The PRC Civil Code And Employment

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The new Civil Code of the People's Republic of China (《中华人民共和国民法典》), hereinafter referred to as "Civil Code") was adopted at the Third Session of the 13th National People's Congress of the People's Republic of China ("PRC") on May 28, 2020, and came into force on January 1, 2021. There are seven parts and 1,260 articles in the Civil Code, which are in the order of general principles, real rights, contracts, personality rights, marriage and family, inheritance, tort liability and supplementary provisions. As the most comprehensive law ever passed in the country, the Civil Code is inextricably linked with labor and employment matters. Below is an outline of several areas businesses operating in China should be aware of.

1. The Scope of Employers

Articles 76, 87, 96, and 102 of the Civil Code define for-profit legal persons such as companies and various enterprises, non-profit legal persons such as public institutions, social organizations, foundations, and special legal persons such as government agencies, rural collective economic organizations, urban and rural cooperative economic organizations, neighborhood committees, village committees, as well as unincorporated organizations such as sole proprietorships and partnerships[1]. For the first time, the Civil Code defines autonomous organizations such as village and neighborhood committees as legal persons. If these entities employ workers and meet the requirements of a labor relationship, they shall be covered by labor-related laws. Therefore, the main scope of "employers" has been further expanded.

2. The Employer's Right of Recourse against Employees

Before the implementation of the Civil Code, Article 34 of the Tort Law of the PRC (《中华人民共和国侵权责任法》) stipulated that the employer shall bear tortious liability if its employees cause damage to others during the performance of their normal work duties[2]. In judicial practice, the court will generally determine that an employer shall be liable for the damage caused by the employee's performance of a work assignment based on the above provision. A recent case tried by the People's Court of Binhu District, Wuxi City, Jiangsu Province, provides an example[3]. In this case, the defendant was a martial arts training center. The plaintiff sued, claiming that the defendant's coaching methods were inappropriate. The court supported the plaintiff's claims. This case also provokes another thought, that is, if the defendant's coach committed gross negligence in the training process, can the defendant recover losses from the coach? Article 1191 provides a positive answer.

In accordance with Article 1191 of the Civil Code, where an employee of an employer has caused damage to others during the performance of their duties, the employer shall bear tortious liability[4]. Upon bearing tortious liability, the employer may seek recourse from an employee who has committed

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[1] See Article 76,87,96,102, PRC Civil Code(《中华人民共和国民法典》)

[2] See Article 34,Tort Law of the PRC(《中华人民共和国侵权责任法》),which has been invalid / abolished on December 31, 2020.

[3] Case No.: [2015] Xibin Minchuzi No. 00464([2015]锡滨民初字第00464号)

[4] See Article 1191, PRC Civil Code(《中华人民共和国民法典》)

an intentional act or gross negligence. Similarly, using the dispute caused by the plaintiff's injury during martial arts training as an example[5], the court also found that the martial arts center providing training shall be liable for the behavior of its coach. The court also quoted the above provision of the Civil Code, and pointed out that if the martial arts center believes that the coach committed an intentional act or gross negligence in the training process, it can recover its losses from the coach.

Before the implementation of the Civil Code, an employer's right of recourse against an employee had never been clearly stipulated in legislation. Article 1191 of the Civil Code fills in this gap. Such a provision can also urge employees to be cautious and diligent in performing their duties, so as to avoid unnecessary damage. As for the scope of recourse, it shall be combined with the employee's degree of fault, the size of the loss, and other factors.

3. "Being Willing to Take Risks"

Enterprises often organize group activities for the purpose of enhancing team cooperation and employee communication. In recent years, cases of damages disputes caused by recreational activities such as games have been on the rise, which can bring perplexity to courts or relevant organizations as they deal with such disputes. The bearing of liability if a participating employee suffers a personal injury is an issue of concern for all employers. According to the rule of "being willing to take risks" established in Article 1176 of the Civil Code, employees who voluntarily participate in recreational and sports activities with certain risks generally bear the risks themselves. If, however, an employer fails to fulfill reasonable security obligations, the employer still needs to bear the civil liability for any damages[6].

Although the above provision of the Civil Code on the part of security obligations are basically consistent with the previous provisions of Article 37 of the Tort Law of the PRC (《中华人民共和国侵权责任法》)[7], the employer, as the subject of security obligations, in case of failing to fulfill the security obligations, will not be exempted from liability because of an employee's willingness "to take risks", but the provision also conveys the idea that some injuries may be unavoidable in activities with certain risks such as rock climbing and diving, etc., and the employer and other security obligation subjects should not be severely criticized to undertake a heavier duty of care.

Article 1176 of the Civil Code establishes the rule of "being willing to take risks" as the basic rule to solve the increasing number of disputes involving team-bonding experiences. The establishment of this rule will help to deal with such disputes in a timely manner, prevent the abuse of the right of action, and enhance the awareness of self-risk prevention of the actor. This is also in line with the general cognition of society and the public's general idea of justice, so as to make law, reason and emotion more compatible.

4. Protection of Personality Rights

The promulgation of the Civil Code strengthens the protection of personality rights of civil subjects, which is mainly reflected in the part of personality rights. For example, Articles 1018 and 1019 of the Civil Code change the conditions regarding the use of employee portraits, and further clarifies the

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[5] Case No.:[2020] Yue 0306 Minchu No. 13747 ([2020]粤0306民初13747号)

[6] See Article 1176, PRC Civil Code(《中华人民共和国民法典》)

[7] See Article 37,Tort Law of the PRC(《中华人民共和国侵权责任法》,) which has been invalid / abolished on December 31, 2020.

rules for the permitted use of these images[8]. Regardless of whether an employee image is being used commercially or not, if an employer uses an employee's photograph, it shall first obtain the consent of the employee.

Meanwhile, Article 1032 and Article 1033 of the Civil Code stipulate the contents of the right to privacy and outlines infringements against privacy[9]. In practice, many employers strengthen employment management through computer software, video monitoring and other means. There are also many cases in judicial practice that reflect the contradiction between an employer's management rights and the privacy of employees. With the promulgation and implementation of the Civil Code, the awareness of the protection of employee privacy will be further awakened and strengthened, and disputes about management and privacy rights will inevitably continue to be staged in practice, and the management rights of employers will inevitably be challenged.

In addition, Articles 1034 to 1038 of the Civil Code stipulate the definition of personal information, and make clear the principles and conditions to be followed in processing personal information as well as the security obligations of personal information processors[10]. In this regard, the employers shall deal with the personal information of employees in accordance with the principles and conditions stipulated in the Civil Code, and ensure the safety of the personal information of employees.

The above-mentioned relevant provisions of personality rights in the Civil Code strengthen the protection obligations and responsibilities of employers for employees, which may further limit the employment management authority of enterprises in labor relations.

5. Legal working age

The PRC Labor Law (《中华人民共和国劳动法》)stipulates that "employers are prohibited from recruiting minors under the age of 16[11]. The Civil Code continues to follow the provisions of General Rules of the Civil Law of the PRC(《中华人民共和国民法总则》) that "a minor who has reached the age of 16 and whose main source of income is his or her own income from work shall be deemed as a person with full capacity for civil conduct", limiting the minimum age of workers recruited by employers to 16 years old, which is consistent with the provisions of the Law of the PRC on the Protection of Minors(《中华人民共和国未成年人保护法》)[12]. Therefore, in the future, employers will still not be allowed to employ minors under the age of 16. Literature, art, sports and special arts and crafts sectors that employ minors under the age of 16 must, in accordance with the relevant provisions of the state, go through examination and approval procedures and guarantee the child's right to compulsory education..

6. The procedure of protecting workers' rights

The Civil Code does not abolish the relevant legal provisions in the field of labor law, and the Law of the PRC on Mediation and Arbitration of Labor Disputes (《中华人民共和国劳动争议调解仲裁法》)is still valid. Therefore, the settlement of labor disputes still follows the four methods set in the Law of the

[8] See Article 1018,1019, PRC Civil Code(《中华人民共和国民法典》)

[9] See Article 1032,1033, PRC Civil Code(《中华人民共和国民法典》)

[10] See Article 1034,1035,1036,1037,1038, PRC Civil Code(《中华人民共和国民法典》)

[11] See Article 15, PRC Labor Law(《中华人民共和国劳动法》)

[12] See Article 38, Law of the PRC on the Protection of Minors (Revised in 2012)(《中华人民共和国未成年人保护法 (2012修正)》)

PRC on Mediation and Arbitration of Labor Disputes, namely consultation, mediation, arbitration and litigation. Among them, negotiation, reconciliation and mediation are not necessary procedures, but arbitration is still the necessary pre-procedure to solve labor dispute cases. Only after labor arbitration does litigation in court become an option. The labor dispute settlement mechanism of "one arbitral and two trials" that came before the implementation of the Civil Code will continue to be used.

Before the formal implementation of the Civil Code, the Supreme People's Court decided to abolish 116 judicial interpretations and relevant normative documents, and revised 111 judicial interpretations and related normative documents. Since January 1, 2020, 116 judicial interpretations and relevant normative documents have been abolished, including four judicial interpretations of labor disputes (hereinafter referred to as "Original Judicial Interpretations") issued successively from 2001 to 2013[13]. Meanwhile, on December 29, 2020, the Supreme People's Court issued the Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in the Trial of Labor Dispute Cases (I)(《最高人民法院关于审理劳动争议案件适用法律问题的解释(一)》, hereinafter referred to as the "New Judicial Interpretation"), which came into force on January 1, 2021.

The New Judicial Interpretation basically summarizes, arranges and classifies the contents of the four Original Judicial Interpretations. Compared with the Original Judicial Interpretation, the content of the New Judicial Interpretation has not changed much, with some people even calling it "old wine in a new bottle". However, under the background of the Civil Code, the integration of judicial interpretation also has its inherent significance. The New Judicial Interpretation adds the Civil Code as the basis of labor dispute trials. Moving forward, the court will directly quote the relevant provisions of the Civil Code in labor dispute trials. Therefore, employers should pay attention to the impact of the Civil Code on labor employment management.

In a word, although there are not many direct provisions on the content of labor relations in the Civil Code, the provisions such as strengthening the protection of personality rights will also have an indirect impact on labor employment. In the following judicial practice, the court will also use the Civil Code as one of the bases to solve labor disputes. Therefore, enterprises should still improve their own rules and regulations in accordance with the relevant provisions of the Civil Code, enhance the ability of labor management to predict and resist risks, and focus their attention on preventing legal risks.

[13] i.e. Interpretation of the Supreme People's Court on Several Issues regarding the Application of Law to Employment Disputes(Fa Shi [2001] No.14)(《最高人民法院关于审理劳动争议案件适用法律若干问题的解释（法释〔2001〕14号）》)、Interpretations of the Supreme People's Court on Some Issues concerning the Application of Laws for the Trial of Labor Dispute Cases (II)(Fa Shi [2006] No. 6)(《最高人民法院关于审理劳动争议案件适用法律若干问题的解释（二）（法释〔2006〕6号）》)、Interpretation of Supreme People's Court on Several Issues on the Application of Law in the Trial of Labor Dispute Cases (III)(Fa Shi [2010] No. 12)(《最高人民法院关于审理劳动争议案件适用法律若干问题的解释（三）（法释〔2010〕12号）》)、Interpretations of Supreme People's Court on Several Issues Relating to Laws Applicable for Trial of Labour Dispute Cases (IV)(Fa Shi [2013] No. 4)(《最高人民法院关于审理劳动争议案件适用法律若干问题的解释（四）（法释〔2013〕4号）》