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海问律师事务所 HAIWEN & PARTNERS

北京市海问律师事务所

地址：北京市朝阳区东三环中路5号财富金融中心20层（邮编 100020）
Address: 20/F, Fortune Financial Center, 5 Dong San Huan Central Road, Chaoyang District, Beijing 100020, China
电话(Tel): (+86 10) 8560 6888 传真(Fax): (+86 10) 8560 6999 www.haiwen-law.com
北京 BEIJING | 上海 SHANGHAI | 深圳 SHENZHEN | 香港 HONG KONG | 成都 CHENGDU

一、部门规章：《网络招聘服务管理规定》及地方化规定施行

Regulation: Regulations on Administration of Online Recruitment Services and Its Accompanying Local Rules Took Effect

为了规范人力资源市场活动，国务院于 2018 年 7 月发布《人力资源市场暂行条例》。随着网络招聘的广泛化，人力资源和社会保障部于 2021 年 3 月 1 日发布了《网络招聘服务管理规定》（人力资源和社会保障部令第 44 号）（“《规定》”），该规定于发布当日开始生效。《规定》作为我国网络招聘服务领域第一部部门规章，对网络招聘服务的活动准入，人力资源服务机构、用人单位和劳动者的义务，服务规范，法律责任等方面的问题作了规定。

In order to regulate human resources market activities, the State Council issued the Provisional Regulations on Human Resources Market in July 2018. With the popularization of online recruitment, the Ministry of Human Resources and Social Security issued the Regulations on Administration of Online Recruitment Services (人力资源和社会保障部令第 44 号) on March 1, 2021 (the “**Regulation**”), which came into effect on the same day. The Regulation, as the first departmental regulation regulating online recruitment services in China, provides stipulations regarding the market access of online recruitment services, the obligations of human resources service institutions, employers and individuals, specification of service offered, legal liabilities and other relevant issues.

《规定》中明确的义务主要针对人力资源服务机构。人力资源服务机构应当取得合格、有效的人力资源服务许可证并进行公示；在网络招聘进行过程中，应当完善网络招聘信息管理；不得向劳动者收取押金，明示其服务项目、收费标准等事项。《规定》还强调了服务机构应履行网络安全和个人信息保护义务，保护相关招聘信息的完整性、保密性、可用性等。

The Regulation mainly sets out obligations of human resources service institutions which are required to (a) obtain a qualified and valid human resources service permit and present it to the public; (b) improve information management in the course of online recruitment; (c) not charge deposits from individuals, and make clear the service items, fee rates and other matters in respect of online recruitment. The Regulation also emphasizes that service institutions shall observe their legal obligation relating to the network security and personal information protection, and safeguard the integrity, confidentiality and availability of relevant recruitment information.

根据《规定》的要求，用人单位主要的义务为提供合法、真实的网络招聘信息，不得含有民族、种族、性别、宗教信仰等方面的歧视性内容，不得违反国家规定在户籍、地域、身份等方面设置限制人力资源流动的条件。而劳动者的主要义务则为如实提供本人基本信息以及与应聘岗位相关的知识、技能、工作经历等情况。

In accordance with the Regulation, the main obligation of employers is to ensure that the recruitment information provided by them is legitimate and authentic, and contains no

discriminatory content in respect of ethnicity, race, gender and religious belief, nor set any unlawful recruitment conditions in terms of household registration, region or identity which may restrict the flow of human resources. The main obligation of individuals is to truthfully provide their personal information and information about their knowledge, skills and experiences required by the position.

在《规定》生效之后，北京市人力资源和社会保障局于 2021 年 3 月 29 日发布了《关于进一步加强网络招聘服务管理的通知》（京人社市场字〔2021〕12 号），基于《规定》做了进一步细化。

After the Regulation came into effect, the Beijing Municipal Human Resources and Social Security Bureau issued the Notice on Further Strengthening the Management of Online Recruitment Services (京人社市场字〔2021〕12 号) on March 29, 2021, which provides detailed provisions to support the implementation of the Regulation locally.

二、部门规章：金融控股公司董事、监事、高级管理人员任职备案管理暂行规定出台 **Regulation: Interim Regulations on Administration of Registration and Record of Directors, Supervisors and Senior Managers of Financial Holding Companies Promulgated**

2021 年 3 月 31 日，中国人民银行发布了《金融控股公司董事、监事、高级管理人员任职备案管理暂行规定》（中国人民银行令〔2021〕第 2 号）（“《暂行规定》”），明确了金融控股公司的董监高的任职条件，规定了就董监高任职情况向人民银行进行备案的细则。

On March 31, 2021, the People's Bank of China promulgated the Interim Regulations on Administration of Registration and Record of Directors, Supervisors and Senior Managers of Financial Holding Companies (中国人民银行令〔2021〕第 2 号) (the “**Interim Regulations**”), clarifying the qualifications of directors, supervisors and senior managers of Financial Holding Companies and providing detailed rules for the record filling with the People's Bank of China.

金融控股公司是指控股或实际控制两个或两个以上不同类型金融机构，自身仅开展股权投资管理、不直接从事商业性经营活动的公司。《暂行规定》中确定的“高级管理人员”为对金融控股公司经营管理、风险控制具有决策权或者重大影响的人员，范围与《公司法》的规定稍有不同。《暂行规定》详细规定了金融控股公司董监高的任职条件、任职经历、资质要求。

"Financial holding company" (“**FHC**”) refers to a company which has a controlling stake in or actually controls two or more financial institutions of different types, solely engages in equity investment management, and does not directly engage in commercial business operations. The "senior managers" defined in the Interim Provisions are those who have decision-making power or significant influence on the operation, management and risk

control of FHC, and the scope of which is slightly different from that under the PRC Corporate Law. The Interim Provisions specifies in detail the qualifications, experiences, eligibility criteria for directors, supervisors and senior managers of FHC.

在此之前，需要对董监高进行备案监管的为证券公司、期货公司等金融机构，《暂行规定》出台后，董监高任职备案的范围扩大到金融控股公司。

Previously, the reporting obligation regarding directors, supervisors and senior managers mainly applies to securities companies, futures companies and other financial institutions. After the promulgation of the Interim Provisions, the reporting obligation has been extended to FHCs.

在《暂行规定》出台之前，中国人民银行于2020年9月相继发布《国务院关于实施金融控股公司准入管理的决定》（国发〔2020〕12号）和《金融控股公司监督管理试行办法》（中国人民银行令〔2020〕第4号），形成了对金融控股公司的配套监管制度。

Before the Interim Provisions, the People's Bank of China has already issued, in succession, the Decision of the State Council on Implementing Access Management of Financial Holding Companies (国发〔2020〕12号) and the Tentative Measures for Supervision and Administration of Financial Holding Companies (中国人民银行令〔2020〕第4号) in September, 2020, which have formed a supervision system on FHCs.

三、地方法规：深圳市发布首个地方性防治性骚扰行为指南

Local Rules: Shenzhen Released the First Local Sexual Harassment Prevention Guide

今年生效的《民法典》第1010条规定，企业应当采取合理的预防、受理投诉、调查处置等措施，防止和制止实施性骚扰。2021年1月15日，深圳市妇女联合会、深圳市公安局、深圳市人力资源和社会保障局、深圳市中级人民法院等九部门联合印发了《深圳市防治性骚扰行为指南》（深妇通〔2021〕1号）（“《指南》”），成为首个地方政府部门为落实《民法典》的原则性规则发布的防治性骚扰的指导性文件。

The newly effective Article 1010 of the Civil Code stipulates that enterprises should take reasonable measures (such as take the necessary precautions, accept complaints, and conduct investigation and ensure properly disposal of cases) to prevent and stop sexual harassment in workplace. On January 15, 2021, nine departments of Shenzhen including the Women's Federation, the Public Security Bureau, the Human Resources and Social Security Bureau and the Intermediate People's Court jointly issued the Shenzhen Sexual Harassment Prevention Guide (深妇通〔2021〕1号) (the “**Guide**”). It is the first guiding document on prevention of sexual harassment of its kind issued by a local government to echo the general requirement of the Civil Code.

《指南》分为七章，从概念、预防教育、咨询投诉处理、职能部门职责等方面，对性骚

扰作出具体且有操作性的规定。《指南》后附有《防治性骚扰制度（样本）》，用人单位在建立相关制度时可以作为参考。

The Guide consists of seven chapters, providing detailed and operational provisions in terms of concepts of sexual harassment, prevention and education, consultation and complaint handling, and responsibilities of functional departments. The Guide is accompanied by the Sexual Harassment Prevention and Control System (Sample), which can be used as a reference by employers when establishing relevant systems.

在《民法典》的基础上，《指南》进一步明确了“性骚扰”的定义、构成要件、表现形式和类型。为确定“性骚扰”的判断标准，《指南》规定了“性骚扰”是“具有性本质的内容”，“违背受害人主观意愿、不受欢迎的”且“对他人人格权的侵犯，给受害人造成了不良的心理感受或敌意、不友好的工作（学习）环境”的行为，并列举了言语、文字、图像、肢体行为等具体表现形式以及不构成性骚扰的情形。定义的细化为用人单位建立相关规章制度提供了重要参考，从而避免因性骚扰行为性质认定的差异导致的用工主体责任。On the basis of the Civil Code, the Guide further refined the definition, constitutive requirements, forms and types of sexual harassment. To clarify what constitutes the sexual harassment, the Guide stipulates that "sexual harassment" is a kind of behavior that "has the nature of sex", "is unwelcome and against the victim's subjective will", and "infringes the personality right of a person by causing bad psychological feeling or creating hostile and unfriendly work or study environment towards him or her". Further, the Guide stipulates that sexual harassment can come in the forms of speech, words, images, physical behaviors. Exceptions for sexual harassment are also listed for reference. The refinement of the definition provides an important reference for employers to introduce relevant rules and might also avoid the liability of employers resulted from the variation in the judgement of sexual harassment due to blurred definition.

除此之外，《指南》的规定中值得注意的内容主要包括：

In addition, the noteworthy provisions in the Guide mainly include:

1. 《指南》细化了《民法典》提出的建立预防性骚扰机制的要求，规定用人单位有责任设立防治性骚扰责任部门（如工会、人力资源部门等），建立的防治性骚扰制度应包含公开承诺、明确的定义、内部投诉程序、惩戒措施、禁止报复措施，并要求用人单位定期开展培训、加强宣传、营造良好的环境。

The requirement of the Civil Code for establishing a mechanism to prevent sexual harassment is refined by the Guide, which specified that employers shall appoint a department taking charge of sexual harassment prevention work (such as the labor union, the human resources department, etc.); an established sexual harassment prevention regulation shall include public commitments, clear definitions, internal complaint procedures, disciplinary measures, and measures on prohibition of retaliation. Employers are also required to conduct regular training, strengthen propaganda, and create a good workplace environment.

2. 《指南》还明确提出责任部门在处理投诉时应注意保护当事人的隐私，防止受害人受到再次伤害。《指南》对用人单位的相关部门处理性骚扰投诉时的约见、调查、调解、处理等各个流程中的具体操作提出建议和要求。

In addition, the Guide expressly states that responsible departments should pay attention to protecting the privacy of the parties concerned when dealing with complaints, to prevent the victims from being harmed again. Suggestions and requirements are also provided in the Guide for the relevant departments of employers to deal with sexual harassment complaints, including the process of interview, investigation, mediation, and disposal.

3. 《指南》还设置了免责条款，即用人单位如果采取了相关措施，可视情况适当免责。具体而言：

The Guide also sets out circumstances where an employer may be exempted from liability if relevant measures have been taken. Specifically,

- 预防措施：例如制定了防治性骚扰制度、作出了反性骚扰提示等。
Preventive measure: for example, formulation of sexual harassment prevention system and issuance of anti-sexual harassment reminders, etc.
- 处置措施：例如迅速对任何性骚扰指控作出回应，采取适当的补救措施及时制止事件的恶化。
Disposal measures: for example, quick responding actions to any allegations of sexual harassment and appropriate remedial measures to stop the deterioration of the incident in time.

《指南》可以作为在深企业建立相关机制、并处理性骚扰事件的参考范本，为企业积极履行法定义务提供了帮助。近年来，社会对性骚扰的关注持续增加，尤其是在《民法典》出台后，各地很可能陆续发布防治性骚扰的地方性指导文件。我们也会持续关注相关更新举措。

The Guide may serve as a reference template for enterprises in Shenzhen to establish relevant internal mechanisms and deal with sexual harassment incidents, which provides support for enterprises in actively fulfilling their legal obligations. Sexual harassment has raised more and more attention in recent years. Especially after the promulgation of the Civil Code, it can be expected that local guidance on prevention and control of sexual harassment in different localities will follow. We will provide updates as significant developments arise.

四、地方法规：辽宁省颁布对女职工的特殊保护规定

Regional Rules: Liaoning Issued Regulations on Special Protections for Female Employees

2021年3月1日，《辽宁省女职工劳动保护办法》（辽宁省人民政府令第337号）（“《办法》”）生效，这是辽宁省首部专门就女职工劳动保护出台的地方性法规。相比于国家

层面的《妇女权益保障法》、《女职工劳动保护特别规定》，辽宁省施行的《办法》增加的具有地方特色的规定主要如下：

On March 1, 2021, the Measures of Liaoning Province of Labor Protection on Female Employees (辽宁省人民政府令第 337 号) (the “**Measures**”) came into effect, which is the first local regulation specially issued for labor protection of female employees in Liaoning province. Compared with the national level rules such as the Law on the Protection of Rights and Interests of Women and the Special Provisions on Labor Protection for Female Employees, the Measures contains some locally customized provisions including the following, among others:

1. 《办法》在《女职工劳动保护特别规定》要求用人单位不得因女职工怀孕、休产假、哺乳等降低其工资和予以辞退的基础上，新增了不得限制晋职、晋级、评聘专业技术职务的规定。

The national rules prohibit employers from lowering female employees’ wages or terminating their labor contracts simply on grounds of pregnancy, taking maternity leave or under breastfeeding period. With reference to that, the Measures additionally requires the employers not to set restrictions on position promotion, rank promotion and professional evaluation against female employees under the abovementioned situations.

2. 规定在女职工经期时，经确诊患有重度痛经或者经量过多的，给予 1 至 2 日的适当休息。除了辽宁地区外，十余省份也规定了女职工的“痛经假”，其中北京、浙江、江西等地明确规定“痛经假”为带薪假。

It stipulates that during menstrual period, female employees who are diagnosed with severe dysmenorrhea or excessive menstrual volume shall be given 1 to 2 days off. Apart from Liaoning province, more than 10 provinces also stipulate "dysmenorrhea leave" for female employees, among which Beijing, Zhejiang, Jiangxi and other regions have specified “dysmenorrhea leave” as paid leave.

3. 新增根据诊断安排有先兆流产症状或者有习惯性流产史的孕期女职工休“保胎假”的规定。

It adds the provision that pregnant employees who have threatened abortion symptoms or have a history of habitual abortion can take "abortion leave".

4. 经本人申请、单位同意可以休哺乳假至婴儿满 1 周岁，哺乳假期间工资由双方协商确定。

Upon application by the female employee and consent by the employer, the female employee may take breastfeeding leave until the infant reaches one-year-old. The salary during the breastfeeding leave shall be determined by the two parties through consultation.

5. 用人单位可以对产后抑郁症和更年期综合症的女职工的岗位和工作时间进行调整，并须安排女职工定期体检。

The position and working hours of female employees with postpartum depression or menopausal syndrome may be adjusted, and regular physical check-up for female employees shall be arranged.

五、地方法规：北京制定境外高端人才个人所得税补贴政策

Local Rules: Beijing Formulated Policy on Individual Income Tax Subsidy for Overseas High-end Talents

2021年4月27日，北京市财政局等三部门联合发布《北京市境外高端人才个人所得税补贴管理暂行办法》（京财税〔2021〕731号）（“**暂行办法**”），就境外高端人才个人所得税补贴的适用范围、条件、计算方式和办理程序作出了具体的规定。

On April 27, 2021, Beijing Municipal Finance Bureau and other three departments jointly issued the Interim Measures for Administration of Individual Income Tax Subsidy for Overseas High-end Talents in Beijing (京财税〔2021〕731号) (the “**Interim Measures**”), which made specific provisions on the applicable scope, conditions, calculation methods and procedures of applying for individual income tax subsidy for Overseas high-end talents.

《暂行办法》的出台，系基于《国务院关于深化北京市新一轮服务业扩大开放综合试点建设国家服务业扩大开放综合示范区工作方案的批复》（国函〔2020〕123号）的要求，亦参考和借鉴了现行粤港澳大湾区、上海自贸区临港新片区个税优惠政策。

The Interim Measure is adopted based on the requirements of the Reply of the State Council on the Work Plan of Deepening Beijing's New Round of Comprehensive Pilot Project for Expanding and Opening up the Service Industry to Build a National Comprehensive Demonstration Zone of Expanding and Opening up the Service Industry (国函〔2020〕123号) and also with reference to the current individual income tax benefit policies of Guangdong-Hong Kong-Macao Greater Bay Area and Shanghai Free Trade Zones Lingang New Area.

《暂行办法》规定，在北京市特定区域对境外高端人才个人所得税实际税负超过15%部分给予补贴，补贴的方式为每年申请一次。“境外高端人才”包括来华工作许可证（A类）持有者、特定企业的高级管理人才和技术人才等符合特定条件的外国国籍人士、港澳台居民、取得国外长期居留权的回国留学人员和海外华侨。

According to the Interim Measures, the subsidy shall be granted to the overseas high-end talents working in certain areas of Beijing for the part of their actual individual income tax burden exceeding 15%, and shall be applied on an annual basis. The “overseas high-end talents” include foreigners, residents of Hong Kong, Macao and Taiwan, returned overseas students and overseas Chinese who have obtained long-term residency abroad who meet the specified qualifications and conditions such as “Class A” work permit holder, senior

management or experts of certain qualified enterprises, etc.

六、案例：多地发布典型案例，涉及存在民事协议情况下劳动关系的认定标准

Cases: Several Different Regions Unveiled Typical Labor Dispute Cases Addressing the Issues on Identification of Employment Relationship in the Context of Civil Contract being Signed

2021年4月，江苏、重庆、广东、山东、成都等地陆续发布劳动争议典型案例。近期发布的典型案例涉及的内容较为广泛，涵盖传统劳动争议、新业态用工纠纷以及疫情防控期间劳动者合法权益保护等各项内容。新业态下事实劳动关系的认定仍是热点，其中江苏、广东、重庆及成都发布的典型案例均涉及到在劳动者和用工方之间存在民事协议的情况下如何认定劳动关系的问题。

In April, 2021, Jiangsu, Chongqing, Guangdong, Shandong, Chengdu and other localities published typical labor dispute cases in succession. The typical cases released recently covers a wide range of contents, including traditional labor disputes, determination of employment relationship under new business forms and protection of employees' rights and interests during COVID-19 pandemic. The identification of employment relations under the new business forms is still a hot topic. Jiangsu, Guangdong, Chongqing and Chengdu respectively discussed the issue of how to determine the employment relations under a situation where the individuals and employers have reached a civil law contract to govern their respective rights and obligations.

1. 江苏：劳动者以个体工商户身份工作不一定排除事实劳动关系的认定

Jiangsu: Registering the natural person rendering services as an independent business does not necessarily exclude the identification of employment relationship

被告公司系外卖配送服务商，原告劳动者在该公司从事外卖配送工作，未签署劳动合同。2018年10月4日，原告在送外卖过程中发生交通事故。双方就是否存在事实劳动关系产生纠纷。被告公司提供《项目转包协议》证明原告系个体工商户，法院认定该协议未经双方签署，且原告领取个体工商户营业执照的时间（2018年10月10日）晚于事故发生的时间，故不影响对劳动关系的判断。法院根据公司对骑手的管理因素（如考勤、派单等），认定双方之间存在劳动关系。

The defendant company is a takeout delivery service provider, and the plaintiff is an individual engaged in delivery work at the company without signing an employment contract. On October 4, 2018, the plaintiff suffered a traffic accident while delivering the takeout. The major dispute of the case is whether or not a *de facto* employment relationship exists between the parties. The defendant provided a Project Subcontracting Agreement to prove that the plaintiff was an independent business. The court found that the agreement was not actually signed by the parties and the date when the plaintiff was issued with the business license to be officially approved as an independent business was

October 10, 2018, later than the accident, which therefore, according to the court, shall not be taken into account in determining whether a *de facto* employment relationship is established. Consequently, in view of the level of control exercised by the company over the riders, such as attendance management and orders distribution, the court determined that the employment relationship had been established between the parties.

该案中，虽然公司败诉原因包括未能证明相关民事协议的有效签署、且事故发生时个人并非个体工商户的身份，但法院也仍然审查了公司对骑手的管理情况以及双方的工作细节，因此，订立民事协议或建立个体工商户身份并不必然会排除事实劳动关系的认定。

In this case, albeit that the company lost the case partly because no valid civil law agreement was found to be concluded and the individual had not been admitted as an independent business when the accident happened, the court also considered the control exercised by the company over the riders and details of assignment and fulfillment of work. Therefore, it is not safe to conclude that the *de facto* employment relationship can be ruled out solely by two parties entering into a civil law contract or registering the individual as an independent business.

2. 广东：劳动者与公司订立承揽协议不一定排除事实劳动关系的认定

Guangdong: The conclusion of a civil law contract between the individual and the company does not necessarily exclude the identification of employment relationship

2016年4月，劳动者入职某铝业公司从事锅炉工工作，未签订劳动合同及办理个人社会保险。2018年4月，铝业公司与劳动者签订一份《承揽协议》，约定双方不存在劳动关系。后劳动者在工作时摔倒致骨折入院治疗，由于申请工伤认定受阻，双方对是否存在劳动关系产生争议。广东高院再审认为：劳动者从事用人单位安排的有报酬劳动，在用人单位铝锭生产车间从事劳动生产并接受用人单位的劳动管理，应认定双方劳动关系成立，不能因双方约定不属于劳动关系，即否定双方实际存在的劳动关系。

In April 2016, the individual joined an aluminum company as a boiler worker without signing an employment contract or contributing social insurance. In April 2018, the company signed a contracting agreement with the individual, stipulating that no employment relationship existed between the two parties. Later, the individual fell down at work and caused an injury. Because of the impediment to be identified as work injury (due to lack of employment contract), dispute arose between parties on whether there was an employment relationship between them. Guangdong Higher People's Court heard the case and held that: the employment relationship between the two parties shall be deemed established if the worker was engaged in paid work arranged by the employer, the work was done in the workplace of the employer and the individual was subject to the labor management of the employer. The *de facto* employment relationship shall not

be automatically excluded only based on a civil law contract whereby it is agreed that no employment relationship would be established.

3. 成都：劳动关系的认定应基于对事实要素的实质审查

Chengdu: Identification of employment relationship should be based on the substantive review of the factual elements

某劳动者和垃圾清运公司订立了一份书面劳动合同，同日又签订一份《垃圾清运承揽协议》。公司认为双方系承揽关系而非劳动关系，法院经审查合同内容以及劳动管理、劳动报酬发放与社保缴纳等事实后，认为双方构成劳动关系。并进一步阐述，即便双方之间不存在书面劳动合同，本案也将根据对上述要素的实质性审查作出劳动关系建立的结论。

The individual concerned entered into both a written employment contract and a civil law contract for garbage clearance service with a garbage clearance company on the same day. The company argued that on account of the existence of the contract for garbage clearance, civil law relationship rather than employment relationship shall prevail. On review of the two agreements and on the facts found regarding the labor management posed by the company on the individual, payment of salary, contribution of social security and so on, the court decided that the employment relationship, instead of civil law relationship was established between the parties. In addition to the forgoing, the court went beyond and concluded that even if no written employment contract was in place, evaluation of the factual circumstance as mentioned above will also be conducted and considered in a substantive way such that the same conclusion will be reached nevertheless.

4. 重庆：报酬计算方式不必然影响双方当事人劳动关系的认定

Chongqing: The calculating method of remuneration does not necessarily impact the identification of employment relationship

某劳动者在某快递公司从事快递投递工作，每投递 1 件快递可得 1 元费用，月底结算。工伤认定过程中，双方就劳动关系发生争议。法院认为，某快递公司与劳动者虽未签订书面劳动合同，但劳动者每天按时到该快递公司处领取快递，并根据公司安排负责特定区域的快递送达。劳动者在工作时间、工作地点、工作内容等方面均服从某快递公司的安排，公司对劳动者实行了有效的管理，应当认定劳动者与公司之间建立了劳动关系。

The individual engaged in express delivery for an express delivery company, and he will receive 1 yuan for each delivery to be settled monthly. During the process of work-related injuries identification, dispute on whether they have established employment relationship arose. The court held that although the company did not sign a written labor contract with the individual, the individual went to the company on time

every day to collect the couriers and was responsible for the delivery of the courier in a specific area as assigned by the company. The worker followed the employer's instructions in respect of working hours, place of work, work content etc. and the company has conducted effective management over the individual. Therefore, it should be recognized that the employment relationship has been established.

随着各种新业态和灵活用工模式的蓬勃发展，实践中，企业与提供服务的个人签订民事协议的情形并不罕见，其中往往约定双方为劳务关系、承揽关系、承包关系、合作关系等。但在双方对于是否存在劳动关系产生争议时，法院不会仅考虑双方的合意约定，仍会根据双方的具体用工模式进行个案判断，通常考察用人单位对劳动者的管理程度（即劳动者对用人单位的从属性）、工资发放方式、社保缴纳情况、劳动者提供的服务是否构成公司经营业务的组成部分等因素。

With the vigorous development of various new business and staffing models, in practice, it is not rare for enterprises and individuals to conclude civil agreements instead of employment contract, defining the legal nature of the relationship as independent service relationship, contracting relationship, subcontracting relationship, cooperative relationship, etc. However, when there is a dispute between the two parties on whether there is an employment relationship, the court will not only consider the terms of the mutual agreement between the two parties, but also will make a judgment case-by-case according to the specific service model of the two parties, usually examining the degree of management the employer posed upon the individual, the structure of compensation, whether the services provided by the individual constitute a part of the company's business and other factors.

然而，由于目前各种新业态的多样性与灵活性，上述传统的事实劳动关系认定要素在不断被挑战，从而导致司法实践中存在较大的主观裁量空间，裁审机构可能从社会利益平衡和行业监管等政策性的角度综合考量。因此，对灵活用工模式依赖较强的企业应特别注意，仅形成不构成劳动关系的约定不能当然排除劳动关系，仍需要结合具体业务模式和行业背景对构成事实劳动关系的风险综合评估。

However, due to the variety and flexibility of the new business models today, the determining elements of employment relationship mentioned above are being challenged constantly, which leads to varying subjective discretion in judicial practice. The balance of social interests and the influence on the industry supervision policy may be taken into account by the courts and the labor arbitration committees. Therefore, enterprises with strong dependence on flexible employment models should pay special attention to the fact that a mutual agreement between parties to rule out the employment relationship apparently cannot save the company from bearing employer liabilities and a comprehensive evaluation taking into consideration the specific features in business model and industrial background should be conducted.

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刘宇翔 LIU, Yuxiang

电子邮件 Email: liuyuxiang@haiwen-law.com

直线 Direct line: (+86 10) 8564 0770

吴琼 WU, Qiong

电子邮件 Email: wuqiong@haiwen-law.com

直线 Direct line: (+86 10) 8560 6827