

Haiwen Labor Law Bi-Monthly Newsletter

Author: LIU, Yuxiang WU, Qiong

此图片来自微信公众平台
未经允许不可引用

Summary

本期摘要



法规速递：国家修订职业教育法，对特困行业实行社会保险相关优惠政策，修改个人所得税专项附加扣除操作办法

Quick View of New Regulations: Revised Vocational Education Law Adopted, Preferential Social Insurance-related Policies Carried out for Industries in Dire Straits, and Operating Measures of Special Additional Deductions for Individual Income Tax Revised



新规速递：北京出台人社局行政处罚裁量基准表，北京及辽宁发布调整劳动争议仲裁管辖的地方规定

Quick View of New Regulations: Beijing Issued the Benchmark Sheet of Municipal Human Resources and Social Security Bureau for Administrative Penalty Discretion; Beijing and Liaoning Issued Notice on Adjusting the Jurisdiction of Labor Dispute Arbitration Cases



新规速递：福建、广西两地修订《人口与计划生育条例》，湖南和四川调整最低工资标准

Quick View of New Regulations: Fujian and Guangxi Revised Regulations on Population and Family Planning, Hunan and Sichuan Adjusted Minimum Wage Standards



典型案例：最高人民法院发布涉就业歧视相关典型案例，北京海淀区法院发布3则男职工休陪产假的典型案例，广东高院等法院发布劳动争议典型案例

Exploration of Typical Cases: The Supreme People's Court Released Typical Cases Concerning Employment Discrimination; Beijing Haidian District People's Court Published 3 Typical Cases Relevant to Paternity Leave for Male Employees; Guangdong Higher People's Court and Other Courts Released Typical Cases of Labor Disputes



一、法规速递：国家修订职业教育法，对特困行业实行社会保险相关优惠政策，修改个人所得税专项附加扣除操作办法

Revised Vocational Education Law Adopted, Preferential Social Insurance-related Policies Carried out for Industries in Dire Straits, and Operating Measures of Special Additional Deductions for Individual Income Tax Revised

1. 职业教育法修订，对企业提出新要求

The Revision of Vocational Education Law Puts Forward New Requirements for Enterprises

2022年4月20日，第十三届全国人民代表大会常务委员会通过对《中华人民共和国职业教育法》（“《职业教育法》”）的修订，新修订的《职业教育法》于2022年5月1日生效。修订后的《职业教育法》共有八个章节，对1996年生效版本的内容进行了较大的细化和丰富，也对行业主管部门、职业学校、职业培训机构提出了更加具体的要求。

The Vocational Education Law of the People's Republic of China (the "Vocational Education Law"), adopted upon revision at the 34th Session of the Standing Committee of the Thirteenth National People's Congress of the People's Republic of China on April 20, 2022, and the newly revised Vocational Education Law has taken effect since May 1, 2022. The revised Vocational Education Law has eight chapters, which provide greater refinement and enrichment to the version of year 1996, and also put forward more specific requirements for competent authorities of the field, vocational schools, and vocational training institutions .

新修订的《职业教育法》明确职业教育与普通教育是两种不同的教育类型，没有高下之分，具有同等重要地位。国家将统筹推进职业教育和普通教育的协调发展，让职业学校学生在升学、就业、职业发展等方面与同层次普通学校学生享有平等机会。

The newly revised Vocational Education Law clarifies that vocational education and general education are two different types of education, with no superiority or inferiority, and of equal importance. The State will promote the coordinated development of vocational education and general education, so that vocational school students can enjoy equal opportunities as general school students at the same level in terms of further education, employment, career development and other aspects.

与此同时，新修订的《职业教育法》也明确或重申了对企业的要求。例如，用人单位不得设置妨碍职业学校毕业生平等就业、公平竞争的报考、录用、聘用条件；企业应当根据本单位实际，有计划地对本单位的职工和准备招用的人员实施职业教育，按照国家有关规定实行培训上岗制度；企业应当根据国务院规定的标准，按照职工工资总额一定比例提取和使用职工教育经费；接纳实习的单位应当保障学生在实习期间的劳动权利，与学生签订实习协议，并给予劳动报酬。

Meanwhile, the newly revised Vocational Education Law also clarifies or reiterates the requirements for enterprises. For example, employers shall not set conditions that may impede the equal employment and fair competition of vocational school graduates in terms of registration for examination, hiring or employment; enterprises shall, in light of their actual situation, provide vocational education to their employees and personnel to be employed in a planned manner, and adopt a pre-job training system in accordance with relevant state regulations; enterprises shall, in accordance with the standards set by the State Council, withdraw money at a certain percentage of the gross compensation of employees and use it for employee education; enterprises that accept internships should protect the labor rights of students during the internship, conclude internship agreements, and pay the labor remuneration.

用人单位应当特别关注新修订的《职业教育法》中关于招聘不得设置歧视政策、应当为职工和拟招聘者实施职业教育、依法计提职工教育经费等普适性规则，积极发挥用人单位在促进职业教育方面的重要作用并履行相关义务。

Employers should pay special attention to the newly revised Vocational Education Law's universal rules that no discriminatory policies shall be implemented during recruitment, vocational education should be adopted for employees and personnel to be employed, and employee education funds should be withdrawn in accordance with the law. Employers are encouraged to actively play an important role in promoting vocational education and fulfill relevant obligations.

2. 国家发布针对特困行业用人单位和从业人员的优惠政策

The State Issues Preferential Policies for Employers and Employees of Industries in Dire Straits

2022年4月6日，在李克强总理主持的国务院常务会议中，基于当前一些市场主体受到严重冲击，有些甚至停产歇业的情况，决定对特困行业的用人单位和从业人员实行更加优惠的社会保险费政策。

On April 6, 2022, in an executive meeting of the State Council chaired by Premier Li Keqiang, it was decided that more preferential social insurance premium policies would be applied to employers and employees of industries in dire straits, considering the current situation that some market entities are severely impacted and some even shut down their production and business.

会议提出的针对特困行业的纾困和就业兜底保护措施主要有三种：其一，对餐饮、零售、旅游、民航、公路水路铁路运输等特困行业，在今年第二季度实施暂缓缴纳养老保险费，并将已实施的阶段性缓缴失业和工伤保险费政策范围，由餐饮、零售、旅游业扩大至上述5个行业。其二，延续执行失业保险保障阶段性扩围政策。其三，提高中小微企业失业保险稳岗返还比例；各地可将4%的失业保险基金结余用于职业技能培训，并向受疫情影响、暂时无法正常经营的中小微企业发放一次性留工培训补助。

There are three main measures proposed at the meeting to provide relief and stabilize employment for industries in dire straits: Firstly, for the catering, retail, tourism, civil aviation, highway, waterway and railroad transport and other industries in dire straits, payment of pension insurance will be postponed in the second quarter of this year, and the scope of the phased suspension of contribution of unemployment and work injury insurance premiums under implementation will be extended from industries of catering, retail and tourism to cover the five industries mentioned above. Secondly, the phased extension policy of unemployment insurance continues to apply. Thirdly, the proportion of refund of the unemployment insurance premiums for small and medium-sized enterprises to stabilize its employment will continue to increase; all regions can use 4% of the unemployment insurance fund balance for vocational skills training, and a one-off employment-securing training subsidy will be given to small and medium-sized enterprises affected by the pandemic and temporarily unable to run their business normally.

安徽、苏州、吉林等地也根据国务院常务会议提出的措施，出台了针对特困行业企业缓交养老、失业、工伤保险费的具体政策。

Anhui, Suzhou and Jilin have also introduced specific policies for enterprises of the industries in dire straits to defer

payment of pension, unemployment and work-related injury insurance premiums based on the measures proposed at the State Council executive meeting.

3.国家税务总局修订个人所得税专项附加扣除操作办法

The State Taxation Administration Revised the Operating Measures of Special Additional Deductions for Individual Income Tax

2022年3月19日，国务院发布《国务院关于设立3岁以下婴幼儿照护个人所得税专项附加扣除的通知》，决定在原有的六项个人所得税专项附加扣除项目的基础上，增设3岁以下婴幼儿照护个人所得税专项附加扣除，规定纳税人照护3岁以下婴幼儿子女的相关支出，按照每个婴幼儿每月1000元的标准定额扣除。国家税务总局于2022年3月25日发布了修订后的《个人所得税专项附加扣除操作办法（试行）》，明确了婴幼儿照护专项扣除的计算时间、填报信息等具体操作。

On March 19, 2022, the State Council issued the Notice of the State Council on the Establishment of Special Additional Deductions for Individual Income Tax for the Care of Children Under the Age of 3, deciding to add one new special additional deduction for individual income tax for the care of children under the age of 3 in addition to the original six special additional deductions for individual income tax, stipulating that expenses related to the taxpayer's care for children under the age of 3 shall be deducted at a flat amount of RMB 1,000 per month per child. On March 25, 2022, the State Taxation Administration issued the revised Operating Measures for Special Additional Deduction for Individual Income Tax (Trial), which clarifies the computing time, information filling and other specific operations for special deduction for child care.

除此之外，针对婴幼儿的照护，在2021年8月20日新修订的《人口与计划生育法》颁布后，各地陆续修订了《人口与计划生育条例》，增设育儿假（通常针对有3岁以下子女的父母）等假期，从时间方面为照护婴幼儿的父母提供便利（参见[《海问·研究 / 海问劳动法双月报》（2021年11-12月）](#)）。

In addition, for the care of infants, after the promulgation of the newly revised Population and Family Planning Law on August 20, 2021, the local Population and Family Planning Regulations were amended successively to provide additional leave such as parental leave (usually for parents with children under 3 years old) to give parents more time to take care of their children (for more information you may refer to "[Haiwen Labor Law Bi-Monthly Newsletter](#)" (2021 November-December)).



二、新规速递：北京出台人社局行政处罚裁量基准表，北京及辽宁发布调整劳动争议仲裁管辖的地方规定

Quick View of New Regulations: Beijing Issued the Benchmark Sheet of Municipal Human Resources and Social Security Bureau for Administrative Penalty Discretion; Beijing and Liaoning Issued Notice on Adjusting the Jurisdiction of Labor and Personnel Dispute Arbitration Cases

1.北京印发《北京市人力资源社会保障行政处罚裁量基准表》

Beijing Issued the Benchmark Sheet of Municipal Human Resources and Social Security Bureau for Administrative Penalty Discretion

2022年3月22日，北京市人力资源和社会保障局（“[北京市人社局](#)”）发布了新修订的行政处罚裁量基准表（“[《裁量基准表》](#)”）。北京市人社局通常依据法规的变化情况，每年发布新的《裁量基准表》汇总表。

On March 22, 2022, the Beijing Municipal Human Resources and Social Security Bureau ([Beijing Labor Authority](#)) issued the newly amended benchmark sheet for administrative penalty discretion (the "[Discretion Benchmark Sheef](#)").

The Beijing Labor Authority usually updates Discretion Benchmark Sheet summary annually in accordance with changes in laws and regulations.

本次修订对原《裁量基准表》中部分处罚行为、处罚依据和裁量基准等进行了调整，并依据《未成年人保护法》《民办教育促进法实施条例》《社会保险基金行政监督办法》《就业服务与就业管理规定》《北京市劳动合同规定》等法律、法规对行政处罚进行了增删。新修订的《裁量基准表》共规定了107种与劳动用工相关的违法行为及其对应的处罚方式，明确其处罚的法律依据、违法的情形和分类、裁量基准及处罚公示期等。

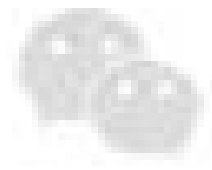
This revision has adjusted some acts subject to penalty, the basis for penalty and the discretion benchmark stipulated in the original Discretion Benchmark Sheet, added and deleted administrative penalty based on laws and regulations including Law on the Protection of Minors, the Implementing Regulations of the Privately-run Education Promotion Law, the Measures for the Administrative Supervision of Social Insurance Fund, the Provisions on Employment Service and Employment Management and the Provisions of Beijing Municipality on Labor Contracts. The newly revised Discretion Benchmark Sheet stipulates a total of 107 types of illegal acts relating to labor and employment as well as the corresponding penalty, clarifying the legal basis for penalty, circumstances and classification of illegal acts, discretion benchmark and penalty publicity period, etc.

2022年发布的《裁量基准表》中新增了以下处罚类型：（1）密切接触未成年人的单位未履行查询义务，招用或者继续聘用具有相关违法犯罪记录的人员；（2）实施职业教育的民办学校举办者及实际控制人、决策机构或监督机构组成人员在民办学校的设立、组织、经营、管理等活动中的违法行为；（3）被监督单位拒不配合社保基金行政监督；另外，也删除了以下行政处罚类型：（1）用人单位未及时为劳动者办理就业登记手续；（2）未签订劳动合同逾期不改；（3）关于以职业技能为主的职业资格培训、职业技能培训的民办学校出资人取得回报违法行为。

The following penalties are newly added in the Discretion Benchmark Sheet issued in 2022: (1) an entity that has close contact with minors fails to fulfill the obligation of inquiry, but hires or continues to employ a person who has relevant illegal or criminal records; (2) The illegal acts of the organizer, actual controllers, members of the decision-making bodies or supervision bodies of a privately-run school that carries out vocational education in the activities of the privately-run school's establishment, organization, operation and management; (3) The supervised entities refuses to cooperate with the administrative supervision of the social insurance fund. In addition, the following administrative penalties were removed from the sheet: (1) failure by the employers to timely handle employment registration procedures for employees; (2) failure by the employers to sign labor contracts and to make rectification within the prescribed time limit; (3) the illegal acts relating to the acquisition of returns by funders of privately-run schools which provide vocational skill - based vocational qualification training and vocational skill training.

用人单位可以参考《裁量基准表》，了解处罚基准，避免违法用工行为。以下几种违法行为及其行政处罚值得用人单位格外注意：

Employers may use the Discretion Benchmark Sheet as a reference, to understand the benchmark for penalty and avoid illegal employment management. The following illegal acts and the corresponding administrative penalties deserve employers' special attention:



此图片来自微信公众平台
未经允许不可引用

2.北京、辽宁发布调整劳动人事争议仲裁案件管辖范围的通知

Beijing and Liaoning Issued Notice on Adjusting the Jurisdiction of Labor and Personnel Dispute Arbitration Cases

2022年3月25日,《北京市人力资源和社会保障局关于调整我市劳动人事争议仲裁案件管辖的通知》(“《通知》”)发布,对劳动人事争议仲裁委员会(“**劳动仲裁委**”)受理的北京市劳动人事争议仲裁案件的管辖范围进行调整,调整后的管辖规则将于2022年5月1日生效。

On March 25, 2022, the Notice of the Beijing Municipal Human Resources and Social Security Bureau on Adjusting the Jurisdiction of Labor and Personnel Dispute Arbitration Cases in the City (the “**Notice**”) was issued, aiming to adjust the jurisdiction and scope of accepting cases of the Labor and Personnel Dispute Arbitration Commission (the “**Labor Arbitration Commission**”) of each district. The adjusted rules have taken effect since May 1, 2022.

考虑到北京市各区已普遍建成实体化仲裁院(中心),且市级仲裁机构将搬迁至副中心办公,《通知》对北京市和各区劳动仲裁委对争议案件管辖范围作出新的分配,其中北京市劳动仲裁委的管辖范围有较大调整;《通知》还解释了“用人单位所在地”的认定方式,明确了指定管辖的情形。

Considering that each district in Beijing has generally established substantial arbitration tribunals (centers) and that municipal arbitration institution will be relocated to the Tongzhou sub-center (通州副中心), the Notice reassigned the jurisdiction of labor arbitration commissions at both municipal and district levels over labor and personnel dispute cases. Among them, the jurisdiction of Beijing Municipal Labor Arbitration Commission experiences a significant change; the Notice also explained the way in which the “location of the employer” shall be determined and clarified the circumstances where the designated jurisdiction shall apply.

除北京地区以外,辽宁省人力资源和社会保障厅也于2022年3月31日发布了《关于调整辽宁省劳动人事争议仲裁案件管辖范围的通知》,对辽宁省及各市、县、区劳动仲裁委的管辖范围进行调整,并对劳动人事争议案件的管辖相关事宜作出解释和明确。

In addition to Beijing, Department of Human Resources and Social Security of Liaoning Province also issued a Notice on Adjusting the Jurisdiction of Labor and Personnel Dispute Arbitration Cases in Liaoning Province on March 31, 2022, which adjusted the jurisdiction of the Labor Arbitration Commission of Liaoning Province and each city, county and district within the province, and explained and clarified matters related to the jurisdiction of labor and personnel dispute cases.

如果发生劳动争议，北京和辽宁地区的企业和劳动者应当根据调整后的劳动仲裁委的管辖范围，向有管辖权的劳动仲裁委提出申请，避免因管辖问题造成案件的拖延。

In case of labor disputes, employers and employees in Beijing and Liaoning should apply to the Labor Arbitration Commission with jurisdiction according to the jurisdiction of the adjusted Labor Arbitration Commission to avoid delays in cases due to jurisdictional issues.



三、新规速递：福建、广西两地修订《人口与计划生育条例》，湖南和四川调整最低工资标准

[Quick View of New Regulations: Fujian and Guangxi Revised Regulations on Population and Family Planning, Wage Standards Were Adjusted in Hunan and Sichuan](#)

1. 福建、广西两地陆续修订《人口与计划生育条例》，调整婚育假期配置

Fujian and Guangxi Revised Regulations on Population and Family Planning to Adjust Marriage and Childbirth Related Leaves

为落实新修订的《人口与计划生育法》相关规定，福建省人民代表大会常务委员会于2022年3月30日发布修订后的《福建省人口与计划生育条例》，广西壮族自治区人民代表大会常务委员会于2022年3月24日发布修订后的《广西壮族自治区人口与计划生育条例》。

In order to implement the provisions of the newly revised Population and Family Planning Law, the Standing Committee of the People's Congress of Fujian issued the revised Regulations on Population and Family Planning of Fujian Province on March 30, 2022, and the Standing Committee of the People's Congress of Guangxi issued the revised Regulations on Population and Family Planning of Guangxi Zhuang Autonomous Region on March 24, 2022.

两地新修订的条例对婚育假期作出较大调整，修订前后假期设置如下（其他地区对于婚育假期的修改和调整请参见[《海问·研究 | 海问劳动法双月报》（2021年11-12月）](#)及[《海问·研究 | 海问劳动法双月报》（2022年1-2月）](#)）：

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, you may refer to the "[Haiwen Research: Haiwen Labor Law Bi-monthly Newsletter](#)" (November-December 2021) and "[Haiwen Research: Haiwen Labor Law Bi-monthly Newsletter](#)" (January-February 2022)).



此图片来自微信公众平台
未经允许不可引用

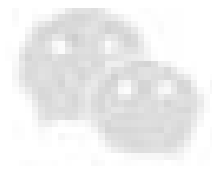
2.湖南和四川调整最低工资标准

Wage Standards Were Adjusted in Hunan and Sichuan

2022年3月，湖南、四川发布调整最低工资标准的通知，都于2022年4月1日生效。

In March, 2022, Hunan and Sichuan issued notices to adjust the minimum wage standard, which took effect on April 1, 2022.

(单位/Unit: 元/¥)



此图片来自微信公众平台
未经允许不可引用

2021年5月至今，各地陆续发布调整最低工资标准的通知，提高当地最低工资标准（参见 [《海问·研究 | 海问劳动法双月报》（2021年5-6月）](#) 及 [《海问·研究 | 海问劳动法双月报》（7-8月）](#)，[《海问·研究 | 海问劳动法双月报》（2021年11-12月）](#)）。

Since May 2021, multiple regions have successively issued notices to adjust the minimum wage and raise the local minimum wage (for more information you may refer to “[Haiwen Research: Haiwen Labor Law Bi-Monthly Newsletter](#)” (May – June 2021), “[Haiwen Research: Haiwen Labor Law Bi-Monthly Newsletter](#)” (July – August 2021) and “[Haiwen Research: Haiwen Labor Law Bi-Monthly Newsletter](#)” (November- December 2021)).



四、典型案例：最高人民法院发布涉就业歧视相关典型案例，广东高院等法院发布劳动争议典型案例，北京海淀区法院发布3则男职工休陪产假的典型案例

Exploration of Typical Cases: The Supreme People's Court Released Typical Cases Concerning Employment Discrimination; Guangdong Higher People's Court and Other Courts Released Typical Cases of Labor Disputes; Beijing Haidian District People's Court Published 3 Typical Cases Relevant to Paternity Leave for Male Employees

1. 最高人民法院发布涉就业歧视相关典型案例

The Supreme People's Court Released Typical Cases Concerning Employment Discrimination

2月23日，最高人民法院发布第二批人民法院大力弘扬社会主义核心价值观典型案例。其中的第四个案例与用人单位的招聘相关，值得用人单位和劳动者注意。

On February 23, the Supreme People's Court released the second batch of typical civil cases in which the People's Courts vigorously promoted core values of Chinese society. The fourth of these cases is related to dispute during recruitment and deserves the attention of employers and employees.

在该案中，应聘者向公司投递了求职简历，但公司查阅其投递的简历后，以应聘者的籍贯所在的地域为由，认定其不适合招聘岗位。法院审理后，认为公司的行为侵害了劳动者的平等就业权。对平等就业权的侵害会损害劳动者的人格尊严，受害人有权依照民事法律规定，请求用人单位承担民事责任。因而判决公司向应聘者口头道歉、登报道歉、支付精神抚慰金9000元。

In that case, the candidate sent his CV to the company, but after reviewing his CV, the company concluded that the candidate was not suitable for the recruiting position on the basis of the region where the candidate's native place is located. After the trial, the court held that the company's conducts had infringed the employee's right to equal employment. The infringement of the right to equal employment undermines the employee's human dignity and the victim has the right to request the employer to bear civil liability in accordance with the provisions of civil law. The company was therefore ordered to verbally apologize to the candidate, publish a newspaper apology and pay a moral compensation of RMB 9,000.

2018年底最高人民法院新增“平等就业权纠纷”作为“人格权纠纷”项下案由，确认此类案件应按人格权纠纷进行审理，从而奠定了遭受就业歧视者可以主张精神抚慰金的法律基础，同时也解决了招聘环节应聘者遭遇就业歧视无处维权的困境。本案的实质审理是对这一司法举措的具体实践，是对劳动者平等就业权的实质性确认和维护。

At the end of 2018, the Supreme People's Court added "equal employment rights disputes" as a subdivision cause of action of "personality rights disputes", confirming that such cases should be deemed as personality rights disputes, thus laying a legal basis for those who suffer from employment discrimination to claim moral compensation. It also solved the dilemma that candidates are unable to defend their rights when they experience employment discrimination in the recruitment process. The trial of this case is a concrete practice of this judicial initiative, which is a substantive confirmation and protection of workers' equal employment rights.

我国法律明确规定劳动者在“民族、种族、性别、宗教信仰”四方面不受歧视。司法实践中，歧视性保护已经进一步扩展到包括婚育、年龄、户籍、病毒携带、学历、身高、前科等方面。用人单位在整个招聘过程中，应当特别注意避免在上述方面产生任何歧视性行动，否则可能承担包括支付精神损失费在内的民事责任。

China's laws clearly stipulate that employees shall not be discriminated against in terms of "nationality, race, gender and religious beliefs". In judicial practice, the protection against discrimination has been further extended to marriage and childbirth, age, household registration, virus carriage, education, height, previous convictions and other aspects. Employers should take special care to avoid any discriminatory action in these aspects throughout the recruitment process, otherwise they may be liable for civil liability, including payment of moral damage compensation.

2. 广东高院等法院发布劳动争议典型案例

Guangdong Higher People's Court and Other Courts Released Typical Cases of Labor Disputes

2022年4月28日，广东高院发布十个劳动争议典型案例，相关案例涉及劳动关系、劳动报酬、经济补偿等内容，涵盖传统劳动争议、新业态用工纠纷以及疫情期间劳资纠纷等方面。

On 28 April 2022, the Guangdong Higher People's Court released ten typical cases of labor disputes, with the relevant cases involving labor relations, labor remuneration and economic compensation, covering traditional labor disputes, disputes over employment in new business form and labor disputes during pandemics.

广东高院发布的十个典型案例中，三则与企业 and 劳动者之间的劳动关系的认定相关，强调了法院对于劳动关系应进行实质审查，以及用人单位不得规避用工主体责任；两则与用人单位单方解除与劳动者的劳动合同相关，强调用人单位解除劳动合同应当具有合理性。另外，典型案例中，还体现出在混同用工的情况下可根据劳动者的主张确定责任主体，以及负责用人单位人事管理的人员主张未签订劳动合同的双倍工资不具有合理性等裁审观点。

Of the ten typical cases released by the Guangdong Higher People's Court, three were related to the determination of employment relationship between enterprises and workers, emphasizing that the courts should conduct substantive examination of employment relations, and that employers should not evade the obligations as an employer; two were related to the unilateral termination of labor contracts between employers and workers, emphasizing that the termination of labor contracts by employers should be reasonable. In addition, the typical cases also reflect the judicial views that (1) the liable entity can be determined according to the employee's claim in the case of mixed employment, and that (2) it is not reasonable for the person responsible for the personnel management of the employer to claim double wages for the non-signing of the employment contract.

除广东外，江苏、重庆、河北、河南、天津、成都、厦门、青岛等地法院接连发布劳动争议典型案例。多地的案例中都涉及与网络主播与签约公司之间的劳动关系认定以及疫情期间劳动用工问题相关的纠纷。

Accept Guangdong, courts in Jiangsu, Chongqing, Hebei, Henan, Tianjin, Chengdu, Xiamen and Qingdao have released a succession of typical cases of labor disputes. The typical cases released by multiple region involved disputes related to the determination of labor relationship between live-streaming performers and contracted companies, and the employment issues during the epidemic during the epidemic.

3.北京海淀区法院发布3则男职工陪产假相关典型案例

Beijing Haidian District People's Court Published 3 Typical Cases Relevant to Paternity Leave for Male Employees

北京海淀区人民法院于2022年3月7日发布了三则与男职工休陪产假相关的典型案例，其中体现了海淀区法院的如下裁判观点，可供用人单位和劳动者在遇到陪产假相关问题时参考：

On 7 March 2022, the Beijing Haidian District People's Court published three typical cases relevant to paternity leave for male employees, which reflect the following judicial views of the Haidian District People's Court. It can be used as a reference for employers and employees when they encounter issues relating to paternity leave.

- a. 用人单位不能以男职工已休陪产假为由抵扣其年假，职工仅休陪产假而未休年假的情况下仍可以主张未休年假补偿金。

The employer shall not deduct the annual leave of a male employee on the grounds that he has taken paternity leave; the employee may still claim compensation for untaken annual leave if he has only taken paternity leave but not annual leave.

- b. 在男职工有充分证据证明其有理由休陪产假时，如用人单位未批准，并以该职工违反休假规定、旷工的理由解除与其的劳动合同，属于违法解除劳动合同。

Where a male employee has sufficient evidence to justify his paternity leave, if the employer does not approve such leave and terminates his employment contract on the grounds that the employee has violated the leave policy and has been absent from work, it shall be deemed as illegal termination of the employment contract.

- c. 男职工未休陪产假的情况下，用人单位无需就未休取的陪产假支付补偿。

In case that a male employee does not take paternity leave, it is not necessarily for the employer to pay compensation for the unused paternity leave.

常联系人或联系海问劳动法团队的以下人员。

Disclaimer: This newsletter is for general information only and does not constitute our legal advice or legal opinions. For further discussions, please consult your regular contact at our firm, or any of the following Haiwen Labor Law Team members.

2022-05-10