

海问劳动法双月报
Haiwen Labor Law Bi-Monthly Newsletter

2023年 3-4月
2023 March – April

本期摘要
Summary

- ◇ 法规解读：《山东省高级人民法院审监三庭关于审理劳动争议案件若干问题的解答》发布，聚焦常见争议问题
Interpretation of Laws and Regulations: The Official Reply to Several Issues Concerning the Trial of Labor Dispute Cases of the Third Court of Shandong Higher People's Court was Released, Focusing on Common Controversial Issues
- ◇ 新规速递：六部门发布两项制度参考文本，关注女职工保护和消除职场性骚扰
Quick View of New Regulations: Six Departments Issued Two Reference Templates, Focusing on Protection for Female Employees and Elimination of Sexual Harassment in the Workplace
- ◇ 典型案例：北京、河南两地公布 2023 年第一批重大劳动保障违法行为，强化对拖欠劳动报酬行为的监督
Exploration of Typical Cases: Beijing and Henan Published the First Batch of Major Labor Security Violations in 2023 to Strengthen the Supervision of Wage Arrears
- ◇ 典型案例：上海市场监管局公布 2023 年首批商业秘密侵权案件
Exploration of Typical Cases: Shanghai Municipal Administration for Market Regulation Announced the First Batch of Trade Secret Infringement Cases in 2023
- ◇ 典型案例：上海长宁法院发布 2020-2022 年涉违纪解除类劳动纠纷十大典型案例

Exploration of Typical Cases: Shanghai Changning District People's Court Released Ten Typical Cases of Labor Disputes over the Termination of Labor Contracts on the Grounds of Disciplinary Violations in 2020-2022

◇ 典型案例：苏州中院发布 2022 年度苏州法院劳动人事争议十大典型案例

Exploration of Typical Cases: Suzhou Intermediate People's Court Released Ten Typical Cases of Labor and Personnel Disputes Heard in Suzhou Courts in 2022

一、法规解读:《山东省高级人民法院审监三庭关于审理劳动争议案件若干问题的解答》发布, 聚焦常见争议问题

Interpretation of Laws and Regulations: The Official Reply to Several Issues Concerning the Trial of Labor Dispute Cases of the Third Court of Shandong Higher People's Court was Released, Focusing on Common Controversial Issues

2023年3月31日,《山东省高级人民法院审监三庭关于审理劳动争议案件若干问题的解答》(“《解答》”)发布,对劳动争议案件受理范围、劳动关系确认、仲裁时效适用等31个问题的裁判规则进行了明确,涉及程序和实体两方面内容,回应了劳动领域的常见争议问题,我们对其中部分规则进行解读如下。

On March 31, 2023, the Official Reply to Several Issues Concerning the Trial of Labor Dispute Cases of the Third Court of Shandong Higher People's Court (the “Reply”) was released, and clearly stated the rules of adjudication on 31 issues including the scope of acceptance of labor dispute cases, confirmation of employment relationship, and application of the time limitation of arbitration, involving both procedural and substantive aspects, responding to common controversial issues in the labor field. Some parts of the rules are interpreted as follows.

1. 达到法定退休年龄人员的劳动关系何时终止

When shall the employment relationship of persons who reach the statutory retirement age be terminated?

根据《劳动合同法》第四十四条第二项规定,“劳动者开始依法享受基本养老保险待遇的”,劳动合同终止,而《劳动合同法实施条例》第二十一条另规定,“劳动者达到法定退休年龄时”,劳动合同终止。实践中,对于达到法定退休年龄且已经依法享受养老保险待遇或领取退休金的人员发生用工争议按劳务关系处理,目前已没有争议。但对于已经达到法定退休年龄但尚未开始享受基本养老保险待遇的人员的劳动合同是否终止的问题仍存在争议,各地裁判口径存在差异。

According to Article 44.2 of the Labor Contract Law, the labor contract shall be terminated when “the worker started exercising his/her basic pension insurance entitlements in accordance with the law”, while Article 21 of the Regulations for the Implementation of the Labor Contract Law provides that the labor contract shall be terminated “when the worker reaches the statutory retirement age”. In practice, it is no longer a controversial issue that the labor dispute raised by those who have reached the statutory retirement age and have started exercising pension insurance entitlements in accordance with the law shall be handled on basis of service relationship, not employment relationship. However, the issue regarding whether the employment contract of those who have reached the statutory retirement age but have not yet started exercising the basic pension insurance entitlements shall be terminated is still controversial, and the caliber of adjudication varies by different area.

《解答》明确,“劳动者达到国家规定的法定退休年龄,非用人单位原因不能享受基本养老保险待遇的,应当终止劳动关系,劳动者再次就业的,应认定为劳务关系;劳动者达到国家规定的法定退休年龄,因用人单位原因不能享受基本养老保险待遇的,不应认定劳动关系终止”。

The Reply clearly states that “if a worker reaches the statutory retirement age but cannot exercise the basic pension insurance entitlements for reasons not related to the employer, the

employment relationship shall be terminated, and it shall be deemed as a service relationship when the worker is rehired. If a worker reaches the statutory retirement age but cannot exercise the basic pension insurance entitlements for reasons of the employer, the employment relationship shall not be deemed terminated”.

2. 劳动者请求用人单位支付未休年假工资的仲裁时效何时起算

When shall the time limitation of arbitration start for employees requesting employers to pay wages for untaken annual leave?

《解答》认为，“依据《关于工资总额组成的规定》第十条的规定，未休年休假工资属于特殊情况下支付的工资，并未明确区分未休年休假工资的不同构成部分”，进而将未休年休假工资认定为劳动报酬，明确“劳动者请求用人单位支付未休年休假工资报酬的，仲裁时效适用劳动争议调解仲裁法第二十七条第四项关于特别仲裁时效的规定”，即从劳动关系解除/终止之日起算。

The Reply holds that “according to Article 10 of the Regulations on the Composition of Gross Wages, the compensation for untaken annual leave belong to the wages paid under special circumstances, and the regulation does not delineate the different components of the compensation of untaken annual leave”, and accordingly identifies the compensation for untaken annual leave as labor remuneration, and states that “if the employee requests the employer to pay the salary remuneration for untaken annual leave, the time limitation of arbitration stipulated by the Article 27.4 of the Law on Mediation and Arbitration of Labor Disputes regarding the special time limitation of arbitration shall apply”, i.e. starts from the date of termination of employment relationship.

3. 劳动者因用人单位安排值班应否支付加班费

Whether the employee shall be paid overtime fees for on-call duty arranged by the employer?

由于值班和加班都是在标准工作时间之外的工作，而劳动法律法规没有对值班是否需支付加班费作出具体规定，故实践中相关争议常有发生。《解答》认为两者具有本质区别，“用人单位因安全、消防、节假日等需要，安排劳动者从事与本职工作无关的值班任务，以及用人单位安排劳动者从事与本职工作有关的值班任务，但值班期间可以休息的，不应认定为加班。劳动者可以依据用人单位规章制度的规定请求支付相应值班报酬待遇，但请求用人单位支付加班费的，不予支持”。

Given both on call duty and overtime work are performed beyond the standard working hours, and labor laws or regulations do not state whether overtime wages shall be paid for on-call duty, relevant disputes often occur in practice. The Reply holds that the two are essentially different, and “If the employer arranges employees to perform on-call tasks unrelated to their own work due to safety, fire control, holidays, etc., or if the employer arranges employees to perform on-call tasks related to their own work while employees can rest during the on-call period, such circumstances shall not be considered as overtime work. The employee may request the payment of the corresponding on-call work remuneration or other remuneration according to the rules and regulations of the employer, but the request for the employer to pay overtime wages shall not be supported”.

4. 自愿放弃缴纳社保是否还能以未缴社保为由解除劳动合同并要求经济补偿

Can an employee who has voluntarily waived social insurance contributions still has the right to terminate the employment contract on the grounds of non-payment of

social insurance contributions and claim economic compensation?

实践中出于减少公司成本、员工个人意愿等原因，存在用人单位与员工就不缴纳社会保险费问题达成一致的情况，但该情形下，容易产生员工以未缴纳社会保险费为由主张解除劳动合同并要求支付经济补偿的纠纷。对员工的该类要求，《解答》认为“有违诚实信用原则，应不予支持”。

In practice, for reasons such as reducing the company's costs or the employee's personal will, there are cases where the employer and the employee agree not to pay social insurance contributions. However, in such cases, it is likely that the employee may claim termination of the labor contract and demand economic compensation on the grounds of non-payment of social insurance contributions. For such claims of employees, the Reply holds that it violates the principle of honesty and should not be supported.

海问建议：山东地区的用人单位应及时了解上述当地裁判规则，在日常劳动管理、劳动关系处理、劳动报酬支付等实践操作中加以参考，避免违法风险。

Haiwen Suggestions: Employers in Shandong should keep an eye on the above-mentioned local judicial rules and refer to them in the daily labor management, disposal of labor relations and payment of compensation in order to avoid the risk of non-compliance.

二、新规速递：六部门发布两项制度参考文本，关注女职工保护和消除职场性骚扰

Quick View of New Regulations: Six Departments Issued Two Reference Templates, Focusing on Protection for Female Employees and Elimination of Sexual Harassment in the Workplace

根据《妇女权益保障法》规定，“用人单位在录（聘）用女职工时，应当依法与其签订劳动（聘用）合同或者服务协议，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”，用人单位应当“制定禁止性骚扰的规章制度”预防和制止对妇女的性骚扰。人力资源和社会保障部等六部门于2023年3月8日发布《工作场所女职工特殊劳动保护制度（参考文本）》和《消除工作场所性骚扰制度（参考文本）》两项内控制度参考文本（“**参考文本**”），作为用人单位制定相关制度的参考。

According to the Law on the Protection of Women's Rights and Interests, when hiring female employees, employers shall sign labor contracts or service agreements with them in accordance with the law, and the labor contracts or service agreements shall contain provisions for the special protection of female employees, and employers shall formulate rules and regulations prohibiting sexual harassment to prevent and stop sexual harassment against women. On March 8, 2023, six departments including the Ministry of Human Resources and Social Security issued two reference templates, the Special Labor Protection Policy for Female Employees in the Workplace (Reference Template) and the Policy to Eliminate Sexual Harassment in the Workplace (Reference Template) (the “**Reference Templates**”), as references for employers to formulate relevant rules.

《工作场所女职工特殊劳动保护制度（参考文本）》主要明确了劳动就业保护、工资福利保护、生育保护、职业安全健康保护等方面的内容；《消除工作场所性骚扰制度（参考文本）》主要明确了消除工作场所性骚扰的用人单位公开承诺、宣传培训、职工举报投诉、调查处置、工会参与监督等方面的内容。

The Special Labor Protection Policy for Female Employees in the Workplace (Reference

Template) mainly specifies employee protections in terms of labor and employment, salary and benefit, maternity, occupational safety and health, etc. The Policy to Eliminate Sexual Harassment in the Workplace (Reference Template) mainly specifies the public commitment of the employer to eliminate sexual harassment in the workplace, publicity and training, employee reporting and complaint, investigation and disposal, and participation of labor unions in supervision.

故上述参考文本可供用人单位在落实妇女权益保障相关法规要求时参考。

Therefore, the above-mentioned Reference Templates can be used by employers for reference when implementing the requirements of the laws and regulations related to the protection of women's rights and interests.

海问建议：用人单位可根据上述参考文本指导，制定完善有关规章制度以及与女职工签订的劳动合同、集体合同。另外可根据所在地地方性法规规定，结合具体实践对参考文本有关内容进一步细化完善。

Haiwen Suggestions: the employer can be guided by the above-mentioned Reference Templates to develop and improve the relevant internal policies, labor contracts and collective contracts with female employees. In addition, according to the local regulations, combined with specific practices on the Reference Templates to further refine the content.

三、典型案例：北京、河南两地公布 2023 年第一批重大劳动保障违法行为，强化对拖欠劳动报酬行为的监督

Exploration of Typical Cases: Beijing and Henan Published the First Batch of Major Labor Security Violations in 2023 to Strengthen the Supervision of Wage Arrears

人力资源和社会保障部于 2017 年发布《重大劳动保障违法行为社会公布办法》（“《办法》”），要求人力资源社会保障行政部门向社会公布，用人单位拖欠劳动报酬且数额较大等已经被依法查处并作出处理决定的重大劳动保障违法行为。

The Ministry of Human Resources and Social Security issued the Measures for Social Announcement of Major Labor Security Violations (the “Measures”) in 2017, requiring the Human Resources and Social Security Administrative Departments to announce to the public significant violations of labor protection laws that have been investigated and dealt with according to the law, such as an employee failing to pay large amount of wage arrears.

作为上述要求的具体落实举措，北京市人力资源和社会保障局（“北京人社局”）于 2023 年 3 月 30 日发布《北京市 2023 年第一批重大劳动保障违法行为社会公布案例》，公布 4 件用人单位拖欠劳动报酬且经北京人社局责令改正、作出行政处理和行政处罚决定后仍不履行的案例。处理结果为北京人社局将在行政处理决定、行政处罚决定复议诉讼法定期限届满后，就用人单位应支付劳动者的工资、赔偿金及应缴纳的罚款依法向人民法院申请强制执行。

As a specific implementation of the above requirements, the Beijing Municipal Human Resources and Social Security Bureau (“Beijing Labor Bureau”) issued the First Batch of Major Labor Security Violations in Beijing in 2023 on March 30, 2023, publishing four cases

in which the employers defaulted on employees' salary and were ordered by Beijing Labor Bureau to make corrections and refused to fulfill after the administrative disposal and penalty decisions were made. Beijing Labor Bureau will apply to the People's Court for compulsory enforcement of the salaries, compensation and fines payable by the employer to the employees after the expiration of the statutory period for reconsideration and litigation of administrative processing decisions and administrative penalty decisions.

河南省于 2023 年 4 月 19 日发布《河南省人力资源和社会保障厅关于发布 2023 年第一批重大劳动保障违法行为的公告》，公布 22 件用人单位拖欠劳动报酬且拒不履行的案例。处理结果为劳动行政部门将所涉用人单位以涉嫌拒不支付劳动报酬罪移送公安机关查处或列入拖欠农民工工资失信联合惩戒对象名单。

Henan Province on April 19, 2023 issued the Henan Province Human Resources and Social Security Department on the Release of the First Batch of Major Labor Security Violations in 2023, announced 22 cases of employers defaulting on employees' salary and refusing to perform. The Labor Administrative Departments will transfer the employers involved on suspicion of refusing to pay employees' salary to the public security organs for investigation and punishment or include such employers in the list of objects of joint punishment for defaulting on migrant employees' salaries in breach of trust.

上述北京和河南公布的案例的内容均根据《办法》规定，列明违法主体全称、统一社会信用代码（或者注册号）及地址，法定代表人或者负责人姓名，主要违法事实及相关处理情况。

The content of the above cases published in Beijing and Henan are in accordance with the Measures, listing the full name, unified social credit code (or registration number) and address of the illegal entity, the name of the legal representative or person in charge, the main facts of the breach and the relevant results.

海问建议：建议用人单位及时了解劳动法规，加强合规管理，避免因拖欠劳动报酬等劳动保障违法行为被列入劳动行政部门的公布案例，影响企业声誉和形象。

Haiwen Suggestions: It is recommended that employers keep abreast of labor laws and regulations, strengthen compliance management, and avoid being included in the published cases of labor administration departments due to default employees' salary and other labor security violations which affect the reputation and image of enterprises.

四、典型案例：上海市场监管局公布 2023 年首批商业秘密侵权案件

Exploration of Typical Cases: Shanghai Municipal Administration for Market Regulation Announced the First Batch of Trade Secret Infringement Cases in 2023

2023 年 4 月 11 日，上海市场监管局公布 2023 年首批商业秘密侵权案件，3 件案例均涉及员工侵犯公司商业秘密，由市场监管部门进行了行政处罚，具体侵权行为如下：

On April 11, 2023, Shanghai Municipal Administration for Market Regulation announced the first batch of trade secret infringement cases in 2023. All 3 cases involved employees infringing on company's trade secrets and administrative penalties were imposed by the Administration for Market Regulation, and the specific infringement acts are as follows:

1. 案例 1 为建工领域首起案件。员工作为成本总监，违反保密义务，向三家投标单位披露所在公司（招标公司）项目招投标文件的标书标底价格、工程清单、价格清单以及相关图纸等商业信息，后市场监管局对该员工和三家投标单位作出合计罚没 130 余万元的行政处罚。

Case I is the first case in the field of architectural engineering. The employee, as Cost Management Director, violated the confidentiality obligation by disclosing to three bidding companies the commercial information of the base bid price, engineering list, price list and related drawings of the project bidding of his company (the tendering company). Then the Administration for Market Regulation made a total fine of more than RMB 1.3 million yuan of administrative penalties on the employee and three bidding companies.

2. 案例 2 为员工离职带走数字模型的案件。员工侍某某在 A 公司担任技术总监，后从 A 公司离职，入职 B 公司。其在离职时违反保密协议约定擅自带走 A 公司研发的数字模型，并用于 B 公司相关业务，后市场监管局对侍某某作出罚款 10 万元整的行政处罚。

Case II is a case where an employee quitted his job and took away the numerical model with him. The employee served as technical director in Company A, and then left company A and joined Company B. When he left Company A, he violated the confidentiality agreement and took away the numerical model developed by Company A without permission and used it for the business of Company B. Then the Administration for Market Regulation imposed an administrative penalty of RMB 100,000 yuan on the employee.

3. 案例 3 为员工透露公司产品报价的案件。陈某为其所在公司重庆区域销售代表，在竞争公司要求下向竞争公司提供了所在公司的同类产品价格表，竞争公司参照该价格表调整了自身产品的价格策略，以获取竞争优势，后市场监管局分别对竞争公司和陈某作出罚款 40 万元和罚款 15 万元的行政处罚。

Case III is a case where the employee disclosed the company's product quotation. The employee, a regional sales representative of his company based in Chongqing, provided the price list of similar products of his company to the competing company upon the competing company's request, and the competing company adjusted the pricing strategy of its own products with reference to the price list to gain a competitive advantage. Then the Administration for Market Regulation imposed administrative fines of RMB 400,000 yuan on the competing company and RMB 150,000 yuan on the employee.

五、典型案例：上海长宁法院发布 2020-2022 年涉违纪解除类劳动纠纷十大典型案例 **Exploration of Typical Cases: Shanghai Changning District People's Court Released Ten Typical Cases of Labor Disputes over the Termination of Labor Contracts on the Grounds of Disciplinary Violations in 2020-2022**

2023 年 4 月 23 日，上海市长宁区人民法院发布 2020-2022 年涉违纪解除类劳动纠纷十大典型案例，紧扣维护劳动者合法权益和支持用人单位正当行使用工管理权两大主题。

相关案例的具体情况如下：

On April 23, 2023, Shanghai Changning District People's Court released the ten typical cases of labor disputes over the termination of labor contracts on the grounds of disciplinary violations in 2020-2022. These typical cases focus on the two main themes of protecting the legitimate rights and interests of employees and supporting employers in the proper exercise of employment management rights. The details of the relevant cases are as follows:

1. 用人单位以严重违纪为由解除劳动合同被法院支持的有 5 个案例

There are 5 cases in which the employer's termination of labor contract on the grounds of serious disciplinary violations was upheld by the court.

值得注意的是，案例二中，员工先后两次入职同一家公司，仅第一次入职时签收公司规章制度，法院在公司规章制度未发生变化的情况下认定员工明知或应知用人单位规章制度，因而认为公司以员工严重违纪为由解除劳动合同是合法的。

It is worth noting that in Case II, the employee joined the same company twice, and only signed to acknowledge the receipt of the company's internal policies on the first occasion. The court found that the employee knew or should have known the employer's internal policies where the company's internal policies have not changed, and therefore held that it was lawful for the company to terminate the employee's labor contract on the grounds of serious disciplinary violations.

其余 4 个案例中，员工的违纪行为分别为：（1）乘务员执行航班期间吸电子烟，虽未造成严重后果，但性质恶劣，危害公共安全；（2）高管擅自转移用人单位大额资金，造成单位财产损失；（3）劳动者不依约报告“利益冲突”的行为，违反公司规章制度的明确规定；（4）劳动者使用虚假发票套取公司财产，存在主观恶意，违反诚实信用原则。因而，法院认定用人单位的解除行为合法。

In the remaining four cases, the employees' violations of discipline were: (1) the flight attendant smoked electronic cigarettes during the flight, which did not cause serious consequences, but was abominable and endangered public safety; (2) the executive transferred a large amount of funds from the employer without authorization, causing damage to the company's property; and (3) the employee did not report the conflict of interest in accordance with the contract, which violated the company's internal policies; (4) the employee used false fapiao to obtain the company's property, showed malicious intent and violated the principle of honesty. Therefore, the court held that the employer's termination was lawful.

2. 用人单位以严重违纪为由解除劳动合同被法院认定为违法的亦有 5 个案例

There are also five cases in which the employer's termination of labor contract on the grounds of serious disciplinary violations was found to be unlawful by the court.

值得注意的是，案例六系举证责任承担问题，法院认为用人单位应对劳动者构成严重违纪承担举证责任，故以用人单位未能证明员工存在违规转售公司产品行为为由认定解除违法；案例七系规章制度的效力范围问题，法院认为用人单位规章制度对劳动者非工作时间、非工作场合的行为不具有普遍适用效力，故认定员工晚间聚餐时相互发生冲突不

适用公司规章制度规定。

It is worth noting that case XI is a case concerning the issue of burden of proof. The court held that the employer shall bear the burden of proof to show that the employee constituted a serious breach of discipline. Therefore, the court judged that the employer's termination was unlawful as the employer failed to prove that the employee's resale of the company's products was in breach of internal policies. Case XII is a case concerning the issue of the scope of effectiveness of the internal policies. The court held that the employer's internal policies were not universally applicable to the behavior of employees during non-working hours and non-working occasions. Therefore, the court found that the company's internal policies did not apply when employees clashed with each other during the evening meal.

其余 3 个案例中，法院认定不构成严重违纪的原因主要为：

In the remaining three cases, the court found that the reasons for not constituting serious disciplinary violations were mainly as follows:

- (1) 公司规章制度规定拒单属于旷工行为，而网约车司机非故意拒单，不应认定为旷工；
The company's internal policies provide that refusal of orders is an absenteeism, while the online car-hailing driver did not intentionally refuse orders and should not be considered absent from work.
- (2) 员工作为大客户部负责人，其审批行为具有管理决策的合理性，且其并无最终决策权，用人单位因相关审批而产生的损失不能归责于该员工，因而员工不存在违纪行为；
As the person in charge of the Key Account Department, the employee's approval behavior was reasonable in terms of management and decision, and he does not have the final decision making power. The losses incurred by the employer due to the relevant approval cannot be attributed to the employee, thus the employee does not violate the discipline.
- (3) 公司规章制度规定不得泄露公司的财务状况、财务资料和薪酬制度，员工将自己的工资明细提供给案外人用以诉讼属于合理披露，并未严重违反公司规章制度。
The company's internal policies stipulate that the company's financial status, financial information and remuneration system shall not be disclosed. The employee's provision of his salary details to the third party for litigation was a reasonable disclosure and did not seriously violate the company's policies.

六、典型案例：苏州中院发布 2022 年度苏州法院劳动人事争议十大典型案例

Exploration of Typical Cases: Suzhou Intermediate People's Court Released Ten Typical Cases of Labor and Personnel Disputes Heard in Suzhou Courts in 2022

2023 年 4 月 24 日，苏州市中级人民法院发布《2022 年度苏州法院劳动人事争议十大典型案例》，涉及多种常见争议。其中，案例二、三、九涉及违法解除劳动合同时的股权激励损失赔偿、劳动者在解除或者终止劳动合同后应履行必要的协助义务、无正当理由取消录用的赔偿责任等问题，体现出苏州法院的下述裁判观点：

On April 24, 2023, Suzhou Intermediate People's Court released the Ten Typical Cases of Labor and Personnel Disputes in Suzhou Courts in 2022, which included a variety of common

labor disputes. Among them, Cases II, III and IX dealt with the issue of compensation for loss of equity incentive in case of unlawful termination of labor contract, the obligation of necessary assistance to be performed by the employee after the dismissal or termination of labor contract, and the compensation liabilities for cancellation of employment without justifiable reasons, reflecting the following judicial views of Suzhou courts:

1. 若用人单位解除劳动者的劳动合同并注销期未行权或解除限售的期权/股票激励,而解除行为非因劳动者过错或主动辞职所导致,且劳动者已经完成相应考核年度工作任务,用人单位不能证明劳动者存在其他不符合行权或解除限售条件的,则用人单位应当赔偿劳动者相应考核期间的股权激励损失。

The employer shall compensate the employee for the loss of the option/stock incentive during the corresponding assessment period if all the following three conditions are satisfied: (1) the employer terminates the labor contract of the employee and cancels the option/stock incentive that has not been exercised or released from the restricted sale period, and the termination is not caused by the employee's fault or resignation, (2) the employee has completed the work tasks of the corresponding assessment year, and (3) the employer cannot prove that the employee does not meet the other conditions of exercising or releasing the restricted sale.

2. 违反后合同义务给对方当事人造成损失的,应当承担赔偿责任。就劳动合同而言,用人单位在劳动合同解除或终止后应当履行开具离职证明、办理档案和社保转移手续的义务,劳动者亦应当履行必要的协助义务。劳动者未及时配合抖音账户解绑,反而注销账户,导致用人单位无法在圣诞期间使用账户营销产生损失,应承担相应赔偿责任。

If a party breaches post-contractual obligations causing damages to the other party, he or she shall be liable for compensation. In terms of the employment contract, the employer shall fulfill the obligation to issue the separation certificate and complete the file and social insurance transfer procedures after the employment contract is terminated or ended, and the employee shall also fulfill the necessary assistance obligations. The employee canceled the Tiktok account, instead of providing necessary cooperation to unbundle the account in a timely manner, resulting in the employer being unable to use the account for marketing during Christmas and incurring losses, so he/she should bear the corresponding liability for compensation.

3. 候选人基于对新公司入职通知书的合理信赖,向原雇主提出离职,属为履行与新公司的劳动合同所做准备,若新公司无正当理由取消录用,给候选人造成损失的,应赔偿候选人损失,损失数额应结合入职通知书中载明的工资标准、原雇主的过错程度以及候选人的待业情况等确定。

If the candidate proposes to leave the employment with the former employer based on the reasonable reliance on the offer letter of the new company, it is a preparation for the fulfillment of the employment contract with the new company. If the new company cancels the offer without justifiable reasons and causes damages to the candidate, the candidate shall be compensated for the damages. The amount shall be determined by taking into account the wage rate stated in the offer letter, the degree of fault of the

former employer and the candidate's work situation.

**声明：本文所载信息仅供参考之用，并不代表我们的法律建议或法律意见。如您需要进一步讨论，请联系您在本所的日常联系人或联系海问劳动法团队的以下人员。*

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

刘宇翔 LIU, Yuxiang

电子邮件 Email: liuyuxiang@haiwen-law.com

直线 Direct line: (+86 10) 8564 0770

吴琼 WU, Qiong

电子邮件 Email: wuqiong@haiwen-law.com

直线 Direct line: (+86 10) 8560 6827