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## 一、法规解读：《妇女权益保障法》修订，对企业预防制止性骚扰、保障妇女平等就业权等提出更高要求

### **Interpretation of Laws and Regulations: Law on the Protection of Women's Rights and Interests Has Been Revised, Putting Forward Higher Requirements for Enterprises to Prevent and Stop Sexual Harassment and Guarantee Women's Equal Employment Rights**

为了保障妇女的合法权益，促进男女平等和妇女全面发展，全国人民代表大会于 2022 年 10 月 30 日修订通过《中华人民共和国妇女权益保障法》（“《妇女权益保障法》”），自 2023 年 1 月 1 日起施行。本次修订对用人单位在预防制止性骚扰、保障妇女平等就业权等方面提出了新的更高要求，具体如下。

In order to protect women's lawful rights and interests, promote the equality between male and female and the all-round development of women, the National People's Congress passed the newly revised Law of the People's Republic of China on the Protection of Women's Rights and Interests (the “**Law on the Protection of Women's Rights and Interests**”) on October 30, 2022, which will come into force on January 1, 2023. This revision puts forward new and higher requirements for employers in preventing and stopping sexual harassment and guaranteeing women's equal employment rights, as follows.

#### 1. 用人单位应细化预防制止性骚扰相关规定

##### **Employers Shall Refine the Internal Policies on Preventing and Stopping Sexual Harassment**

修订前的《妇女权益保障法》虽然明确禁止对妇女实施性骚扰，但是并未明确哪些主体对于防治性骚扰具有何种程度的具体义务。新《妇女权益保障法》的第二十三条首先对性骚扰的实施形式予以明确：“禁止违背妇女意愿，以言语、文字、图像、肢体行为等方式对其实施性骚扰”；同时，在第二十五条对用人单位应当采取的具体预防和制止措施进行了进一步的细化规定，包括：

1. 制定禁止性骚扰的规章制度；
2. 明确负责机构或者人员；
3. 开展预防和制止性骚扰的教育培训活动；
4. 采取必要的安全保卫措施；
5. 设置投诉电话、信箱等，畅通投诉渠道；
6. 建立和完善调查处置程序，及时处置纠纷并保护当事人隐私和个人信息；
7. 支持、协助受害妇女依法维权，必要时为受害妇女提供心理疏导；
8. 其他合理的预防和制止性骚扰措施。

Although the Law on the Protection of Women's Rights and Interests before revision explicitly prohibited sexual harassment, it didn't specify which entities have specific obligations to prevent sexual harassment and to what extent. Article 23 of the new Law on the Protection of Women's Rights and Interests first defines the forms of sexual harassment: “Sexual harassment of women against their will by verbal, written, image, physical behavior, or other means shall be prohibited”; Meanwhile, Article 25 further specifies the preventive and restraining measures that employers should take, including:

1. formulating internal rules and systems prohibiting sexual harassment;

2. specifying a department or person in charge;
3. conducting education and training activities to prevent and stop sexual harassment;
4. taking necessary safety and security measures;
5. publishing complaint telephone numbers and mailboxes, among others, and keeping complaint channels unimpeded;
6. establishing and improving investigation and resolution procedures, resolving disputes in a timely manner, and protecting the privacy and personal information of relevant parties;
7. supporting and assisting women victims in lawful enforcement of rights, and providing them with psychological counseling when necessary; and
8. other reasonable measures to prevent and stop sexual harassment.

对于违反规定，未采取必要措施预防和制止性骚扰，造成妇女权益受到侵害或者社会影响恶劣的用人单位，根据《妇女权益保障法》第八十条相关规定，将由上级机关或者主管部门责令改正，拒不改正或者情节严重的，将依法对直接负责的主管人员和其他直接责任人员给予处分。另根据第七十七条规定，如相关单位未采取合理措施预防和制止性骚扰，侵害妇女合法权益，导致社会公共利益受损的，检察机关可以发出检察建议并可以依法提起公益诉讼。

According to Article 80, where an employer violates this Law by failure to take necessary measures to prevent and stop sexual harassment, causing women's rights and interests being infringed or creating an execrable social impact, higher authorities or relevant authorities shall order it to take corrective action, and disciplinary measures shall be taken to the directly liable executive in charge and other directly liable persons in accordance with the laws, if they refuse to take corrective action or if the circumstances are serious. And according to Article 77, if relevant entities fail to take reasonable measures to prevent and stop sexual harassment, causing women's rights and interests or the public interest being infringed, the procuratorates may issue a prosecutive recommendation and file a public interest lawsuit according to the laws.

**海问建议：**本次修订要求用人单位建立流程化、规范化的性骚扰防治制度和处理程序，对用人单位的人事管理提出了更具体明确的要求；在明确单位责任的同时，新增的责任追究规定使得单位内部有关责任人员也有可能直接面临来自有权部门的处分。综上所述，用人单位的性骚扰防治义务和责任不再仅仅是形式要求。值得注意的是，《妇女权益保障法》第八条规定，有关机关制定或者修改涉及妇女权益的法律、法规、规章和其他规范性文件，应当听取妇女联合会的意见。全国妇联权益部于2021年出台了《防治职场性骚扰指导手册》，对用人单位如何防治职场性骚扰提出了具有操作性的指南，值得用人单位在履行性骚扰防治法律义务时进一步借鉴和参考。

**Haiwen Suggestions:** This revision requires employers to establish a streamlined and standardized sexual harassment prevention and copying mechanism, and puts forward more specific and clear requirements for the employers. The newly added accountability rules make it possible for the responsible persons within the employing entity to directly face the punishment from the competent authorities, besides the liabilities of the entity. To sum up, the employer's obligation and responsibility to prevent and control sexual harassment is no longer just a mere formality. It is worth noting that Article 8 of the Law on the Protection of Women's Rights and Interests stipulates that the relevant authorities should solicit the

opinions of the Women's Federation when formulating or revising laws, regulations, rules and other normative documents concerning women's rights and interests. In 2021, the All-China Women's Federation's Rights and Interests Department issued the Guiding Manual on Prevention and Control of Sexual Harassment in the Workplace, which provides operational guidelines on how to prevent and handle harassment cases for employers. It is worthy of further reference when employers fulfill their legal obligations of sexual harassment prevention and control.

## 2. 进一步保障妇女平等就业权

### **Further Guaranteeing Women's Equal Employment Rights**

男女平等是我国的基本国策之一，早在 2005 年已经被纳入《妇女权益保障法》，但原法仅原则性地规定了单位在招聘阶段不得歧视妇女，不得因结婚、怀孕等原因降低妇女的工资待遇。新修订的《妇女权益保障法》不仅细化了招聘录用阶段的妇女平等就业权要求，还进一步明确了妇女在整个用工过程中享有的各项平等权利。

Gender equality is one of China's basic national policies, and it was included in the Law on the Protection of Women's Rights and Interests as early as 2005. However, the law before this revision only stipulated in principle that the employer should not discriminate against women in the recruitment stage, and should not reduce women's salary due to marriage, pregnancy and other reasons of a similar kind. The revised Law on the Protection of Women's Rights and Interests not only specifies women's equal employment rights in the recruitment stage, but also further clarifies the equal rights enjoyed by women in the whole employment process.

#### **用人单位在招聘阶段不得实施的行为（除国家另有规定外）：**

1. 限定为男性或者规定男性优先；
2. 除个人基本信息外，进一步询问或者调查女性求职者的婚育情况；
3. 将妊娠测试作为入职体检项目；
4. 将限制结婚、生育或者婚姻、生育状况作为录（聘）用条件；
5. 其他以性别为由拒绝录（聘）用妇女或者差别化地提高对妇女录（聘）用标准的行为。

#### **Prohibited Acts of Employer in Recruitment Stage (unless Otherwise Required by Law):**

1. recruiting only males or specifying preference for males;
2. in addition to basic personal information, inquiring about or investigating the marital and parenting status of a female candidate;
3. including a pregnancy test as a pre-employment medical examination item;
4. conditioning employment on marital or parenting restrictions or status;
5. otherwise refusing to employ women on the grounds of gender or applying higher standards for recruiting women in a differentiated manner.

#### **用人单位在用工阶段不得实施的行为：**

1. 用人单位不得因结婚、怀孕、产假、哺乳等情形，降低女职工的工资和福利待遇，
2. 不得因上述原因限制女职工晋职、晋级、评聘专业技术职称和职务。

#### **Prohibited Acts of Employer during the Process of Employment:**

1. decreasing a female employee's wage and perks, by reason of matrimony, pregnancy,

- maternity leave or breastfeeding, among others;
2. restricting the female employee from promotion in post, rank, professional qualification certification or appointments by the above reasons.

对于用人单位的性别歧视行为，将由人力资源和社会保障部门责令改正，拒不改正或者情节严重的，处一万元以上五万元以下罚款。另根据第七十七条规定，如相关单位侵害妇女平等就业权益，导致社会公共利益受损的，检察机关可以发出检察建议并可以依法提起公益诉讼。

For the gender discrimination by an employer, labor authorities shall order it to take corrective action, and impose a fine from RMB 10,000 to RMB 50,000 if it refuses to take corrective action or if the circumstances are serious. And according to Article 77, if relevant entities violate women's equal employment rights and causes the public interest being infringed, the procuratorates may issue a prosecutive recommendation and file a public interest lawsuit according to the laws.

**海问建议：**用人单位应当及时对其整个用工管理流程进行检视和完善，以避免就业歧视方面的风险，包括在招聘信息发布、信息搜集、员工入职、例行体检、晋升、劳动关系解除等各个环节。同时，应确保所有的规章制度和用工相关法律文件均符合最新的法律要求。

**Haiwen Suggestions:** Employers should review and make improvement to their whole employment process to control the employment discrimination risks, including the recruitment posting, information collection, onboarding, physical examination, promotion, and termination of employment, and should make sure all the internal policies and employment documents are in compliance with the latest legal requirements.

### 3. 加强妇女健康权益、休息权等特殊保护 **Strengthening Special Protection on Women's Health and the Right to Rest, etc.**

用人单位还应当注意，在女职工的录（聘）用、在职期间存在以下特殊保护要求：

1. 在录（聘）用阶段，根据第四十四条规定，用人单位与女职工签订的劳动（聘用）合同或者服务协议中应当具备女职工特殊保护条款。
2. 在女职工在职期间，根据第三十一条规定，用人单位应当定期为女职工安排妇科疾病、乳腺疾病检查以及妇女特殊需要的其他健康检查。
3. 另根据第四十七条、第五十一条规定，用人单位应当依法保护妇女休息权利，遵守国家职工生育休假制度，保障孕产期女职工依法享有休息休假权益。

Employers should also pay attention to the following special protection requirements for female employees:

1. According to Article 44, the employment contract or service agreement with female employees shall contain special protection clauses.
2. Article 31 stipulates that an employer shall regularly arrange health screening for female employees related to gynecological diseases, breast diseases and other health examinations specially needed by women.
3. According to Article 47 and Article 51, an employer shall protect women's right of rest and observe the relevant rules regarding maternity leave and benefits during pregnancy

according to the law.

对于用人单位侵害妇女劳动和社会保障权益的，根据第七十四条规定，人力资源和社会保障部门可以联合工会、妇女联合会约谈用人单位，依法进行监督并要求其限期纠正。另根据第八十五条，违反本法规定，侵害妇女的合法权益，其他法律、法规规定行政处罚的，从其规定；造成财产损失或者人身损害的，依法承担民事责任；构成犯罪的，依法追究刑事责任。

Where an employer violates women's labor and social security rights and interests, in accordance with Article 74, the labor authorities may, together with trade unions and women's federations, interview the employer, exercise supervision in accordance with the law, and require the employer to take corrective action within a specified period. According to Article 85, where a violation of this law infringes the lawful rights and interests of a woman, if any other law or regulation provides any administrative punishment against it, such law or regulation shall be followed. If such violation causes any property losses or personal damages, the violator shall bear civil liabilities. If any crime is constituted, criminal liabilities shall be imposed.

**海问建议：**用人单位应当及时对其整个用工管理流程、规章制度及用工文件进行全面检视和完善，以确保符合最新的法律要求。

**Haiwen Suggestions:** Employers should review and make improvement to their whole employment process, as well as all the internal policies and employment documents, to make sure they are in compliance with the latest legal requirements.

## 二、新规速递：《中央企业合规管理办法》生效，为中央企业、国有企业开展合规管理提供重要规范性依据

### **Quick View of New Regulations: Measures for Compliance Management of Centrally Administered Enterprises Came into Force to Provide Significant Regulatory basis for the Compliance Management of Centrally Administered Enterprises and State-Owned Enterprises**

国务院国有资产监督管理委员会在 2022 年 8 月 23 日发布的《中央企业合规管理办法》（“《办法》”）已于 2022 年 10 月 1 日生效。《办法》适用于国资委根据国务院授权履行出资人职责的中央企业，同时中央企业应当根据本《办法》推动其所属单位建立安全合规管理体系。地方国有资产监督管理机构也应参照本办法，指导所出资企业加强合规管理工作。可见，《办法》有可能成为中央企业及其所属单位以及其它国有企业合规建设的核心文件之一。

Measures for Compliance Management of Centrally Administered Enterprises (the “Measures”) issued on August 23, 2022 by the State-owned Assets Supervision and Administration Commission of the State Council (the “SASAC”) came into force on October 1, 2022. The Measures applies to centrally administered enterprise for which the SASAC performs the duties of capital contributor as authorized by the State Council, and the centrally administered enterprises shall promote their affiliated entities to establish safe compliance management systems in accordance with the Measures. The local state-owned assets supervision and administration authorities shall guide the enterprises which they invested to

strengthen the compliance management according to the Measures. Thus it appears that the Measures may become one of the core documents for the compliance construction of centrally administered enterprises, their affiliated entities and other state-owned enterprises.

《办法》规定，中央企业应当针对安全生产、劳动用工、税务管理等重点领域制定合规管理具体制度或者专项指南。在员工管理方面，《办法》明确中央企业应当完善违规行为为追责问责机制，明确责任范围，细化问责标准，建立所属单位经营管理和员工履职违规行为记录制度，将违规行为性质、发生次数、危害程度等作为考核评价、职级评定等工作的重要依据。

According to the Measures, the centrally administered enterprises shall formulate specific systems or special guidelines for compliance management in key areas such as work safety, employment, tax management and so forth. Regarding management of employees, the Measures clarifies that the centrally administered enterprises shall improve its accountability mechanism for violations, clarify the scope of responsibilities, refine the standards for accountability, establish systems for recording the violations of its affiliated entities' operation management and employees' performance of duty, and take the nature, frequency of occurrence and degree of harm of violations as an important basis for performance assessment, position rating, etc..

**海问建议：**中央企业及其所属单位以及其他国企应高度重视、及时落实《办法》相关要求，包括不断完善自身合规管理体系建设和规章制度，依法优化合规组织框架，如设立首席合规官并明确其权责等。在体系建设过程中应当注意纳入风险识别预警机制、建立相应的考核和评估机制，并强化监督与问责机制。另外，如相关制度直接涉及员工的切身利益，则应当注意制定和修改过程中应完整履行民主讨论程序和公示程序，以保障相关制度的有效性。

**Haiwen Suggestions:** The centrally administered enterprises, their affiliated entities and other state-owned enterprises shall attach great importance to and timely implement the relevant requirements of the Measures, including constantly improving their compliance management system and policies, optimizing the framework and organization of compliance, e.g. setting up the role of Chief Compliance Officer and clarifying his/her rights and responsibilities, etc.. During the formulation of compliance system, the enterprises shall establish an identification, evaluation and early warning mechanism for compliance risks and corresponding assessment and evaluation mechanism, and strengthen the mechanism of supervision and accountability. In addition, if the compliance policies directly affect interests of employees, the democratic consultation and notification procedure shall be completed during the formulation and modification process to ensure the effectiveness of the relevant policies.

三、新规速递：天津市发布新修订的未成年人保护条例，规定密切接触未成年人的用人单位应当建立从业查询制度

**Quick View of New Regulations: Tianjin Issued the Revised Regulation on the Protection of Minors to Establish the Rule that Employers Who Have Close Contact with Minors Shall Establish the Employment Inquiry System**

2022年9月27日，天津市人民代表大会常务委员会修订通过《天津市未成年人保护条



例》（“《**条例**》”），于2022年11月1日开始实施。《条例》新增以下规定：任何组织或者个人不得违反规定招用未成年人；密切接触未成年人的单位应当建立从业查询制度，在招聘工作人员时应当向公安机关、人民检察院查询应聘者是否具有性侵害、虐待、拐卖、暴力伤害等违法犯罪记录，发现其具有前述行为记录的，不得录用。这与《中华人民共和国未成年人保护法（2020修订）》（“《**未成年人保护法**》”）中的以下规定是相符的：“密切接触未成年人的单位招聘工作人员时，应当向公安机关、人民检察院查询应聘者是否具有性侵害、虐待、拐卖、暴力伤害等违法犯罪记录；发现其具有前述行为记录的，不得录用。密切接触未成年人的单位应当每年定期对工作人员是否具有上述违法犯罪记录进行查询。通过查询或者其他方式发现其工作人员具有上述行为的，应当及时解聘。”

On September 27, 2022, the Standing Committee of the Tianjin Municipal People's Congress adopted the revision of Regulations of Tianjin Municipality on the Protection of Minors (the “**Regulations**”) which came into force on November 1, 2022. The Regulations added the following provisions: no organization or individual may recruit minors in violation of regulations; employers who have close contact with minors shall establish the employment inquiry system and inquire with the public security organs or the people's procuratorates about whether the candidate has any record of illegal or criminal act such as sexual assault, abuse, abduction and human trafficking, act of force, etc. when recruiting employees, and shall not employ personnel who is found to have any record of the aforesaid acts. This is consistent with the following provisions in Law of People's Republic of China on the Protection of Minors (revised in 2020)(the “**Law on the Protection of Minors**”): “*When recruiting employees, employers that are in close contact with minors shall inquire with the public security organs and people's procuratorates about whether the candidate has any record of illegal or criminal act such as sexual assault, abuse, abduction and human trafficking, act of force, etc. and shall not employ personnel who is found to have any record of the aforesaid acts. Employers that are in close contact with minors shall regularly check whether the employees have the above-mentioned records of illegal or criminal act every year. If the employees are found to have the above behaviors through inquiry or other means, they shall be dismissed in time.*”

**海问建议：**关于从业查询，一方面，根据公安部于2021年12月3日发布的《公安机关办理犯罪记录查询工作规定》，单位查询本单位在职人员或者拟招录人员的犯罪记录，需要以法律、行政法规有关于从业禁止的规定为前提，上述《未成年人保护法（2020修订）》的相关规定即属于该等“从业禁止的规定”。另一方面，根据《中华人民共和国刑法》第一百条规定，依法受过刑事处罚的人在就业时应当如实向有关单位报告自己曾受过刑事处罚、不得隐瞒，因此企业在招聘过程中可以询问拟招录人员是否曾受过刑事处罚，相关人员负有前科报告义务。

**Haiwen Suggestions:** Regarding employment inquiry, on the one hand, according to the Rules for Public Security Organs in Handling of Criminal Record Inquiry Work issued by the Ministry of Public Security on December 3, 2021, when an employer inquires about the criminal record of its in-service staff or personnel to be recruited, it should be based on the provisions of laws and administrative regulations on prohibition of employment, and the relevant provisions of the Law on the Protection of Minors (revised in 2020) mentioned above belong to such “provisions on prohibition of employment”. On the other hand, according to

Article 100 of Criminal Law of the People's Republic of China, anyone who has been subjected to criminal penalties shall, when being employed, report to the employer faithfully about the fact, without concealment, therefore employers can ask whether candidates have been subjected to criminal penalties during recruitment and relevant personnel are obliged to report criminal record.

#### 四、新规速递：国务院出台《促进个体工商户发展条例》，河北省、河南省陆续出台人力资源市场条例，河北省发布 2021 年部分职业工资指导价位

##### **Quick View of New Regulations: The State Council Issued Regulation for Promoting the Development of Individually Owned Businesses; Hebei Province and Henan Province Successively Released Regulations on Human Resources Market; Hebei Province Issued the 2021 Guidance Wage Level of Certain Occupations**

#### 1. 国务院出台《促进个体工商户发展条例》

##### **The State Council Issued Regulation for Promoting the Development of Individually Owned Businesses**

为了鼓励、支持和引导个体经济健康发展，2022 年 10 月 1 日，国务院发布《促进个体工商户发展条例》，特别明确不得诱导、强迫劳动者登记注册为个体工商户，地方政府不得将个体工商户数量增长率、年度报告率等作为绩效考核评价指标。

In order to encourage, support and guide healthy development of the individually owned economy, the State Council issued Regulations for Promoting the Development of Individually Owned Businesses on October 1, 2022, specifying that employees shall not may be induced or forced to register as individually owned businesses, and local government shall not take the number growth rate and annual reporting rate of individually owned businesses as the performance appraisal indicators.

#### 2. 河北省、河南省陆续出台人力资源市场条例

##### **Hebei Province and Henan Province Successively Released Regulations on Human Resources Market**

河北省人民代表大会常务委员会则于 2022 年 9 月 28 日发布《河北省人力资源市场条例》（“《条例》”）。《条例》规定，人力资源服务机构对网络招聘服务用户信息保护情况每年至少进行一次自查，对不真实、不合法的信息及时进行核实，依法采取删除等措施，并保存相关记录；鼓励人力资源服务机构为灵活就业人员提供求职招聘、人力资源服务外包等专业化服务；对人力资源服务机构引进高层次人才、高技能人才或者急需紧缺人才的，可以根据引进人才的层次、数量按照规定给予补助。

The Standing Committee of the People's Congress of Hebei Province released the Regulations on Human Resource Market of Hebei Province (the “**Regulations**”) on September 28, 2022. According to the Regulations, human resource service agencies shall conduct self-check on the information protection status of online recruitment service users at least once a year, verify the unreal and illegal information timely, take measures such as deleting according to law, and keep relevant records. The Regulations encourages human resource service agencies to provide professional services for personnel under flexible

employment mode such as job hunting and recruitment, and outsourcing of human resource services. Human resource service agencies who have introduced high-level talents, high-skilled talents or talents in urgent need, may receive subsidies according to the level and quantity of the introduced talents in accordance with the Regulations.

2022年9月30日，河南省人民代表大会常务委员会发布《河南省人力资源市场条例》（“《**条例**》”）。《条例》明确，个人求职者发现人力资源服务机构、网络运营者违法或违约处理其个人信息的，有权要求删除，发现处理的其个人信息有误的，有权要求更正或者删除；对于新就业形态劳动者，符合确立劳动关系情形的，平台企业应当依法与其订立**劳动合同**，不完全符合确立劳动关系情形但平台企业对劳动者进行劳动管理的，平台企业应当与劳动者订立**书面协议**。

The Standing Committee of the People’s Congress of Henan Province released the Regulations on Human Resource Market of Henan Province (the “**Regulations**”) on September 30, 2022. According to the Regulations, job hunters have the right to request the deletion of their personal information if human resource service agencies or network operators handled their personal information unlawfully or in breach of contract, and have the right to request the correction or deletion of their personal information if the handled personal information is wrong. Regarding workers under new forms of employment, the platform enterprises shall conclude **labor contracts** with the workers if they meet the conditions of establishing labor relations. If the platform enterprises conduct labor management on the workers who do not fully meet the conditions of establishing labor relations, the platform enterprises shall conclude **written agreements** with the workers.

### 3. 河北省发布 2021 年部分职业工资指导价位

#### Hebei Province Issued the 2021 Wage Level Guidance of Certain Occupations

为落实《关于建立企业薪酬调查和信息发布制度的通知》（人社部发〔2018〕29号）相关要求，河北省人力资源和社会保障厅于2022年10月25日发布《河北省2021年部分职业工资指导价位》（“《**工资指导价位**》”）。该《工资指导价位》涉及265个职业，相关用人单位招工、劳动者求职，以及企业开展工资集体协商时可以结合自身情况进行参考。在此之前，珠海、青岛等地亦发布有关于工资指导价位的文件。

In order to implement the relevant requirements of the Notice on the Establishment of Enterprise Salary Survey and Information Release System (Ministry of Human Resources and Social Security Issue No. 29, 2018), Hebei Provincial Department of Human Resources and Social Security issued the Hebei Province 2021 Wage Level Guidance of Certain Occupations (the “**Wage Level Guidance**”) on October 25, 2022. The Wage Level Guidance covers 265 occupations, and it can be used for reference combining their own individual situation for employers’ recruiting, employees’ job hunting, and enterprises’ collective negotiations of wage. Before this, Zhuhai, Qingdao and other regions also issued documents on the local wage level guidance.

### 五、典型案例：合肥市中级人民法院发布一起劳动争议典型案例，重庆市万州区人民法院发布八起劳动争议典型案例

#### Exploration of Typical Cases: The Intermediate People's Court of Hefei

## **Municipality Issued a Typical Case of Labor Dispute, and the Primary People's Court of Wanzhou District of Chongqing Municipality Issued Eight Typical Cases of Labor Dispute**

### **1. 合肥市中级人民法院发布一起劳动争议典型案例**

#### **The Intermediate People's Court of Hefei Municipality Issued a Typical Case of Labor Dispute**

日前,合肥市中级人民法院发布一起由合肥市包河区人民法院审理的劳动争议案例,《人民法院报》于2022年10月13日进行了大篇幅报道。案情主要为担任文员内勤岗位的年某某在公司中兼任有关会计工作,后上当受骗将公司账上资金转给诈骗分子,造成公司194.3万元的损失,公司起诉年某某要求赔偿损失。

Recently, the Intermediate People's Court of Hefei Municipality released a labor dispute case tried by the Primary People's Court of Baohe District of Hefei Municipality. People's Court Newspaper made a large-scale report of this case on October 13, 2022. The main facts of the case are that Nian who served as an office clerk held a concurrent post as accountant in the company, and he was deceived to transfer the funds in the company's account to fraudsters, resulting in a loss of RMB 1.943 million. Then the company sued Nian for compensation.

该案例主要涉及劳动者履行工作职责或执行工作任务时给用人单位造成损失的问题,法院认为劳动者正常履职情况下造成的损失属于用人单位的客观经营风险,劳动者一般不承担赔偿责任。但是,劳动者存在故意或重大过失、未尽到忠实审慎义务的,应当承担一定程度的赔偿责任。赔偿的范围及比例应结合劳动者的过错程度、损害程度、劳动报酬水平等因素综合认定。本案中,法院判决年某某应当承担8万元的损害赔偿责任。

This case mainly involves issues that the employees cause loss to the employers when performing duties or tasks. The court held that the loss caused by the employee's normal performance of duties belongs to the objective business risk of the employer, and the employee generally does not bear the liability for compensation. However, if an employee intentionally or negligently fails to fulfill his duty of loyalty and prudence, he / she shall be liable for compensation to a certain extent. The scope and proportion of compensation should be comprehensively determined by factors such as the fault degree, damage degree and labor remuneration level of employees. In this case, the court ruled that Nian should be liable for damages of 80,000 yuan.

### **2. 重庆市万州区人民法院发布八起劳动争议典型案例**

#### **The Primary People's Court of Wanzhou District of Chongqing Municipality Issued Eight Typical Cases of Labor Dispute**

重庆市万州区人民法院于2022年9月27日发布八起劳动争议典型案例,涉及网络主播与经纪公司在不具备人身从属性、经济从属性情况下不构成劳动关系,服务期约定以用人单位实际对员工进行了专项业务技能培训、培训费用支付为条件,用人单位为员工投保商业保险并不免除工伤保险待遇支付义务等问题。

The Primary People's Court of Wanzhou District of Chongqing Municipality issued eight typical cases of labor dispute, involving that network anchors and brokerage companies don't

constitute employment relations when they don't have personal or economic subordination, the pre-condition for setting up a service period on employees is that the employer actually provides special business skills training for employees and the training expenses have been paid at the employer's cost and the employer's purchase of commercial insurance for employees doesn't exempt their payment obligation of mandatory work related injury insurance benefits.

其中案例八值得注意，该案例涉及用人单位违法解除与劳动者的劳动合同，劳动者在仲裁中请求继续履行劳动合同，但在诉讼中劳动合同期限届满，不具备继续履行的条件，劳动者诉至法院时将请求变更为支付赔偿金，重庆市万州区人民法院认为未违反仲裁前置程序的规定，可由人民法院直接进行审理。就该问题目前各地裁判观点并不一致，在面对纠纷时需结合法院所在地的裁审口径进行确定，重庆万州区的该口径对于劳动者较为有利。

The eighth case among them is noteworthy. This case involves that the employer illegally terminated the labor contract with the employee, and the employee requested to continue performing the labor contract in arbitration. However, in the lawsuit, the term of the labor contract expired, and there was no condition for continuous performance. When the employee appealed to the court, he changed his request to pay compensation. The Primary People's Court of Wanzhou District of Chongqing Municipality held that it didn't violate the rule that a labor claim is short of justifiability before the courts if not completing prior arbitration proceedings, and the people's court can hear it directly. At present, the opinions of local judges are not consistent on this issue. When facing disputes, it is necessary to evaluate this issue according to the local rules and judicial practice. The court's opinion reflected in the above case is more favorable to employees.

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