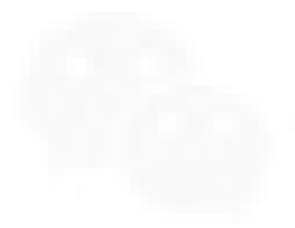


海问劳动法双月报（2023年7-8月）

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Interpretation of Laws and Regulations: Draft Amendments to the Criminal Law (XII) Issued, Adding Crimes Related to Breach of Trust and Dereliction of Duty by Personnel of Non-State-Owned Enterprises, and Adjusting the Penalties for Bribery- Crimes

《中华人民共和国刑法修正案（十二）（草案）》（以下简称“《草案》”）于2023年7月27日起公开征求意见。《草案》共拟修正7条刑罚条文，涉及以下两个方面：

The Draft Amendments to the Criminal Law of the PRC (XII) (“Draft”) was issued on July 27, 2023 for public consultation. The Draft proposed to amend seven penal provisions, covering the following two areas:

1. 将非法经营同类营业、为亲友非法牟利和徇私舞弊低价折股、出售国有资产罪的罪名主体扩展到非国有企业

Extending the subject matter of the Crime of Illegally Engaging in Similar Businesses, Crime of Illegally Seeking Profits for Relatives and Friends, and Crime of Practicing Favoritism by Converting Shares at Low Prices or Selling State-Owned Assets, to Non-State-Owned enterprises

《草案》将现行刑法第一百六十五条规定的非法经营同类营业罪、第一百六十六条规定的为亲友非法牟利罪和第一百六十九条规定的徇私舞弊低价折股、出售国有资产罪的罪名主体从“国有公司、企业”扩展到非国有企业，将民营企业、外资企业等企业人员的背信和渎职行为纳入刑法规制的范畴。

The Draft extended the subject matter of Crime of Illegally Engaging in Similar Businesses as stipulated in Article 165, Crime of Illegally Seeking Profits for Relatives and Friends as stipulated in Article 166, and Crime of Practicing Favoritism by Converting Shares at Low Prices or Selling State-Owned Assets as stipulated in Article 169 of the current Criminal Law, from state-owned enterprises to non-state-owned enterprises, and also extended personnel's breach of trust and dereliction of duty of the foreign-funded enterprises and other enterprises into the scope of criminal law.

2. 修改完善贿赂类犯罪的处罚规定，调整贿赂类犯罪刑事责任

The penalty provisions for bribery crimes were revised and improved, and the criminal liability for such crimes was adjusted.

《草案》修改完善了贿赂类犯罪的处罚规定，在行贿罪中增加了多次行贿、向多人行贿、国家工作人员行贿等六类从重处罚情形，并将贿赂类犯罪的刑罚档次和最高刑进行调整，将单位受贿罪、对单位行贿罪、单位行贿罪从原来的一档刑罚调整为两档刑罚，并将最高刑分别提高。

The Draft enhanced the penal provisions for bribery, with the inclusion of six aggravating circumstances. Some examples included offering multiple bribes, bribery towards multiple persons or state officials. Additionally, the penalty grades and maximum penalties for bribery penal provisions had been modified, with the Crime of Taking Bribes by Entities, Crime of Offering Bribes to an Entity, and Crime of Offering Bribes by an Entity being raised from a single grade of penalty to two. Maximum penalties had also been increased accordingly.

海问建议：2023年5月开始，国家十四部委联合发布《2023年纠正医药购销领域和医疗服务中不正之风工作要点》，中央纪委国家监委召开动员会，部署纪检监察机关配合开展医药领域腐败问题集中整治，各地方也迅速开启医药领域的反腐风暴。结合刑法《草案》对贿赂类犯罪及背信和渎职相关犯罪的修订，企业应予以重视，着力完善源头防范和内部腐败治理的体制机制，避免相关员工触犯刑法红线。

Haiwen Suggestions: Starting in May 2023, fourteen state ministries and commissions jointly issued the Points for Rectifying Unethical Medical Procurement and Sales and Services in 2023, the Disciplinary Committee of the Communist Party, National Supervisory Commission of the PRC held a mobilization meeting to coordinate Disciplinary Inspections and Supervisory Organizations in targeting corruption. Local anti-corruption efforts in the medical field had also been expedited. Combined with revising the breach of trust and dereliction of duty related to the Draft, enterprises should focus on enhancing prevention measures and internal governance systems to prevent employees from crossing the criminal law red line.

二、新规速递：延长两项个人所得税优惠政策，提高三项个人所得税专项附加扣除标准

Quick View of New Regulations: Extension of Two Preferential Policies on Individual Income Tax and Increase of Three Additional Special Deduction Standards for Individual Income Tax

1. 财政部、国家税务总局于2023年8月18日发布《关于延续实施全年一次性奖金个人所得税政策的公告》，将全年一次性奖金不并入当年综合所得、实施按月单独计税的政策延至2027年底。

The Ministry of Finance (MOF) and the State Administration of Taxation (SAT) issued an announcement on August 18, 2023, extending the implementation of the Policy on Individual Income Tax on Annual Lump-sum Bonus until the end of 2027. The policy permitted annual lump-sum bonuses to remain excluded from the current year's consolidated income and enforced monthly separate taxation.

2. 财政部、国家税务总局于2023年8月18日发布《关于延续实施上市公司股权激励有关个人所得税政策的公告》，将上市公司股权激励不并入当年综合所得、全额单独计税的政策延至2027年底。

The MOF and the SAT issued an Announcement on August 18, 2023, extending the implementation of the Policy on the Continuation of the Implementation of Individual Income Tax Policies on Equity Incentives for Listed Companies until the end of 2027. The policy ensured that equity incentives for listed companies would not be merged with the consolidated income of the current year, and full-amount separate taxation would instead

apply.

3. 国务院于2023年8月28日发布《关于提高个人所得税有关专项附加扣除标准的通知》，将3岁以下婴幼儿照护、子女教育、赡养老人三项专项附加扣除标准分别提高了1000元/月，调整后的扣除标准自2023年1月1日起实施。

1. The State Council issued a Notification regarding the Increment of Special Additional Deductions Standard for Individual Income Tax on August 28, 2023. This increment had raised the standard of special additional deductions for infants and young children under the age of 3, children's education, and support for the elderly by ¥1,000 per month. These new standards had been enforced since 1 January 2023.



三、新规速递：北京调整最低工资标准；天津更新劳动合同法实施细则；杭州出台育儿补助实施办法；五部门发布预防和消除不当管理风险隐患制度参考文本

[Quick View of New Regulations: Beijing Adjusted Minimum Wage Standard; Tianjin Updated Labor Implementation Rules for the Labor Contract Law; Hangzhou Issued Implementation Measures for Childcare Subsidies; Five Departments Issue Reference Texts for System to Prevent and Eliminate Mismanagement Risks and Hazards](#)

1. 北京调整最低工资标准

Beijing Adjusted Minimum Wage Standard

2023年7月11日，北京市人力资源和社会保障局发布《关于调整北京市2023年最低工资标准的通知》。2023年9月1日起，北京市最低工资标准由每小时不低于13.33元、每月不低于2320元，调整为每小时不低于13.91元、每月不低于2420元。其中，劳动者应得的加班、加点工资，劳动者个人应缴纳的各项社会保险费和住房公积金等项目不作为最低工资标准的组成部分，用人单位应按规定另行支付。

On July 11, 2023, the Beijing MOHRSS issued a notice regarding the minimum wage standard in Beijing for 2023. Effective from September 1, 2023, the minimum wage standard in Beijing has been raised from not less than ¥13.33 per hour and ¥2,320 per month to not less than ¥13.91 per hour and ¥2,420 per month. Among them, items such as overtime pay owed to employees, and various employee social insurance contributions and housing fund payments were not included in the minimum wage standard. Employers must pay these separately in accordance with regulations.

2. 天津更新劳动合同法实施细则

Tianjin Updated Labor Implementation Rules for the Labor Contract Law

2023年8月1日，天津市人力资源和社会保障局发布的《天津市贯彻落实劳动合同法若干问题实施细则》生效。相较于2018年天津人社部门发布的实施细则，该细则明确了：（1）用人单位通过互联网平台招用、管理劳动者，根据实际用工情况，用人单位对劳动者进行劳动管理、有明确的工作任务要求，将构成劳动关系；（2）用人单位和劳动者协商一致可以订立电子劳动合同，订立时需按照劳动合同法、电子签名法等法律要求的标准；（3）用人单位与劳动者约定的加班加点工资计算基数，不得低于劳动者所在岗位应得的工资报酬。

On August 1, 2023, the Implementation Rules for the Labor Contract Law issued by the Tianjin MOHRSS became effective. Compared to the version issued by the Tianjin MOHRSS in 2018, the new rules had clarified that (1) where an employer recruits and manages an employee through internet platforms, if the employer conducts management on employee and puts forward clear requirements for work, it would be deemed that there is a labor relationship based on the actual employment situation. and (2) the employer and the employee could enter into an e-labor contract by consensus, which must comply with the Labor Contract Law, Electronic Signature Law and other legally required standards. (3) the basis for calculating overtime pay, as agreed between the employer and the employee, shall not be lower than the wage due to the employee's position.

3. 杭州出台育儿补助实施办法

Hangzhou Issued Implementation Measures for Childcare Subsidies

2023年8月7日，杭州市卫生健康委员会、财政局发布《杭州市育儿补助实施办法（试行）》，采用一次性发放现金形式向杭州户籍的生育二孩、三孩家庭发放孕产补助和育儿补助，其中孕产补助标准为二孩2000元、三孩5000元，育儿补助标准为二孩5000元、三孩20000元。

On August 7, 2023, the Hangzhou Municipal Health Committee and the Finance Bureau issued the Implementation Measures for Childcare Subsidies in Hangzhou (Trial), which adopted the form of one-time cash payment to provide maternity subsidies and childcare subsidies to Hangzhou households with two or three children, with the standard of maternity subsidies being ¥2,000 for two children and ¥5,000 for three children, and the standard of childcare subsidies being ¥5,000 for two children and ¥20,000 for three children.

4. 五部门发布预防和消除工作场所不当管理风险隐患制度参考文本

Five Departments Issued Reference Texts for System to Prevent and Eliminate Mismanagement Risks and Hazards

2023年8月14日，人力资源和社会保障部等五部门印发《预防和消除工作场所不当管理风险隐患制度（参考文本）》（“[参考文本](#)”）。参考文本强调了用人单位应如实告知员工工作相关情况、不得扣押证件、不得要求提供担保、处理违纪员工不要求职工额外劳动或对职工罚款，以及依法解除或终止劳动合同时一次性付清工资和经济补偿并同时出具解除/终止劳动合同证明等事项。参考文本虽并非正式法律渊源，但对企业建立相关内部制度、实施合规管理具有一定参考价值。

On August 14, 2023, the MOHRSS and five other departments issued the System for Preventing and Eliminating the Hidden Risks of Improper Management in the Workplace (Reference Text) (“[Reference Text](#)”). The Reference Text emphasized that employers should truthfully inform employees of work-related situations, not withhold credentials, not ask for guarantees, not require additional labor or impose fines on employees for handling disciplinary actions, and pay wages and compensation in one lump sum upon termination of the labor contract in accordance with the law and issue a certificate of termination of the labor contract at the same time. Although the reference text is not an official source of law, it has certain reference value for enterprises to establish relevant internal systems and implement compliance management.

四、典型案例：最高人民法院发布抓实公正与效率践行社会主义核心价值观典型案例

Exploration of Typical Cases: The Supreme People's Court Released Typical Cases on Focusing Justice and Efficiency and Practicing Socialist Core Values

2023年8月2日，最高人民法院举行新闻发布会，发布人民法院抓实公正与效率践行社会主义核心价值观典型案例十五个。与劳动用工相关的其中两个案例体现出裁判机构的如下裁判观点：

On August 2, 2023, the Supreme People's Court held a press conference to issue fifteen typical cases of the People's Courts in focusing justice and efficiency and practicing socialist core values. Two of the cases related to labor and employment reflected the following adjudication views:

1. 案例4中，用人单位未为劳动者缴纳社会保险，劳动者自行缴纳后请求用人单位返还。法院认为，本案依法属于人民法院应当受理的案件范围，判决用人单位返还劳动者垫付的社会养老保险断档补缴及滞纳金。

In Case 4, the employee paid the social insurance contribution on his own due to the employer's failure to make the contribution, and thus the employee requested the employer to return the payment. The court held that the case fallen within the scope of cases that should be accepted by the people's court in accordance with the law, and ruled that the employer should return the amount of the employee's advance payment for the interrupted social pension insurance and the amount of late payment fees.

2. 案例5中，劳动者被确诊为脑死亡后家属决定人体器官捐献，临沧市人力资源和社会保障（“[临沧市人社局](#)”）根据医院出具的死亡证明判断劳动者从突发疾病到经抢救无效死亡的时间已经超过了48小时，作出不予认定工伤决定。法院认为，在人体器官捐献情形下，应当以诊疗机构确认的脑死亡时间作为死亡时间，判决撤销临沧市人社局的不予认定工伤决定并要求其重新作出具体行政行

为。

In Case 5, the employee's family decided to donate his human organs after he was diagnosed with brain death, and the Lincang MOHRSS, based on the death certificate issued by the hospital, made a decision not to recognize the work-related injury in light of the time from the employee's sudden illness to his death after being rescued had exceeded 48 hours. The court held that, in the case of human organ donation, the time of death should be based on the time of brain death confirmed by the hospital, and ruled that the Lincang MOHRSS's decision on not to recognize work-related injuries should be reversed and the Lincang MOHRSS should be required to take a new decision.



五、典型案例：北京市通州区人民法院发布三起劳动争议典型案例

Exploration of Typical Cases: Tongzhou District People's Court of Beijing Released Three Typical Cases of Labor Disputes

2023年8月3日，北京市通州区人民法院（“通州法院”）召开“涉劳动争议纠纷案件审理情况”新闻通报会，梳理近三年通州法院劳动争议纠纷的审理情况，妥善处理劳动争议的具体举措，并发布三件典型案例。

On August 3, 2023, Tongzhou District People's Court of Beijing (“Tongzhou Court”) held a press conference on Trials of Cases of Labor Disputes, inventorying the trials of labor disputes in the Tongzhou Court in the past three years and specific measures taken to handle labor disputes properly, and releasing three typical cases.

1. 案例一涉及高管离职纠纷。某集团拟聘用劳动者作为专业管理人才，出于对劳动者从上一家公司离职的补偿以及对承诺在某集团任职需超过10年的激励，某集团向劳动者支付了补偿金1.5亿元，劳动者与某集团建立了劳动关系。后某集团与劳动者的劳动关系解除（离职原因未明确）。通州法院经审理认定，某集团支付给劳动者的1.5亿元补偿金中，对弥补劳动者离职上一家公司所受损失的性质的8800万元，劳动者无需返还；对保障某集团与劳动者长期稳定履行劳动合同的性质的6200万元部分，按照劳动者在某集团的工作时间、退休年龄等因素对补偿金予以折算，最终判令劳动者返还某集团4900万余元。该案争议类型较为新颖，案涉标的金额高达上亿元，对劳动者和用人单位的利益均衡保护具有参考意义。

The first case is a dispute regarding separation of a senior executive. A group company intended to employ the employee as a professional management talent, to compensate the employee for his departure from the former employer and incentivize his commitment to serve in the group company for more than 10 years, the group company paid the employee ¥150 Million as compensation, and thus the employee established a labor relationship with the group company. Subsequently, the labor relationship between the group company and the employee was terminated (the reason for which was not specified). After the trial, Tongzhou Court held that, among the ¥150 Million compensation paid to the employee, ¥88 Million is not required to be returned since it was to make up for the loss caused by the employer's departure from the former employer. However, for the rest of the compensation (¥62 Million) which was to ensure the long-term and stable employment between the group company and the employee, the court prorated it based on the employee's service period with the group company, retirement age and other factors, and ordered the employee to return more than ¥49 Million the group company. This case is of a novel type, and the amount involved in is hundreds of millions, which has a reference significance for the balanced protection of the interests of employees and employers.

2. 案例二中，劳动者从事外卖配送工作，在公司的要求下注册为个体工商户。法院结合劳动者的工作内容、某公司的业务内容、某公司的经营管理、劳动报酬的发放主体等因素，认定某公司与劳动者存在劳动关系。

In the second case, the worker was engaged in takeaway delivery and registered as an individual business as requested by the company. In consideration of the work content, the company's business scope, the company's operation and management, and the entity paid salary, etc., the court determined that an employment relationship existed between the parties.

3. 案例三中，劳动者在某公司从事网络直播工作，双方未签订劳动合同。法院结合某公司招聘专员曾明确表述劳动者系公司员工等证据，认定双方存在劳动关系。

In the third case, the worker was engaged in network live-streaming in a company, and the two parties had not signed an employment contract. In consideration of the fact that the company's recruitment officer had clearly stated that the worker was an employee of the company and other evidence, the court determined that an employment relationship existed between the two parties.

六、典型案例：北京市昌平区人民法院发布劳动争议审判与诚信建设白皮书

Exploration of Typical Cases: Changping District People's Court of Beijing Released the White Paper on Labor Disputes Trial and Integrity Construction

2023年7月18日，北京市昌平区人民法院发布《劳动争议审判与诚信建设白皮书（2018-2022年）》，梳理了近五年劳动争议案件整体情况，并通报了十起劳动争议典型案例。

On July 18, 2023, Changping District People's Court of Beijing released the White Paper on Labor Dispute Trial and Integrity Construction (2018-2022), inventorying the overall picture of labor dispute cases in the past five years, and circulating ten typical labor dispute cases.

典型案例中的裁判要点如下：

The judicial opinions in the typical cases are as follows:

1. 用人单位为劳动者办理落户指标并约定服务期，因劳动者提前辞职未能办理落户手续的，劳动者应向用人单位赔偿人力资源成本支出的损失5万元；

In the case that the employer applied for Beijing Hukou quota for the employee and agreed on a service period, and the employee failed to file the Hukou due to his resignation in advance, the employee was ordered to compensate the employer for the loss of ¥50,000 in human resource cost;

2. 劳动者提供虚假休假证明，用人单位有权以严重违反规章制度为由解除劳动合同；

The employer was considered to have the right to terminate the employment contract on the grounds of serious violation of rules and regulations in the case that the employee provided false leave certificates;

3. 法院查明用人单位篡改员工入职时间，支持劳动者主张的解除劳动合同经济补偿金金额；

The court ascertained that the employer has tampered with the employee's commencement date and upheld the amount of severance for termination of the employment contract claimed by the employee;

4. 劳动者承诺放弃社保无效，用人单位应赔偿因社会保险经办机构已不能补办导致劳动者无法享受社会保险待遇的损失；

The employee's promise of waiving the payment of social insurance was held invalid, and the employer shall compensate for the employee's social security benefits loss if the social insurance has been unable to be applied;

5. 劳动合同中约定了竞业限制但未约定经济补偿，劳动者履行了竞业限制义务的，用人单位应按解除前十二个月平均工资的30%按月支付经济补偿；

In the case that a non-competition restriction was agreed upon in the employment contract with no non-competition compensation, and the employee had fulfilled the non-competition obligation, the employer should pay non-competition compensation on a monthly basis at the rate of 30% of the average salary of twelve months prior to the termination of the employment;

6. 劳动者在离职时承诺再无争议后反悔，向用人单位主张赔偿，法院驳回劳动者主张；

The employee had promised no further disputes upon the termination of employment, but claimed compensation from the employer later. The court rejected such claim of the employee;

7. 劳动者签订劳动合同次日被辞退，用人单位应支付违法解除劳动合同的赔偿金；

The employee was dismissed the following day after signing an employment contract, and the employer should pay compensation for wrongful termination of the employment contract;

8. 用人单位与劳动者签订《劳务协议》掩盖劳动关系，劳动者主张支付加班费的主张获支持；

The employer signed a Contract of Service with the employee to cover up the employment relationship, and the employee's claim for overtime pay was upheld;

9. 劳动者求职简历造假，实际学历为中专但伪造本科学历应聘，用人单位以试用期不符合录用条件为由解除劳动合同合法；

The employee falsified the job application resume by falsifying a bachelor's degree despite the fact that his/her actual academic qualification is a technical secondary school. The employer terminated the employment contract on the ground that the employee did not satisfy the employment conditions during the probationary period, and the termination was deemed lawful;

10. 事业单位工作人员在聘用期内违反约定提前离职，应向所在单位支付违约金。

In the case that a staff of a public institution violated the engagement agreement by resigning prior to the expiration of his/ her engagement term, he/she shall pay liquidated damages to the public institution.

七、典型案例：苏州市中级人民法院发布2018-2022年涉新就业形态纠纷案件审判白皮书暨十大典型案例

Exploration of Typical Cases: Suzhou Intermediate People's Court Released the White Paper on Trial of Cases of Disputes Involving New Work Models and Ten Typical Cases in 2018-2022

2023年7月12日，苏州市中级人民法院举行座谈会，发布《涉新就业形态纠纷案件审判白皮书（2018-2022）》（“白皮书”）以及涉新就业形态十大典型案例。

On 12 July 2023, Suzhou Intermediate People's Court held a symposium, releasing the White Paper on the Trial of Cases of Disputes Involving over New Work Models (2018-2022) (the “White Paper”) as well as ten typical cases involving new work models.

白皮书梳理了苏州市近五年涉新就业形态案件审理的总体情况。据统计，全市法院共审结涉新就业形态纠纷862件，主要涉及外卖骑手、快递员、网络主播、网约车司机四类群体。白皮书明确了平台经济发展和劳动者权益“双保护”的司法理念、“事实优先”的司法审查一般原则、“要素式+从属性”的认定劳动关系的方法等主要裁判思路。

The White Paper inventoried the overall picture of the trial of cases involving new work models in Suzhou in the past five years. According to statistics, the courts in Suzhou concluded a total of 862 disputes involving new work models, mainly involving four groups: takeaway riders, couriers, streamers, and online car-hailing service drivers. The white paper clarified the judicial principle of protecting both the platform economic development and employees' rights and interests, the general principle of priority of facts in judicial review, and the method of identifying employment relationship by analyzing the elements and the subordination, etc.

十大典型案例中主要裁判观点如下：

The main judicial views in the ten typical cases are as follows:

1. 案例1-4为请求确认劳动关系案件，裁审机构根据案情认定其中3个案件构成劳动关系。

Cases 1-4 are cases regarding confirmation of employment relationship, and the labor arbitration committees determined that there was employment relationship between the employee and the employer in three of the cases based on the facts of the cases.

2. 案例5中，裁审机构认定平台企业未征得劳动者的知情同意，单方改变规则，损害劳动者合法权益的，该规则不具有法律约束力，平台企业应当赔偿因此造成的损失。

In Case 5, the labor arbitration committee determined that as the platform enterprise unilaterally changed the rules without obtaining the workers' consent and infringed the workers' lawful rights and interests, the rules were not legally binding on the workers, accordingly the platform enterprise should compensate for the losses caused.

3. 案例6中，租车人驾驶互联网租车平台车辆发生交通事故造成他人损害的，租车平台未合理履行风险控制义务存在过错时，应承担相应的赔偿责任。

In Case 6, the car renter caused damage to a third person in a traffic accident while driving a vehicle rented from an Internet car rental platform, the car rental platform should bear corresponding compensation liability as it was at fault for failing to properly perform the risk control duty.

4. 案例7-9对新业态员工执行工作任务致人损害时，侵权责任承担主体进行了认定。

Cases 7-9 identified the main subject of the tort liability when employees in new work models caused damage to a third party in performance of their work.

5. 案例10中，具备用工主体资格的用人单位将相关业务或经营权发包给不具备用工主体资格的主体后招用的劳动者因工伤亡的，由发包方承担工伤保险责任。

In Case 10, if the employer with qualification of employing outsources the relevant business or operation to an entity without qualification of employing and caused work-related injury or death to the workers hired, the party issuing outsourcing shall bear the responsibility for work injury insurance.