

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

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Snapshot of New Regulations: The Ministry of Human Resources and Social Security, the National Health Commission, the Ministry of Emergency Management, the State Administration of Taxation and the National Healthcare Security Administration Jointly Issued Interim Provisions on Safeguarding the Basic Rights and Interests of Overage Workers

2026年5月10日，人力资源和社会保障部会同国家卫生健康委、应急部、税务总局和国家医保局等五部门联合出台了《超龄劳动者基本权益保障暂行规定》（“《暂行规定》”），自2026年7月1日起正式生效。

On May 10, 2026, the Ministry of Human Resources and Social Security, the National Health Commission, the Ministry of Emergency Management, the State Administration of Taxation, and the National Healthcare Security Administration Jointly Issued *Interim Provisions on Safeguarding the Basic Rights and Interests of Overage Workers* (“**Interim Provisions**”), which took effect on July 1, 2026.

作为延迟退休政策的配套规定，《暂行规定》明确了用人单位与超龄劳动者的权利和义务，填补了现行劳动法律制度在超龄劳动者权益保障规则适用方面的空白。《暂行规定》明确了用人单位应当保障超龄劳动者在劳动报酬、休息休假、劳动安全卫生、工伤保障四大方面的基本权益，并对超龄劳动者用工协议的变更和终止、社会保险缴纳、争议处理方式等做出规定。

As a supporting regulation to the policy on delaying retirement, the Interim Provisions clarify the rights and obligations of employers and overage employees who have surpassed the statutory retirement age, thereby filling the gap in the current labor legal system regarding the application of rules for the protection of such workers' rights. The Interim Provisions explicitly require employers to safeguard the basic rights and interests of overage workers such as the right to labor remuneration, rest and vacation, work safety and health, and work-related injury security. It also set forth provisions on the amendment and termination of employment agreement, social insurance contributions, and dispute resolution mechanisms, among other matters.

我们近期基于实务经验对《暂行规定》进行了要点解读和用工建议，具体内容请参见[海问·观察 / 新规速递：《超龄劳动者基本权益保障暂行规定》解读及建议](#)。

Recently, we have conducted a key point interpretation of the Interim Provisions based on practical experience. For detailed analysis, please refer to Haiwen [Observation | Snapshot of New Regulations: an Analysis and Suggestions on Interim Provisions on Safeguarding the Basic Rights and Interests of Overage Workers.](#)

此外，2026年6月29日，北京市人社局、天津市人社局、河北省人社厅发布《超龄劳动者用工协议（参考文本）》，可作为公司与超龄劳动者签订书面用工协议的参考。协议内容包括期限、工作内容、工作地点和要求、工作时间和休息休假、劳动报酬、社会保险、劳动保护、劳动条件与职业危害防护、协议的变更、解除与终止、违约责任及约定的其他事项、争议处理等九个部分。

In addition, on June 29, 2026, the Beijing Municipal Human Resources and Social Security Bureau, the Tianjin Municipal Human Resources and Social Security Bureau, and the Hebei Provincial Department of Human Resources and Social Security jointly issued the *Employment Agreement for Overage Workers (Model Text)*, which may serve as a reference for companies when entering into written employment agreements with overage workers. The Agreement consists of nine sections, covering the term of the agreement, job description, place of work and requirements, working hours and rest and leave, remuneration, social insurance, labor protection, working conditions and protection against occupational hazards, amendment and termination of the agreement, liability for breach of contract and other agreed matters, and dispute resolution.



、新规速递：《关于修订部分税务执法文书的公告》施行，社保基数稽查逐渐强化

[Snapshot of New Regulations: Revised Tax Enforcement Documentation Took Effect, and Audits on Social Insurance Contribution Bases Have Been Gradually Tightened](#)

2026年4月27日，国家税务总局发布《关于修订部分税务执法文书的公告》，自2026年6月1日起施行。根据《社会保险费征缴暂行条例》第十八条，劳动保障行政部门或税务有权对用人单位社保缴费情况进行检查；本次公告对部分税务执法文书进行了修订完善，同步启用了新版《社会保险费检查通知书》，进一步强化税务部门对社保缴费基数核查力度。与旧版相比，新版在格式上增加了用人单位需提供与社保相关的用人情况、工资表、财务报表等资料、检查方式、地点、频次等要素，告知事项中补充了申请回避和投诉举报内容，旨在进一步推动税务检查执法标准化、规范化，以适应行政检查的新要求。

On April 27, 2026, the State Taxation Administration issued the *Announcement on Revising Certain Tax Law Enforcement Documents*, which came into force on June 1, 2026. Pursuant to Article 18 of the Interim Regulations on the Collection and Payment of Social Insurance Premiums, labor security administrative departments and tax authorities are empowered to inspect employers' premium payment status. The Announcement revises and improves various tax law enforcement documents and launches an updated version of the Notice of Social Insurance Contribution Inspection further tightening tax authorities' verification of social insurance contribution bases. Compared with the old version, the new format adds key elements including materials employers are required to submit related to social insurance such as employment records, payroll statements and financial statements, as well as the inspection methods, venues and frequency. Supplementary provisions on applications for recusal and complaint reporting are also added to the notification clauses. The revisions are intended to further standardize and institutionalize tax inspection law enforcement to meet the new requirements governing administrative inspections.

2026年以来，上海、江苏、河南、湖南等地在年度社会保险缴费工资申报通知中，均明确要求用人单位在申报社会保险缴费工资前，应当组织职工本人对缴费工资进行签字确认，并妥善留存相关资料，以备税务机关检查。对于用人单位而言，社会保险费申报、工资基数核定、资料留存等方面的合规要求将进一步提高。

Since the beginning of 2026, local authorities in Shanghai, Jiangsu, Henan and Hunan, among other regions, have expressly required employers, in their annual social insurance contribution wage reporting notices, to obtain employees' written confirmation of their contribution wage base before filing the annual declaration and to retain the relevant supporting documents for potential inspection by the tax authorities. Based on the above, employers are expected to face increasingly stringent compliance requirements in relation to social insurance contribution reporting, determination of contribution bases and document retention.

海问建议：用人单位应结合所在地社会保险费缴费工资申报要求，完善年度缴费工资确认流程并妥善留存相关资料。同时，可结合年度申报工作对社会保险缴费基数进行合规自查，确保缴费基数与工资支付情况保持一致，并完善工资表、员工确认记录及其他申报材料的归档管理，以降低后续税务检查及社会保险争议风险。

Haiwen Suggestions: Employers need to review the annual social insurance contribution wage reporting requirements applicable in their respective jurisdictions, refine internal procedures for obtaining employees' confirmation of contribution wages, and properly retain the relevant records. In addition, employers may consider conducting an internal compliance review of their social insurance contribution bases during the annual reporting process to ensure consistency between the declared contribution bases and actual wages paid, while maintaining complete payroll records, employee confirmation forms and other filing materials to mitigate the risks arising from future tax inspections and social insurance disputes.

、新规速递：江苏省发布《关于印发<江苏省实习生和见习人员参加工伤保险办法>的通知》

Snapshot of New Regulations: Jiangsu Province Issued Notice on Issuing the Measures of Jiangsu Province on Participation in Work-Related Injury Insurance by Interns and Trainees

2026年5月9日，江苏省联合发布《关于印发<江苏省实习生和见习人员参加工伤保险办法>的通知》（“《办法》”），自2026年7月1日生效。

On May 9, 2026, Jiangsu Province issued the Notice on Issuing the *Measures of Jiangsu Province on Participation in Work-Related Injury Insurance by Interns and Trainees* (the “**Measures**”), which shall take effect on July 1, 2026.

《办法》规定用人单位可自愿为实习生、见习人员参加工伤保险。实习生和见习人员的参保方式灵活，工伤保险关系根据实习和见习协议的提前终止或续签而终止或延长；参保后工伤认定、劳动能力鉴定、工伤保险待遇支付等待遇参照《工伤保险条例》《江苏省实施〈工伤保险条例〉办法》及其他相关规定进行。

The Measures provide that employers may, on a voluntary basis, enroll interns and trainees in work-related injury insurance. The enrollment method for interns and trainees is flexible, in that the work-related injury insurance relationship shall be terminated or extended in accordance with the early termination or renewal of the internship or traineeship agreement. After enrollment, matters such as work injury determination, assessment of capacity for work, and payment of work-related injury insurance benefits shall be handled with reference to the *Regulations on Work-Related Injury Insurance*, the *Measures of Jiangsu Province for Implementing the Regulations on Work-Related Injury Insurance*, and other relevant provisions.

、典型案例：人社部发布侵害劳动者就业权益典型案例

Exploration of Typical Cases: The Ministry of Human Resources and Social Security Releases Typical Cases on Infringement of Employees' Employment Rights

2026年5月15日，人力资源社会保障部发布侵害劳动者就业权益典型案例，公布近年来查处的“招转培”欺诈、非法网络职介、虚假招聘、就业歧视等侵害劳动者就业权益的典型案例，旨在提示用人单位及人力资源服务机构应依法规范招聘行为，保障劳动者平等就业权利。

On May 15, 2026, the Ministry of Human Resources and Social Security (“**MOHRSS**”) released a number of typical cases concerning infringements of employees’ employment rights. The published cases involve unlawful practices such as “recruitment-to-training” scams, illegal online employment intermediary services, fraudulent recruitment and employment discrimination that have been investigated and penalized in recent years, aiming to remind employers and human resources service providers to conduct recruitment activities in compliance with the law and safeguard employees’ right to equal employment.

企业在招聘及用工管理过程中应注意如下要点：（1）确保招聘信息真实、合法，不得发布虚假职位信息或设置违反法律规定的就业限制条件；（2）不得以招聘、入职培训等名义向劳动者收取不合理费用；（3）规范试岗、培训等管理安排，避免通过“无薪试岗”等方式规避工资支付义务；（4）加强招聘流程审查及人力资源供应商管理，防范因招聘行为不规范引发行政处罚或劳动争议风险。

It is advisable for the employers to pay particular attention to the following during recruitment and employment management: (1) ensure that recruitment information is accurate and lawful, and refrain from publishing false job advertisements or imposing employment restrictions prohibited by law; (2) do not charge employees unreasonable fees under the pretext of recruitment or pre-employment training; (3) properly manage probationary work arrangements and training programs, and avoid using practices such as “unpaid trial work” to circumvent statutory wage payment obligations; and (4) strengthen the review of recruitment procedures and the management of human resources service providers to mitigate the risks of administrative penalties or labor disputes arising from non-compliant recruitment practices.



、典型案例：北京、上海发布涉劳动争议典型案例

Exploration of Typical Cases: Beijing and Shanghai Released Typical Labor Dispute Cases

近期，北京市房山区人民法院、上海市高级人民法院分别发布涉劳动争议典型案例，对劳务派遣、关联企业用工、加班管理等实践中常见争议问题进行了分析，对企业规范用工管理具有参考意义，以下问题值得关注：

Recently, the Fangshan District People's Court of Beijing and the Shanghai High People's Court released a number of typical labor dispute cases addressing common issues arising in practice, including labor dispatch, employment by affiliated companies and overtime management. These cases provide useful guidance for employers in improving employment compliance. The following points are noteworthy.

1. 北京市房山区人民法院发布劳务派遣等灵活用工劳动争议典型案例

Fangshan District People's Court of Beijing Released Typical Labor Dispute Cases on Labor Dispatch and Other Flexible Employment Arrangements

2026年5月13日，北京市房山区人民法院发布3个劳务派遣等灵活用工劳动争议典型案例，涉及劳务派遣、关联企业交叉用工、业务外包等实践中的常见争议问题。典型案例裁审观点如下：

On May 13, 2026, Beijing Fangshan District People's Court released three typical labor dispute cases involving labor dispatch and other flexible employment arrangements, focusing on issues regarding labor dispatch, cross-employment by affiliated companies and business outsourcing. The opinions of the typical cases are summarized as below:

(1) 案例1中，用工单位依据公开绩效考核制度及员工月度任务完成情况，证明员工长期未达到岗位要求，经培训、调整岗位后仍无法胜任工作，遂将员工退回派遣单位。派遣单位核实退岗原因，并在履行相关程序后解除劳动合同。法院认为，用工单位退回员工具有客观考核依据，派遣单位解除程序合法，不构成违法解除，但应依法支付经济补偿金。

In Case 1, the employer relied on its publicly available performance appraisal policy and the dispatched employee's monthly performance records to demonstrate that the dispatched employee had consistently failed to meet the performance requirements of the position. After providing training and adjusting the dispatched employee's position, the dispatched employee still failed to perform the job competently, and was therefore returned to the labor dispatch entity. After verifying the dispatched employee's return reason and completing the relevant statutory procedures, the labor dispatch entity terminated the employment contract. The court held that the employer had objective grounds for returning the dispatched employee, and that the labor dispatch entity lawfully terminated the employment contract in accordance with the applicable procedures. Accordingly, the termination did not constitute unlawful dismissal, although statutory severance payment remained payable.

(2) 案例2中，劳动者先后与两家关联公司签订劳动合同，但实际岗位职责、工作内容及管理体系未发生变化，且关联公司之间存在薪资、绩效、报销、离职结算等交叉管理情形。法院认为，关联企业通过轮换劳动合同主体规避用工责任，构成混同用工，相关主体应共同承担协商解除劳动合同经济补偿责任。

In Case 2, the employee entered into employment contracts with two affiliated companies successively, while the employee's job responsibilities, work content and management structure remained unchanged. The affiliated companies also exercised overlapping management with respect to matters such as payroll, performance evaluation, expense reimbursement and exit settlement. The court held that the affiliated companies had attempted to evade their employment obligations by alternating the nominal contracting employer, constituting mixed employment. Accordingly, the affiliated companies were held jointly liable for the statutory severance payable upon the mutually agreed termination of the employment contract.

(3) 案例3中，劳动者与企业签订业务外包协议，但劳动者实际接受企业考勤、考核及日常管理，并从事企业核心业务。法院认为，双方实际存在人身、经济及组织从属性，符合劳动关系特征，企业不得通过协议名称规避劳动合同义务，最终判令企业支付未签劳动合同二倍工资差额。

In Case 3, the employee entered into a business outsourcing agreement with the Company. In practice, however, the employee was subject to the company's attendance, performance appraisal and day-to-day management, while performing the company's core business functions. The court held that the parties had established the characteristics of an employment relationship, including personal, economic and organizational subordination. The Company may not evade its obligations under labor laws merely by labeling the arrangement as a business outsourcing relationship, and ultimately ordered the Company to pay double wages for failing to execute a written employment contract as required by law.

2. 上海市高级人民法院发布涉民生劳动争议典型案例

Shanghai High People's Court Releases Typical Labor Dispute Cases Concerning People's Livelihood

2026年6月，上海市高级人民法院开展2025年度上海法院涉民生典型案例宣传展示，陆续发布一批涉民生典型案例，其中案例九与加班问题相关，值得关注：

In June 2026, the Shanghai High People's Court launched its 2025 publicity campaign on typical cases concerning people's livelihood adjudicated by Shanghai courts and successively released a number of representative cases. Among them, Case 9, concerning overtime work, is particularly noteworthy:

该案中，员工在下班后及休息日按照公司要求通过线上方式核对数据、制作报表，公司以员工未提交加班申请为由否认加班事实。法院认为，判断是否构成加班的核心标准，是劳动者是否在标准工作时间外、受用人单位安排从事实质性劳动，企业不能仅以未履行审批程序否认加班。法院结合岗位特点、工作内容及线上工作频次综合认定加班时间，并判令企业支付相应加班工资。

In this case, the employee was required to verify data and prepare reports online after regular working hours and on rest days. The employer denied the existence of overtime work on the ground that the employee had not submitted an overtime application. The court held that the key criterion for determining whether overtime has occurred is whether the employee performed substantive work outside the statutory working hours at the employer's request or arrangement. An employer may not deny the existence of overtime solely because the employee failed to complete the internal approval procedures. Taking into account the nature of the employee's position, the work performed and the frequency of the employee's online work, the court determined the overtime hours on a comprehensive basis and ordered the employer to pay the corresponding overtime wages.



、典型案例：广东高院、广东省人社厅发布劳动争议典型案例

Exploration of Typical Cases: Guangdong High People's Court and Guangdong Provincial Department of Human Resources and Social Security Released Typical Labor Dispute Cases

1. 广东省高院发布涉劳动争议典型案例

Guangdong High People's Court Released Typical Labor Dispute Cases

2026年5月29日，广东省高级人民法院发布一批劳动争议典型案例，涉及被派遣劳动者权益保护、劳动者个人信息和隐私权保护、企业依规调岗降薪的合法性审查等方面的十个案例，其中，以下裁审观点值得重点关注：

On May 29, 2026, the Guangdong High People's Court released ten typical labor dispute cases covering issues such as the protection of dispatched employees, protection of employees' personal information and privacy, and judicial review of employers' decisions on position adjustments and salary reductions. Among them, the following judicial opinions are noteworthy:

(1) 销售提成等绩效奖金属于工资组成部分，应计入经济补偿计算基数；

Performance-based remuneration such as sales commissions forms part of an employee's wages and should be included in the calculation base for statutory severance.

(2) 事业单位工作人员进修后未依约履行服务期应承担违约责任；

Employees of public institutions who fail to fulfill an agreed service period after receiving employer-sponsored training may be held liable for breach of contract.

(3) 达到退休年龄但未享受职工基本养老保险待遇的劳动者，发生工伤后仍可请求用人单位承担工伤待遇责任；

Employees who have reached the statutory retirement age but are not yet eligible for basic pension benefits may still claim work-related injury benefits from their employers if they suffer a work-related injury.

(4) 用人单位不得通过拆分工资结构方式制造已经提前支付竞业限制补偿金的假象并规避法定义务；

Employers may not evade their statutory obligation to pay post-employment non-compete compensation by artificially splitting the wage structure to create the appearance that such compensation has already been paid in advance.

(5) 对于以派单量、业务量为主要计算依据的绩效奖金，用人单位不得通过"恶意不派单"变相减低工资，否则构成未依法提供劳动条件，劳动者有权要求补足工资差额；

Where performance bonuses are primarily determined by work assignments or business volume, employers may not indirectly reduce employees' by withholding work assignments. Such conduct may constitute a failure to provide the agreed working conditions, entitling employees to claim the resulting wage shortfall.

(6) 用人单位基于生产经营需要进行岗位调整，如符合劳动合同约定、岗位特点及员工工作惯例，且不存在侮辱性、惩罚性情形的，属于企业合理使用用工自主权，劳动者应予配合；

An employer's adjustment of an employee's position for legitimate business and operational needs is generally permissible, provided that it is consistent with the employment contract, the nature of the position and established working practices, and is not humiliating or punitive in nature.

(7) 企业依据合法有效制度及客观绩效结果进行调岗降薪，可能被认定合法；

Position adjustments and corresponding salary reductions implemented in accordance with valid internal policies and objective performance assessment results may be upheld as lawful.

(8) 企业基于合理理由善意核查病假真实性，不构成违法管理行为。

An employer's good-faith verification of the authenticity of an employee's sick leave, where supported by reasonable grounds, does not constitute unlawful employment management.

2. 广东省人社厅发布涉劳动争议典型案例

Guangdong Provincial Department of Human Resources and Social Security Released Representative Labor Dispute Arbitration Cases

2026年5月29日，广东省人力资源和社会保障厅发布四起劳动人事争议仲裁典型案例，涵盖劳务派遣、劳动者维权信息保护、境外就业劳动争议以及事业单位工作人员解除聘用合同手续办理等领域，对企业规范用工管理具有参考意义。案例裁判要点提示如下：

On 29 May 2026, the Guangdong Provincial Department of Human Resources and Social Security released four representative labor and personnel dispute arbitration cases. The cases address issues including labor dispatch protection of employees' information relating to the exercise of their legal rights, overseas employment disputes, and the procedures for terminating employment contracts with personnel of public institutions. They provide useful guidance for employers on compliant workforce management. The key takeaways are summarized below:

(1) 企业通过劳务派遣形式规避实际用工责任的，可能被认定构成“假派遣、真用工”。案例1中，劳动者由制造公司招聘入职，实际接受制造公司的工作安排、考勤管理及日常管理。虽然制造公司主张劳动者系由劳务派遣公司派遣，并由派遣公司承担部分人事管理职责，但仲裁机构根据劳动者实际接受管理、提供劳动以及工资支付等情况，认定制造公司与劳动者之间存在事实劳动关系。相关主体不得通过形式上的劳务派遣安排规避法定用工责任。

Employers may not use labor dispatch arrangements to evade their responsibilities as the actual employer. In Case 1, the employee was recruited by a manufacturing company and was subject to its work assignments, attendance management and day-to-day supervision. Although the manufacturing company argued that the employee had been dispatched by a labor dispatch entity, which was responsible for certain HR administration matters, the labor arbitration committee held that a de facto employment relationship existed between the manufacturing company and the employee based on factors including the actual management exercised over the employee, the provision of labor and the wage payment arrangements. The labor arbitration committee emphasized that employers may not avoid their statutory employment obligations through labor dispatch arrangements that exist only in form.

(2) 用人单位不得因劳动者曾申请劳动仲裁等依法维权行为而实施差别对待或解除劳动合同。案例2中，劳动者曾通过劳动仲裁程序维护自身合法权益，入职时并未告知用人单位，用人单位后续以劳动者提供虚假信息导致劳动合同无效为由解除劳动合同。仲裁机构认为，劳动者依法申请劳动仲裁属于正当维权行为，用人单位不得违法收集、使用劳动者维权信息，并不得据此限制劳动者就业权益或解除劳动合同。

Employers may not discriminate against employees or terminate their employment because they have lawfully pursued labor arbitration or otherwise exercised their legal rights. In Case 2, an employee had previously initiated labor arbitration to protect his lawful rights, but did not disclose such fact to the employer when he was employed. The employer subsequently terminated the labor contract on the ground that the employee had provided false information, rendering the labor contract void. The arbitration committee held that applying for labor arbitration is a legitimate means of protecting one's legal rights. Employers may not unlawfully collect or use information relating to an employee's exercise of such rights, nor rely on that information to restrict employment opportunities or terminate employment.

(3) 境外就业场景下应根据实际用工模式判断法律关系，明确各方责任。案例3中，劳动者因境外就业过程中产生劳动报酬、职业伤害等争议。仲裁机构认为，对于涉及境外就业的用工安排，应结合对外劳务合作、对外承包工程、对外投资合作、属地化用工等不同模式，依法判断劳动关系主体及责任承担方式，避免因合同形式不明确导致劳动者权益保障不足。

In overseas employment arrangements, the legal relationship and the parties' respective responsibilities should be determined based on the actual employment model. In Case 3, disputes arose in connection with overseas employment including claims relating to remuneration and occupational injuries. The arbitration committee held that, in cases involving overseas employment, the nature of the employment relationship and the allocation of legal responsibilities should be assessed in light of the specific arrangement adopted, such as overseas labor cooperation, overseas engineering contracting, outbound investment projects or localized employment. The arbitration committee further noted that the rights and interests of employees should not be undermined by unclear contractual arrangements.

(4) 事业单位工作人员解除聘用合同应依法履行相关程序。案例4中，事业单位与工作人员之间因解除聘用合同手续办理产生争议。仲裁机构明确，事业单位作为特殊用人主体，在解除聘用关系时，应依据相关法律法规及人事管理规定履行必要程序，不得仅依据内部决定单方面终止聘用关系。

Employees of public institutions must follow the applicable statutory procedures when terminating employment contracts with their personnel. In Case 4, a dispute arose over the procedures for terminating an employment contract between a public institution and one of its employees. The arbitration committee held that, as a special category of employer, a public institution must comply with the applicable laws, regulations and personnel management rules when terminating an employment relationship, and may not unilaterally terminate the employment contract solely on the basis of an internal decision.

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2026-07-15