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※ Exploration of Typical Cases: Tianjin Municipal Human Resources and Social Security Bureau Released Typical Labor Cases of 2021

1. Interpretation of Laws and Regulations: The Ministry of Human Resources and Social Security and the Supreme People's Court Issued Opinions on Issues Related to the Connection of Labor and Personnel Dispute Arbitration and Litigation

In order to better connect the procedures of labor arbitration with that of the first instance on a gradual basis and to unify the applicable legal standards nationwide, the Ministry of Human Resources and Social Security (the "MOHRSS") and the Supreme People's Court jointly issued the *Opinions on Issues Related to the Connection of Labor and Personnel Dispute Arbitration and Litigation (I)* (the "Opinion (I)") on 21 February 2022.

In March 2015, the Central Committee of the Communist Party of China and the State Council issued the *Opinions of the Central Committee of the Communist Party of China and the State Council on Constructing Harmonious Labor Relations*, proposing to "strengthen the connection and coordination of arbitration and litigation, and actively explore the establishment of new rules and systems for the effective connection of litigation and arbitration procedures and the unification of applicable legal standards". In November 2017, the MOHRSS and the Supreme People's Court jointly issued the *Opinions on Strengthening Efforts in Developing the Mechanism Connecting Arbitration and Litigation of Labor Disputes*, proposing to "establish sound new rules and systems to make sure the consistency and linkage of arbitration and litigation in terms of case acceptance scope and effective procedural connection". The Opinion (I) is a concrete implementation of the requirements set out in the two rules, seeking to bring into play the respective functions and roles of mediation, arbitration and litigation, and improve the efficiency of the arbitration and litigation of labor and personnel dispute cases while ensuring procedural justice.

The Opinion (I) sets out the provisions on strengthening the connection between arbitration and litigation of labor and personnel disputes from both substantive and procedural aspects, some of which are new provisions and some of which are the original provisions. Its main provisions include the following aspects:

(1). Regulating the follow-up procedural issues of mediation agreements. In order to give legal binding force to the mediation agreement reached by parties on a voluntary basis, the Rules for the Handling of Arbitration Cases Involving Labor and Personnel Disputes have established an examination system in the arbitration proceeding to legalize labor mediation agreements, and in the meanwhile, the People's Mediation Law and the Civil Procedure Law also established a similar system to give judicial confirmation to such mediation agreements. On this basis, in order to further clarify the relationship between the two systems, the Opinion (I) stipulates that in the event that an application for examination of a mediation agreement is not accepted or confirmed by arbitration commission, in principle, either party can submit the matters to arbitration, as long as the matter is falling within the acceptance scope of labor arbitration. But in some special cases where the conditions are met, the parties may directly initiate litigation. At the same time, it is provided that for mediation agreements reached after mediation presiding by a mediation organization, the parties may apply for either arbitration examination or judicial confirmation in order to make such mediation agreement enforceable.

(2). Clarifying the applicable scope of final awards of arbitration. The Law on Mediation and Arbitration of Labor Disputes and the Rules for the Handling of Arbitration Cases Involving Labor and Personnel Disputes stipulate that arbitration award of labor disputes made by the Arbitration Commission for Labor and Personnel Disputes (the "Arbitration Commission") shall be final under certain circumstances, and the award shall take legal effect from the date the award is made. The employee dissatisfied with the final award may initiate a litigation to the

court, while the employer shall apply for revocation of the award to an intermediate people's court if it is dissatisfied with the final award. The Opinion (I) further clarifies the scope of the application of final awards, stipulates that the Arbitration Commission shall make a non-final award in matters concerning the confirmation of labor relations, and regulates the preparation and jurisdiction of final and non-final awards, as well as the suspension of proceedings, joinder of proceedings and mediation in subsequent litigation trials.

(3). Improving the connection rules between arbitration and litigation in respect of submission and cross-examination of evidence and issuance of verdict or award. The Opinion (I) regulates the submission of evidence by the parties and the connection between the providing and examination of evidence in the arbitration and that in the litigation. And, it provides specific and detailed provisions on the issue of self-admission by the parties in labor arbitration. In addition, the Opinion (I) also stipulates how to better connect the hearing and decision-making procedures of arbitration with that of litigation, and specifies that the Arbitration Committee may initiate arbitration supervision procedures, and that the court shall accept the awards re-issued according to the arbitration supervision procedures in accordance with the laws and regulations.

(4). Unifying some of the standards of substantive rules. The Opinions (I) clarifies the applicable standards of some substantive matters. For example, the Arbitration Commission and the court shall not support an employee's claim of requiring the employer to pay the second time salary after one year from the date of employment on the grounds that the employer has not concluded a written labor contract; if the parties have agreed on non-competition compensation, and if the employer, due to its own reason, fails to pay compensation for three months after termination or expiration of the employment contract, the Arbitration Commission and the court shall support the employee's request of releasing him or her from the non-compete obligation. It is worth noting that some local regulations are not consistent with the above applicable legal standards and it remains to be seen whether the release of the Opinion (I) will lead to adjustments and changes to the local judicial practice.

(5). Other matters. The Opinion (I) also provides for other procedural issues at the arbitration and litigation of labor and personnel disputes. For example, the Arbitration Commission shall accept the cases filed by the employers claiming for damages on the ground of Article 90 of the Labor Contract Law; the Arbitration Committee and the court should pay attention to the procedure issues when hearing the employee's claim of severance and double severance arising from the termination of labor contract; the nature of the legal relationship and the validity of civil actions should be dealt with as focus issues under certain circumstances; and how to handle the change of claims during litigation and arbitration proceedings, etc.

The Opinion (I) is an important rule on the connection between arbitration and litigation in labor disputes, which has an important influence on employers, employees and legal practitioners. Both the employer and the employee should pay attention to the relevant procedural requirements and the adjudication standards provided in the Opinion (I), so as to adjust the behaviors in a timely manner and avoid any damage of interests caused by the procedural or substantive disconnection between the arbitration and litigation.

On 28 February 2022, the heads of the Department of Mediation and Arbitration of the MOHRSS and the No.1 Civil Court of the Supreme People's Court answered questions on the Opinion (I), mentioning that the two departments would subsequently promote the efficient and orderly connection between Arbitration Commissions and courts in various regions through the continuous joint publication of typical cases and the establishment of a system for comparing information on adjudication and trial. We will also continue to keep an eye on this issue and update the interpretation of the relevant rules in a timely manner.

2. Quick View of New Regulations: Various Regions Issued Special Governance Programs for the Prevention of Occupational Hazards, and Released Regulations for the Protection Rights and Interests of Laborers in New Work Patterns

(1). Guangdong, Henan and Beijing have successively Issued Special Regulatory Programs to Contain Occupational Hazards

According to the requirements of the Notice of the General Office of the National Health Commission on the In-depth Implementation of Special Regulation of Occupational Hazards and the National Occupational Disease Prevention and Control Plan (2021-2025) jointly issued by various ministries in December 2021, various regions have successively introduced special regulatory programs for the prevention of

occupational hazards, and will regulate industrial enterprises with excessive dust, chemical poisons, noise hazard and with 10 or more employees.

On January 25, 2022, Health Commission of Guangdong Province issued the Guangdong Province In-depth Special Governance of Occupational Hazards Work Program; on January 29, 2022, Health Commission of Henan Province issued the Henan Province Special Governance of Occupational Hazards Action Program (2022-2025); on February 27, 2022, Beijing Municipal Health Commission promulgated the Notice on the In-depth Special Governance of Occupational Hazards.

The goal of the special regulatory action in the three places is to improve workplace labor conditions, control and reduce occupational hazards from the source, and protect employees' occupational health. Enterprises that do not have proper management in place may be required to intensify rectification, and in severe cases, they may even be ordered to stop operations or close down. Employers within the scope of governance should pay attention to the steps, arrangements and specific requirements of the local special action and strengthen the management and monitoring of the workplace.

(2). Several Different Regions Released Regulations for the Protection of Rights and Interests of Laborers in New Work Patterns

Following the issuance of the Guiding Opinions on Protecting the Labor Security Rights and Interests of Laborers in New Work Patterns by MOHRSS and other seven departments on July 16, 2021 (for more information you may refer to [*"Haiwen Research: Haiwen Labor Law Bi-monthly Newsletter"* \(2021 July-August\)](#)), the local implementing policies are being released successively.

Shanghai issued the Implementing Opinions on Protecting the Labor Security Rights and Interests of Laborers in New Work Patterns on January 4, 2022, explicitly urging platforms to optimize algorithm principles, not to use the strictest algorithm as an assessment standard, and to contain the use of punitive measures which shall be replaced by active management; proposing to consider the feasibility of actively creating conditions to gradually liberalize the household registration restrictions so that those flexible workers who are not the registered residents of the city can also participate into the city's basic pension and basic medical insurance; encouraging enterprises to take active measures to provide care and assistance to employees in terms of accommodation, children's education, and their special difficulties.

Shaanxi Province issued a notice on January 5, 2022 on the Implementing Measures on Protecting the Labor Security Rights and Interests of Laborers in New Work Patterns, which states that no discriminatory restrictions shall be set on rural migrant workers moving to the city for employment; encourages enterprises to reasonably determine the assessment standard and appropriately relax the quota standards through "worker-friendly algorithm" and other means; for enterprises that seriously infringe on the legitimate rights and interests of workers, the information on breach of faith will be pushed to the national credit information sharing platform (Shaanxi), and joint disciplinary actions will be implemented by multiple departments, so as to effectively safeguard the legitimate rights and interests of laborers in new work patterns.

Inner Mongolia issued a notice on February 15, 2022 on the Implementation Opinions of Inner Mongolia Autonomous Region on Protecting the Labor Security Rights and Interests of Laborers in New Work Patterns, which requires the establishment of a professional platform algorithm supervision mechanism led by the competent industrial administrations, with the participation of the Ministry of Human Resource and Social Security department, trade unions, enterprise representative organizations and expert teams, and the inclusion of enterprise's labor usage into the integrity system of entities and operators.

The Healthcare Security Administration of Guangdong Province and the Guangdong Provincial Tax Service, State Taxation Administration issued the Notice on Further Improving the Participation of Flexible Employed Workers in Employees' Basic Medical Insurance in the Province on February 1, 2022, which provides that flexible employed workers within the legal working age, regardless of their household registration, can participate in employees' medical insurance at their place of employment, thereby further protecting the rights and interests of flexible employed workers in Guangdong to participate in employees' medical insurance.

3. Quick View of New Regulations: Eight Ministries Jointly Issued Revisions the Administrative Provisions on the Internship of Students of Vocational Schools; Inner Mongolia and Yunnan Revised Regulations on Population and Family Planning; and Suzhou Issued Opinions on Giving Positive Incentives to Enterprises with Harmonious Labor Relations

(1). Eight Ministries Jointly issued Revisions to the Administrative Provisions on the Internship for Students of Vocational Schools

On December 31, 2021, the Ministry of Education, the MOHRSS, and other 6 departments jointly re-issued the Administrative Provisions on the Internship of Students of Vocational Schools (the **"Internship Provisions"**) with substantive revisions to the original Internship Provisions which were jointly issued by five ministries, including the Ministry of Education and MOHRSS in April 2016. Internship Provisions put forward new requirements and regulations on the organization, management, assessment, safety responsibilities, safeguard measures, supervision of internships for students of vocational schools.

The original Internship Provisions divided the internship of vocational school students into cognition practice, training internship and on-the-job internship. For different types of internships, there are also different regulations on internship agreements, rest and leave rights, and remuneration for internship students, etc. The newly revised Internship Provisions canceled the above classifications and defined internship as "activities in which students with certain practical working ability, under the guidance of professional staff, participate in practical work as assistants or relatively independently", and no longer treats the related issues differently. In addition, students from undergraduate vocational colleges are also explicitly included in the scope of application of the Internship Provisions.

Based on the original Internship Provisions, the newly revised Internship Provisions have added the provisions that the internship agreement shall include working hours and rest arrangements, internship remuneration and payment methods, and the liability of each party for breach of contract; require that vocational schools and employer shall not arrange for students to engage in physical labor of Level III intensity or above or other internships that are harmful to physical and mental health, or arrange for students to work on rest days. The Internship Provisions also require that employer shall give students appropriate remuneration, and the payment cycle of internship remuneration shall not exceed one month. For the students who work independently and have the ability to work independently on the internship position, the wage standard shall be no less than 80% of the wage standard of the same position or the lowest wage standard of the company in principle. Employers are encouraged to purchase accident insurance for internship students. The Internship Provisions also mentioned that enforcement of law will be strengthened against the employers and vocational schools.

It is worth noting that the Internship Provisions make it clear that the right to manage and punish internship students remains with schools. Specifically, the school shall, together with the employer concerned, carry out criticism and education of its students who violate rules and regulations, the attendance and assessment standard or other requirements according to the school discipline and relevant internship management regulations; if there is any serious violation committed by a student, the school shall subject the student to a disciplinary sanction; and the damages caused to the property of the employer shall be compensated in accordance with the law. However, it is the employer that has the first responsibility in terms of safety production and safeguarding the personal safety and health of students. Internship students shall be treated equally with ordinary employees in terms of the provision of labor protective equipment, safety and health education, training, and management.

Enterprises that engage vocational school students for internships need to be aware of relevant provisions of the Internship Provisions regarding the internship agreements, basic rights of interns, obligations and responsibilities of enterprises, to ensure compliance with the employment regulations.

(2). Inner Mongolia and Yunnan Revised Regulations on Population and Family Planning Successively to Adjust Marriage and Childbirth Related Leaves

In order to implement the provisions of the newly revised Population and Family Planning Law on August 20, 2021, the Standing Committee of the People's Congress of Inner Mongolia issued the revised Regulations on Population and Family Planning of Inner Mongolia Autonomous Region on January 10, 2022, and the Standing Committee of the People's Congress of Yunnan Province issued the revised Regulations on Population and Family Planning of Yunnan Province on January 17, 2022.

The newly revised regulations in both regions have made significant adjustments to the leaves related to marriage and childbirth, and the leave settings before and after the revision are as follows (for more information about revisions and adjustments to marriage and childbirth related leaves in other regions, please refer to the [*"Haiwen Research: Haiwen Labor Law Bi-monthly Newsletter"* \(November-December 2021\)](#))

地区 Regions	条例的修订情况 Effective Date	假期种类 Types of Leave	适用主体 Applicable Body	修改前 Before Revision	修改后 After Revision
内蒙古自治区 Inner Mongolia	2022.1.7 发布， 2022.1.10 生效 Promulgated on 2022.1.7 and effective on 2022.1.10	婚假 marriage leave	夫妻双方 couple	18 日 18 days	18 日 18 days
		延长产假 extended maternity leave	女方（生育第一、二个子女） female (when having the first and second child)	60 日 60 days	60 日 60 days
			女方（生育第三个子女） female (when having the third child)	/	90 日 90 days
		护理假 paternity leave	男方 male	25 日 25 days	25 日 25 days
		育儿假 parental leave	夫妻双方 couple	/	夫妻双方可在子女满 3 周岁前每年各享 10 日 Each parent is entitled to 10 days' leave each year before the children reach the age of 3
云南省 Yunnan	2022.1.17 发布， 2022.1.17 生效 Promulgated on and effective on 2022.1.17	婚假 marriage leave	夫妻双方 couple	18 日 18 days	18 日 18 days
		延长产假 extended maternity leave	女方 female	60 日 60 days	60 日 60 days
		护理假 paternity leave	男方 male	30 日 30 days	30 日 30 days
		育儿假 parental leave	夫妻双方 couple	/	生育或者合法收养且子女不满 3 周岁的，夫妻双方每年各享 10 日，有两个以上不满 3 周岁子女的，再增加 5 日 For both natural born children and adopted children under 3 years old, each of their parent is entitled to 10 days' leave per year, and if there are two or more children less than 3 years old, they shall be entitled to an additional 5 days' leave

Employers should fully understand the local rules in force, and on this basis, update and improve the internal rules and regulations in a timely manner to protect the rights and interests of employees on rest and leave.

(3). Suzhou Issued Opinions on Giving Positive Incentives to Enterprises with Harmonious Labor Relations

In order to implement the requirements of the Central Committee of the Communist Party of China and the State Council on constructing harmonious labor relations and to further promote the activities of constructing harmonious labor relations, on December 3, 2021, Suzhou Human Resources and Social Security Bureau issued the Opinions on Giving Positive Incentives to Enterprises with Harmonious Labor Relations (the "Opinions").

The Opinions provide 27 incentive policies to enterprises that meet the local standard of Jiangsu Province as set out in the Evaluation Criteria for Harmonious Enterprises in Labor Relations and that are evaluated and recognized as "Harmonious Enterprises in Labor Relations" by the Tripartite Committee for Coordinating Labor Relations at or above the municipal level. For example, the enterprises will be listed in the "Positive List" of trustworthy enterprises for social inquiry, the permit for implementation of special working hours can be valid for up to three years, the payment rate of work injury insurance premiums can be lowered, the active inspection related to housing

fund can be exempted, and the review procedure for deposit business is simplified, etc. The assessment of "Harmonious Enterprises in Labor Relations" mainly examines the compliance of labor usage, the completeness of labor rules and regulations, the reasonableness of the wage distribution mechanism, the implementation of rest and social welfare, as well as factors relating to safety production and democratic management.

Employers may obtain many preferential incentives by paying close attention to the protection of employees' interests in production and operation, and building harmonious labor relations.

4. Exploration of Typical Cases: Tianjin Municipal Human Resources and Social Security Bureau Released Typical Labor Cases in 2021

On January 27, 2022, Tianjin Municipal Human Resources and Social Security Bureau released the Notice on Releasing Typical Cases of Labor and Personnel Disputes of 2021, aiming to provide a stronger guidance to Tianjin labor and personnel dispute arbitration commissions in handling relevant cases.

The release of 2021 consists of 5 typical cases in total, and the guiding opinions revealed by such cases are summarized as follow:

- (1). Where the employer decides not to renew an employment contract upon expiration without knowing that the female employee is pregnant, it shall not constitute an illegal termination in principle and there is no need to pay termination severance. However, the employer shall continue to perform the employment contract until the corresponding circumstances disappear.
- (2). If an employer's regulation requires employees to work longer hours than the statutory limit, it shall be deemed null and void as it conflicts with imperative laws, even if the regulation has gone through the required democratic procedures.
- (3). If the employer terminates the employment contract on the grounds that the employee "does not satisfy the employment conditions during the probationary period", the following three conditions must be met at the same time: (1) reasonable and clear employment conditions and assessment criteria are set and communicated to the employee at the beginning of recruitment and employment, (2) the company shall provide proof to demonstrate that the employee does not meet the employment conditions during the probationary period, and (3) the employee is clearly notified of the termination of the employment contract before the expiry of the probationary period.
- (4). The employer has the right to make overall arrangement for employees to take paid annual leave based on its specific operational needs, provided that the employees' right to rest and leave must be ensured.
- (5). The agreement signed between the employer and employee whereby the employee voluntarily gives up the contribution and benefit of social insurance is invalid due to the violation of the mandatory provisions of the law. It shall be deemed that the nonpayment or insufficient payment of social insurance premiums is on the employer who thus shall bear corresponding legal liabilities.

Employers located in Tianjin can use the guiding opinions revealed by the typical cases released by the Tianjin Human Resources and Social Security Bureau as a reference to obtain a better understanding on the trail standards on relevant issues in practice.

***<https://mp.weixin.qq.com/s?biz=MzA5MjYzNDQyMw==&mid=2658230372&idx=1&sn=48a64f36a0f7668fd7e06f2567c973c4&chksm=8befec3cbc98652a2be7041d9f11c167eb>

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