China's New Labor Rules: Key Provisions, Corporate Impacts, and Compliance Strategies

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On August 1, 2025, China's Supreme People's Court (SPC) issued the *Interpretation (II) of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Labor Dispute Cases (Fa Shi [2025] No. 12)* (the ***"Judicial Interpretation II"***), along with six accompanying representative labor dispute cases (the "**Representative Cases**").

Scheduled to take effect on September 1, 2025, *Judicial Interpretation II* clarifies contentious issues in contemporary labor disputes—particularly non-compete clauses, social insurance, and employee benefits—to unify judicial standards and improve adjudicative consistency. The Representative Cases—drawn from proactive judicial practice—illustrate how *Judicial Interpretation II* applies to real-world disputes.

This article provides an analysis of *Judicial Interpretation II*’s pivotal provisions and newly established rules, assesses their practical implications for corporate employment management, and offers useful recommendations for the compliance advice of workplace management.

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1. Joint liability of affiliated entities regarding remuneration & benefits in co-employment arrangements.

Article 3 of Judicial Interpretation II:

"Where an employee is employed alternately or simultaneously by multiple entities with an affiliated relationship, and requests confirmation of the existence of a labor relationship, the people's court shall handle the case according to the following circumstances: (1) Where a written labor contract has been concluded and the employee requests confirmation of the labor relationship in accordance with the labor contract, the people's court shall support such claim in accordance with the law; (2) Where no written labor contract has been concluded, the labor relationship shall be confirmed based on employment management acts, considering factors such as working hours, work content, payment of labor remuneration, and payment of social insurance premiums. Where an employee requests that the affiliated entities jointly bear responsibilities such as payment of labor remuneration and welfare benefits in circumstances as specified in item (2) of the preceding paragraph, the people's court shall support such claim in accordance with the law, except where the affiliated entities have made agreements on labor remuneration and welfare benefits with the employee in accordance with the law and with the employee's consent."

In practice, mixed employment arrangements among affiliated enterprises remain common, leading to persistent disputes over labor relationship identification and remuneration obligations. *Judicial Interpretation II* provides clarity on this matter: where employees are alternately or concurrently employed by affiliated entities without written contracts, courts will assess employment relationships based on substantive factors including actual employment management practices, working hours, job functions, remuneration payment, and social security contributions, while generally supporting employees' claims for joint liability regarding unpaid wages and benefits among such entities. Importantly, this joint liability may be avoided if the affiliated entities have established agreements on remuneration and benefits with the employee's explicit consent. Representative Case II reinforces these principles by clarifying the standards and the criteria in such disputes.

Recommendations for Compliance:

Affiliated entities engaging in co-employment arrangements face material joint liability risks if they cannot demonstrate clear independent employment relationships. To mitigate such exposure, enterprises may consider implementing the following measures:

A. Explicitly designate the employing entity, social insurance contributor, and salary-paying entity in written labor contracts.

B. For necessary cross-enterprise workforce sharing, execute formal secondment agreements or equivalent written contracts that clearly delineate liability allocation, while securing the employee's written consent to avoid joint liability under *Judicial Interpretation II*.

2. Foreign enterprises are included as participants in labor dispute litigation in accordance with the law.

Article 5 of Judicial Interpretation II:

"A lawfully established representative office of a foreign enterprise may be a party to a labor dispute case. Where a party applies to add the foreign enterprise as a party to the litigation, the people's court shall support such application in accordance with the law."

Under Chinese law, representative offices of foreign enterprises ("**the Representative Offices**") are not considered legal employers and must hire employees via authorized labor dispatch providers. In practice, while courts generally recognize Representative Offices as proper litigation parties and hold them jointly liable with dispatch agencies, their limited assets often result in unenforced judgments. Consequently, it is difficult for claimants to request to enforce the awards on the foreign enterprises themselves.

Article 5 of *Judicial Interpretation II* addresses this issue by explicitly recognizing the litigation eligibility of Representative Offices while allowing parties to petition for the inclusion of foreign enterprises as participants. This rule strengthens the liability framework for foreign enterprises operating in China, ensuring that claimants' rights are not compromised due to the Representative Offices' special status.

Recommendations for Compliance:

The final text of *Judicial Interpretation II* revised the draft provision's phrasing from "adding a party to the proceedings" to "adding as a litigation participant." While this clarification addresses procedural participation, uncertainty persists regarding both the legal standing of foreign enterprises in China's labor dispute litigation and their potential direct liability. To mitigate risks, enterprises may consider the following measures:

A. Representative Offices should engage employees exclusively through qualified foreign service agencies under labor dispatch arrangements to avoid direct employment.

B. Dispatch agreements should clearly delineate the scope of rights and obligations of all parties to establish clear liability boundaries, thereby preventing the potential extension of Representative Offices' liabilities to their parent foreign enterprises.

3. The circumstances and criteria for determining "consecutively concluding two fixed-term labor contracts " entitling employees to request open-ended employment contracts are clarified.

Article 10 of Judicial Interpretation II:

"Any of the following circumstances shall be deemed by the people's court as meeting the requirements of 'consecutively concluding two fixed-term labor contracts':

(1) The employer and the employee have agreed to extend the term of the labor contract for a cumulative period of one year or more, and the extension period has expired;

(2) The employer and the employee have agreed that the labor contract shall be automatically extended upon expiration, and the extension period has expired;

(3) The employee, for reasons not attributable to himself/herself, continues to work at the original workplace and position, and the employer changes the contracting entity but continues to manage the employee, and the contract period has expired;

(4) The labor contract is re-concluded by other acts in violation of the principle of good faith to evade the application of the law, and the contract period has expired."

Pursuant to Article 14 of the *Labor Contract Law*, employees who meet statutory conditions acquire the right to demand open-ended contracts after completing two consecutive fixed-term labor contracts. To resolve inconsistent judicial interpretations regarding what constitutes 'two consecutive fixed-term labor contracts' and to prevent employers from circumventing statutory obligations, *Judicial Interpretation II* provides explicit clarification by incorporating negotiated contract extensions cumulatively exceeding one year as well as automatic renewal clauses into the assessment framework, with a catch-all provision voiding arrangements contrary to the principle of good faith thus establishing comprehensive safeguards.

Notably, *Judicial Interpretation II* reinforces the legislative intent of Article 10 of *the Implementation Regulations of the Labor Contract Law* by expressly stipulating that the count of consecutive labor contracts shall accumulate where employees maintain their original workplace and position and the change of contracting entities for reasons not attributable to themselves. This provision is expected to effectively eliminate a systematic loophole that previously enabled employers to circumvent statutory obligations for open-ended contracts through restructuring of entities under the same company group.

Recommendations for Compliance:

To ensure compliance and mitigate legal risks, enterprises are advised to establish and maintain dynamic management systems for labor contracts, prioritizing the following key measures:

A. Implement regular performance reviews of labor contracts, integrated with automated tracking systems to flag approaching termination dates and renewal deadlines.

B. Prohibit from extending the contract term automatically replacing formal renewals or intentionally prolonged contract terms.

C. Conduct comprehensive assessments to identify and address operational practices that could be construed as attempts to circumvent statutory labor obligations.

4. Refined enforceability standards for non-compete clauses.

Article 13 of Judicial Interpretation II:

"Where the employee is not aware of or has not accessed the employer's trade secrets or confidential matters related to intellectual property, and the employee requests confirmation that the non-competition clause is not effective, the people's court shall support such claim in accordance with the law. Where the scope, region, term, and other contents of the non-competition clause as agreed are not commensurate with the trade secrets or confidential matters related to intellectual property that the employee is aware of or has accessed,

and the employee requests confirmation that the part of the non-competition clause exceeding a reasonable proportion is invalid, the people's court shall support such claim in accordance with the law."

Article 14 of Judicial Interpretation II:
"Where the employer and senior management personnel, senior technical personnel, and other personnel with confidentiality obligations agree on a non-competition clause during the term of employment, and the employee requests confirmation that the non-competition clause is invalid on the grounds that such a clause may not be agreed upon during the term of employment or that no economic compensation has been paid, the people's court shall not support such claim."

As a key legal instrument for protecting trade secrets and intellectual property, the non-compete system has long faced disputes over its permissible scope in China's judicial practice. Drawing on recent rulings, *Judicial Interpretation II* now establishes clearer standards for enforceability:

1) **Employee Qualification** – Non-compete clauses are unenforceable against employees who neither accessed trade secrets nor were bound by IP-related confidentiality obligations.
2) **Proportionality Requirement** – Restrictions on scope, geography and duration must be reasonably tailored to the trade secrets or confidential information accessed by the employee. The stricter restrictions without reasonable grounds will be deemed invalid.

Notably, the specific criteria for determining "reasonable proportionality"—particularly concerning the restriction on scope, geography, and duration of non-compete clauses—remain further case-by-case judicial clarification. This standard will undoubtedly become a pivotal factor in adjudicating future non-compete disputes in China.

Regarding the controversial issue concerning non-compete obligations during active employment, Article 14 of *Judicial Interpretation II* establishes landmark clarifications:

1) **Validity Confirmation** – Explicitly affirms the enforceability of non-compete agreements during active employment.
2) **Compensation Principle** – Recognizes that the consideration for such obligations is presumptively included in regular wages, absolving employers of compensation obligations.

Although *Judicial Interpretation II* does not explicitly prescribe penalties for breaches of active-employment non-compete obligations, Supreme Court's Representative Case V confirms that employees who violate such duties during employment may be held contractually liable. Consequently, we understand that penalty or liquidated damages clauses for those employees who violates the non-compete obligations during the employment may be valid and enforceable.

Recommendations for Compliance:
Under the standards established in *Judicial Interpretation II*, enterprises should carefully avoid the following problematic clauses in non-compete agreements: (i) A "one-size-fits-all" clause that apply to employees without regard to their actual access to confidential information; (ii) Excessively broad provisions on the

scope of non-compete restrictions (including the restricted industries, prohibited activities, geographic scope, and duration of obligations). Such clauses face significant invalidation risks under judicial review. Moreover, employers are advised to be prepared to substantiate the employee’s actual access to trade secrets as well as the reasonable proportionality of restrictions imposed. For optimal legal protection and enforceability, we advise enterprises considering adopting the following measures:

A. **Tailor non-compete clauses to each employee's actual exposure to trade secrets**, ensuring the restrictions' scope, duration, and geographic coverage precisely correspond to both the confidential information accessed and the employee's position level.

B. **Implement a tiered trade secret management system** that clearly defines access privileges by job function and establishes verifiable protocols for information classification, access tracking, and authorization - creating an auditable foundation for enforcing reasonable restrictions.

C. **Develop robust evidence preservation protocols** including documented trade secret inventories, access logs for confidential materials, and comprehensive training records to maintain a demonstrable chain of evidence supporting the necessity and proportionality of the restrictions.

5. Any agreement or undertaking to waive social insurance contributions shall be null and void.

Article 19 of Judicial Interpretation II:

“Where the employer and the employee agree, or the employee promises the employer, that there is no need to pay social insurance premiums, the people's court shall determine that such agreement or promise is invalid. Where the employer fails to pay social insurance premiums in accordance with the law, and the employee requests to terminate the labor contract and for the employer to pay economic compensation in accordance with item (3), Article 38 of the Labor Contract Law, the people's court shall support such claim in accordance with the law. Where the circumstances in the preceding paragraph exist, and the employer, after making up the social insurance premiums in accordance with the law, requests the employee to return the social insurance compensation already paid, the people's court shall support such claim in accordance with the law.”

In China, the payment of social insurance contributions is an irreducible statutory obligation binding upon both employers and employees, the validity of which remains impervious to modification through mutual consent or unilateral declaration. *Judicial Interpretation II* categorically invalidates any contractual provisions or voluntary employee undertakings purporting to waive such contributions, while simultaneously imposing corresponding liability on employers. Significantly, *Judicial Interpretation II* establishes a two-way remedial framework: employees may terminate employment contracts and claim economic compensation based on such violations, while employers who subsequently fulfill their overdue contribution obligations may seek recoupment of any alternative compensation previously paid to employees in lieu of statutory social insurance contributions.

Recommendations for Compliance:

Under the clarified rules of *Judicial Interpretation II*, attempts to circumvent social insurance obligations will prove economically counterproductive by failing to achieve intended labor cost savings, and trigger compounded legal exposure—including payment of overdue contributions, economic compensation liabilities, and administrative penalties. Accordingly, enterprises are advised to implement the following measures:

A. Establish rigorous procedures to ensure full and timely social insurance contributions.

B. Categorically prohibit all social insurance waiver agreements and explicitly reject any requests from employees to "voluntarily waive social insurance coverage".

6. Elimination of labor service relationship classification for re-hired workers after retirement.

Article 21 of *Judicial Interpretation II* expressly abolishes Paragraph 1, Article 32 of *the Supreme People's Court Interpretation on Several Issues Concerning the Application of Law in Labor* Dispute *Cases (I) (Fa Shi [2020] No. 26)*, which previously mandated courts to classify disputes involving the independent workers who have received pensions as labor service relationships. This amendment aligns with China's delayed retirement policy reforms and coordinates with the *Provisional Rules on Fundamental Rights Protection for Over-Age Workers (Draft for Public Comment)* issued by the Ministry of Human Resources and Social Security on July 31, 2025 (the "***Provisional Rules***").

The *Provisional Rules* are to specifically clarify rights and obligations for employment relationships beyond statutory retirement age. Upon formal adoption, the *Provisional Rules* will establish the primary legal framework governing post-retirement employment terms and the respective rights and duties of employers and workers.

Recommendations for Compliance:

Enterprises are advised to proactively monitor the formal enactment of the *Provisional Rules*, any accompanying implementation guidelines and any relevant local regulatory interpretations to ensure timely compliance. This includes conducting thorough review of all existing employment arrangements involving workers who have either exceeded the statutory retirement age or are current pension recipients. Based on the findings, enterprises may systematically update their employment documentation, including standard contracts, policy manuals, and HR procedures, to align with the new requirements.

7. Unclear issues waiting for further clarifications.

The final text of *Judicial Interpretation II* adopts a measured approach to contentious labor issues—such as disputes relating to the equity incentive program and/or employee stock ownership plan etc. and unilateral employer-initiated job reassignments—by omitting provisions that appeared in the December 2023 draft and deferring the establishment of specific adjudication standards. This deliberate omission signals a preference for incremental jurisprudential development, allowing courts to apply fundamental labor principles on a case-by-case basis and build consensus through evolving precedent rather than prescriptive rules.

Article 1 of Draft Judicial Interpretation II:
[Admissibility of Equity Incentive Disputes]
"Disputes arising from employees' claims for the grant of underlying equity interests or compensation for equity incentive losses—where employers provide equity-based compensation under labor relationships—constitute labor disputes, excluding disputes arising from equity exercise. Where a party challenges an award rendered by a labor dispute arbitration tribunal and files a lawsuit in accordance with the law, the people's court shall accept the case."

Article 5 of Draft Judicial Interpretation II:
[Statute of Limitations for Special Labor Remuneration Claims]
"Where an employee invokes Article 27(4) of the Labor Dispute Mediation and Arbitration Law for claims concerning unused annual leave pay or overtime wages, the people's court shall uphold such application of the statute of limitations."

Article 20 of Draft Judicial Interpretation II:
[Adjudicative Standards for Unilateral Position/Location Adjustments by Employers]
"In labor disputes arising from an employer's unilateral adjustment of work positions or locations, the employer bears the burden of proving the lawfulness of such adjustments.
The People's Court shall deem an adjustment unlawful where an employee asserts its illegality under any of the following circumstances:
(i) Violation of the labor contract terms or the employer's binding work rules;
(ii) Absence of objective operational necessity;
(iii) Materially adverse alterations to wages or other working conditions without necessary assistance or compensatory measures;
(iv) Objective inability of the employee to perform the adjusted role;
(v) Discriminatory, humiliating, or similarly improper conduct; or
(vi) Contravention of laws or administrative regulations.
Where an unlawful adjustment occurs, the people's court shall rule in favor of an employee who terminates the contract citing the employer's failure to provide working conditions, consequently awarding economic compensation."

Final Considerations

China's dynamic economic transformation and shifting workforce demographics have driven significant reforms in labor governance. *Judicial Interpretation II* embodies China's balanced strategy to preserve stable employment relationships while simultaneously facing the complexities brought by emerging work arrangements. Going forward, organizations are advised to ensure compliance while developing cooperative labor practices that align with these updated standards.

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