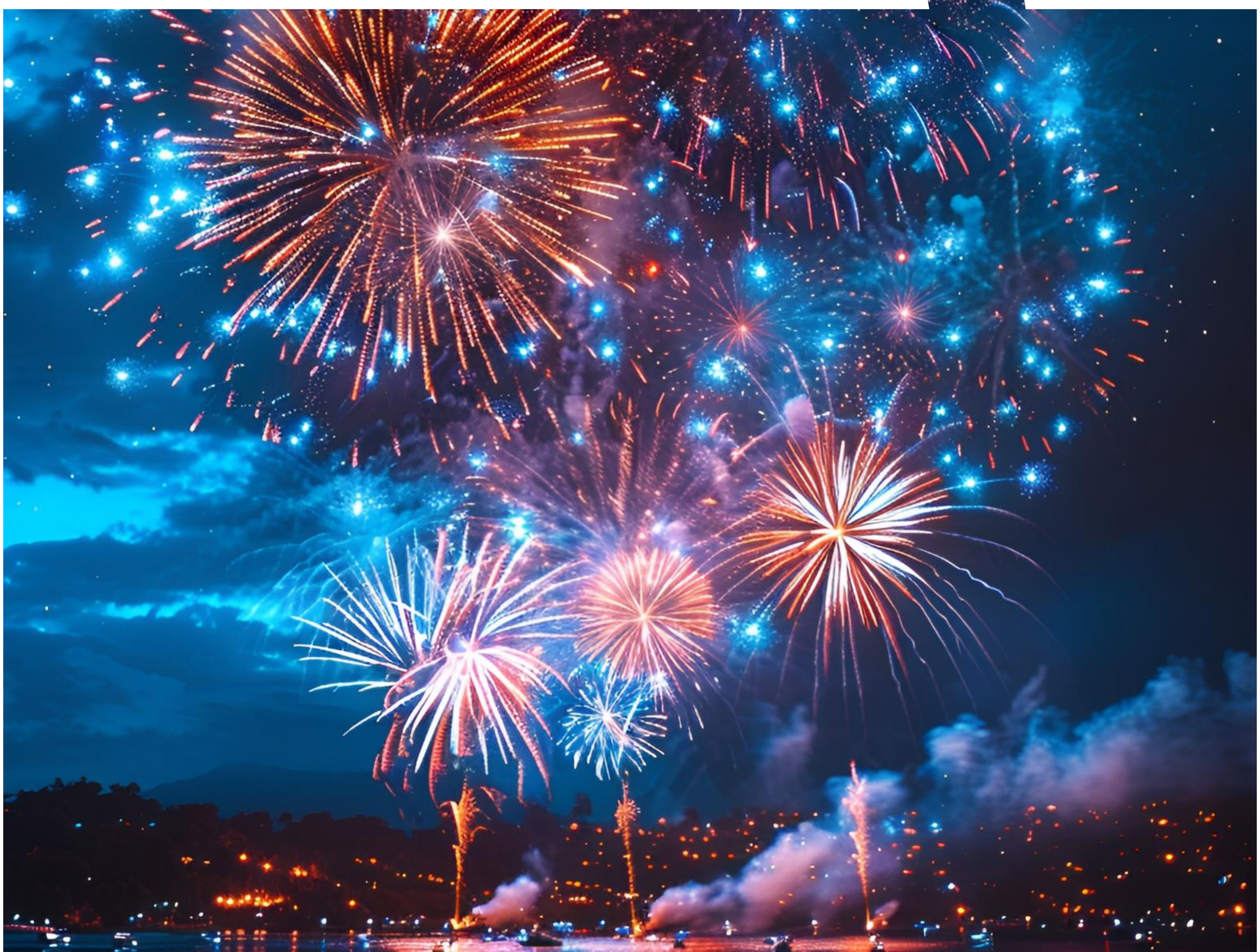
Review and Outlook—

Llinks Labor & Employment Law Alert for 2024



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As the final page of the 2024 calendar turns, we pause to reflect on a year of remarkable progress. For China's labor and employment legal framework, 2024 has been a year of transformation and refinement.

In response to demographic changes and economic development, China initiated the reform of its retirement system with the introduction of new regulations for the gradual raise of statutory retirement age, marking a solid step forward in addressing the challenges of an aging population. The increase in statutory public holidays from 11 to 13 days not only enhances citizen welfare but also promotes better work-life balance. The Supreme People's Court issued pivotal cases to curb the overuse of non-compete agreements, striking a balance between protecting corporate trade secrets and safeguarding employees' rights to employment.

This special publication by the Labor and Employment team at Llinks Law Offices takes you on a journey through 2024's significant developments and offers a glimpse into the opportunities and challenges awaiting us in 2025.

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Review of 2024

➲ **Introduction of gradual delay of retirement regulations and launch of retirement system reform.**

On September 13, 2024, the 11th session of the Standing Committee of the 14th National People's Congress approved the *Decision on Gradually Delaying the Statutory Retirement Age* (“**Decision”**), which is accompanied by the *Measures for the Gradual Delaying of the Statutory Retirement Age* (the **“Measures”**). Both the Decision and the Measures will take effect on January 1, 2025. These two regulations introduce significant changes to key aspects such as the statutory retirement age and the minimum required years of social insurance contributions, marking the official start of China’s retirement system reform.

This reform reflects the necessity of adapting to increased life expectancy and economic structural changes, addressing discrepancies in the existing retirement system. The new framework adopts different rules to different age groups and offers a flexible retirement options, allowing eligible employees to retire earlier or later than the statutory age.

Enterprises are advised to proactively manage retirement processes, consult with employees regarding their preferences, and establish standardized retirement procedures to balance rights and mitigate risks.

For further reading on the reform, visit：Understanding New Rules for Delaying Retirement in China

➲ **Nationwide rollout of the individual pension system, further strengthening China’s pension framework.**

On December 10, 2024, the Ministry of Human Resources and Social Security, in collaboration with the Ministry of Finance, the State Taxation Administration, the National Financial Regulatory Administration, and the China Securities Regulatory Commission, jointly issued the Notice on the *Full Implementation of the Individual Pension System* (the **“Notice”**). This marks the nationwide rollout of the individual pension system, expanding upon pilot projects in 36 cities and offering broader participation options and enhanced flexibility for contributors. Tax benefits across the payment, investment, and withdrawal stages further incentivize participation.

The individual pension system serves as a vital supplement to China’s pension framework, enhancing security for individuals and alleviating pressure on public pensions.

➲ **Updates to policies on new forms of employment, prompting platform enterprises to legalize practices.**

Throughout 2024, multiple policies were introduced to enhance protections for workers in new forms of employment, particularly those on digital platforms. On February 23, 2024, the Ministry of Human Resources and Social Security unveiled a trio of guidelines: the *Guidelines for Rest and Remuneration Rights Protection of Workers in New*

Employment Forms, the *Guidelines for Publicizing Labor Rules for Workers in New Employment Forms*, and the *Service Guide for Rights Maintenance of Workers in New Employment Forms*. On November 6, 2024, the All-China Federation of Trade Unions, in collaboration with the Ministry of Human Resources and Social Security and three other departments, jointly issued the *Guidelines for Consultation on the Rights of Workers in New Employment Forms*.

On December 23, 2024, the Supreme People's Court released typical cases of labor disputes in new business forms, focusing on determining labor relationships between platform companies and workers in these new employment forms. In parallel, provinces such as Guangdong, Hainan, and Anhui introduced local policies and guidelines in 2024 to protect the rights and interests of workers in new employment forms, covering areas such as participation in work injury insurance and housing provident funds.

These policies and guidelines encourage the standardization of employment practices and strengthen rights protection mechanisms in new employment forms.

- **Amendment to public holiday regulations, increasing statutory holidays from 11 to 13 days.**

On November 10, 2024, the State Council issued the *Decision on Amending the Measures for National Annual Holidays and Commemorative Days*, increasing the number of statutory holidays from 11 to 13 days by adding Lunar New Year's Eve and May 2. This adjustment, effective January 1, 2025, reduces the annual working days from 250 to 248, without changing the monthly salary calculation benchmark of 21.75 days per month. However, it will impact the number of working days within cycles under the comprehensive working hours system and may affect the calculation of medical leave in some regions.

Enterprises are advised to consider these changes when planning work schedules, particularly for those under comprehensive working-hour systems, to ensure compliance.

- **Pivotal Supreme Court cases addressing overuse of non-compete agreements and balancing interests.**

On April 30, 2024, the Supreme People's Court released typical labor dispute cases, clarifying that the core purpose of the non-compete system in the *Labor Contract Law* is to protect trade secrets and intellectual property rights of enterprises, rather than to restrict the movement of talent. The Court also emphasized that non-compete agreements must not infringe upon the right of workers, who do not have confidentiality obligations, to choose their own employment. This ensures a balance between protecting the legitimate rights and interests of both parties.

This trend represents a significant shift in the judicial review of non-compete obligations and a deeper examination of whether workers are genuinely subject to confidentiality and non-compete duties. According to one typical case, workers who do not have confidentiality obligations—regardless of having signed a non-compete agreement—are not required to comply with non-compete terms. This protects workers' right to freely choose their employment and promotes the social mobility of labor resources.

- **Record-breaking damages of RMB 640 million in a trade secret case, condemning unfair competition.**

On April 25, 2024, the Supreme People’s Court Intellectual Property Tribunal awarded RMB 640 million in damages in a trade secret dispute between Geely and WM Motor. This is the highest compensation awarded to date in intellectual property infringement litigation in China. The case underscores advancements in judicial practices for protecting trade secrets and demonstrates a firm stance against unfair competition.

Proving trade secret infringement has long been a challenge in such cases. In this instance, nearly 40 senior managers and technicians from Geely Group's subsidiaries transitioned to WM Motor Group and its affiliates, suspected of illegally obtaining and using Geely’s new energy automobile chassis technology secrets. The personnel involved in the research and development of Geely’s chassis technology took the resulting technology with them to WM Motor Group, creating significant challenges for Geely in proving the infringement.

This case sends a strong message: China is committed to robustly protecting intellectual property and fostering innovation. The country will take a firm stand against the improper acquisition of others’ technological achievements. Moreover, it encourages ethical business practices, emphasizing that market competition should follow legal frameworks and respect the principles of originality and fair labor.

Outlook for 2025

- **To clarify employer-employee rights and obligations, supporting policies for gradual delay of retirement are urgently needed.**

  With the official implementation of the policy of gradual delay of retirement, enterprises need to adapt their HR practices to align with the new requirements, while employees should adjust their career plans to comply with the trend of delayed retirement.

  Several pending issues need to be addressed, such as determining the job nature and corresponding retirement age for female employees, identifying employment relationships for employees who have reached the statutory retirement age but are not yet eligible for pension insurance, reconciling local delayed retirement policies with the new national regulations, and clarifying the retirement age application for employees from Hong Kong, Macao, Taiwan, and foreign nationals. Additionally, the legality of terminating employment contracts for employees intending to delay retirement without negotiation remains a concern.

  Given the current situation, it is crucial to formulate supporting policies for the new retirement legal system. These policies will clarify the rights and responsibilities of both employers and employees, ensuring a smooth and effective transition to the new policy.

- **Proposed revision of the *Anti-Unfair Competition Law* enhances anti-corruption measures and emphasize personal accountability.**

  The *Draft of Anti-Unfair Competition Law* (the **"Draft"**) was released on December 25, 2024 and is currently undergoing public consultation. The Draft expands on unfair competition in the digital economy, strengthens the governance of commercial bribery, and emphasizes the principle of "punishment to the person."

  The Draft targets both bribe-givers and takers. It not only increases fines for commercial bribery from RMB 3 million to RMB 5 million but also holds individuals accountable, including legal representatives and key persons involved, with personal penalties for such misconduct.
  The Draft reflects an adaptation to the evolving network economy, strengthens market supervision, and aims to protect the integrity of fair competition. Its goal is to create a stable, predictable, market-oriented business environment based on the rule of law.

- **Rising labor dispute cases require businesses to focus on lawful labor management.**

On June 17, 2024, the Ministry of Human Resources and Social Security published the *2023 Annual Statistical Bulletin on the Development of Human Resources and Social Security*. According to the report, nationwide mediation organizations and arbitration institutions handled 3.85 million labor and personnel dispute cases in 2023, involving 4.082 million workers, with a total settlement amount of 82.99 billion yuan. This marks a significant increase from 2.631 million cases in 2021 and 3.162 million cases in 2022, reflecting a rise of over one million cases in three years. This growth highlights the increasing complexity of labor relations and the frequent occurrence of labor-management conflicts in the current economic and social climate.

Amid efforts to cut costs and increase efficiency, there has been a surge in disputes related to performance and year-end bonuses, job contracts, non-compete clauses, and stock incentives. As workers become more aware of their rights, businesses are urged to strengthen their efforts to prevent and better manage disputes. Proactively addressing these issues will help reduce costs associated with labor management and dispute resolution.

- **Potential for systemic legislation to foster harmonious and stable labor relations.**

On October 30, 2024, the Ministry of Human Resources and Social Security published the article *"Promoting High-Quality Full Employment by Building Harmonious Labor Relations."* The article not only emphasizes the goal of achieving high-quality full employment but also highlights the importance of strengthening the systematic development of labor law.

The article calls for updating labor laws to keep pace with economic progress and new forms of employment. This includes revising existing laws, such as the *Labor Contract Law*, and eventually compiling a comprehensive *Labor Code* when appropriate.

Since the introduction of the *Labor Law* thirty years ago, the law itself has seen little change, though surrounding regulations have evolved. With advances in technology, new business models, and an aging population, labor laws are facing new challenges. By 2025, we will need laws that not only address traditional issues such as pay and termination but also modern concerns, such as protecting workers in emerging employment forms and safeguarding older employees in the digital age.

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 2023/2025, Patrick Gu was recommended in Regulatory/Compliance, Labor and employment in the 2023/2025 edition of The Legal 500 Greater China list
- In 2024, Patrick Gu was recommended in Labor and Employment in the 2024 edition of The Legal 500 Greater China list
- 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 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 Best Law Firm for Client Service of Chambers China Awards 2020

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