

海问劳动法双月报（2024年9-10月）

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一、新规速递：实施渐进式延迟法定退休年龄，实施就业优先战略促进高质量充分就业，施行企业职工基本养老保险病残津贴，完善生育支持政策体系，修改全国年节及纪念日放假办法

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1. 全国人大常委会会议通过《关于实施渐进式延迟法定退休年龄的决定》

The NPCSC Approved the Decision on Gradual Delay of Statutory Retirement Age

2024年9月13日，全国人大常委会通过了《关于实施渐进式延迟法定退休年龄的决定》，批准了《国务院关于渐进式延迟法定退休年龄的办法》。新规逐步将男职工的法定退休年龄从原六十周岁延迟至六十三周岁，将女职工的法定退休年龄从原五十周岁、五十五周岁分别延迟至五十五周岁、五十八周岁。我们近期对渐进式延迟法定退休年龄进行了详细分析并提供了用工实务建议，具体内容可参见[《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》](#)。

On September 13, 2024, the Standing Committee of the National People's Congress (NPCSC) approved the Decision on Gradual Delay of Statutory Retirement Age, and authorized the Measures for Gradual Delay of Statutory Retirement Age issued by the State Council. The new regulation will gradually raise the statutory retirement age for male employees from 60 to 63 years old and for female employees from 50 or 55 years old to 55 or 58 years old (depending on their roles), respectively. We have conducted a detailed analysis of the gradual delay statutory retirement age and provided practical advice. For the specific content of this part, please refer to "[Haiwen Observation | A Global Perspective on New Statutory Retirement Age Regulation: Interpretation, Impact, and Strategic Responses](#)".

2. 中共中央、国务院发布《关于实施就业优先战略促进高质量充分就业的意见》

The Central Committee of the CPC and the State Council Issued Opinions on Employment Promotion Strategy for High-Quality and Full Employment

2024年9月15日，中共中央、国务院发布的《关于实施就业优先战略促进高质量充分就业的意见》中，重点关注了提升劳动者就业权益保障水平，指出保障平等就业权利、促进劳动报酬合理增长、构建和谐劳动关系以及扩大社会保障覆盖面。后续劳动者就业各环节的立法、司法层面可能将推进并落实相关政策，我们也将继续密切追踪相关进展。

On September 15, 2024, the Central Committee of the Communist Party of China (CPC) and the State Council issued the Opinions on Implementing an Employment Promotion Strategy to Promote High-Quality and Full Employment, emphasizing improved labor rights and protections. Key focuses include ensuring equal employment rights, promoting reasonable growth in labor remuneration, fostering harmonious labor relations and expanding social security coverage. Legislative and judicial initiatives to implement these policies across various stages of employment are expected to follow, and we will keep a close eye on related developments.

3. 人社部、财政部印发《企业职工基本养老保险病残津贴暂行办法》

The MOHRSS and MOF Issued Interim Measures for Disability Benefits Under the Pension Insurance for Employee

2024年9月27日，人社部、财政部印发的《企业职工基本养老保险病残津贴暂行办法》中规定：参保人员达到法定退休年龄前因病或者非因工致残经鉴定为完全丧失劳动能力的，可以申请按月领取病残津贴；病残津贴月标准和累计缴费年限、距离法定退休年龄年限相关，所需资金由基本养老保险基金支付；参保人员领取病残津贴期间，不再缴纳基本养老保险费。

On September 27, 2024, the Ministry of Human Resources and Social Security (MOHRSS) and the Ministry of Finance ("MOF") issued the Interim Measures for Disability Benefits Under the Pension Insurance for Employee. The measures provide that employees who are deemed total loss of working capacity due to illness or non-work-related injury before reaching statutory retirement age may apply for monthly disability benefits. The disability benefits amount will be linked to cumulative contribution years and the remaining years until statutory retirement age. These disability benefits will be funded by the basic pension insurance fund, and employees will no longer be required to contribute to the pension fund during the disability period.

4. 国务院办公厅印发《关于加快完善生育支持政策体系推动建设生育友好型社会的若干措施》

The General Office of the State Council Issued Measures to Enhance Fertility Support Policies System and Promote the Development of a Fertility-Friendly Society

2024年10月19日，国务院办公厅印发的《关于加快完善生育支持政策体系推动建设生育友好型社会的若干措施》的通知载明：指导有条件的地方将参加职工基本医疗保险的灵活就业人员、农民工、新就业形态人员纳入生育保险；保障法律法规规定的产假、生育奖励假、陪产假、育儿假等生育假期落实到位；建立生育补贴等制度；从落实对女职工特殊劳动保护、营造家庭友好型工作环境等方面强化职工权益保障。

On October 19, 2024, the General Office of the State Council issued the Measures to Enhance Fertility Support Policies System and Promote the Development of a Fertility-Friendly Society, recommending that regions where conditions permit should extend medical insurance coverage to include maternity insurance for persons under flexible employment, migrant employees, and those engaged in new work models, and also emphasize the full implementation of legally mandated maternity leave, maternity reward leave, paternity leave, and childcare leave. Additional measures include establishing maternity subsidy systems, and strengthening the protection of employees' rights and interests by ensuring the female employees' rights through special labor protections and family-friendly workplaces, etc.

5. 国务院修改《全国年节及纪念日放假办法》

The State Council Revised Regulations on Public Holidays for National Festivals and Memorial Days

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。本次修改将农历除夕、5月2日新增为全体公民放假的节日，并明确全体公民放假的假日，可合理安排统一放假调休，结合落实带薪年休假等制度，实际形成较长假期。除个别特殊情形外，法定节假日假期前后连续工作一般不超过6天。

On November 10, 2024, the State Council approved the Decision on Amending the Regulations on Public Holidays for National Festivals and Memorial Days. The amendments add Lunar New Year's Eve and May 2nd as public holidays for all citizens. The revised measures also clarify that public holidays can be combined with adjustments to regular working schedules and the implementation of paid annual leave systems to create longer holiday periods. Except for special circumstances, continuous workdays before or after public holiday periods should generally not exceed six days.

本次修改后，用人单位如需安排劳动者在上述新增的全体公民放假的节日工作的，需按照法定节假日加班支付300%的加班工资。此外，月均工作日由原20.83天变更为20.67天。为免疑义，在计算工资时，因计薪日（即法定节假日及工作日总和）天数不变，月计薪天数仍需按照21.75天计算。

Under the amendments, employers arranging work for employees on the newly added public holidays must pay 300% of the employee's regular daily wage as statutory overtime compensation. Additionally, the monthly working day standard has been changed to 20.67 days instead of the previous 20.83 days. For the avoidance of doubt, when calculating employees' wage, it will still follow the standard of 21.75 paid days per month, as the number of paid days, i.e. the total number of statutory holidays and

working days, remains unchanged.



二、新规速递：云南发布女职工劳动保护特别规定，浙江出台婚假规定，陕西通过工会劳动法律监督条例

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1. 云南发布《云南省女职工劳动保护特别规定》

[Yunnan Issued the Yunnan Provincial Special Provisions on Labor Protection of Female Employees](#)

2024年9月25日，云南省人民政府发布《云南省女职工劳动保护特别规定》。根据该规定：患有重度痛经的女职工，经医疗或者妇幼保健机构确诊后，经期给予1至2日的休假；用人单位确因工作需要致使女职工产假或者休假未满足规定天数的，应当安排补休；不能安排补休的，应当按照应休未休产假、休假天数工资标准的百分之二百支付工资报酬。

On September 25, 2024, the Yunnan Provincial Government issued the Yunnan Provincial Special Provisions on Labor Protection for Female Employees. According to the regulation, female employees diagnosed with severe dysmenorrhea by medical institutions are entitled to 1 to 2 days of menstrual leave. Employers who require female employees to return to work before completing their statutory maternity leave or other approved leave periods due to work needs must arrange compensatory leave. If compensatory leave is not feasible, employers shall pay 200% of the employee's daily wage for each unused day of leave as compensation.

2. 浙江出台《浙江省婚假规定》

[Zhejiang Released the Zhejiang Provincial Marriage Leave Regulations](#)

2024年9月27日，浙江省人大常委会公布《浙江省婚假规定》。根据该规定：依法办理结婚登记的职工享受婚假十三天，国家法定节假日、休息日不计入婚假；婚假期间工资、奖金和其他福利待遇由用人单位照发；职工应当自登记结婚之日起一年内休婚假，确因工作需要不能在一年内休婚假的，经用人单位和职工协商同意可以延后半年休婚假；职工经与用人单位协商，可以一次性休婚假，也可以分段休婚假。

On September 27, 2024, the Standing Committee of Zhejiang Provincial People's Congress promulgated the Marriage Leave Regulations of Zhejiang Province. The regulations grant employees 13 days of marriage leave after registering their marriage. National holidays and weekends are excluded from the calculation of marriage leave. During the marriage leave period, wages, bonuses, and other benefits shall be paid in full by the employer. Employees must take their marriage leave within one year of their marriage registration date. If employee has not taken marriage leave for reasons of work needs, the leave may be deferred for up to six months upon mutual agreement between the employer and the employee. Employees may choose to take the leave in one-off or in segments, subject to agreement with their employer.

3. 陕西通过《陕西省工会劳动法律监督条例》

[Shaanxi Approved the Shaanxi Provincial Regulation on Labor Law Supervision of Trade Unions](#)

2024年10月9日，陕西省人大发布《陕西省工会劳动法律监督条例》。陕西省区域内工会依法对用人单位遵守劳动法律法规，保障职工合法权益情况进行有组织的群众监督。工会劳动法律监督委员会、工会劳动法律监督员发现用人单位违反劳动法律法规，侵害职工合法权益，应当组织用人单位和职工进行协商，经协商解决不成的适用“一函两书”制度处理。关于“一函两书”制度保障劳动者权益工作的主要内容，请详见[《海问·研究 / 海问劳动法双月报》（2024年1-2月）](#)。

On October 9, 2024, the Standing Committee of the Shaanxi Provincial People's Congress issued the Shaanxi Provincial Regulation on Labor Law Supervision of Trade Unions. Trade unions in Shaanxi region are authorized to organize public supervision to ensure that employers comply with labor laws and regulations and protections on the legal rights and interests of employees. If the Trade Union Legal Supervision Committee or Trade Union Labor Law Supervisors identify violations of labor laws or infringements on employees' rights by employers, they are required to organize mediation between the employer and employees. If mediation fails, the Collaborative Approach system shall be applied to handle the issue. For further details on the Collaborative Approach system and its role in protecting employee rights, please refer to the "[Haiwen Research | Haiwen Labor Law Bi-Monthly Newsletter \(January-February 2024\)](#)".



三、典型案例：最高检发布《检察机关民事支持起诉典型案例》

Exploration of Typical Cases: The Supreme People's Procuratorate Released Typical Cases of Procuratorial Support on Civil Litigation

2024年9月6日，最高检发布7起《检察机关民事支持起诉典型案例》，3起案例和劳动关系、劳务关系相关，值得用人单位和劳动者注意。

On September 6, 2024, the Supreme People's Procuratorate released seven Typical Cases of Procuratorial Support on Civil Litigation. Among these, three cases are related labor and service relationships and deserve the attention of employers and employees.

案例一中，王某等42人向公司追索欠付的劳动报酬，人社部门向检察院转交案件线索后，王某等人向检察院申请支持起诉，检察院审查后予以受理并向法院发出支持起诉意见书。经检察院与法院积极沟通，推动法院快速办理公司作为申请执行人的其他案件实现债权，进一步推动公司与王某等人就劳动报酬金额、支付时间达成调解协议。该法院出具调解书后，公司已按期履行调解书确定的给付义务。

In case 1, Mr. Wang and 41 other individuals claimed unpaid wages from their employer. Upon receiving case clues from the local MOHRSS, the procuratorate accepted Mr. Wang and the others' application for civil litigation support. After reviewing the case, the procuratorate submitted an opinion on support on civil litigation to the court. By communication with the court, the procuratorate facilitated the swift execution of other cases where the employer was the applicant, enabling it to recover its debts. Subsequently, the employer and the claimants reached a mediation agreement on the wage amounts and payment schedule. Following the court's issued the mediation, the employer fulfilled its obligations on time.

案例二中，发包方向承包方全额支付了工程款，承包方承诺发放农民工工资。但尹某等4人向承包方提供劳务后，承包方仅单方出具委托业主支付的对账单但未足额支付劳务报酬。经劳动监察大队移送案件线索后，尹某等人向检察院申请支持起诉。法院审理认定承包方和尹某等人存在劳务合同法律关系，判令承包方支付劳务报酬。

In case 2, the contractee had paid the contractor in full, and the contractor had promised to pay wages to the migrant workers. However, after Mr. Yin and three others provided services, the contractor unilaterally issued a bill but failed to pay the migrant workers' wages. After receiving case clues from the labor inspection department, Mr. Yin and the others applied to the procuratorate for support on civil litigation. The court ruled that a service contract existed between the contractor and the workers and ordered the contractor to pay the remuneration for personal services.

案例三中，四川泸州籍务工者张某在宁波慈溪某门窗厂工作期间受伤，该厂股东未足额支付医疗费、护理费等赔偿金，人社部门因张某无法提供营业执照、劳动合同等证明材料拒绝了工伤认定申请。该案线索移送至四川省泸州市

人民检察院后，因张某工作地、事故发生地为宁波市慈溪市，又经浙江省宁波市人民检察院移送至浙江省慈溪市人民检察院支持起诉，并推动工伤认定事宜。经多方协同，张某和该厂股东就停工留薪期工资等工伤保险待遇达成和解协议。

In case 3, a migrant employee from Luzhou, Sichuan, was injured while working at a door and window factory in Cixi, Ningbo. The factory's shareholder failed to fully compensate Mr. Zhang for medical expenses, nursing fees, and other damages. Due to Mr. Zhang's inability to provide proof of business registration or an employment contract, the local MOHRSS denied his work injury verification application. The case was referred to the Luzhou People's Procuratorate in Sichuan Province, and Since the workplace and accident location were in Cixi, Ningbo, the case was further transferred to the Cixi People's Procuratorate in Zhejiang Province. The procuratorate supported Mr. Zhang in promoting civil litigation and facilitated the verification of his work injury. Through multi-party coordination, Mr. Zhang and the factory's shareholder reached a settlement agreement on wages during medical leave and other work injury insurance benefits.



四、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: MOHRSS Released Typical Cases of Infringement on Employees' Employment Rights

2024年10月8日，人社部发布《侵害劳动者就业权益典型案例》，涉及招转培、虚假招聘、就业歧视、非法劳务派遣等违法案件。就其中包含的典型违法行为，我们梳理如下：

On October 8, 2024, the MOHRSS released Typical Cases of Infringement on Employees' Employment Rights, which highlight violations such as deceptive recruitment, employment discrimination, and illegal labor dispatch. Below is a summary of the key unlawful behaviors:

1. 非法开展职业中介、职业技能培训。根据《就业促进法》等法律法规，从事职业中介、职业技能培训，应当取得人社部门的人力资源服务许可和职业技能培训许可。在未获得相关行政许可的情况下，以提供高薪工作岗位的虚假信息诱导求职者参与培训，收取高额培训费用的案涉公司，被人社部门处以停止从事职业中介活动、停止办学以及罚款的行政处罚。

Illegal Operation of Employment Agencies and Vocational Skills Training According to the Employment Promotion Law and other regulations, enterprises engaged in employment agency services or vocational skills training must obtain human resources service permits and vocational training permits from the MOHRSS. The company involved in this case lured candidates with false promises of high-paying jobs to participate in training programs and charged exorbitant fees without obtaining the necessary licenses. The company was penalized by the MOHRSS with orders to cease its employment agency activities and training programs, along with fines.

2. 发布虚假、歧视性招聘信息。根据《人力资源市场暂行条例》《人力资源服务机构管理规定》等法律法规，人力资源服务机构发布的招聘信息应当真实、合法，不得包含就业歧视性内容，不得采取欺诈等不正当手段。人力资源服务机构未获得委托以第三方公司名义发布虚假招聘信息、实际条件与招聘承诺明显不符，以及对特定户籍的劳动者就业进行限制的，均属于侵害求职者就业权益的违法行为。案涉公司被人社部门责令限期整改、清除相关信息，并处以罚款的行政处罚。对求职者造成损失的，还需赔偿相应损失。

Publishing False or Discriminatory Job Advertisements. Under the Interim Regulations on the Human Resources Market and the Regulations on the Administration of Human Resources Service Agencies, recruitment information issued by human resources service agencies must be truthful and lawful, and must not include discriminatory content or involve fraudulent practices. Violations included posting false job advertisements under the name of a third-party company without authorization, advertising

conditions that significantly deviated from promises, and imposing restrictions based on household registration (hukou). The company involved was ordered by the MOHRSS to rectify the violations, remove the illegal advertisements, and pay fines. Additionally, the company was required to compensate candidates for any incurred losses.

3. **未经许可从事网络招聘。**根据《网络招聘管理规定》等法律法规，经营性人力资源服务机构从事网络招聘服务，应当依法取得人力资源服务许可。通过自运营的微信公众号发布招聘信息的公司，被人社部门责令清除并处以停止从事职业中介活动的行政处罚。

Engaging in Online Recruitment Without Authorization. According to the Regulations on Online Recruitment, commercial human resources service agencies must obtain a human resources service license to provide online recruitment services. In this case, a company published recruitment advertisements through its self-operated WeChat public account without proper authorization, and the MOHRSS ordered the company to remove the advertisements and imposed a penalty requiring it to cease its employment agency activities.

4. **未经许可经营劳务派遣业务、克扣劳务派遣员工工资。**根据《劳务派遣暂行规定》等法律法规，经营劳务派遣业务应当向人社部门申请行政许可，劳务派遣单位应当依法支付被派遣员工的劳动报酬和相关待遇。未取得劳务派遣行政许可的情况下派遣自有员工至相关单位的，被人社部门处以停止经营、没收违法所得以及罚款的行政处罚。取得劳务派遣行政许可的单位克扣被派遣员工工资的，亦被人社部门处以罚款。

Operating Labor Dispatch Services Without Authorization and Withholding Dispatched Employees' Wages. As stipulated by the Interim Provisions on Labor Dispatch, enterprises engaged in labor dispatch services must obtain administrative approval from the MOHRSS. Labor dispatch agencies must also pay wages and provide benefits to dispatched employees in accordance with the law. In one case, an employer dispatched its own employees to other enterprises without obtaining the required labor dispatch license, resulting in penalties including suspension of operations, confiscation of illegal income, and fines. In another case, a licensed labor dispatch agency was penalized for withholding the wages of dispatched employees, and it was fined by the MOHRSS for violating dispatched employees' rights.



五、典型案例：山西、广西、上海、湖南等多地法院发布涉劳动人事相关典型案例

Exploration of Typical Cases: Shanxi, Guangxi, Shanghai, Hunan, and Other Regions' Courts Released Typical Cases Related to Labor and Employment

2024年10月11日，山西省高级人民法院发布“[2023年行政审判十大典型案例](#)”，其中两起案件与工伤保险相关。

On October 11, 2024, the Shanxi High People's Court released the [Ten Typical Cases of Administrative Trials in 2023](#), two of which involved work-related injury insurance:

- 案例3中，法院认定井下作业人员出井后到单位浴室洗澡期间因突发疾病经抢救无效在48小时内死亡属于视同工伤的情形；

Case 3: The court ruled that the death of an employee who worked underground and passed away within 48 hours of suffering a sudden illness while showering in the employer's bathroom after leaving the mine, regarded as a work-related injury under equivalent circumstances.

- 案例4中，法院认定用人单位未履行法定参保义务，不应影响工伤职工享有工伤保险待遇，用人单位名下暂无可供执行的财产，遂判决责令社保中心核定并先行支付员工工伤保险待遇。

Case 4: The court ruled that an employer's failure to comply with its legal obligation to enroll its employees in work-related injury insurance should not prevent the injured employee from receiving work-related injury benefits. The court ordered the Social Security Center to assess and pay the benefits in advance the employer had no assets available for enforcement.

2024年10月9日，广西壮族自治区防城港市人民法院发布“[涉企纠纷典型案例](#)”。

On October 9, 2024, the Fangchenggang Intermediate People's Court of Guangxi issued [Typical Cases of Enterprise-Related Disputes](#):

- 刑事审判案例中，员工利用工作便利盗窃原材料卖给废品回收站，法院判决员工犯盗窃罪。

In criminal trial case, an employee used the convenience of workplace access to steal raw materials and sell them to a recycling station. The court convicted the employee of theft.

- 行政审判案例中，具备用工主体资格的承包单位将其承包工程发包给不具备用工主体资格的自然人，该自然人又雇佣他人并在工作中受伤的，法院认定承包单位应当承担工伤保险责任。

In administrative trial case, a contractor with legal employment capacity subcontracted a project to an individual without such capacity, who then employed others. When one of these employees was injured on the job, the court held the contractor liable for work-related injury insurance responsibilities.

此外，2024年9月至10月，上海、湖南、江苏等地法院亦陆续发布与劳动人事相关争议的典型案例，主要包括：

Between September and October 2024, courts in Shanghai, Hunan, Jiangsu, and other provinces also released typical cases related to labor and employment, including:

- 上海市浦东新区人民法院发布“[平台经济服务合同纠纷审判工作十大典型案例](#)”（案例四）；

Shanghai Pudong People's Court: [Ten Typical Cases in Service Contract Disputes in the Platform Economy](#) (Case 4).

- 湖南省株洲市中级人民法院发布十个“[劳动争议典型案例](#)”；

Hunan Zhuzhou Intermediate People's Court: [Ten Typical Cases of Labor Dispute](#)

- 江苏省南通市如东县人民法院发布十大“如东县劳动人事争议‘调裁审’典型案例”[[案例一至案例五参考链接>>](#)，[案例六至案例十参考链接>>](#)];

Jiangsu Rudong People's Court in Nantong: Top Ten Typical Cases in Rudong Labor and Employment Dispute Arbitration-Mediation-Adjudication (Cases 1–5 [[Reference Link>>](#)], Cases 6–10 [[Reference Link>>](#)]).

- 山东省青岛市莱西市人民法院发布六大“[莱西法院2021年-2023年劳动争议审判典型案例](#)”；

Shandong Laixi People's Court in Qingdao: [Six Typical Cases of Labor Dispute of Laixi Court from 2021 to 2023](#).

- 四川省成都市金牛区人民法院、重庆市江北区人民法院联合发布“[优化营商环境典型案例](#)”（案例二）。

Sichuan Chengdu Jinniu District People's Court and Chongqing Jiangbei District People's Court: [Typical Cases on Optimizing the Business Environment](#) (Case 2).

