Llinks Legal Alert – Labor & Employment Law

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Spotlight on News

1. Supreme People's Court: *Interpretation (I) of the Supreme People's Court on the Application of the Tort Liability Section of the Civil Code of the People's Republic of China*

On September 25, 2024, the Supreme People's Court ("**SPC**") announced that the *Interpretation (I) of the Supreme People's Court on the Application of the Tort Liability Section of the Civil Code of the People's Republic of China* ("**Interpretation (I)**") was approved at the 1909th meeting of the Judicial Committee of the SPC on December 18, 2023, and will come into effect on September 27, 2024.

Notably, Interpretation (I) further clarifies the scope of tort liability for employers. Article 15 of Interpretation (I) specifies that *employers shall bear tort liability for damage caused to others by their employees or by other personnel executing tasks on behalf of the employer during the performance of work duties*. Furthermore, Article 16 elaborates on the circumstances under which labor dispatch companies and companies accepting dispatched labor must jointly bear the liability for damages caused to others by dispatched personnel while performing working tasks. Labor dispatch companies' joint liability is limited to cases of their *fault within the scope of improper selection of personnel or failure to fulfill training obligations*, and the total amount of compensation paid by the liable parties shall not exceed the losses to which the injured party is entitled. Additionally, Article 17 states that if employees commit crimes while performing work duties, this does not release the employer's civil liability of compensation. However, any recovery or restitution completed in the criminal proceedings can be deducted in the civil enforcement proceedings.

2. Ministry of Human Resources and Social Security and Ministry of Finance: *Notice on the Issuance of Interim Measures on Basic Pension Insurance Disability Subsidies for Enterprise Employees*

On September 27, 2024, the Ministry of Human Resources and Social Security and the Ministry of Finance jointly issued the *Notice on the Issuance of the Interim Measures on Basic Pension Insurance Disability Subsidies for Enterprise Employee* ("**Measures**"). The Measures will come into effect on January 1, 2025, and the policies regarding retirement and resignation for enterprise employees who have completely lost their labor capacity due to illness or non-work-related reasons will cease to be implemented from the date the Measures take effect.

According to the Measures, effective January 1, 2025, participants in the basic pension insurance for enterprise employees who are assessed as having completely lost their labor capacity due to illness or non-work-related reasons before reaching the statutory retirement age may apply to receive monthly disability subsidies, which will be funded by the basic pension insurance fund. The monthly standard for the disability subsidies and the payment period will be determined based on the participant's age and cumulative contribution years at the time of application. The monthly standard for the disability subsidies shall be adjusted in accordance with any national adjustments to the amounts of basic pension. During the period in which participants receive the disability subsidies, they shall not be required to pay basic pension insurance premiums. If participants continue to work and make contributions in accordance with national regulations, the disability subsidies shall be suspended starting from the month following the resumption of contributions.

Legislation Updates

1. General Office of the State Council: *Several Measures for Accelerating the Improvement of the Fertility Support Policy System and Promoting the Construction of a Fertility-Friendly Society*

On October 19, 2024, with the approval of the State Council, the General Office of the State Council issued the *Several Measures for Accelerating the Improvement of the Fertility Support Policy System and Promoting the Construction of a Fertility-Friendly Society* (hereinafter referred to as the "**Measures**"). The Measures are divided into six parts: the first part outlines the overall requirements; the second to fifth parts detail the main content, presenting key tasks for promoting the construction of a fertility-friendly society from various aspects such as fertility service support, education, housing, and employment; the sixth part sets out requirements for regional government to implement the Measures.

The Measures set forth numerous requirements regarding labor protection and employee's rights. The Measures call for society as a whole to strengthen fertility service support, improve the implementation of the maternity insurance system, and enhance the protection of insured female employees under the maternity insurance scheme. The Measures demand local authorities ensure the implementation of maternity leave, childbirth reward leave, paternity leave, and childcare leave, as well as to develop implementation plans and management standards for maternity subsidies. Additionally, the Measures emphasize the strengthening of employee rights protection, urging employers to legally uphold labor protections for female employees during pregnancy, maternity, and breastfeeding periods, and encouraging employers to create family-friendly work environments, such as flexible working hours and work from home options.

The Measures will contribute to reducing fertility costs, safeguarding employee rights, and promoting high-quality population development.

2. Central Committee of the Communist Party of China and the State Council: *Opinions on Implementing the Employment Priority Strategy to Promote High-Quality and Full Employment*

On September 15, 2024, the Central Committee of the Communist Party of China and the State Council jointly issued the *Opinions on Implementing the Employment Priority Strategy to Promote High-Quality and Full Employment* (the "**Opinions**"), which takes effect immediately upon issuance. The Opinions are divided into seven parts, comprising twenty-four specific provisions.

The Opinions clarify the need to promote coordinated development between economic and social growth and employment promotion, improve the employment support system for key groups, establish an efficient and precise public employment service system, and enhance the protection of employee' rights. Among the requirements, the Opinions stipulate that over 60% of employee education funding should be allocated for training frontline workers. Also, local authorities must establish a relief mechanism for employment discrimination, fully eliminate household registration restrictions on insurance coverage, and promote comprehensive coverage of unemployment insurance, work-related injury insurance, and housing provident funds for workers.

The Opinions reflect the ongoing efforts of the Central Committee of the Communist Party of China and the State Council to effectively enhance the quality of employment and ensure reasonable improvement employment environment, which will bring about new changes to the employment market and labor relations in society.

Case Study

1. Beijing High People's Court: Securities company cannot withhold deferred bonuses without proving employee's personal responsibility for risk events

- **Facts**

Employee Fang joined a securities company in 2004 and held positions such as Compliance Director, Vice President, and Executive Committee Member. From January 2015 to May 2017, Fang served as the head of internal control at the securities company. Due to multiple compliance and risk control incidents in 2016, the company held that Fang, as the person responsible for compliance and legal matters as well as risk control, failed to diligently fulfill his duties. As a result, the company did not pay Fang the deferred portions of his annual bonus from the Board's annual reward fund for 2014 and 2015, which were supposed to be paid in 2017 and 2018. On June 8, 2018, Fang resigned and subsequently applied for labor arbitration and litigations, requesting the company pay him over RMB 3 million in his unpaid deferred bonuses and annual allowances as the head of internal control.

Investigations revealed that in 2016, the securities company received penalties and warnings including *Decision on Administrative Supervisory Measures*, *Decision on Notification and Criticism of Sanctions* and *Letter of Supervisory Concerns* from a number of departments of the China Securities Regulatory Commission and Shenzhen Stock Exchange respectively. Additionally, according to Article 3, paragraph 1, sub-paragraph 3 of the company's *Board Reward Fund Management Measures*, during the period of deferred bonus payments, if executives fail to diligently fulfill their duties, leading to business losses or significant illegal or regulatory violations or major risks, the company may stop paying all or part of the unpaid bonuses. The case has now come into effect after labor arbitration, first instance, second instance and retrial procedures.

- **Judge's Viewpoint**

The court of first instance held that the securities company failed to provide evidence proving that Fang did not diligently fulfill his duties in relation to the risk events and should bear personal responsibility. Therefore, the company should pay Fang the unpaid deferred bonuses.

The court of second instance held that although the securities company submitted evidence such as the administrative regulatory measures decision from the Securities Regulatory Commission, the decision did not impose penalties on Fang personally or his department. Additionally, the exit audit report for Fang did not indicate that he should bear personal responsibility for the risk events. As a result, the securities company failed to successfully prove that Fang "failed to diligently fulfill his duties, leading to business losses or significant illegal or regulatory violations or major risks." Therefore, the company still had the obligation to pay Fang the unpaid deferred bonuses of the board reward fund.

In the retrial, the Beijing High People's Court affirmed the reasoning of the previous two courts, stating that the securities company failed to successfully prove that the company's risk events were caused by Fang's failure to diligently fulfill his duties and did not establish that Fang personally bore responsibility for the risk events. Thus, the securities company should pay Fang the deferred bonuses of the board reward fund, and the company's retrial application was dismissed.

2. Typical Case from Haidian Primary People's Court: Even if the company's rules and regulations and labor contract do not explicitly specify such requirements, an employee's repeated failure to respond to work messages during work from home period constitutes a serious violation of labor discipline and professional ethics, and the company may terminate the labor contract

- **Facts**

Employee Yang worked for a company that, during the COVID-19 pandemic in 2020, required all employees to work from home and communicate via instant messaging software. From February to April 2020, Yang repeatedly failed to respond promptly to work messages from his supervisor during working hours. On April 13, 2020, Yang did not reply to a message to assign work tasks for more than six hours. On that day, the company issued its first written warning to Yang, requiring him to ensure immediate replies to company messages during working hours. Failure to prompt reply would be considered absenteeism, and receiving more than two written warnings would lead to termination of the labor contract. Subsequently, Yang had two instances of failing to respond to messages for over three hours, leading to the company to issue two additional written warnings. On April 22, 2020, Yang again did not respond to work messages for over three hours during working hours. The company terminated his labor contract on the grounds of non-compliance with company management and serious violations of labor discipline. Yang filed for labor arbitration and litigation, seeking compensation for the unlawful termination of his labor contract.

- **Judge's Viewpoint**

The court found that completing work tasks and adhering to labor discipline and professional ethics are fundamental requirements for employees. Even though the company's rules and regulations and labor contract do not explicitly stipulate these requirements, if an employee engages in serious violations of labor discipline or professional ethics, the employer may terminate the labor contract. Yang repeatedly failed to respond to the company's work requirements for several months during work from home period, and after multiple warnings, he still did not diligently fulfill his responsibilities. This constituted a serious violation of professional ethics and labor discipline, making the company's termination of the labor contract reasonable and lawful. The company has no obligation to pay compensation for unlawful termination.

Judge's comment: In the absence of articles of labor contract, company’s rules and regulations, to determine whether a worker has seriously violated professional ethics and labor discipline, it is necessary to consider: (1) whether the standards of labor discipline and professional ethics align with generally accepted societal values; (2) whether the employee subjectively committed serious faults or even acted intentionally; (3) the impact of the employee’s actions or inactions on the employer's operations and management, and whether such impact is sufficient to affect the purpose of establishing the labor relationship; (4) whether the employer provided warnings or regulations regarding the employee's behavior, offering the employee an opportunity for correction and the employee's feedback on this correction. In this case, Yang's repeated and prolonged failure to respond to the company's work requirements during work from home period was a form of delaying work tasks and constituted a serious violation of labor discipline and professional ethics. Therefore, the company was justified in terminating the labor contract.

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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