Llinks Legal Alert – Labor & Employment Law

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Shanghai · Beijing · Shenzhen · Hong Kong · London

LLINKS Law Offices
通力律师事务所

Contents

Spotlight on News

1. Beijing released 2023 average wage, raising the cap for calculating statutory severance pay to RMB 47,103/month in the locality.
2. The Ministry of Human Resources and Social Security and the Ministry of Finance issued the *Notice on Adjusting the Basic Pensions for Retirees in 2024*, raising the retirees' basic pension levels.

Legislation Updates

1. Beijing introduced *Implementation Measures for Administrative Handling of Violations in the Medical Insurance Sector (Trial)*.
2. Shanghai announced *Notice on Issues Related to Adjusting the Standard of Maternity Medical Expense Subsidies*.

Case Study

1. The Supreme People’s Court issued a guiding case, ruling that ordinary employees who have no access to core business information should not be bound by a duty of confidentiality and therefore are not subject to a non-competition obligation, even if they have previously signed a non-competition agreement.
2. In a case in Shandong, it was determined that WeChat accounts registered by employees during the course of performing their duties and for the benefit of the company's business are considered the property of the company. Therefore, upon leaving the company, employees are required to return these WeChat accounts.

Spotlight on News

1. Beijing released 2023 average wage, raising the cap for calculating statutory severance pay to RMB 47,103/month in the locality.

On June 19, 2024, the Beijing Municipal Bureau of Statistics released data on "Population and Employment" as part of its "2024 Annual Statistical Release Plan of the Beijing Municipal Bureau of Statistics and the Survey Office of the National Bureau of Statistics in Beijing". According to the report, the annual average wage for employees in legal entities in Beijing was RMB 188,413, with a monthly average wage of RMB 15,701 (a 5.57% increase from 2022).

According to local rules in Beijing, the average wage of employees in legal entities is used to determine the cap for the monthly salary for calculating statutory severance pay under the *Labor Contract Law*. Effective immediately, if an employee's average monthly income prior to termination exceeds RMB 47,103 (calculated as RMB 15,701 multiplied by 3), the severance pay should be calculated based on and capped at this figure.

2. The Ministry of Human Resources and Social Security and the Ministry of Finance issued the *Notice on Adjusting the Basic Pensions for Retirees in 2024*, raising the retirees' basic pension levels.

On June 13, 2024, the Ministry of Human Resources and Social Security and the Ministry of Finance issued the *Notice on Adjusting the Basic Pensions for Retirees in 2024* (the **"Notice"**). The Notice specifies that starting from January 1, 2024, basic pensions for retirees from enterprises and public institutions who retired before the end of 2023 will be increased by an average of 3% of their 2023 monthly pension.

The Notice mandates each province to determine the adjustment ratio and level, aligning with the national adjustment ratio. This includes integrating a flat-rate adjustment to ensure social equity by applying a uniform increase for all retirees within the same region. Additionally, a contribution-linked adjustment incentivizes "more contributions, more benefits" and rewards longer contribution periods or working years based on the retirees' basic pension level. Furthermore, the Notice implemented an inclination adjustment to provide special support for elderly retirees and those residing in remote and challenging areas.

Legislation Updates

1. Beijing introduced *Implementation Measures for Administrative Handling of Violations in the Medical Insurance Sector (Trial).*

On June 4, 2024, Beijing Medical Insurance Bureau introduced the *Implementation Measures for Administrative Handling of Violations in the Medical Insurance Sector (Trial)* (the **"Trial Measures"**). The Trial Measures aim to bolster oversight of medical insurance funds and strengthen enforcement against violations. The Trial Measures specify distinct situations, standards, procedures and requirements for various administrative actions.

For insured individuals, penalties include mandatory restitution and a minimum three-month suspension of medical expense network settlements if they misuse their medical insurance cards, benefit improperly, or engage in illegal activities such as selling drugs obtained through medical insurance, leading to losses for the medical insurance fund.

Furthermore, the Trial Measures outline that designated medical institutions engaging in practices like fictitious hospitalizations, over-treatment, double billing, collusion and exchange of medicines, or facilitating insured persons in the resell of medicines, accepting the return of cash or in-kind goods or obtaining other unlawful benefits will face corrective actions by the medical insurance administrative department. The medical insurance administrative department reserves the right to interview the responsible individuals within these institutions, aiming to ensure compliance and accountability. If the aforementioned actions lead to losses for the medical insurance fund, the medical insurance administrative department will mandate the institutions to promptly return or recover the misappropriated funds.

2. Shanghai announced *Notice on Issues Related to Adjusting the Standard of Maternity Medical Expense Subsidies.*

On May 28, 2024, Medical Insurance Bureau, Municipal Development and Reform Commission, Municipal Finance Bureau, and Municipal Health Commission in Shanghai jointly announced the *Notice on Issues Related to Adjusting the Standard of Maternity Medical Expense Subsidies* (the **"Notice"**), which took effect on June 1, 2024. The Notice raised the standard of subsidizing maternity medical expenses in Shanghai, aimed at alleviating burdens of medical expenses on pregnant women and newborns.

The Notice outlined that maternity medical expense subsidies for insured women have been raised from RMB 3,600 to RMB 4,500, among which, subsidies for critical maternal cases adjusted to RMB 8,300. In addition, the Notice stipulates that for natural miscarriages occurring at or after four months of pregnancy, the subsidy has been raised from RMB 600 to RMB 800, and for miscarriages occurring before four months, the subsidy has been raised from RMB 400 to RMB 600.

Case Study

1. **The Supreme People's Court issued a guiding case, ruling that ordinary employees who have no access to core business information should not be bound by a duty of confidentiality and therefore are not subject to a non-competition obligation, even if they have previously signed a non-competition agreement.**

- **Facts**

Employee Li, joined a company as a massage therapist on January 10, 2017, signed a confidentiality agreement containing a non-compete clause requiring Li to refrain from working in similar products or related services with similar enterprises for two years after leaving employment, with a penalty of no less than RMB 50,000 in the event of breach. Li left the company in May 2021, subsequently joined a community health service center in July. The company alleged in arbitration that Li had access to the company's customer data, product pricing program, training courses and other sensitive information, Li shall be regarded as other personnel that are subject to confidentiality obligations. The company demanded Li of RMB 50,000 liquidated damages for breaching the non-competition obligation. The arbitration committee did not support the company's claim, later, the company brough the case to the people's court.

- **Judge's Viewpoint**

The court emphasized that non-compete clauses under the *Labor Contract Law* primarily aim to safeguard employers' commercial secrets, intellectual property, and to regulate unfair competition, rather than impede the free movement of talent among enterprises. However, there are widespread misuse in practice, where non-competition clauses are applied indiscriminately, often without distinguishing employees who handle trade secrets or intellectual property. This results in agreements with disproportionately high liquidated damages that employees feel compelled to accept due to employer's dominant position. The court emphasized that demanding high liquidated damages from employees who lack confidentiality obligations and subsequently join competitors after leaving their jobs infringes on their rights. The court underscored the importance of assessing not just the competitive relationships between former and new employers but also whether employees should indeed be subject to non-compete obligations.

In this case, although the company and Li agreed to a non-competition clause, the evidence presented by the company only demonstrated that Li had access to the company's general business information as part of his daily responsibilities, rather than its core business information. Employees who have access to the employer's general business information in the performance of their normal duties do not belong to "other personnel who bear confidentiality obligations" as stipulated in Paragraph 1 Article 24, of the *Labor Contract Law*. Therefore, the court ruled that Li was not obligated to adhere to non-competition terms and rejected the company's request for liquidated damages for breaching the non-competition clause.

2. In a case in Shandong, it was determined that WeChat accounts registered by employees during the course of performing their duties and for the benefit of the company's business are considered the property of the company. Therefore, upon leaving the company, employees are required to return these WeChat accounts.

- **Facts**

Employee Liu provided health education services and sold different advanced courses online for a company from March to May 2023. Liu was provided with a work cell phone and instructed to register a WeChat account for business purposes, specifically to manage customer interactions related to online courses. In Liu's actual work, Liu as a customer service agent added a large number of customers who purchased online courses through the WeChat account. After leaving the company, Liu retained the WeChat account, prompting the company to allege significant financial losses—approximately RMB 170,000—due to the inability to maintain customer relationships and pursue sales opportunities. The company filed a tortious liability lawsuit, seeking the return of the WeChat account and compensation for the financial damages. Liu argues that he ceased using the account following leaving the employment and contends that the customer contacts are shared resources, not exclusively owned by the company, thus denying any infringement of the company's rights.

- **Judge's Viewpoint**

The WeChat account, considered virtual property, holds significant value encompassing personal information, customer privacy, and economic interests. Typically, WeChat accounts registered by or for employees to facilitate company business are attributed to the company. Customer information collected through these accounts as part of job responsibilities also belongs to the company. Upon termination of employment, employees are obligated to return all work-related materials, including virtual office resources like WeChat accounts to the company. Failure to do so may infringe on the company's rights, leading to legal liabilities.

The People's Court of Huaiyin District, Jinan City, Shandong Province, held that the WeChat account in question was registered using a company-provided cell phone number for work purposes. Therefore, the account's ownership and usage rights were deemed to belong to the company. As Liu used the WeChat account in the course of his duties, he was legally obligated to hand over the work and return the WeChat account to the company when he left the company.

Introduction of Llinks Labor and Employment Law Practice

Llinks provides clients with efficient solutions and pragmatic labor law compliance advice based on clients' business needs. Our services include: providing daily labor law compliance advice and training; designing strategies and plans for mass layoffs and participating in on-site negotiations; assisting in solving personnel replacement in mergers and acquisitions, and providing on-site support and crisis management for strikes and other collective action; representing clients in labor arbitrations and litigations involving terminations of employment contracts, bonus payments, etc.; advising on issues of white-collar crime, anti-corruption and anti-bribery, anti-discrimination, personal information protection, protection of trade secrets and non-competition obligation, equity incentives, and senior-level employee dismissals, etc.

Awards and Honors:

- In 2024, Patrick Gu was recommended as a Ranked Partner in Chambers and Partners Greater China Region Guide 2024
- In 2021, 2020 and 2019, Patrick Gu was consecutively recommended as the leading labor lawyer by China Law & Practice
- In 2023, 2022, 2021, 2020 and 2019, Patrick Gu was consecutively recommended as the top-tier labor lawyer by LEGALBAND
- In 2023, Patrick Gu was recommended in Regulatory/Compliance, Labor and employment in the 2023 edition of The Legal 500
- In 2023, Patrick Gu was recommended as the leading lawyer by The Legal 500
- Llinks Law Offices were awarded Labor & Employment PRC Firms China 2023 by The Legal 500
- Llinks Law Offices were awarded Most Innovative Firm of the Year of China Law & Practice Awards 2021
- Llinks Law Offices were awarded Best Law Firm for Client Service of Chambers China Awards 2020

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