



Llinks Legal Alert – Labor & Employment Law

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Spotlight on News

1. The Supreme People's Court Released the Latest Guiding Cases on Labor Disputes

[The Supreme People's Court \("SPC"\) recently released the 32nd batch of seven guiding cases](#), which focus on cases concerning employees' rights and interests. The guiding cases serve as a reference for people's courts at all levels in ruling similar cases. We have summarized some common misunderstandings reflected from the guiding cases and accordingly provided practical suggestions for employers in dealing with these issues in daily labor and employment management. *For more detailed interpretation of the guiding cases, please refer to the following articles previously written by us: [The Supreme People's Court Released the Latest Guiding Cases on Labor Disputes](#).*

2. The Shanghai Municipal People's Congress: Employers Shall not Refuse to Recruit Employees Infected by Infectious Diseases

The executive meeting of the State Council on July 13, 2022 specified that it is strictly prohibited to discriminate against people who have ever tested positive to COVID-19 nucleic acid in employment. The Standing Committee of Shanghai Municipal People's Congress then adopted by vote the *Decision of the Standing Committee of the Shanghai Municipal People's Congress on Further Effectively Carrying out the Current Work of Promoting Employment* (the "**Decision**"). The Decision specifies that any employer shall not terminate employment contract with an employee due to his/her infection with an infectious disease, nor shall it refuse to recruit an employee due to his/her infection with an infectious disease. It was reported that people who have recovered from COVID-19 have been discriminated against during job hunting. The legislation clarifies the principle of equal employment and sets guidance for dispute resolution in employment discrimination cases.

3. Beijing, Shanghai, Guangzhou and Shenzhen: Social Average Wage Standards in 2021 are Raised, and the Social Minimum Wage Standards of Beijing and Shanghai in 2022 Remain Unchanged

On June 29, 2022, Beijing Municipal Bureau of Statistics released the average wage of employees in corporate entities in Beijing in 2021, which is CNY13,876 per month. From July 1, 2022, the average wage of full-coverage urban employers in Shanghai in 2021 is CNY1,1396 per month. On 6 June 2022, Shenzhen Municipal Bureau of Statistics released that the average wage of urban employees with non-private entities in 2021 is CNY12,964 per month. On 14 June 2022, Guangzhou Municipal Bureau of Statistics released that the average wage of employees in 2021 is CNY12,024 per month.



In view of the impact of the COVID-19 epidemic on the economy and the society, Beijing and Shanghai have announced that the minimum wage standards in 2022 will not be adjusted for the two cities. Beijing's minimum salary will remain CNY2,320 per month, and Shanghai CNY2,590 per month.

Legislation Updates

1. **Shanghai: *Notice on Ensuring Grassroots Express Delivery Outlets in Shanghai Given Priority to Contribute to the Work-related Injury Insurance* was released, Grassroots Express Delivery Outlets May Contribute the Work-related Injury Insurance for Deliverymen**

Recently, the Shanghai Municipal Human Resources and Social Security Bureau and Shanghai Municipal Postal Administration jointly released the *Notice on Ensuring Grassroots Express Delivery Outlets in Shanghai Given Priority to Contribute to the Work-related Injury Insurance* (the "**Notice**"). The Notice expressly states that grassroots express delivery outlets with flexible employment and high mobility can contribute the work-related injury insurance for deliverymen from July 1, 2022. For grassroots express delivery outlets that have obtained the express delivery business permit issued by Shanghai Municipal Postal Administration and are qualified as employers, they can directly contribute the work-related injury insurance for the deliverymen. For grassroots express delivery outlets that have filed for the record with Shanghai Municipal Postal Administration and do not have the subject qualification as employers, the enterprises to which the outlets belong and which have the express delivery business license qualification and the subject qualification as employers shall go through the formalities on their behalf and shall be entitled to given priority in contributing the work-related injury insurance for the deliverymen. In recent years, the issue of contributing work-related injury insurance for flexible employees has arisen heated discussion. The Notice releases a policy signal that deliverymen who have not established labor relations with employers can also be given priority to contribute work-related injury insurance. However, given that the Notice has just been promulgated and is mostly a broad policy guiding clause, the policy implementation and operation requirements are still unclear, and the details still need to be further clarified by relevant departments in the future.

2. **Department of Human Resources and Social Security of Jiangsu, Shanghai, Zhejiang and Anhui jointly announced the *Guidelines for Compliance of Labor Dispatch in the Yangtze River Delta***

Recently, Department of Human Resources and Social Security of Jiangsu, Shanghai, Zhejiang and Anhui jointly announced the *Guidelines for the Compliance of Labor Dispatch in the Yangtze River Delta* (the "**Guidelines**"). The Guidelines, based on the local practice of the Yangtze River Delta, propose to standardize the labor dispatch practices by centering on three dimensions: employers, labor dispatch companies and labor dispute resolution. The Guidelines aim to remind employers and labor dispatch companies of issues needed to be paid attention to during labor dispatch and potential legal risks. The Guidelines are the first policy guideline jointly formulated by the departments of human resources and social security in the Yangtze River Delta, which have great guiding significance for the employers in the area.



3. Guangzhou: the *Guangzhou Women's Development Plan (2021 - 2030)* released, aiming to Eliminate Gender Discrimination in Employment

Recently, the Guangzhou Municipal People's Government has released the *Development Plan for Women in Guangzhou (2021- 2030)* (the "**Development Plan**"). The Development Plan puts forward that it is imperative to comprehensively implement the laws, regulations and policies for eliminating gender discrimination in employment and create a gender equal employment mechanism and market environment. The relevant authorities shall conduct joint interviews with and impose punishments on the employers suspected of gender discrimination in the process of recruitment, employment, promotion, dismissal etc. Meanwhile, the Development Plan puts forward that it is necessary to strictly implement the relevant laws and regulations on protection of female employees' labor rights and interests, incorporate workplace sexual harassment into the scope of labor supervision, and guide employers to establish sexual harassment prevention and coping mechanisms. The Development Plan also proposes to promote qualified labor dispute arbitration institutions to establish arbitration courts for female employees' rights protection to mediate and settle labor disputes of female employees in accordance with the law. The Development Plan highlights Guangzhou's determination to eliminate gender discrimination in employment and prevent sexual harassment in the workplace.

Case Study

An employee who refused to be transferred by the Company was dismissed; Beijing No.1 Intermediate People's Court opined that the Company constitutes illegal termination of employment contract

Facts

Mr. Ge joined Koolearn Technology Holding Limited (the “**Company**”) in 2013 and signed the open-ended -term employment contract in 2020, which stipulated that Mr. Ge was a senior development engineer. In March 2021, Mr. Ge received an email from the Company specifying that his position shall be adjusted from senior development engineer in the technical center to technical support engineer in the product center. After the adjustment, the salary and the place of work would remain unchanged and the work tasks were similar. Mr. Ge refused and the parties failed to reach an agreement in meetings thereafter. The Parties agreed in the Employment Contract that the Company shall have the right to reasonably adjust Mr. Ge’s position based on its production and operation needs. In April 2021, the Company terminated Mr. Ge’s employment contract on the ground that he had refused to report for his new position despite repeated explanations, notification and reminders, which had seriously violated the relevant rules of the Company. Mr. Ge refused to accept the termination and initiated labor arbitration. Afterwards, the parties filed a lawsuit with the court.

Judge’s Viewpoint

The court of first instance opined that the employer and the employee agreed that the employee's work position could be adjusted according to the production and operation situation. However, the employer should prove that the production and operation situation has changed, and that the employee's work position is adjusted reasonably according to the production and operation needs. In this case, the Company did not provide evidence of changes in production and operation. Mr. Ge was adjusted from "senior development engineer" to "technical support engineer", which would obviously have some impact on his career development. The Company lacked justifiable reasons for Mr. Ge's job adjustment, and Mr. Ge had the right to refuse. Accordingly, the court of first instance ruled that the Company should pay CNY382,500 in compensation to Mr. Ge for the illegal termination. The court of second instance opined that the Company failed to prove that its production and operation had changed and that the relevant job adjustment was reasonable. Moreover, the new position would obviously have a negative impact on Mr. Ge's career development, Mr. Ge's working hours used to be from 9:00 a.m. to 6:00 p.m., but was then changed to three shifts of morning, midday and evening, which was also a change in labor conditions unfavorable to employees. The court of second instance upheld the original decision.

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:

- Llinks Law Offices were awarded Best Law Firm for Client Service of Chambers China Awards 2020
- Llinks Law Offices were awarded Labor & Employment Firm of the Year of China Law & Practice Awards 2021
- Llinks Law Offices were awarded Most Innovative Firm of the Year of China Law & Practice Awards 2021
- In 2022, 2021, 2020 and 2019, Patrick Gu was consecutively recommended as the top-tier labor lawyer by LEGALBAND
- In 2020 and 2019, Patrick Gu was consecutively recommended as the leading labor lawyer by China Law & Practice

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