

海问劳动法双月报（2024年11-12月）

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一、新规速递：《实施弹性退休制度暂行办法》发布

Quick View of New Regulations: The Interim Measures for the Implementation of Flexible Retirement System was Issued

2025年1月1日，人力资源社会保障部等三部门印发《实施弹性退休制度暂行办法》（“《办法》”）。《办法》贯彻落实了全国人大常委会及国务院关于实施渐进式延迟法定退休年龄的相关规定（具体内容可参见[《海问·研究 | 海问劳动法双月报（2024年9-10月）》](#)和[《海问·观察 | 全球视角下的延迟退休新规：解读、影响与应对策略》](#)），具体而言：

On January 1, 2025, the Ministry of Human Resources and Social Security (“MOHRSS”) and two other departments issued the Interim Measures for the Implementation of Flexible Retirement System (“**Measures**”). The Measures implement the relevant provisions regarding the gradual delay of statutory retirement age as formulated by the Standing Committee of the National People’s Congress and the State Council (for details, please refer to “[Haiwen Research | Haiwen Labor Law Bi-Monthly Newsletter \(September-October 2024\)](#)” and “[Haiwen Observation | A Global Perspective on New Statutory Retirement Age Regulation: Interpretation, Impact, and Strategic Responses](#)”). Specifically:

1. **明确弹性提前退休条件。**职工自愿选择弹性提前退休的条件是：1）职工可以自愿选择，但需至少在选择的退休时间前3个月以书面形式告知单位；2）所选退休时间应达到国家规定的按月领取基本养老金最低缴费年限（以提高最低缴费年限情况表为准）；3）提前时间距法定退休年龄（以延迟法定退休年龄对照表为准）最长不超过3年，即在1个月至36个月期间范围进行选择；4）退休年龄不得低于原法定退休年龄，即女50/55男60。

Clarification of Conditions for Flexible Early Retirement. The conditions for employees to voluntarily choose flexible early retirement are as follows: 1) Employees may voluntarily choose early retirement but must inform their employer in writing at least three months before the selected retirement date. 2) The years of the employee’s social insurance contribution upon the selected retirement date must meet the minimum contribution period required by national regulations for receiving basic pension payments (see table of increased minimum contribution periods). 3) The period advancing the statutory retirement age (see table of delayed statutory retirement age) shall not exceed three years, meaning employees can choose to take early retirement within a range of 1 month and 36 months before reaching statutory retirement age. 4) The retirement age must not be earlier than the original statutory retirement age, i.e., 50/55 for women and 60 for men.

2. **明确弹性延迟退休条件。**职工弹性延迟退休的条件是：1）用人单位和职工需协商一致，应提前1个月以书面形式明确延迟退休时间等事项；2）达到法定退休年龄（以延迟法定退休年龄对照表为准），并达到本人法定退休年龄对应年份最低缴费年限（以提高最低缴费年限情况表为准）；3）延迟时间距法定退休年龄最长不超过3年；4）弹性延迟退休时间确定后，不再延长；5）弹性延迟退休期间，所在单位与职工协商一致，可以终止弹性延迟退休。

Clarification of Conditions for Flexible Delayed Retirement. The conditions for delayed retirement are as follows: 1) The employer and employee must reach a mutual agreement and formalize the relevant arrangements such as delayed retirement date in writing at least one month in advance. 2) The employee must have reached statutory retirement age (see table of delayed statutory retirement age) and years of the employee’s social insurance contribution have met the minimum contribution period for their specific statutory retirement age (see table of increased minimum contribution periods). 3) The period after the statutory retirement age shall not exceed three years. 4) Once the flexible delayed retirement period has been set, it cannot be extended further. 5) During the period after the statutory retirement age, the employer and employee may terminate the flexible delayed retirement arrangement through mutual agreement.

3. **明确弹性延迟退休期间的劳动人事关系。**弹性延迟退休期间，所在单位与职工的劳动关系或人事关系延续，单位和职工应按时足额缴纳社会保险费。达到弹性延迟退休时间，劳动关系或人事关系终止，所在单位应按规定为其办理退休手续。

Clarification of Employment Relations During Flexible Delayed Retirement. During the period of flexible retirement, the employment relations between

the employee and the employer continues. Both parties are obliged to pay social security contributions in full and on time. Upon reaching the end of the flexible delayed retirement period, the employment relations terminate, and the employer must carry out the formalities of retirement in accordance with the regulations.

4. **明确弹性退休制度的适用群体。**公务员、国有企事业单位领导人员及其他管理人员不适用弹性延迟退休的特别规定，到法定退休年龄时应当及时办理退休手续。机关和国有企事业单位工作人员弹性退休的，应当按照干部人事管理权限和规定程序报批同意。

Clarification of the Applicable Group for Flexible Retirement System. The Measures do not apply to civil servants, leaders and other managerial personnel of state-owned enterprises, their retirement formalities must be completed when they reach the statutory retirement age, and flexible retirement should be approved according to the cadre management authority and the prescribed approval procedures.

二、**新规速递：**人社部修改在中国境内就业的外国人参加社会保险暂行办法，印发新就业形态劳动者权益协商指引，全面实施个人养老金制度，贯彻实施全国年节及纪念日放假办法

Quick View of New Regulations: MOHRSS Revised Temporary Measures for Foreigners Employed in China to Participate in Social Insurance, Issued Guidelines for Negotiation of Rights of New Work Forms, Fully Implemented the Personal Pension System, and Enforced Public Holidays for National Festivals and Memorial Days

1. 人社部修改在中国境内就业的外国人参加社会保险暂行办法

MOHRSS Revised Temporary Measures for Foreigners Employed in China to Participate in Social Insurance

2024年12月23日，人社部发布了关于修改《在中国境内就业的外国人参加社会保险暂行办法》的决定。此次修改完善了中国境内就业的外国人的法律规定依据和证件名称；对在中国境内外享受按月领取社会保险待遇的外国人每年核验社会保险待遇享受资格的具体程序进行了规定，增加了通过互联网自助办理的措施；并对附件《外国人社会保障号码编制规则》作出了相应修改。

On December 23, 2024, the MOHRSS issued the decision to amend the Temporary Measures for Foreigners Employed in China to Participate in Social Insurance. This revision improves the legal basis and certificate names for foreigners employed in China, specifies the procedure for annual verification of foreigners' eligibility for social insurance benefits both in and outside China, introduces self-service measures via the Internet, and revises the Rules for the Compilation of Foreigners' Social Security Numbers.

2. 人社部办公厅等四部门印发新就业形态劳动者权益协商指引

Guidelines for Negotiation of Rights of New Work Forms Issued by the MOHRSS and Four Other Departments

2024年11月6日，人社部办公厅、中华全国总工会办公厅等四部门发布关于印发《新就业形态劳动者权益协商指引》的通知。该指引主要涉及线上接受互联网平台发布的配送、出行、运输、家政服务等工作任务，按照平台要求提供平台网约服务，通过劳动获取劳动报酬的劳动者，规范企业和工会组织、劳动者代表平等协商涉及劳动者权益事项，如制修订涉及劳动者权益的制度规则和算法、建立健全协商机制，要求企业在协商成果生效后10日内以适当方式向所有适用的劳动者公布，并据此共同遵照履行。

On November 6, 2024, the General Office of the MOHRSS and four other departments issued a notice on the Guidelines for Negotiation of Rights of New Work Forms. The guidelines mainly focus on workers who accept tasks such as delivery, transportation, and domestic services provided via internet platforms, and receiving compensation based on platform orders. The guidelines standardize the negotiation process between enterprises, trade unions, and worker representatives on issues related to workers' rights, such as revising systems and algorithms concerning workers' rights, establishing negotiation mechanisms, and ensuring that employers publish the negotiation results to all affected workers within 10 days of the agreement.

3. 人社部、财政部等五部门全面实施个人养老金制度

Full Implementation of the Personal Pension System by the MOHRSS, Ministry of Finance, and Other Three Departments

2024年12月10日，人社部、财政部等五部门联合发布了《关于全面实施个人养老金制度的通知》（“《通知》”）。自2024年12月15日起在中国境内参加城镇职工基本养老保险或者城乡居民基本养老保险的劳动者，均可以参加个人养老金制度，税收优惠政策的实

施范围从先行城市（地区）同步扩大到全国等内容；《通知》新增了参加人患重大疾病、领取失业保险金达到一定条件或者正在领取最低生活保障金的，可以申请提前领取个人养老金的情形，规定参加人可以选择按月、分次或者一次性领取个人养老金，并可以向银行提出变更领取方式。

On December 10, 2024, the MOHRSS, Ministry of Finance, and other three departments jointly issued a notice on The Full Implementation of the Personal Pension System ("Notice"). Starting from December 15, 2024, employees who have participated in the basic pension insurance for urban employees or the basic pension insurance for urban and rural residents in China are eligible to join the personal pension system, with tax benefits expanding from pioneer cities to nationwide. The notice adds provisions for early withdrawal in cases of serious illness or unemployment, allows individuals to choose between monthly, multiple, or lump-sum pension payments, and permits changes to the payment method with the bank.

4. 人社部贯彻实施全国年节及纪念日放假办法

Enforced Public Holidays for National Festivals and Memorial Days by MOHRSS

2024年11月10日，国务院审议通过关于修改《全国年节及纪念日放假办法》的决定（参见[《海问·研究 | 海问劳动法双月报（2024年9-10月）》](#)）。人社部就贯彻实施该办法发布了相关通知：

On November 10, 2024, the State Council approved the decision to amend the Public Holidays for National Festivals and Memorial Days (refer to "[Haiwen Research | Haiwen Labor Law Bi-Monthly Newsletter \(September-October 2024\)](#)"). The MOHRSS issued a notice on its implementation:

- 2025年1月1日，人社部办公厅发布了关于做好《国务院关于修改〈全国年节及纪念日放假办法〉的决定》贯彻实施工作的通知。该通知要求各地要指导企事业等单位依法安排职工休假，确保广大职工应休尽休。通知还特别指出，企业等单位依法安排职工在法定节假日工作的，应当另外支付给职工不低于劳动合同规定的其本人日或小时工资标准的300%支付工资报酬（即300%不含本人工资）。

On January 1, 2025, The MOHRSS issued a notice on the implementation of the Revised Regulations on Public Holidays for National Festivals and Memorial Days. The notice requires local governments to guide employers to legally arrange holidays for employees. It also clarifies that employers should pay employees 300% of their daily or hourly wage rates (excluding base salary) for working on legal public holidays.

- 2025年1月1日，人社部发布了《关于职工全年月平均工作时间和工资折算问题的通知》。因制度工作时间计算时需扣除13天法定节假日，月均工作日由原20.83天变更为20.67天，即（365天-104天休息日-13天法定节假日）÷12月=20.67天。但因法定节假日用人单位仍应当依法支付工资，折算日工资时不剔除13天法定节假日，月计薪天数仍需按照21.75天计算，即（365天-104天休息日）÷12月=21.75天。

On January 1, 2025, The MOHRSS issued a notice regarding the calculation of average monthly working days and wages for employees was issued. As holidays are deducted from working days, the monthly average working days per month are adjusted from 20.83 to 20.67. However, the employee's average pay days shall still be 21.75 days/ month.

三、典型案例：人民法院案例库新增7件劳动争议案例，并将4件历史入库案例调整为指导性案例

Exploration of Typical Cases: The People's Court Case Database Added 7 New Labor Dispute Cases, and Adjusted 4 Historical Cases as Guiding Cases

自2024年2月人民法院案例库（“[案例库](#)”）上线并向公众开放以来，已收录58件劳动、人事争议案件，其中7件于2024年12月新收录入库。2024年12月23日，最高院发布首批新就业形态劳动争议专题指导性案例，4件案例均为案例库历史收录案例，本次案例库调整为指导性案例。主要裁判要点总结如下：

Since the People's Court Case Database ("[Case Database](#)") has launched to the public in February 2024, it has collected 58 labor and personnel dispute

cases, among which 7 were newly included in December 2024. On December 23, 2024, the Supreme People's Court released the first batch of guiding cases on new employment forms, with 4 cases previously recorded in the Case Database now adjusted to guiding cases. The main opinions are summarized as follows:

1. 4件指导性案例关注新就业形态劳动关系的确认, 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。

Four Cases Focus on the Confirmation of Employment Relationship in the New Work Form, Emphasizing That the Court Should Conduct A Substantive Review of the Employment Relationship and That the Employer Should Not Circumvent the Main Responsibility of Employing Workers

在指导性案例237号中, 法院根据劳动者的出勤时间、报酬领取方式、根据系统派单完成任务情况, 认定该员工与公司之间存在从属性, 用人单位不能以签订承揽、合作协议为由规避劳动关系的成立。在指导性案例238号中, 外卖骑手按平台要求注册为个体工商户后再签订承揽、合作协议, 法院根据协议实际履行情况, 结合劳动者接单规则、薪资来源、日常工作管理, 认定双方之间存在劳动关系。

In *Guiding Case No. 237*, the court determined that there was subordination between the employee and the employer based on the employee's attendance times, methods of remuneration receipt, and the completion of tasks according to system-assigned orders. The employer cannot evade the establishment of employment relationship by citing the signing of contracting or cooperation agreements. In *Guiding Case No. 238*, a take-away rider registered as individual businesses according to platform requirements and then signed contracting or cooperation agreements. In view of actual performance of the agreements, rules of orders-acceptance, payment of remuneration, and daily work management, the court determined that the employment relationship had been established between the parties.

但在指导性案例239号中, 由于经纪公司对网络主播的工作时间、工作内容及工作过程控制程度不强, 法院认定双方不存在劳动关系, 明确了因经济关系所产生的履约要求与支配性劳动管理的界限; 指导性案例240号中, 法院亦认定劳动者对用人单位并无较强从属性, 认定双方不存在劳动关系。

However, in *Guiding Case No.239*, as the talent agency did not have a strong control over the working hours, working contents and working process of a live streamer, the court determined that the employment relationship did not exist between the parties, and clarified the boundary between the performance requirement arising from economic cooperation and dominant labor management. In *Guiding Case No. 240*, the court also determined that the employees and the company does not have strong subordination and there is no employment relationship between the parties.

2. 7件新增案例涉及劳动关系的订立及解除、工伤认定、约定不定时工时制度下加班费支付等问题。

Seven Cases Involve the Establishment and Termination of Employment Relationship, Verification of Work Injury and Payment of Overtime under the Agreed Flexible Working System

在张某诉某公交公司案中, 法院认定劳动者在某平台实名投诉用人单位不按规定配发口罩, 不符合因劳动者自身原因用人单位可以不续订无固定期限劳动合同的无过失性辞退情形; 劳动者符合劳动合同法规定的续订无固定期限劳动合同的条件的, 依法享有单方选择权, 用人单位无权拒绝续订劳动合同。

In the case of *Mr. Zhang v. Public Transportation Company*, the employee complained on a platform under his real name regarding that the employer did not provide him with face masks, and it was held that this case does not fall under the circumstance of a no-fault dismissal where the employer could choose not to renew the open-ended labor contract due to the employee's personal reasons; If the employee meets the conditions for renewal of an open-term labor contract as stipulated in the Labor Contract Law, he or she has the right to make a unilateral choice in accordance with the law, and the employer does not have the right to refuse to renew the labor contract.

在黄某诉重庆某某公司案中, 法院认定公司履行民主公示程序制定相关规定, 明确滋扰或骚扰女职工将被开除, 黄某利用职务之便对其部门女职工实施骚扰行为, 导致多名女职工离职, 属于严重违反劳动合同及规章制度。

In the case of *Mr. Huang v. A Chongqing Company*, the court held that the employer had fulfilled the democratic publicity procedures, specifying that nuisance or harassment of female workers would lead to dismissal, while the employee took advantage of his position to harass the female employees of his department, causing many female employees to resign, which constituted a serious violation of the labor contract and regulations.

在某劳务公司诉天津市武清区人社局案中，法院认为，职工在下班后回宿舍收拾行李、前往乘车地点、回家这一整体过程，符合职工工作、生活衔接的客观需要，应当认定为《工伤保险条例》第十四条第六项所规定的“上下班途中”受到非本人主要责任的交通事故应当认定为工伤的情形。

In the case of *A Labor Service Company v. Tianjin Wuqing District MOHRSS*, it was held that the overall process of the employee returning to the dormitory after work to pack up luggage, going to the bus place and returning home was in line with the objective needs of the employee's work and life, and should be regarded as the circumstance in which the employee is injured in a traffic accident which was not caused by him/her “while commuting to or from work” as stipulated in Article 14(6) of the Regulations on Work Injury Insurance.

孟某诉天津某云商公司案中，劳动合同约定为不定时工时制，但双方并未实际履行，孟某实际每周工作六天，每天工作7.5个小时，法院认定用人单位应当按照标准工时工作制依法支付加班工资。

In the case of *Mr. Meng v. Tianjin Yunshang Company*, the employment contract stipulated flexible working hours system, but without the actual performance of the parties. Mr. Meng actually worked six days a week and 7.5 hours a day, so the court ruled that the employer shall pay the overtime wages under the standard working hour system in accordance with the law.

此外，对案例库中其他劳动争议案件的详细分析以及用工实务建议，可参见[《海问·观察 | 基于最高院第32批指导性案例的分析及用工实务建议》](#)、[《海问·研究 | 海问劳动法双月报（2024年1-2月）》](#)以及[《海问·研究 | 海问劳动法双月报（2024年7-8月）》](#)。

In addition, for a detailed analysis of these guiding cases and practical suggestions on employment, please refer to [Haiwen Observation: Analysis and Practical Suggestions on Employment Based on the 32nd Batch of Guiding Cases of the Supreme People's Court](#), [Haiwen Research: Haiwen Labor Law Bi-monthly Newsletter \(January-February 2024\)](#) and [Haiwen Research: Haiwen Labor Law Bi-monthly Newsletter \(July-August 2024\)](#).

四、典型案例：北京市发布涉劳动争议典型案例

Exploration of Typical Cases: Beijing Municipality Released Typical Cases of Labor Disputes

2024年12月17日，北京市人社局发布了2024年度十大劳动人事争议仲裁典型案例，涵盖网约家政工劳动关系认定、劳动合同解除、事业单位人事争议等多个方面。我们认为可以重点提示的裁判观点有：

On December 17, 2024, Beijing MOHRSS released ten typical labor dispute arbitration cases in 2024, covering many aspects such as labor relationship determination of gig domestic workers, termination of labor contract, public institution personnel disputes, etc. The judicial views that we would like to highlight are as follows:

1. 某家政公司和职工签订《合作协议书》及《家政服务用工协议》规避《劳动合同法》，裁审机构根据双方主体资格、用工管理情况等认定双方存在劳动关系。

A housekeeping company and the employee entered into the Cooperation Agreement and the Housekeeping Service Employment Agreement to evade the Labor Contract Law. The labor arbitration committee held that labor relationship shall be identified based on the subject qualifications and employment management of the parties.

2. 职工为索要未签劳动合同双倍工资差额，多次拒绝签订书面劳动合同，裁审机构认为劳动者为谋取不正当利益恶意拒绝签署，违反诚实信用原则，驳回其仲裁请求。

The employee repeatedly refused to sign a written employment contract with the company and later claimed double pay for failing to sign the contract. It was considered that the employee maliciously refused to sign for the purpose of seeking improper benefits and violated the principle of good faith, and the labor arbitration committee rejected such arbitration claim of the employee.

3. 劳动者虽未于劳动合同约定的工资异议期内提出书面意见，不能以单纯的沉默行为即视为劳动者对工资的认可和对工资请求权作出放弃的处分，且该约定属于“用人单位免除自己的法定责任、排除劳动者权利的”无效约定，裁审机构对劳动者主张绩效奖金差额的诉求予以支持。

Although the employee fails to put forward written opinions within the wage objection period as agreed in the employment contract, it shall not be deemed that the employee has recognized the wages and waived his/her right to claim for wages by simple silence act, and the such agreement was invalid because it "exempted the employer from its legal liability and excludes the employee's rights". The labor arbitration committee upheld the employee's claim for the difference in performance bonus.

4. 女职工在孕期不能适应原劳动的，用人单位应减轻劳动量或安排其他适应的劳动。某公司未与怀孕女职工协商一致，单方面调岗增加女职工负担，职工未同意后要求解除劳动关系，认定构成违法解除。

When a female employee cannot adapt to her original work style during pregnancy, the employer shall reduce her workload or arrange other suitable work for her. Where a company failed to negotiate with a pregnant female employee and unilaterally transferred her to another post, thereby increasing her burden, and the employee refused, the company's request to terminate the labor relationship with the employee shall be determined to be an illegal termination.

5. 职工被认定为工伤后未按用人单位要求于指定时间到指定地点就诊，但根据其伤情在居住地附近医院就诊并开具休假证明。裁审机构认定认为用人单位在未有证据证明职工病假存疑的情况下以其不配合调查为由解除劳动合同缺乏合理性，构成违法解除。

An employee, recognized as having a work-related injury, failed to take the medical treatment at the location and specified time as designated by the employer. Instead, the employee sought medical attention at a hospital near his residence due to the nature of the injury and obtained a medical leave certificate. The labor arbitration committee determined that the employer's decision to terminate the employment contract on the grounds of the employee's non-cooperation in the investigation, without evidence questioning the validity of the employee's sick leave, was unreasonable and constituted an unlawful termination.

6. 用人单位不得滥用竞业限制损害劳动者权益，若职工不属于高级管理人员、高级技术人员和其他负有保密义务的人员，则用人单位与该人员关于竞业限制的约定无效。

Employers must not abuse non-compete restrictions to the detriment of employees' rights. If an employee is not a senior manager, senior technical staff, or other personnel with confidentiality obligations, any agreement on non-compete restrictions between the employer and such personnel is invalid.

7. 职工与医院约定医师规范化培训的服务期为5年，违约金为500,000元，职工培训期间享受了相应补贴和工资待遇，裁审机构认定服务期相关约定合法有效，最终判决职工提前2年离职支付培训违约金150,000元。

An employee entered into an agreement with a hospital for a standardized physician training service period of 5 years, with a penalty for breach of contract set at RMB 500,000. The employee enjoyed corresponding subsidies and salary benefits during the training period. The labor arbitration committee determined that the service period-related agreement (bonding agreement) was legally valid and effective. The employee was ultimately ordered to pay the penalty of RMB 150,000 for breach of contract due to leaving 2 years ahead of schedule.

五、典型案例：重庆市、武汉市等多地陆续发布劳动人事争议案件典型案例

Exploration of Typical Cases: Chongqing, Wuhan and Other Places Successively Released Typical Cases of Labor and Personnel Dispute Cases

2024年12月26日，重庆市第五中级人民法院发布7个劳动争议纠纷典型案例。其中，我们认为以下案例值得关注：

On December 26 2024, the Fifth Intermediate People's Court of Chongqing Municipality released seven typical cases of labor disputes. Among them, we believe that the following cases are noteworthy:

1. 案例1中，劳动关系存续期间，用人单位将本应向劳动者支付的“工资”以“经济补偿金”之名义向劳动者支付，劳动合同到期后主张已经履行经济补偿义务，裁审机构认定相关约定侵害了劳动者的合法权益，应属无效。

In Case 1, the employer paid the wages that should have been paid to the employee in the name of "economic compensation" during the period of the employment relationship, and claimed that it had fulfilled the obligation of economic compensation after the expiration of the labor

contract, and the labor arbitration committee found that the agreement infringed on the lawful rights and interests of the employee and was invalid.

2. 案例2中，用人单位以职工差欠垫付社保等费用为由拒绝履行申报退休手续，裁审机构认为及时为劳动者申请办理退休手续是用人单位的法定义务，用人单位不能因职工差欠其垫付的社会保险费等理由拒绝为职工办理退休手续。

In Case 2, the employer refused to process the retirement procedures, citing that the employee owed social security fee advances to the employer. The labor arbitration committee ruled that it is the employer's legal duty to promptly apply for retirement procedures and that the employer cannot refuse to process these procedures for the employee based on alleged social security advances owed by the employee.

3. 案例5中，公司设置绩效工资及其支付条件，属于依法行使自主经营管理权的行为。职工因任职期间故意或者重大过失行为导致用人单位亏损，用人单位有权依照《中华人民共和国公司法》和公司章程的规定，经合法程序形成内部决议，延迟或者停止发放绩效工资。

In Case 5, the setting of performance pay and its payment conditions by a company is considered a lawful exercise of its autonomous management rights. The employer has the right to suspend or stop the payment of performance pay in accordance with the provisions of the Company Law of the People's Republic of China and the articles of association of the company, and through legal procedures to form an internal resolution.

2024年11月12日，武汉东湖高新区人民法院发布了5个劳动争议典型案例，涵盖新业态用工关系认定、企业商业秘密保护与人才合理流动、超龄劳动者合法权益等领域。案例5中，认定员工严重违反规章制度并行使劳动合同解除权时，除应审查制度合法性外，还应考量施行的合理性。公司以员工多次提前1分钟离开工位认定为“早退”明显欠缺合理性，且公司此前并未向员工提及早退或整改事宜，公司解除劳动合同违法。

On November 12, 2024, the People's Court of Wuhan East Lake High-Tech Development Zone released five typical cases of labor disputes, covering the identification of employment relationships in new work forms, the protection of trade secrets, the reasonable mobility of talent, and the legitimate rights and interests of workers over the age of retirement. In Case 5, when an employee is found to have seriously violated the rules and regulations, and the employer exercises the right to terminate the labor contract, both the legality of the system and the reasonableness of its implementation should be examined. The company's decision to regard the employee's repeated one-minute early departure from the workstation as 'early off-duty (without approval)' was clearly unreasonable. Moreover, the company had never mentioned the early off-duty issue to the employee or requested the employee's rectification. Therefore, the company's termination of the employment contract was deemed unlawful.

此外，上海、重庆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、外卖骑手、快递员等典型新就业形态劳动者与平台企业之间的劳动关系认定相关纠纷。

In addition, courts in Shanghai, Chongqing and other places have released a series of typical labor dispute cases. Many of these cases involve disputes related to the determination of employment relationship between platform enterprises and employees engaged in new forms of employment, such as live streamers, take-away riders, and couriers.