

PRC: SUPREME PEOPLE'S COURT GUIDING EMPLOYMENT CASES

中国：最高人民法院指导性劳动案例

On 6 July 2022, the Supreme People's Court published the 32nd batch of seven guiding cases on its website and WeChat blog, mainly on the protection of employees' legitimate rights and interests, for reference by people's courts at all levels when trying similar cases. This update summarises these guiding cases.

2022 年 7 月 6 日，最高人民法院在其网站和微信公众号公布了第 32 批 7 个指导性案例，主要涉及员工合法权益的保护，供各级人民法院审理类似案件时参考。本次更新简述了这些指导性案例的核心要点。

Existence of an employment relationship

劳动关系的确认

Guiding Case No. 179, Nie Meilan v. Beijing Lin's Brothers Culture Co., Ltd., clarifies that where an organisation and an individual enter into an agreement labelled "cooperative business", so long as the substance of the rights and obligations of each party in the agreement and the actual performance of the agreement reflect an employment relationship, the people's court will find that the parties are in an employment relationship. The people's court will consider the content of the contract signed between the parties, and the rights and obligations reflected in the actual performance of the contract as material factors in assessing whether an employment relationship exists. The overarching aim is to better protect employees' legal rights and interests.

指导案例 179 号《聂美兰诉北京林氏兄弟文化有限公司确认劳动关系案》明确了单位与个人签订 "合作经营" 协议的，只要协议中各方权利义务的内容和协议的实际履行情况反映出存在劳动关系，人民法院就会认定双方存在劳动关系。人民法院将当事人之间签订的合同内容以及合同实际履行情况所反映的权利义务作为评价是否存在劳动关系的重要因素。首要目的是为了更好地保护员工的合法权益。

Legality of unilateral termination of employment

单方面解除劳动合同的合法性

Guiding Case No. 180, Sun Xianfeng v. Huai'an West Human Resources Development Co., Ltd., clarifies that in assessing the legality of an employer's unilateral termination of an employment contract, the court will consider reasons set out in the notice of termination issued by the employer to the employee upon termination. Any new, additional reason given by the employer in the course of the trial that is not contained in the notice of termination will be disregarded.

指导案例 180 号《孙贤锋诉淮安西区人力资源开发有限公司劳动合同纠纷案》，明确了在评估用人单位单方面终止劳动合同的合法性时，法院将考虑用人单位在解除劳动合同时向员工发出的解除函中列出的理由。用人单位在审判过程中提出的任何未包含在解除通知中的新的、额外的理由都将不被考虑。

Sexual harassment

性骚扰

Guiding Case No. 181, Zheng v. Honeywell Automation Control (China) Co., Ltd., clarifies that where a manager fails to take reasonable measures in response to a complaint by an employee who has been sexually harassed, or if there are circumstances suggesting that the manager condones sexual harassment or interferes with the investigation of sexual harassment, the employer may terminate the employment contract with the manager on the grounds that the manager has failed to perform its obligations and seriously violates the rules and regulations. If the manager claims that the termination of the employment contract is illegal, the people's court will not support it. This case signals to employers that they need to build a reasonable mechanism to prevent and deal with sexual harassment following the passing of the Civil Code, and to raise awareness in relation to the prevention of sexual harassment in the workplace.

指导案例 181 号《郑某诉霍尼韦尔自动化控制（中国）有限公司劳动合同纠纷案》，明确了用人单位的管理层（经理）对受到性骚扰的员工的投诉未采取合理措施，或者有纵容性骚扰、干扰性骚扰调查的情形，用人单位以该经理不履行义务、严重违反规章制度为由解除劳动合同。如果该经理主张解除劳动合同违法，人民法院将不予支持。本案向用人单位发出信号，在《民法典》通过后，要建立合理的性骚扰预防和处理机制，提高预防工作场所性骚扰的相关意识。

Bonus clauses

奖金条款

Guiding Case No. 182, Peng Yuxiang v. Nanjing City Construction Development (Group) Co., Ltd. clarifies that where an employer stipulates that an employee may receive a bonus upon the satisfaction of certain performance criteria but refuses to pay out the bonus without any justifiable reason when the employee satisfies the criteria, the people's court will order the employer to pay out the bonus.

指导案例 182 号《彭宇翔诉南京市城市建设开发（集团）有限责任公司追索劳动报酬纠纷案》，明确了用人单位规定员工达到一定的业绩标准可以获得奖金，但在员工达到标准时无正当理由拒不支付奖金的，人民法院将判决用人单位支付奖金。

Guiding Case No. 183, Fang Yue v. China United States Metropolitan Life Insurance Co. clarifies that where the terms and conditions of a year-end bonus scheme stipulate that the bonus is not payable to an employee who leaves their employment before the date the bonus is paid and an employee is disqualified from receiving that bonus solely because their employment is terminated prior to the relevant date but the termination is not due to their fault or resignation, the people's court will support the employee's claim for the employer to pay the bonus. This case is of guidance to the people's courts in adjudicating labour disputes involving year-end bonuses, preventing employers from infringing on the legitimate rights and interests of workers in the name of rules and regulations.

指导案例 183 号《房玥诉中美联泰大都会人寿保险有限公司劳动合同纠纷案》，明确了虽然用人单位的规章制度规定年终奖发放前离职的员工不能享有年终奖，但是劳动合同的解除非因员工单方过失或主动辞职所致，且员工符合年终奖发放标准时，员工主张用人单位支付年终奖的，人民法院应当予以支持。本案例对人民法院审理涉年终奖的劳动争议案件具有指导意义，防止用人单位借规章制度之名侵害员工的合法权益。

Exclusion of liability

排除责任

Guiding Case No. 184, Ma Xiaonan v. Beijing Sohu New Power Information Technology Co. provides that a clause purporting to exempt an employer from all legal liabilities and to exclude employees' rights is invalid.

指导案例 184 号《马筱楠诉北京搜狐新动力信息技术有限公司竞业限制纠纷案》，旨在明确免除用人单位所有法律责任和排除员工权利的条款是无效的。

Employment discrimination

就业歧视 Guiding Case No. 185, Yan Jialin v. Zhejiang Sheraton Resort Co., Ltd., clarifies that where an employer treats a candidate differently at the recruitment stage without any justifiable reason based on factors such as geography and gender that are not necessarily related to the inherent requirements of the job, such act amounts to employment discrimination and the employer will be held liable. This case provides useful guidance to people's courts in assessing discrimination in disputes over equal employment opportunity, and in accurately balancing the relationship between an employer's employment autonomy and an employee's equal employment rights.

指导案例 185 号《闫佳琳诉浙江喜来登度假村有限公司平等就业权纠纷案》，明确了用人单位在招聘阶段基于地域、性别等与工作内在要求无必然联系的因素而对应聘者实行差别待遇的，该行为构成就业歧视，用人单位将承担法律责任。本案为人民法院评估平等就业机会纠纷中的歧视行为，准确平衡用人单位的就业自主权和员工的平等就业权之间的关系提供了有益的指导。

Key takeaways

核心要点

Although people's courts are not bound by previous decisions, the guiding cases are useful for employers as they carry persuasive authority in treatment of similar cases in the future and may form a nation-wide unified view on such cases, notwithstanding the varying practice across different provinces, cities and regions in the PRC on employment law.

尽管人民法院不受以往判决的约束，但这些指导性案例对用人单位来说是有参考意义的，因为它们在未来处理类似案件时具有参考价值，并可能在全国范围内形成对此类案件的统一看法，尽管中国不同省市和地区在劳动法方面的实践操作不尽相同。