Hogan Lovells

The Ministry of Human Resources and Social Security and the Supreme People's Court Jointly issue the First Batch of Typical Cases of Labor and Personnel Disputes

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China's regulator in charge of employment issues, the Ministry of Human Resources and Social Security, and the Supreme People's Court of China jointly published the *Typical Cases of Labour and Personnel Disputes (First Batch)* on July 10, 2020 ("**First Batch of Typical Cases**"), aiming to unify trial standards nationwide. The First Batch of Typical Cases consists of 15 cases in total, the topics of which cover various controversial issues in practice, including disputes in relation to the outbreak of COVID-19, remuneration, non-competition, open-term, change of working place and position, and flexible working hours system, etc.

This note summarizes several of the main takeaways from the First Batch of Typical Cases.

1. Disputes in relation to the Outbreak of COVID-19

It has been clarified in the first case that force majeure was not introduced into the *Employment Contract Law of the People's Public of China* ("**Employment Contract Law**"), as the employee-employer subordination relationship is different from equal civil relationship. In accordance with the *Opinion on the Proper Handling of Issues Related to Labour Relations under Pandemic Conditions* on May 20, 2020, the outbreak of COVID-19 cannot be deemed as a force majeure event in the context of employment. If an employment contract cannot be performed by the employee due to the outbreak of COVID-19, the company cannot unilaterally decide to suspend the employment contract; instead, the parties may negotiate to modify the employment contract through mutual consent.

In the case that a company is delayed in resuming operation or employees are unable to return to work due to emergency measures other than mandatory isolation and quarantine taken by the authorities, such as suspension of work or lockdown, the company should adopt different approaches in handling different situations. For instance, for an employee who is not under mandatory quarantine required by law but is self-isolated as required by the local property management company or other similar organizations, and cannot provide ordinary services to the company for more than one wage payment period, the company may pay local living

expenses only (rather than ordinary monthly salary) after first consulting with him/her. No consent is required from the employee on the payment of living expenses. It has also been clarified in the fourth case that "one wage payment period" refers to a calendar month, which should be calculated from the first day of suspension of operation due to the outbreak of COVID-19.

The fifth case indicates that the company can partially suspend its operation due to COVID-19 and reduce the wages of the employee who's working for the suspended production line or division/department.

In addition, it has also been clarified in the sixth case that the company is entitled to arrange for the employee to take annual leave based on specific production and work situation during COVID-19, by taking into consideration the intentions of employees in accordance with the *Regulations on Paid Annual Leave for Employees* and the *Opinion on the Proper Handling of Issues Related to Labour Relations under Pandemic Conditions*, while the employee's consent is not necessary.

2. Remuneration-related Dispute

The ninth case clarifies that the training expenses are different from the monthly wages paid by the company to the employee during the training period. In case the employee breaks the term of service and is liable for liquidated damages, the liquidated damages should be a pro-rata portion of the training expenses over the remaining service term. For calculation purposes, training expenses include training fees, travel fees and other direct expenses paid by the company, but excluding the monthly wages during the training period.

3. Disputes in relation to the Terms of Employment Contract

3.1 Employee provides false information

The tenth case makes the obligation for the "*employee to truthfully provide information*" clear, as stipulated in the Employment Contract Law limits to the information that is directly related to the conclusion of employment contract, such as technical skills, educational background, diploma, qualification, work experiences, etc. and the company has no right to request for other private personal information, such as marital information and whether the employee has children. The company is entitled to unilaterally terminate the employment contract if the employee fails to provide truthful information that is directly related to the employment contract as discussed above.

3.2 Employee's request for double wages for the employment contract which is deemed to have "open-term"

The eleventh case clarifies that in cases in which an employment contract has been deemed as "open-term" due to the company's failure to conclude a written employment contract within one year in accordance with Article 14 of the Employment Contract Law, the company is not obliged to pay double wages for not concluding written contract. The double wages obligation only applies if the company fails to conclude a written employment contract from the second months to the twelfth months after the employee's start of service. This understanding is in line with some local judicial practices, such as in Beijing and Guangdong.

3.3 Company's failure to pay non-competition compensation for 3 months

In the spirit of Article 8 of the Interpretations of the *Supreme People's Court on Certain Issues concerning the Application of Law in the Trial of Labor Dispute Cases (IV)*, the twelfth case readdressed that in case where the company fails to make non-competition compensation to the employee who is under non-competition obligations for more than 3 months, the employee will no longer be bound by the non-competition restrictions and the non-competition agreement will therefore be deemed as being terminated.

3.4 Company's right to change the position and working place

It is controversial in practice whether the company has the discretion to change the working place and position of an employee without his/her consent. The fourteenth case indicates that following factors should be taken into consideration when deciding whether the unilateral adjustment made by the company is reasonable:

(a) whether the adjustment is based on the production and operation needs of the company;

(b) whether the adjustment is a significant change to the employment contract;

(c) whether the adjustment constitutes discrimination or stigmatization against the employee;

(d) whether the adjustments will impose major impact on remuneration and other working conditions;

(e) whether the employee is qualified for the new position; and

(f) whether the company provides necessary assistance or compensation for the inconveniences caused by the change of working place.

Although it is the company's right to make adjustments to employees' working location and position as far as they are reasonable, it is suggested weighing above factors and seeking legal advice on whether any unilateral adjustment can be justified.

Conclusion

The release of the First Batch of Typical Cases has addressed many concerns in the implementation of the laws in labour and personnel disputes, and is expected to help solve certain inconsistent interpretations in local practices. Right after the release of the First Batch of Typical Cases, the Supreme People's Court issued the *Guiding Opinions of the Supreme People's Court on Unifying the Application of Laws and Strengthening Similar Case Retrieval (for Trial Implementation)* ("**Guiding Opinions**") on July 27, 2020 ("**Guiding Opinions**"), which may strengthen the role of the First Batch of Typical Cases in guiding the handling of labor and personnel disputes. Nevertheless, as the judicial practice for labor disputes may still vary in different cities, each labor case is worth a case-by-case analysis.

Contacts

Sherry Gong
Partner, Beijing
T +86 10 6582 9516
sherry.gong@hoganlovells.com

Liang Xu
Partner, Beijing
T +86 10 6582 9577
liang.xu@hoganlovells.com