

Haiwen Labor Law Bi-Monthly Newsletter

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一、新规速递：国家市场监督管理总局发布《商业秘密保护规定》

Snapshot of New Regulations: The State Administration for Market Regulation Issued Provisions on the Protection of Trade Secrets

2026年2月24日，国家市场监督管理总局发布《商业秘密保护规定》（国家市场监督管理总局令第126号）（“**规定**”），对商业秘密界定、侵权行为认定、合法行为情形、维权与执法流程等问题进行了完善和更新。《规定》自2026年6月1日起施行，《关于禁止侵犯商业秘密行为的若干规定》同步废止。

On February 24, 2026, Provisions on the Protection of Trade Secrets (国家市场监督管理总局令第126号, “**Provisions**”) was issued by the State Administration for Market Regulation, which elaborates and improves on the definition of trade secrets, identification of infringements, circumstances not constituting an infringement, rights protection and enforcement procedures. The Provisions shall take effect on June 1, 2026, and the Several Provisions on Prohibiting Infringement of Trade Secretss shall be repealed simultaneously.

其中，我们认为与劳动用工相关的以下更新内容值得注意：

Among the above, we consider the following updated items relating to employment management to be noteworthy:

1. 进一步拓展商业秘密的保护范围：第五条将“算法、计算机程序、代码”、与经营活动有关的客户“交易习惯、意向”纳入商业秘密保护的内容。

Further expanding the scope of trade secret protection: Article 5 includes “algorithms, computer programs, and codes” and customers’ “transaction habits, intentions” related to business activities within the scope of trade secrets.

2. 对于“商业价值”和“保密措施”的认定标准进行系统性更新：作为构成商业秘密的要件，第七条将“具有商业价值”这一要件进行了细化，涵盖能为权利人带来资产增加、营业收入增长、利润增长、用户数量增长、成本费用降低、研发时间缩短、交易机会增加以及商业信誉提升等多种形态；第九条明确了“要求离职员工登记、返还、清除、销毁其接触、获取的商业秘密及其载体，继续承担保密义务”属于权利人采取的相应“保密措施”；

Systematically updating the criteria for determining “commercial value” and “confidentiality measures”: Article 7 enumerates specific circumstances of “commercial value” as a condition to constitute trade secrets, covering various forms including increasing the right holder's assets, revenue growth, profit growth, user base expansion, cost reduction, shortened R&D time, increased business opportunities, and enhanced commercial reputation. Article 9 stipulates that “requiring departing employees to register, return, purge, or destroy the trade secrets and their carriers that they have accessed or obtained, and to continue to bear confidentiality obligations” shall be deemed corresponding confidentiality measures adopted by the right holder.

3. 明确将教唆、引诱、帮助他人侵犯商业秘密的行为纳入规制范围，以防范企业不当手段挖角员工：第十三条进一步细化了《反不正当竞争法》第十条第（四）项的具体情形，对于怂恿、指使或利诱（包括物质奖励和非物质奖励）引导他人侵犯商业秘密，以及明知或应知他人侵犯商业秘密，仍为其提供帮助的行为（包括为其提供资金、技术、设备、办公场所、办公设施等），均构成侵犯商业秘密。

Clarifying acts of instigating, inducing, or assisting others in infringing trade secrets are subject to regulatory prohibitions to prevent improper talent poaching: Article 13 further elaborates on the specific circumstances under Article 10(4) of the Anti-Unfair Competition Law, providing that inciting, directing, or inducing (including material and non-material incentives) others to infringe trade secrets, as well as knowingly or constructively assisting such infringement by providing funding, technology, equipment, office premises, or facilities, shall constitute trade secret infringement.

4. 补充保密义务的来源：第十二条新增了在没有合同约定的情况下，“权利人通过规章制度或者合理的保密措施，对员工、前员工、合作方等明确提出保守商业秘密的要求”也属于员工承担保密义务的依据；

Supplementing the sources of confidentiality obligations: Article 12 newly provides that in the absence of contractual stipulations, “the right holder, through rules and regulations or reasonable confidentiality measures, expressly requires employees, former employees, and partners to maintain trade secrets” shall also serve as the basis for employees’ confidentiality obligations.

5. 新增侵权豁免情形：第十五条规定了不构成侵犯商业秘密的情形，包括“商业秘密权利人的前员工利用在工作中积累的通用知识、技能、行业经验，或者通过公开渠道可获取的行业信息开展工作”等。

Adding new exemptions from infringement liability: Article 15 sets out circumstances that do not constitute infringement of trade secrets, including “former employees of the trade secret right holder using general knowledge, skills, and industry experience accumulated during their work, or using industry information available through public channels to carry out their work”.



二、新规速递：广州市发布《关于转发广东省灵活就业人员参加失业保险办法的通知》

Snapshot of New Regulations: Guangzhou Issued Notice on Forwarding the Measures for Flexible Employment Personnel in Guangdong

2025年12月27日，广州市人力资源和社会保障局、广州市财政局、国家税务总局广州市税务局发布《关于转发广东省灵活就业人员参加失业保险办法的通知》（“**通知**”），就新业态从业等灵活就业人员参加失业保险及待遇核发进行了进行了规定。《通知》自2026年1月1日起施行，有效期2年。

On 27 December 2025, the Guangzhou Municipal Human Resources and Social Security Bureau, Guangzhou Municipal Finance Bureau, Guangzhou Municipal Taxation Bureau of the State Taxation Administration issued the Notice on Forwarding the Measures for Flexible Employment Personnel in Guangdong Province to Participate in Unemployment Insurance (“**Notice**”), which stipulates the participation of flexible employment personnel, including those engaged in new forms of employment, in unemployment insurance and the issuance of benefits. The Notice took effect on January 1, 2026 for a term of two years.

其中，我们认为与劳动用工相关的以下条款值得注意：

Among the above, we consider the following articles relating to labor employment to be noteworthy:

1.明确灵活就业人员参加失业保险遵循自愿的原则。第三条明确本通知制定的原则，并规定参加失业保险的人员需办理就业登记；

Clarifying that flexible employment personnel may participate in unemployment insurance on a voluntary basis. Article 3 clarifies the principles underlying the Notice and provides that flexible employment personnel shall complete employment registration.

2.强调灵活就业人员可以领取失业金的条件。第十一至第十三条明确了领取失业金的条件，细化了“非因本人意愿中断灵活就业”的情形、在两个及以上平台就业的人员从其中一个或多个平台中断就业不得申领失业金等；

Emphasizing the eligibility conditions for flexible employment personnel to claim unemployment benefits. Articles 11 to 13 stipulate conditions for unemployment benefits, elaborating on the circumstances of “interruption of flexible employment not due to the employee’s own will”, disqualifying personnel employed by two or more platforms from claiming benefits when ceasing employment with one or more platforms.

3.明确失业保险待遇相关规定。第十四条为灵活就业人员指引其申领失业保险待遇的途径、所需资料等；第十六条强调了参加失业保险的灵活就业人员，其缴费年限与企业职工失业保险参保缴费期限合并计算。

Clarifying provisions relating to unemployment insurance benefits. Article 14 guides flexible employment personnel on the application procedures and required documentation for claiming benefits, while Article 16 provides that contribution periods of flexible employment participants shall be consolidated with those of enterprise employees for unemployment insurance purposes.



三、新规速递：银川市发布《银川市属国有企业管理人员末等调整和不胜任退出工作指引（试行）》

Snapshot of New Regulations: Yinchuan Issued Guidelines for the Adjustment of Lower-Ranked Managers and the Exit of Incompetent Personnel in State-Owned Enterprises under the Administration of Yinchuan

2024年12月27日，国务院国资委召开会议，提出2025年底前国有企业普遍推行管理人员末等调整和不胜任退出制度、“末等”不能简单划比例或一刀切、“退出”的类型主要是指退出原岗位等问题。

On 27 December 2024, the State-owned Assets Supervision and Administration Commission of the State Council convened a meeting, requiring state-owned enterprises to fully implement the lower-ranked adjustment and exit system for management personnel by the end of 2025; “low ranking” shall not be determined by simple quota or one-size-fits-all approach; and “removal” mainly refers to exit from the original position.

根据以上原则，2026年1月30日，银川市政府国有资产监督管理委员会发布《银川市属国有企业管理人员末等调整和不胜任退出工作指引（试行）》（“[指引](#)”），明确管理人员末等调整和不胜任退出，是指对考核评价排名末等、不胜任岗位要求的管理人员予以岗位调整、岗位退出的管理方式，并对国有企业管理人员末等调整和不胜任退出的考核方式、退出条件、退出方式、退出程序等问题进行了规定。该《指引》自2026年1月30日起施行。

In accordance with the above principles, on January 30, 2026, the Yinchuan Municipal State-owned Assets Supervision and Administration Commission issued the Guidelines for the Adjustment of Lower-Ranked Managers and the Exit of Incompetent Personnel in State-Owned Enterprises under the Administration of Yinchuan (Trial) (“[Guidelines](#)”), which defines such lower-ranked adjustment and exit as a management mechanism for position adjustment or exit for management personnel ranked lowest in performance evaluation or incompetent to meet job requirements, and stipulates assessment methods, and the conditions, forms and procedures of exit. The Guidelines took effect on January 30, 2026.

对于国有企业的末等调整和不胜任退出制度，其他地区也出台过相关规定。例如，上海市《关于印发<市国资委监管企业国有独资公司章程指引（2024版）><市国资委监管企业国有控股公司章程指引（2024版）>的通知》（沪国资委法规〔2025〕27号）规定，国有独资公司和国有控股公司应当结合公司实际，建立末等调整和不胜任退出等符合市场化要求的选人用人机制；天津市《对国有相对控股混合所有制企业监管的意见（试行）》（津国资党〔2022〕194号）也要求对国有相对控股混合所有制企业管理人员建立健全末等调整和不胜任退出等用人机制。

Other regions have also issued relevant provisions. For example, in Shanghai, Notice on Issuing the Guidelines for Articles of Association of State-Owned Sole Proprietorship Companies under the Supervision of the Municipal State-owned Assets Supervision and Administration Commission (2024 Edition) and the Guidelines for Articles of Association of State-Owned Holding Companies under the Supervision of the Municipal State-owned Assets Supervision and Administration Commission (2024 Edition) (沪国资委法规〔2025〕27号) requires wholly state-owned and state-controlled enterprises to establish market-oriented recruitment and employment mechanisms including low-ranked adjustment and exit for incompetent. Besides, in Tianjin, Guidelines on the Supervision of State-Owned Relatively Controlled Mixed-Ownership Enterprises (Trial) (津国资党〔2022〕194号) also stipulates the establishment of personnel management mechanisms for executives of state-owned relatively controlled mixed-ownership enterprises, including lower-ranked adjustments and exit for incompetence.



四、典型案例：人民法院案例库新增4件劳动争议案例

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

2026年1月-2月期间，人民法院案例库陆续收录了4个劳动争议典型案例，涵盖劳动关系认定、免缴社会保险费约定的效力、加班费争议以及严重违纪认定等劳动争议多个方面，就其中包含的裁判典型观点，我们梳理如下：

From January to February 2026, four typical labor dispute cases were successively added to the People's Court Case Database, covering multiple aspects of labor disputes such as labor relationship identification, validity of social insurance exemption agreements, overtime pay disputes and serious disciplinary violations. The key judicial views are summarized as follows:

1.用人单位与劳动者约定或者劳动者向用人单位承诺无需缴纳社会保险费的，该约定或者承诺无效。在朱某平诉北京荣某保安服务有限公司等劳动争议案中，员工在入职时签署自愿放弃缴纳社保声明，在职期间公司亦未为该员工缴纳社会保险费。后员工以公司未为其缴纳社会保险费为由提出辞职，离职后向公司主张支付工资、加班工资以及经济补偿金。裁判机构认为，该约定免除用人单位法定义务、排除劳动者权利，违反法律强制性规定而无效。最终认定公司应当依法承担向该员工支付经济补偿的民事责任。

Where an employer and employee agree, or where an employee undertakes to the employer, that social insurance contributions need not be paid, such agreement or undertaking shall be null and void. In the *Labor Dispute Case Between Zhu Mouping and Beijing Rongmou Security Services Co., Ltd.*, the employee signed a voluntary renunciation of social insurance contributions; the employer did not make contributions. The employee resigned on the grounds that the employer failed to make social insurance contributions, and claimed wages, overtime pay and economic compensation. The adjudication body held that such agreement exempted the employer's statutory obligations, violated mandatory laws and was invalid. The employer was ordered to pay economic compensation.

2.MCN机构以合作协议形式招聘劳动者从事直播服务，双方就劳动关系认定发生争议的，人民法院应当进行实质审查。在*南京七某传媒有限公司诉崔某熙合同纠纷案*中，崔某与某传媒公司签订《某平台直播艺人合作协议》，明确崔某合同期内所有收益由双方共享，协议签订后崔某使用本人ID在平台开展直播活动，公司为其提供住宿。后崔某提出解除上述合作协议，双方产生纠纷。法院认定，崔某的工作内容由某传媒公司确定，工作时间、工作量均受到公司的严格控制，工作具有持续性、稳定性等，崔某的协商议价能力较弱，不能改变“合作”价格等。判决确认崔某与某传媒公司之间存在劳动关系。

Where MCN recruit employees to provide live-streaming services through cooperation agreements and disputes arise regarding the identification of employment relationship, the court shall conduct a substantive review. In the *Contractual Dispute Between Nanjing Qimou Media Co., Ltd. and Cui Mouxi*, Cui signed a Live-Streaming Artist Cooperation Agreement for Platform with the company, stipulating that the parties would share all platform earnings. Then Cui conducted live-streaming activities on the platform using personal ID, with the company providing accommodation. Subsequently, Cui terminated the agreement, leading to a dispute over their legal relationship. The court determined that the company dictated Cui's working content and strictly controlled Cui's working hours and workload, that the work exhibited continuity and stability, and that Cui possessed limited bargaining power, unable to alter the "cooperative" price, thus confirming the existence of employment.

3.劳动者在岗期间短暂休息不构成严重违反用人单位规章制度。在*广东省良某食品有限公司诉余某劳动争议纠纷案*中，员工在职期间任公司某商场门店的店长，因员工在工作时间、店内尚有客户购物的情况下在收银台睡觉，被商场工作人员发现并投诉至公司微信群，公司认定其构成严重违纪。法院认定，事发当日，员工在店铺内连续工作时间超过8小时，出现疲惫且短暂休息属于正常现象，不应予以苛责，因公司提交的证据未能证明员工处于长时间睡眠状态或对公司造成直接经济损失，最终驳回公司提出的严重违反公司规章制度的主张。

A brief rest during working hours does not constitute a serious breach of the employer's rules. In the *Labor Dispute Between Liang Mou Food Co., Ltd. and Yu Mou* in Guangdong Province, an employee serving as store manager was found taking a nap at the cashier desk during working hours while customers were present. It was reported by staff via the company's WeChat group, and the company determined that it constituted a serious breach of discipline. The court determined that on that day the employee had worked continuously for over eight hours, so feeling tired and taking a brief rest constituted a normal occurrence and should not be subject to undue censure. As the company's evidence failed to demonstrate that the employee had a prolonged sleep nor that direct economic loss had been incurred, the court ultimately dismissed the company's claim that the employee had seriously violated the rules.

4.劳动者在非工作时间、工作场所回复工作消息是否构成“隐形加班”，应当综合考虑劳动者是否提供了实质工作内容加以认定。在*李某艳诉北京某科技公司劳动争议案*中，双方虽约定实行不定时工时制但未依法审批。李某主张其部分工作日下午下班时间及休息日期间利用微信等社交媒体处理工作，累计加班595.8小时，应得加班费20余万元。法院认为，随着经济发展及互联网技术的进步，劳动者工作模式日趋灵活，劳动者利用社交媒体在法定工作时间、场所之外开展工作已成常态。应当综合考虑劳动者回复消息的频次、时长、内容复杂度等因素确定是否提供了实质性劳动内容，认定加班情况。最终法院酌情认定公司应向李某支付加班费3万元。

Whether an employee's response to work-related messages outside working hours or workplace constitutes "invisible overtime work" should be determined by comprehensively considering whether the employee provided substantive work content. In the *Labor Dispute Between Li Mouyan and a Beijing Technology Company*, a flexible working hours system was agreed but was not approved in accordance with the law. Li claimed to have used social media such as WeChat to handle work outside regular working hours on work days and during rest days, accumulating 595.8 hours of overtime, and entitling her over RMB 200,000 in overtime pay. The court held that with the development of

economy and internet technology, employee's working patterns have become increasingly flexible, and it has become commonplace for employees to use social media to conduct work outside statutory working hours and locations. When determining whether substantive labor has been provided, factors such as the frequency, duration, and complexity of response content shall be comprehensively considered to establish overtime circumstances. Ultimately, the court determined at its discretion that the company should pay Li RMB 30,000 in overtime pay.



五、典型案例：北京高院发布涉欠薪民事审判典型案例

Exploration of Typical Cases: Beijing Released Typical Civil Cases Concerning Unpaid Wages

2026年2月5日，北京市高级人民法院召开北京法院涉欠薪民事审判执行工作新闻发布会，会议中总结发布了8件欠薪典型案例。其中，我们认为值得提示的相关案例如下：

On February 5, 2026, the Beijing High People's Court held a press conference on civil trial and enforcement proceedings concerning unpaid wages, during which eight typical cases concerning unpaid wages were issued. We highlight key cases as below:

1.案例一涉及劳动者在仲裁程序中申请财产保全的问题。霍某在仲裁阶段请求公司支付工资、绩效奖金等共计13.5万元，因担心用人单位转移资金导致裁决难以执行，通过仲裁委员会向法院申请冻结公司银行账户存款13.5万。法院认为，霍某财产保全申请符合法律规定，故及时作出保全裁定并足额冻结公司上述存款。该案显示，劳动者在仲裁程序中申请财产保全具有可行性，可有效防止用人单位恶意转移财产、规避执行。

Case 1 concerns the employee's application for property preservation during arbitration proceedings. During the arbitration, Huo Mou requested the company to pay wages, performance bonuses and other sums totaling RMB 135,000. Concerned that the employer might transfer funds to evade enforcement, Huo applied through the arbitration commission to the court to freeze RMB 135,000 in the company's bank account. The court determined that Huo's application complied with legal requirements, promptly issuing a preservation order to freeze the aforementioned amount. This case demonstrates the feasibility of employees applying for property preservation during arbitration, which would effectively prevent employers from maliciously transferring assets to evade enforcement.

2.案例二涉及用人单位以未正式实施的绩效考核制度单方变更工资计算方式的问题。该案中，某营销公司在《绩效考核制度（草稿稿）》尚未履行民主程序、未正式实施的情况下，即单方将员工工资与月度绩效考核挂钩并扣发工资，员工以此为由解除劳动合同并主张工资差额及经济补偿。法院认定，用人单位未履行上述程序义务即单方扣减工资的，劳动者有权解除劳动合同并主张经济补偿。

Case 2 concerns the employer unilaterally altering the method of wage calculation based on a performance appraisal policy that had not been formally implemented. In this case, a marketing company linked Teng's wages to monthly performance assessments and withheld the employee's salary before the Performance Appraisal Policy (Draft) had undergone democratic procedures or been formally enacted. The employee terminated the labor contract on this ground, claiming the wage differential and severance. The court held that where an employer unilaterally withholds wages without fulfilling the aforementioned procedural obligations, the employee is entitled to terminate the labor contract and claim severance.



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