘密、商业秘密、个人隐私，涉及未成年人或者不宜在互联网公布的其他情形的，不在互联网上公布。

Where Arbitration Awards involve state secrets, military secrets, commercial secrets, personal privacy, minors or other circumstances that make it inappropriate for online disclosure, it shall not be made publicly available on the Internet.

4. 当事人相关身份信息将被匿名处理：当事人为自然人的，保留姓氏，名字以“某”替代，其余信息应当删除；当事人为法人或者其他社会组织的，名称以“某单位”替代，住所地保留至区县。

The relevant identity information of the parties will be anonymized: for individuals, their surname will be retained, the first name will be replaced by “*”, and the rest of the information shall be deleted; for companies or other organizations, the name will be replaced by “* employer”, and only the information on the district in which the place of domicile is located will be retained.

5. 案件承办人员或仲裁委员会指定的专门工作人员应对拟进行网上公开的裁决书是否属于可以在互联网公布范围、相关身份信息是否按照规定已替代或者删除处理、适用法律是否准确、认定事实是否清楚进行审核，未经审核的裁决书不得在互联网公布。

The case-carrying arbitrator or the staff designated by the Arbitration Commission shall review whether the Arbitration Awards are eligible for publication on the Internet, whether the relevant identity information has been replaced or removed in accordance with the regulations, whether the law has been correctly applied, and whether the case facts are clearly presented. No Arbitration Awards shall be released on the Internet without undergoing this review process.

海问建议：公布仲裁裁决书对于员工和企业互相进行背景调查或可起到参考作用，亦可以提供企业提供仲裁审理和合法用工的实践参考。

Haiwen Suggestions: The release of Arbitration Awards may serve as a reference for employees and employers to conduct background investigations on each other, and may also provide employers with practical references for arbitration case trials and lawful employment.



三、典型案例：最高院发布涉民营企业、民营企业家人格权保护典型案例

Exploration of Typical Cases: Supreme Court Released Typical Cases Concerning the Protection of Personality Rights of Private Enterprises and Private Entrepreneurs

2023年10月16日，最高人民法院发布涉民营企业、民营企业家人格权保护典型案例。其中案例4与劳动用工相关。

On 16 October 2023, the Supreme People's Court issued typical cases concerning protection of personality rights of private

enterprises and private entrepreneurs. Among them, Case 4 is related to employment.

该案例中，员工离职后因劳动报酬问题与公司产生争议，在其微信朋友圈及微信群聊中对公司经营的专营店连续发表贬损性、侮辱性的言论信息。

In this case, an employee, who had a dispute with the company over labor remuneration after separation, continuously made derogatory and insulting remarks regarding the franchise store operated by the company in WeChat Moments and WeChat group chats.

法院认为，该不当言论信息为一定范围内公众所知悉，导致部分公众对公司的品牌店产生负面认识，造成社会评价降低，侵犯了公司的名誉权，员工依法应当承担侵权责任，因此支持了公司要求员工在其微信朋友圈中向公司道歉的主张。

The court held that the inappropriate remarks were known to the public within a certain range, which led to some members of the public having negative perceptions of the company's brand store, resulting in a lower social evaluation, and infringing on the company's right of reputation, accordingly the employee should assume the tort liability in accordance with the law, and therefore the court supported the company's claim for an apology to be made to the company in the employee's WeChat Moments.



四、典型案例：天津市发布弘扬社会主义核心价值观典型案例

Exploration of Typical Cases: Tianjin Municipality Releases Typical Cases to Promote Socialist Core Values

2023年9月11日，天津市高级人民法院联合天津市文明办发布十大弘扬社会主义核心价值观典型案例，其中案例十和劳动用工相关。

On 11 September 2023, the Tianjin High People's Court and the Tianjin Civilization Office released ten typical cases of carrying forward socialist core values. Among them, the case ten is related to labor and employment.

该案中，公司将员工安排至小会议室单独办公后，在员工不知情情况下两次于小会议室窗户上方安装了摄像头。员工以公司侵犯隐私权、个人信息权益为由，提出判令公司公开赔礼道歉，删除视频及底档，并赔偿员工维权合理开支及精神损害抚慰金等请求。

In this case, the employer installed a camera above the window of a small meeting room twice without the employee's awareness after arranging for the employee to work in a small meeting room alone. The employee claimed that the employer had violated his/her right to privacy and personal information, and requested that the employer make a public apology, delete the video and files, and compensate the reasonable expenses incurred in defending his/her rights as well as moral compensation.

法院认为，劳动者在工作中应接受用人单位的合理管理，同时也享有人格权益不受侵犯的权利，公司专门安排该员工至小会议室单独办公，又私自对员工办公区域安装摄像头进行监控，显然超出了正常人事管理的必要限度，在一定程度上损害了员工的个人隐私，因此支持了员工要求公司赔礼道歉的主张。

The court held that employee should accept the employer's reasonable management at work, and also enjoy the right to inviolability of personality rights and interests. The employer specifically arranged for the employee to work alone in a small conference room, and secretly installed a camera to monitor the employee's office area, which obviously exceeded the necessary limits of normal management, and to a certain extent damaged the employee's privacy, so the employee's request for the employer to make an apology was upheld.



五、典型案例：北京市发布《劳动争议审判工作白皮书》，重庆市发布八起劳动人事争议典型案例

Exploration of Typical Cases: Beijing Released White Paper on Labor Dispute Trial Work, Chongqing Released Eight Typical Cases of Labor and Personnel Disputes

2023年10月11日，北京市密云区人民法院召开新闻发布会，发布《密云法院劳动争议审判工作白皮书》，通报六起劳动争议典型案例。我们认为下述两个案例值得关注：

On 11 October 2023, the Miyun District People's Court of Beijing held a press conference, releasing the White Paper on Labor Dispute Trial Work of Miyun Court and informing about six typical cases of labor disputes. We highlight below cases for reference:

· 案例3中，公司与员工解除劳动关系后（因涉及工伤）未在法定期限内为员工办理社保关系转移手续，致使员工在入职新公司后因无法缴纳社保而被解除劳动关系。法院判决公司赔偿员工部分损失。

In Case 3, the employer failed to complete social insurance transfer procedures within the statutory period after terminating the labor relationship with the employee (due to work-related injuries), resulting in the employee's employment being terminated by his new employer due to the inability to contribute social security after working for the new employer. The court ruled that the employer should compensate the employee for part of the loss.

· 案例6中，公司单方解除员工，解除通知中载明的解除理由为员工不服从工作安排，但庭审中主张的解除理由为员工存在旷工、迟到早退且不服从公司安排。因庭审中陈述的解除理由与解除通知载明理由不一致，且未提供证据证明，法院认定公司解除劳动合同违法。

In Case 6, the employer unilaterally dismissed the employee, and the dismissal reason indicated in the termination notice was that the employee did not obey the work arrangement. However, the dismissal reasons claimed by the employer in the trial were that the employee was absent from work, late for work, left early and did not obey the employer's arrangement. As the reasons for dismissal stated in the trial were inconsistent with the reason stated in the notice, and no evidence was provided to prove it, the court concluded that the employer's termination of the employment contract was unlawful.

2023年10月19日，重庆市万州区人民法院和人社局联合召开新闻发布会，通报八起典型案例。其中案例3也关注了解除理由前后不一致的用工实践。

On 19 October 2023, the Wanzhou District People's Court of Chongqing and the Bureau of Human Resources and Social Security jointly held a press conference to announce eight typical cases. The Case 3 also focused on the employment practice of inconsistent reasons for termination.

· 案例3中，公司解除通知中未明确解除事由，庭审中公司主张员工存在不服从公司安排外派学习等解除理由，法院认为劳动合同已解除的情形下，公司事后变更、补充的解除事由不应作为定案依据，认定公司解除劳动合同违法。

In case 3, the termination notice issued by the employer did not specify the reason for termination. However, during the trial, the employer claimed that the employee had not followed the employer's arrangements for expatriate study, etc. The court held that if the employment contract had been terminated, the employer's later modifications and additions to the termination reasons should not be considered in the case. Therefore, it held that the employer's termination of the employment contract was unlawful.

海问建议：劳动合同解除权系形成权，企业在行使单方解除权时，建议在解除通知中明确《劳动合同法》的对应解除理由，公司事后变更、补充的解除事由难以作为司法审理的依据。企业在解除劳动关系后，建议按照法律规定及时办理社保减员手续，避免产生损失。

Haiwen Suggestions: The right to terminate the employment contract is a formative right, and it would be advisable for employers to specify the corresponding reasons for termination in the notice of termination in accordance with the Employment Contract Law when exercising the right to terminate the employment contract unilaterally. It is difficult to use the reasons for termination that the employer's subsequent modifications and additions as a basis during the arbitration trial. After the termination of the labor relationship, employers are advised to go through the social security transfer procedures in a timely manner in accordance with the provisions of the law, in order to avoid losses.

六、典型案例：上海市金山区人民法院发布《未签订劳动合同类劳动争议案件审判白皮书》

[Exploration of Typical Cases: Shanghai Jinshan District People's Court Released White Paper on Trial of Labor Dispute Cases Concerning Unsigned Labor Contracts](#)

2023年9月19日，上海市金山区人民法院举行新闻发布会，发布了《未签订劳动合同类劳动争议案件审判白皮书（2020.01-2023.08）》并公布了8个典型案例。

On 19 September 2023, the People's Court of Jinshan District of Shanghai held a press conference and released the White Paper on the Trial of Labor Dispute Cases Concerning Unsigned Employment Contracts (2020.01-2023.08) and issued eight typical cases.

典型案例中的裁判要点如下：

The judicial opinions in the typical cases are as follows:

1. 公司和员工签订《劳务协议》中约定了工资、岗位、遵守规章制度等内容，具有劳动合同的特征，法院结合实际履行的情况认定成立劳动关系。

The employer and the employee signed a Contract of Service in which they agreed on salaries, positions, and compliance with rules and regulations, which had the characteristics of an employment contract, and the court found that an employment relationship was

established in light of the actual performance.

2. 员工为物流公司运送货物，物流公司未证明其与案外人存在挂靠事实，法院认定物流公司和员工之间存在劳动关系。

The employee transported goods for a logistics company, and the logistics company failed to prove the fact of affiliation with a third party, the court found that the logistics company and the employee had an employment relationship.

3. 公司方就临时岗位用工达成建立劳动关系合意，符合以完成一定工作任务为期限的劳动关系特征，法院认定存在劳动关系。

The employer reached an agreement on the establishment of employment on a temporary position, which was in line with the characteristics of an employment with a term of completion of certain tasks, and the court found that there was an employment relationship.

4. 实际施工人的雇员不受发包方全面管理的，法院认定和发包方之间不存在劳动关系。

In the case that the employee of the actual constructor was not under the overall management of the contractor, the court found that there was no employment relationship between the employee and the contractor.

5. 公司在案件审理中注销的，仍可认定劳动关系存在，相关责任由该公司的股东承担。

The employer was deregistered during the trial, the employment relationship may still be deemed to exist and the liability shall rest with the employer's shareholders.

6. 公司就签订劳动合同已履行诚信磋商义务后的对应期间，无需支付二倍工资。

The employer would not be required to pay double wages for the period as of it had fulfilled its obligation to consult with the employee in good faith regarding the conclusion of the employment contract.

7. 公司应自用工之日起签订劳动合同，试用期间未签订劳动合同亦需支付二倍工资。

The employer shall sign an employment contract from the date of employment, and shall pay double wages for the probationary period without signing an employment contract.

8. 劳动合同到期前公司未明示是否续签，不符合劳动合同期满终止情况下公司无需支付经济补偿金的情形，仍应支付经济补偿金。

Where the employer did not indicate whether or not to renew the employment contract before expiration, this would be not in line with the situation that the employer was not required to pay severance, and the employer should still pay severance to the employee.



七、典型案例：上海市普陀区人民法院发布十起劳动争议典型案例

Exploration of Typical Cases: Shanghai Putuo District People's Court Released Ten Typical Cases of Labor Disputes

2023年10月15日，上海市普陀区人民法院举办新闻发布会，发布了十起劳动争议典型案例。其中，以下案例值得关注：

On 15 October 2023, Shanghai Putuo District People's Court held a press conference and released ten typical cases of labor disputes. Among them, the following cases are noteworthy:

1. 案例6中，公司发放的《录用通知书》中载明绩效奖金与公司、个人绩效挂钩，一般为15万/年，可依据绩效结果上浮或下调。法院认为，公司2019年起存在严重亏损，决定不予全体员工的绩效奖金依法有据，未支持员工主张的绩效奖金。

In Case 6, the company issued an Offer Letter, stating that the performance bonus, which was generally RMB 150,000 per year, was linked to the performance of the company and the individual, and could be adjusted upward or downward based on the performance results. The court held that the company had serious losses from 2019, and the decision to withhold the performance bonuses of all employees is in accordance with the law, and accordingly did not support the performance bonuses claimed by the employees.

2. 案例8中，员工因操作失误造成公司配件损坏的损失，并出具书面承诺表示愿意赔偿公司损失，承诺中载明了损失的具体金额。法院支持了公司要求员工赔偿损失的请求，但综合考量员工的过错程度、工资收入水平及是否进行了

必要的技能培训等因素，在双方约定的赔偿金额基础上进行了调减。

In Case 8, the employee caused damage to the company's components due to operational errors, and provided a written undertaking stating he was willing to compensate the company for the loss, which contained the specific amount of the loss. The court supported the company's claim for the employee to compensate for the loss, but reduced the agreed amount of compensation based on the comprehensive consideration of the employee's degree of fault, the level of wages, and whether a necessary skills training was carried out, etc.

3. 案例9中，公司新组建的董事会作出决议聘任了新的总经理后，免除员工的总经理职务，并与员工协商调整其岗位为副总经理，员工未接受。因此公司依据劳动合同订立时依据的客观情况发生重大变化，原劳动合同无法继续履行的理由解除了劳动合同。法院认为，公司与员工协商副总经理的岗位可以认定双方未能就变更劳动合同的内容达成一致，故认定公司解除劳动合同合法。

In Case 9, the company's newly formed board of directors made a resolution to appoint a new general manager, and exempted the employee from the position of general manager. Consequently, the employer negotiated with the employee to adjust his position as deputy managing director, but the employee did not accept the change. The company therefore terminated the employment contract on the grounds that there had been a significant change in the objective circumstances on which the employment contract was based at the time of its conclusion, and that the original employment contract could not continue to be fulfilled. The court held that as the company had negotiated with the employee for the reposition of deputy managing director, it could be determined that the parties failed to reach an agreement on the change of the employment contract, and therefore the termination of the employment contract was deemed lawful.

2023-11-20