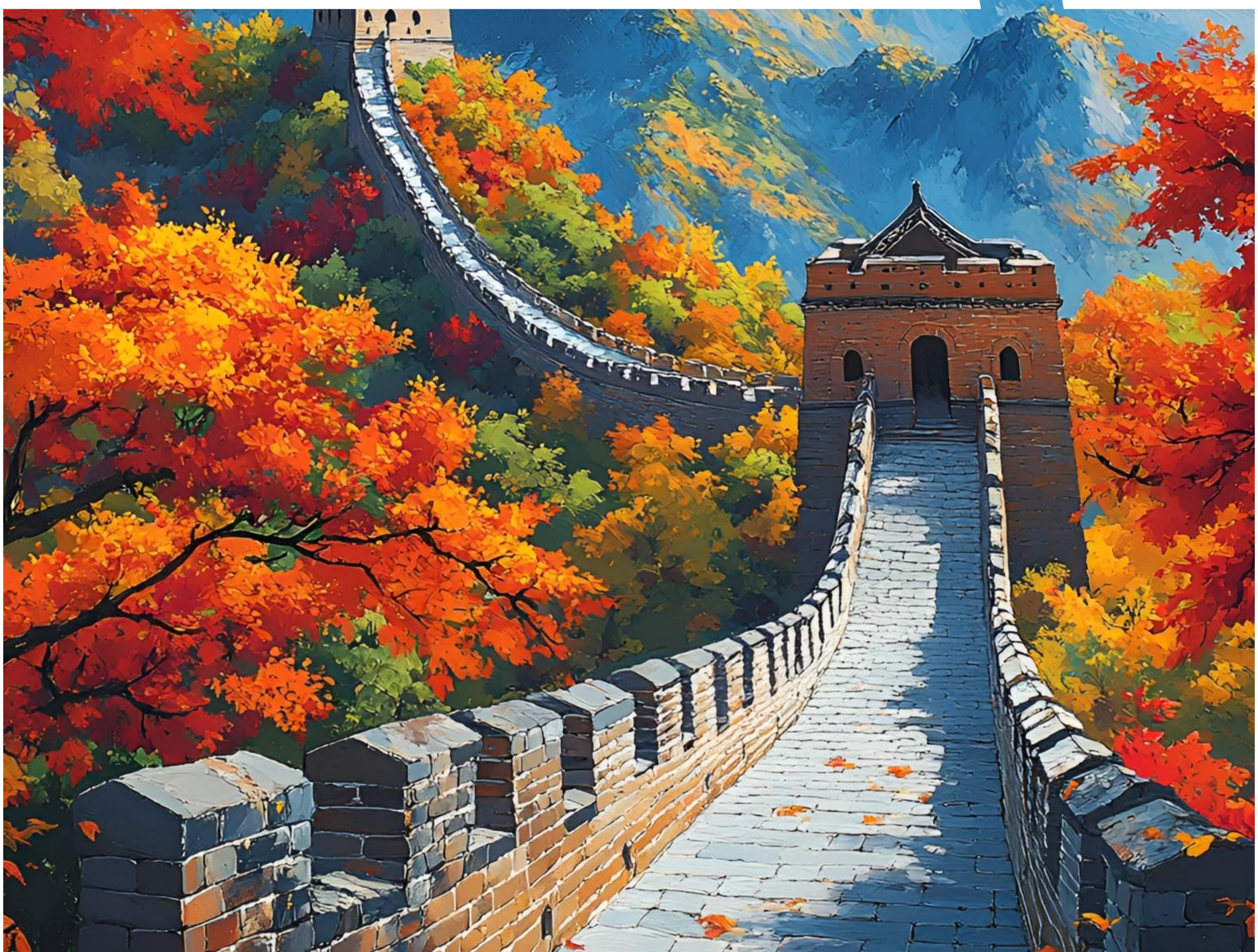
Llinks Legal Alert – Labor & Employment Law

September 2024



Shanghai · Beijing · Shenzhen · Hong Kong · London

LLINKS Law Offices
通力律师事务所

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Spotlight on News

1. Gradual retirement reform officially launched, introducing a "Flexible" retirement mechanism and increase in the minimum social insurance contribution period

On September 13, 2024, the 11th session of the Standing Committee of the 14th National People's Congress officially passed and issued the *Decision on the Implementation of the Gradual Delay of the Statutory Retirement Age* (hereinafter referred to as the "**Decision**"). The Decision will come into effect on January 1, 2025 and outlines a gradual extension of the statutory retirement age to 63 years for male employees, and to either 55 or 58 years for female employees, depending on applicable regulations.

In conjunction with the Decision, the State Council issued the *Measures on the Gradual Delay of the Statutory Retirement Age* (the "**Measures**") on the same day. The Measures stipulated that, effective from January 1, 2025, the retirement age for male employees and for female employees currently subject to a retirement age of 55 will be delayed by one month every four months until reaching 63 and 58 years, respectively. For female employees whose current statutory retirement age is 50, their retirement age will be delayed by one month every two months until they reach 55 years old. Additionally, beginning January 1, 2030, the minimum social insurance contribution period required for receiving basic pension benefits will gradually increase from 15 years to 20 years, with an annual increase of six months. Employees who meet the minimum contribution period requirements may opt for flexible early retirement, allowing them to retire up to three years earlier than the post-delay statutory retirement age, but no earlier than the pre-delay statutory retirement age. Additionally, for employees who reach the post-delay statutory retirement age, they may also delay retirement for up to three years upon agreement with their employers.

For more information, please refer to article *Understanding and Practical Guidance on the New Rules for Delayed Retirement in China* authored by Llinks Law Offices's Labor and Compliance Team.

Legislation Updates

1. Zhejiang: *Notice on the Issuance of the Guidelines for the Management of Labor Dispatch in Zhejiang Province*

On August 23, 2024, the Zhejiang Provincial Human Resources and Social Security Department released the *Notice on the Issuance of the Guidelines for the Management of Labor Dispatch in Zhejiang Province* ("**Guidelines**"), which took effect immediately.

The Guidelines stipulate that that labor dispatch companies must have a registered capital of no less than RMB 2 million. Authorities will conduct random inspections to verify compliance with this capital requirement, as well as the qualifications and operational standards of the labor dispatch companies. Labor dispatch companies are also mandated to enroll dispatched workers in social insurance at the location of the hiring company and to make contributions according to local regulations. Should a labor dispatch company fail to register dispatched workers for social insurance or pay the required premiums, resulting in damages to workers, it will be legally obligated to compensate for those damages. Additionally, the Guidelines require labor dispatch companies to submit an annual business report; late or false submissions may result in penalties.

2. Singapore passed the *Platform Workers Bill*, mandating online platforms to contribute to the Central Provident Fund and pay work-related injury insurance to protect workers' right

On September 10, 2024, the Parliament of Singapore officially passed the *Platform Workers Bill* ("**Bill**"), which will come into effect on January 1, 2025. According to the Bill, Platform Workers are defined as individuals managed and controlled by online platforms providing ride-hailing or delivery services. According to the Ministry of Manpower of Singapore, there were 70,500 Platform Workers in Singapore as of 2023, comprising 22,200 taxi drivers, 33,600 private hire car drivers, and 14,700 delivery workers.

The Bill mandates that online platforms contribute to the Central Provident Fund ("**CPF**") for Platform Workers born on or after January 1, 1995, ensuring they receive work-related injury insurance comparable to regular employees. Additionally, the Bill establishes the Platform Work Associations, a representative organization aimed at safeguarding Platform Workers' rights and facilitating collective bargaining with employers.

This legislation enhances protections for over 70,000 Platform Workers in Singapore and may serve as a valuable reference for other countries.

Case Study

1. Shanghai: securities company received warning letters from the CSRC for failing to fulfill supervisory duties, justifying the company's clawback of bonuses already paid to the employee

- **Facts**

Employee Ge joined a securities company in 2011 as a manager in Business Department. In response to regulatory demands for risk accountability and remuneration compliance, the company implemented the *Reporting, Handling, and Accountability Measures for Compliance Risks* (**"Measures"**). Article 16 of the Measures permits economic penalties for employees, including clawback of bonuses.

During her tenure, Employee Ge led both an IPO project (Project A) and an asset restructuring project (Project B). Due to compliance violations in Project B involving misappropriated funds, the company received a warning letter from the CSRC. Additionally, a subsequent warning letter from the CSRC was also issued for Project A due to non-compliance with project approval procedures.

On June 2, 2021, the company decided to deduct a total of RMB 147,300 from Employee Ge's performance bonuses due to compliance issues related to Project B, taking this amount from the bonuses she earned from other projects. Employee Ge challenged this decision through labor arbitration and subsequent litigation.

- **Judge's Viewpoint**

The Shanghai No.1 Intermediate People's Court ruled that the deduction of bonuses was justified, as the compliance issues fell under Employee Ge's responsibilities. Given that she had already received over RMB 2.6 million in bonuses for the project, the deduction was deemed reasonable. Furthermore, since the company's Measures clearly stipulated in Article 16 that deducted bonus include both project bonuses directly related to compliance risks or violations, as well as various other bonuses not directly tied to the project incurring such risks or violations, the securities company's decision to deduct Project B's bonus from other unrelated projects was deemed lawful. Consequently, the court determined that the securities company was not obligated to pay back the clawed-back bonus to Employee Ge.

2. Shenzhen: The employer cannot shift business risk to employees through bet-on agreement, and the provisions stipulating that employees cannot recover betting stake when they resign are invalid

- **Facts**

Employee Duan worked as a graphic designer for a company starting August 7, 2018. On March 5, 2019, he signed a Bet-on Agreement, investing RMB 7,000 as a stake, with a conditional return based on the company's performance. The agreement stipulated that if he resigned, he would forfeit his stake.

After resigning, Duan sought the return of his RMB 7,000 stake, which the company refused. He subsequently pursued labor arbitration and filed a lawsuit for the return of the funds.

- **Judge's Viewpoint**

The Shenzhen Nanshan District People's Court found the bet-on agreement to be problematic, as it effectively shifted business risks onto the employee, undermining his legitimate rights and interests. Additionally, the provision regarding forfeiture of the betting stake upon resignation was seen as a restriction of the employee's right to resign and has increased the cost of doing so. According to Article 9 of the *Labor Law of the People's Republic of China*, an employer cannot impose financial guarantees or collect property from employees. Thus, the court ruled that the company must return the RMB 7,000 stake to Employee Duan.

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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