Review and Outlook
Llinks Labor & Employment Law Alert
for 2022

Shanghai · Beijing · Shenzhen · Hong Kong · London

LLINKS Law Offices
通力律师事务所

The countdown to the New Year has begun, and we are about to enter 2023. Looking back on 2022, it has been a challenging and extraordinary year for each of us. This year's hot spots in the field of labor and employment mainly focus on the protection of employees' personal information, flexible employment, equal employment, protection of the rights and interests of female employees, etc. In addition, due to the long-term impact of the COVID-19 epidemic, employers have encountered great challenges in human capital management and labor law compliance. The compliance team of Llinks Law Offices shares our thoughts on such important legislations in 2022 and also foresees the trends in the coming year.

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Review of 2022

➲ The Impact of the *Personal Information Protection Law* on Employment

The *Personal Information Protection Law*, which is the milestone legislation in the area of privacy and protection of personal information. It is also a critical challenge and big concern for employers operating in China. How to legally collect, store, use and protect the personal information of employees, and which is the most appropriate way to obtain employees' consent? Those are the questions being asked most often. The employers need to build and improve internal management systems and operating procedures, obtain consent from employees, reasonably determine operational access, and conduct regular training on the protection of employees' personal information, so as to fulfill their obligations to process employees' personal information in compliance and protect employees' legal rights and interests.

➲ Launch of the Implementation of the Individual Pension System

Five departments including the Ministry of Human Resources and Social Security and the Ministry of Finance jointly released the *Measures for the Implementation of Individual Pension* (the "**Measures**"), which provide detailed provisions on the participation procedures, fund account management, supervision and administration and other contents for individual pension. The Measures clarify that individual pension shall be subject to individual accounts, the contribution shall be borne by the participants themselves, and the cap of annual contribution is CNY12,000. Participants who contribute to individual pension shall establish individual pension accounts, which is under the closed-type operation. And the participants may receive the individual pension if they reach the age eligible for receiving the basic pension insurance, completely lose capacity to labor, settle abroad or under other circumstances.

➲ Regulatory Regulations Put Forward New Requirements for the Employment Management of Financial Enterprises

The *Measures for the Supervision and Administration of Directors, Supervisors, Senior Executives and Practitioners of Securities or Fund Operators*, *Guidelines for Securities Companies to Establish a Stable Remuneration System*, *Guidelines for the Performance Appraisal and Remuneration Management of Fund Management Companies*, *Measures for Supervision and Administration of Publicly Offered Securities Investment Fund Managers* and its implementation provisions, which have come into effect this year, have put forward a series of regulatory requirements for securities fund operators, among which at the level of labor management, the main issues are employee's quiet period system, the salary deferral payment system, the bonus claw-back system and the bonus co-investment system.

- **Strengthen the Requirements for Equal Employment, Maternity Treatment, Prevention of Sexual Harassment in the Workplace for Female Employees**

The *Law of the People's Republic of China on the Protection of Rights and Interests of Women* (the "**LPWRI**") will come into force as of January 1, 2023. With respect to labor and employment area, the LPWRI clarifies the specific circumstances of gender discrimination in employment and incorporates such discrimination into the scope of labor and social security supervision. The LPWRI makes it clear that labor contracts or service agreements shall include clauses on the protection of female employees' rights; the LPWRI improves the systems and mechanisms for the prevention and resolution of sexual harassment and establishes the public interest litigation and prosecution supporting systems to protect women's rights and interests.

- **Crack-down and Punishment of Social Insurance Fraud**

The *Measures for the Administrative Supervision of Social Insurance Funds (2022)* issued by the Ministry of Human Resources and Social Security stimulate that whoever fraudulently pays social insurance contributions, makes supplementary payments in violation of regulations and obtains social insurance benefits by fabricating personal information, labor relations, providing false supporting materials, etc., shall be dealt with in accordance with the *Social Insurance Law of the People's Republic of China*, and the social insurance administrative department shall order the return of the fraudulently obtained social insurance benefits and impose a fine of not less than two times but not more than five times the amount fraudulently obtained. And the Ministry of Human Resources and Social Security encourages people to report such illegal matters. Many local authorities have also issued policies and adopted special governance actions to crack down on fictitious labor relations and paying social insurance on behalf of others.

- **Safeguard the Labor Security Rights and Interests of Workers in New Employment Forms**

In recent years, the platform economy has developed rapidly, and the number of workers in new forms of employment relying on the Internet platform has increased significantly. It is emphasized at the national level, as well as at the regional level such as Beijing and Shanghai, that the government would support the development of new forms of employment and improve the relevant protective measures, and conduct the pilot program of occupational injury insurance for the new business forms.

Outlook for 2023

➲ Directors' Liability in the Draft Revisions to the *PRC Company Law*

The 38th Session of the Standing Committee of the 13th National People's Congress was held in Beijing from December 27 to 30, 2022. From the perspective of HR management, in the proposed amendments to the Second Deliberation Draft of the Revised Draft of the *Company Law* submitted to this Standing Committee meeting, it should be noted that the provisions on directors' responsibility are improved. It is clarified that if a director or senior management causes damage to others due to intent or gross negligence in the performance of his or her duties, in addition to the company, the director and senior management shall also bear the liability for compensation. Companies can purchase liability insurance for directors and officers.

➲ Strengthen the Protection of Trade Secrets and Carry out Protection Measures

With the continuous strengthening of trade secret protection by employers and the gradual improvement of the legal system related to trade secret protection, the crackdown on the illegal disclosure of trade secrets by employees to the new employer has also gradually increased. Most employers require key employees who have access to confidential information to sign confidentiality agreements and fulfill post-employment non-compete obligations. The *Anti-Unfair Competition Law* was revised again, the special rules on proof in trade secret infringement litigation are particularly beneficial to owners of the trade secrets. In the future, employers shall pay more attention on how to reasonably and effectively protect trade secrets, legally and reasonably restrain employees' behaviors during and after employment, and file lawsuits for infringement of trade secrets to protect their rights.

➲ Organization Restructuring and Personnel Optimization in the Post-Epidemic Era

Due to the long-term impact of the COVID-19 epidemic, the global economy is facing multiple challenges and market competition is becoming increasingly fierce, and many companies may integrate their business, reduce staffing and some position to better fit the market. In 2023, how to properly and legally handle labor relations has also become a concern for enterprises. Some employers may be involved in labor law issues related to redundancy, such as mutual termination, economic layoffs, etc.

➲ Compliance Requirements for New Forms of Employment

On December 26, 2022, the Supreme People's Court issued the *Opinions on Providing Judicial Services and Safeguards for Stable Employment*, requiring that the protection of the rights and interests of workers in flexible employment and new forms of employment should be strengthened, that the development of new employment forms should be supported and standardized, and that the responsibility of platform enterprises should be reasonably determined; promoting enterprises to guide and support workers in new forms of employment who do not fully conform to the circumstances of establishing labor relations to participate in corresponding social insurances according to their own conditions.

It is foreseeable that disputes related to new employment forms will further increase next year, and employers should contribute insurances as soon as possible for relevant personnel who can participate in the work-related injury insurance and commercial insurance to avoid relevant liability and reduce labor costs.

- **Social Responsibility Under ESG**

ESG focuses on the non-financial performance of enterprises in the fields of sustainable development and social responsibility from the perspectives of environmental, social and governance, which is highly consistent with China's requirements for promoting comprehensive green transformation of economy and society. Chinese enterprises must attach great importance to this, further improve their capabilities in social responsibility and labor compliance on the road of ESG compliance, so as to cope with the complex challenges in international market competition, and continue to build systems and implement supporting measures around important issues such as anti-forced labor, equal employment and anti-discrimination, occupational health and safety, and protection of employees' personal information and privacy.

- **Compliance Challenges When Chinese Companies Go Abroad**

Looking forward to 2023, China will re-open its door to the world. And cross-border secondment, foreign trade, overseas investment, construction of overseas production bases and R&D centers are all expected to restart, and foreign labor management will also show new trends and face new challenges in 2023. Cross-border employment and operation focus on matters such as: overseas remuneration arrangements for expatriate employees, employment safety, prohibition of cross-border commercial corruption, compliance with local employment arrangements, equal employment, and the cross-border transfer of employees' personal information, and unionization, etc. In addition to meeting mandatory labor requirements in host countries, multinational companies also need to consider whether to adopt consistent global human resource management policies. Therefore, it is very important to establish compliance systems, design HR management structures, and carry out cultural integration under the guidance of professional lawyers in the development of overseas business and employment.

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 Labor & Employment PRC Firms in China and Patrick Gu was recommended as the leading lawyer 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 Labor & Employment 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
- In 2020 and 2019, Patrick Gu was consecutively recommended as the leading labor lawyer by China Law & Practice
- In 2022, 2021, 2020 and 2019, Patrick Gu was consecutively recommended as the top-tier labor lawyer by LEGALBAND

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