

## 江三角·劳动法论坛——规章制度常见错误（争议）条款的识别与修订

### RDL — Identification and Amendment of the Commonly Faulty Clauses (Controversial) in Employers' Rules and Regulations

北京：6月13日，苏州：6月18日，上海：6月19日，深圳：6月25日，成都：6月27日  
Beijing/Jun.13<sup>th</sup>, Suzhou/Jun.18<sup>th</sup>, Shanghai/Jun.19<sup>th</sup>, Shenzhen/Jun.25<sup>th</sup>, Chengdu/Jun.27<sup>th</sup>

语言：中文 Language : Chines

#### 课程背景：

劳动法体系的一项重要特点在于通过各层级的法律规范不断压缩用人单位的管理自主权，在此背景下，企业内部的规章制度可谓是“硕果仅存”。因为，用人单位可以通过规章制度，在法律的基础上，“见缝插针”地个性化定制有针对性、可操作性的员工管理规范。一套优秀的规章制度，无疑是HR日常工作的有力武器，也是处理劳动争议的重要工具。

然而，要真正实现上述目标却十分不易，如果说好的规章制度会让HR有如虎添翼之感，一套存有瑕疵的规章制度则会让HR左右为难，甚至有作法自缚之感。

正面来看，一套好的规章制度应该具备“合法”、“合理”、“好用”等特点；而从反面来看，我们经常看到“违法”、“不合理”、“难用”条款的大量存在。基于此，本次课程从律师规章制度修改的实务经验出发，与大家一起系统梳理企业内部规章制度，以“挑错”为方式，按照企业规章制度的基本框架进行地毯式搜索，发现常见错误（争议）条款。

本次课程特别突出“实用”的特点，我们不止于发现及消除错误，更重要的是在对错误条款进行法律分析和风险评价的基础上，提供合法有效的问题解决方案。

同时，规章制度的有效性也要求根据最新劳动立法及时修改更新。因此，本次课程将特别对近期上海、北京、浙江、深圳等地的最新裁审口径进行分析解读，

并结合各地近期公布的劳动争议典型案例，为识别并修订规章制度常见错误（争议）条款提供最新的依据。

**课程目标：**

- ※ 有效更新各地最新裁判口径和司法判例，及时掌握司法动态；
- ※ 系统掌握识别规章制度常见错误（争议）条款的分析思路；
- ※ 熟练运用修订规章制度常见错误（争议）条款的基本技能。

**参会对象：**

人事总监、人事经理、公司法务、工会干部及其他高级管理人员。

**论坛日程 Agenda:**

08:30—09:00	<b>签到</b> Reception
09:00—12:00	规章制度常见错误（争议）条款的识别与修订案制定与实施（上） Identification and Amendment of the Commonly Faulty Clauses (Controversial) in Employers' Rules and Regulations
10:45—11:00	<b>茶歇</b> Tea Break
12:00—13:30	<b>午餐</b> Lunch
13:30—16:30	规章制度常见错误（争议）条款的识别与修订案制定与实施（下） Identification and Amendment of the Commonly Faulty Clauses (Controversial) in Employers' Rules and Regulations
15:00—15:15	<b>茶歇</b> Tea Break

**课程大纲：**

前沿：一套优秀的规章制度应该具备哪些特点？——从法律要求以及实践需要的角度

## **第一章 规章制度的程序**

- 1、经与全体职工讨论协商，决定于 XX 年 X 月 XX 日起实施本规定…
- 2、本规定适用于集团总部及下属各分支机构…
- 3、本规定及后续更新刊登于本公司内部网络，员工有义务上网阅读学习…
- 4、公司发布的规章制度，公司有权随时调整、改变并实施…

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## **第二章 招聘及试用制度**

- 1、应聘者应提供未犯罪证明…
- 2、双方劳动关系自劳动合同签订之日起算，上岗前参加培训不建立劳动关系…
- 3、员工试用期内因病假、工伤等原因未实际到岗工作的，相关日期从试用期内扣除…
- 4、员工与其他单位存在竞业限制约定且处于有效期内的，视为不符合录用条件…

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## **第三章 考勤制度**

- 1、迟到一个小时及以上者，视为旷工…
- 2、员工请病假应按公司要求履行请假手续、，提交公司要求的材料，包括但不限于指定医院的病假证明、病历卡等，否则视为旷工…
- 3、非全日制员工执行本公司考勤相关规定，不得迟到早退…

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## **第四章 休假制度**

- 1、已享受本单位带薪病假天数，折抵相应法定年休假天数…
- 2、新工作需要，本年度无法安排法定年休假的，公司有权再下一年度安排休假，员工有义务配合…
- 3、员工法定年休假应在当年度内休完，特殊情况下经公司同意，员工可申请下一年度休假，否则视为对法定年休假的放弃…

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### **第五章 加班管理制度**

- 1、员工在周末及法定节假日出差在途的，不是加班，公司不支付加班费…
- 2、加班小时数以 2 小时起计，最少 1 小时为递增单位。

员工因休息日加班所引起的调休，应在 12 个月内内申请并使用完毕，否则视为自动放弃…

- 3、管理人员自动实行不定时工时制，不享受加班费…

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### **第六章 绩效考核制度**

- 1、公司有权对绩效考核的内容、标准及周期进行调整，员工应该配合…
- 2、绩效考核位列末位的，视为不能胜任工作，公司有权对其工作岗位和劳动报酬进行调整…
- 3、绩效考核不胜任的，应进行公司安排的绩效改进计划（“PIP”），经绩效改进计划后仍不能通过考核的，公司可解除劳动合同…

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### **第七章 奖惩制度**

- 1、旷工一天，扣发月工资 10%，另外发书面警告；连续旷工三天或经书面警告后重犯者解除劳动合同…
- 2、对于公司规定的各项奖励，公司保留随时撤销的权利…
- 3、员工在本公司以及集团公司工作期间所有奖惩记录累计计算…

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## **第八章 薪酬与福利制度**

- 1、未能完成公司规定的劳动定额，将按照低于最低工资的标准支付当月劳动报酬...
- 2、公司有权利对本单位的薪酬结构进行调整...
- 3、符合下列条件的，享受本年度年终奖：...发放时在册且未提起离职行为的...
- 4、若员工离职时未办理工作交接或未偿还公司债务，公司可相应扣除员工工资，且不办理档案和社会保险关系转移手续...

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## **第九章 保密与竞业限制制度**

- 1、员工不得互相交流个人工资收入情况...
- 2、涉密人员在合同期限内不能辞职...
- 3、员工入职后应与公司签订竞业限制协议，公司有权在劳动合同解除终止后一个月内告知劳动者是否需要履行竞业限制义务...

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## **第十章 商业行为准则**

- 1、员工近亲属不得与公司存在商业交易行为...
- 2、员工不得在微博、微信、博客等媒体发布影响公司声誉的行为...
- 3、员工提供虚假发票视为虚假报销...

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## **第十一章 合同续签与解除制度**

- 1、正式员工由于个人原因提出辞职的，本人应提前 30 天以书面形式提交辞职报告，2、交用人单位和人力资源部审核后，确定最后工作日...
- 2、员工乘坐非法运营的黑车视为严重违纪...
- 3、顶撞上司被视为严重违纪，可解除劳动合同.....

4、以下情形属于客观情况发生重大变化：...部门裁撤...

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## **第十二章 其他常见错误（争议）条款**

1、员工参军入伍的，视为辞职，双方劳动关系自动终止...

2、公司可根据公司实际经营状况，有权随时调动员工的工作岗位，包括晋升、降级或同级调整...

3、员工因违反公司操作规定而造成工伤的，公司不承担相关赔偿责任...

4、员工国外出差视为参加专业技术培训，并受约定的服务期约束...

5、员工应通过合法的渠道主张权利，违法停工罢工的，视为旷工...

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### **讲师介绍：**

#### **陆敬波---首席合伙人，江三角律师事务所**

陆敬波，中国大陆劳动法服务市场的先行者和开拓者。2002年创立中国首劳动法律服务在线平台——“劳动法苑”（laodongfa.com）；2004年创办企业实用期刊《劳动法苑》并组建中国大陆规模最大、最专业的劳动法律师机构。受聘众多世界500强企业、各政府行政部门担任常年法律顾问、培训师。担任上海财经大学等四所高等院校的兼职教授，先后出版有《劳动合同法HR应用指南》、《纷争与和谐——劳动争议的预防和处理》、《集团型企业劳动关系管理实务》等近十部著作。

陆敬波律师在劳动法专业领域的突出表现奠定了其作为中国大陆劳动法律服务领域标杆性人物的地位。

### **Course Background:**

One of the basic features of the labor law system lies in the fact that the legal regulation of every level limits consistently the management discretion of the employer. Under this context, it may be said that the internal rules and regulations set up by employers act as almost the only ground for management. Therefore, the employer has the right to set up the code of conduct for the employees via its internal rules and regulations within the scope of legal authorization. Such code of conduct would be specialised and practical so as to meet the employer's unique demand. An exemplary system of rules and regulations is undoubtedly a strong

weapon for HR managers in their daily work and it is also an important tool in the dissolution of the labor disputes.

However, the realization of the above mentioned target is totally difficult in practice .A good regulatory system set up by the employer can make HR managers doubly easier and smoother while a deficient one could have an adverse effect to the extent likewise.

On one hand, a set of rules and regulations established by the employer should be featured as 'legal', 'reasonable', 'practicable' etc. On the other, we have encountered often many clauses which are 'illegal', 'unreasonable', 'impractical'. Therefore, this lecture, based on lawyers' practical experience, systematically goes through the employer's internal rules and regulations and intends to point out some common wrong (or controversial) provisions in light of the basic structure of the foregoing rules and regulations.

At the same time, this lecture will especially focus on 'practicability'; we will not only point out and step away from the mistakes, but also provide effective legal solutions to the problems, based on a legal analysis and risk assessment of the controversial clauses.

Meanwhile, in term of the validity of internal rules and regulations, it requires timely update in accordance with the latest enacted labor legislation. Therefore, this lecture will provide the newest foundation for legitimate and effective solution to common defective (controversial) clause via the analysis to the latest judicial guideline in Shanghai, Beijing, Shenzhen, etc., and the combination with typical labor dispute cases released recently.

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### **Course Objective:**

- 1.Effective update of the latest judicial guideline and precedent cases as well as judicial trend;
- 2.Systematic grasp of a critical thinking for the identification of the frequent defective(controversial) clauses in employer's internal the rules and regulations;
- 3.Proficiency in the basic skills for the amendment of the frequent defective(controversial) mistakes in employer's rules and regulations.

### **Subject of Participants:**

HR director, HR manager, legal counsel, trade union cadre and other senior management.

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### **Course Outline:**

**Front-line:** What are the characteristics that an exemplary setof employer's internal rules and regulations established by the employer should possess? – Judging from the requirements stipulated by law and in practice.

### **Section 1 The Procedure for Establishing Rules and Regulations**

- 1.1 Through negotiations with all the employees, it is decided that these provisions will be effective from ...
- 1.2 These stipulations shall apply in the Group HQ and any other subordinate branch...
- 1.3 These stipulations and any future update shall be published in the internal network of the Company; every employee has the obligation to log on to the network to read and know ...
- 1.4 The Company has at any time the right to adjust, amend and implement the its rules and regulations...

### **Section 2 Recruitment and Probationary Period**

- 2.1 The candidate should offer no-crime-record certificates ...
- 2.2 The labor relationship between both parties shall start from the date that this labor contract is signed, and participation in training before the assumption of labor duties shall not be deemed as establishment of a labor relationship...
- 2.3 In case that an employee cannot assume labor duties during the probationary period due to sick leave or occupational injury etc, the relevant days will be deducted from the duration of the probationary period...
- 2.4 In case that an employee is under valid non-competition obligation with another employer, it will be considered that the employee does not meet the requirements for recruitment...

### **Section 3 Working attendance**

- 3.1 Delay of one hour and more will be considered as absenteeism...
- 3.2 Employee asking for medical leave should comply with the requirements of the company and follow the procedure for asking medical leave, and provide the company with the required material, including but not limited to the certificate for sick leave by the designated hospital, medical record etc; otherwise, it will be considered as absenteeism
- 3.3 Part-time workers shall follow the relevant working attendance checking rules of this company, and are not allowed to come to work late or leave early...



#### **Section 4 Leave Management**

4.1 Sick leave with payment actually undertaken by the employee should be deducted from mandatory annual leave....

4.2 In case the Company could not arrange mandatory annual leave within the current year due to work requirement, the Company has the right to make the arrangement in the following year and the employee is obliged to cooperate with such arrangement...

4.3 The employee should use up all mandatory annual leave within the current year; under special circumstances, the employee could apply for the mandatory annual leave in the following year upon the Company's approval; otherwise, it will be deemed as a waiver...

#### **Section 5 Over-time Work Management**

5.1 If the employee is on the travel in relation to a business trip on weekend or statutory holidays, it is not regarded as over-time work and the Company will not make over-time work pay accordingly...

5.2 Only over-time work for at least 2 hours will kick out the calculation of over-time work, and it should be calculated in the unit of 1 hour.

5.3 Adjusted rest due to over-time work on weekend should be applied and used up within 12 months; otherwise it would be regarded as a waiver...

5.4 Member of management is bound by non-fixed working our system automatically and is not entitled to over-time work pay...

#### **Section 6 Performance Review**

6.1 The Company is entitled to adjust the content, standard and period of performance review, and the employee should cooperate with such adjustment...

6.2 If the employee is rated at the bottom in performance review, such employee would be considered incompetent for the work and the Company is entitled to adjust the work position and salary of such employee.

6.3 The employee fails in performance review should participate in PIP; if that employee still fails in performance review after PIP, the Company is entitled to conduct the termination...

#### **Section 7 Reward and Sanction**

7.1 One day's absence from work will lead to 10% deduction of monthly salary; continuous 3 day's absence or absence after written warning will lead to termination...

7.2 The Company reserves the right to withdraw any and all reward...

7.3 All reward and sanction that the employee receives during the employment with the Company or a Group Company will be calculated accumulatively...

#### **Section 8 Salary and Benefit**

8.1 If case the employee fails to accomplish the work assignment, he/she will be paid with minimum local salary...

8.2 The Company is entitled to adjust the Company's salary structure...

8.3 The employee is entitled to enjoy annual reward on condition that...to stay employed by the Company and not to bring up the resignation...

8.4 If the employee fails to complete handover procedure or pay for the debt owed to the Company at separation, the Company could deduct from such employee's salary and withhold the transfer of archives and social insurance account...

#### **Section 9 Confidentiality and Non-competition**

9.1 The employees should not communicate with each other regarding personal salary...

9.2 Employees under confidentiality obligation should not resign within the term of the employment contract...

9.3 The employee should sign a non-competition agreement with the company at the start of employment and the Company is entitled to notify the employee whether to fulfill the non-competition obligation after one month from the termination of employment contract...

#### **Section 10 Code of Conduct**

10.1 The employee's near relative should not conduct any commercial transaction with the Company...

10.2 The employee should not release anything that might impair the Company's reputation via Weibo, Micro-chat or Blog, etc.

10.3 In case of submission of falsified invoice, the employee would be considered to have committed falsified reimbursement...

#### **Section 11 Renewal of the Contract and dismissal**

11.1 The employee should submit the letter of resignation in writing to the department and HR 30 days in advance in case the employee wants to resign due to personal reasons; the last working day will be set after the review of letter of resignation...

- 11.2 The employee commits a serious misbehavior if he/she takes illegal cab...
- 11.3 Disobedience against the supervisor will be considered as serious misbehavior and will lead to termination...
- 11.4 The following situations consist of major change in objective conditions: ...the removal of the entire department...

**Section 12 Other Frequent Defective/Controversial Provision**

- 12.1 The employee's joining in army would be considered as resignation; the employment should be terminated there after...
- 12.2 The Company is entitled to adjust the employee's work position at any time, including upgrade, degrade and horizontal transfer...
- 12.3 The Company will not indemnify the employee if such employee suffers from work-related injury due to breach of operation guidance...
- 12.4 The employee's business trip abroad is regarded as professional training and such employee should be subject to service term...
- 12.5 The employee should claim for their right via legitimate approach. If they proceed into unlawful strike, such employee is deemed as absent from work...

**For More Information, please contact with...**

**收费标准 Charging standard**

Standard Fee/person 一人参会费用	3800 RMB/位
Standard Fee/person 两人参会费用	3500 RMB/位

**备注：全天会议包含上、下午茶歇及午餐**

Note: All-day meeting covers morning and afternoon tea break, and lunch.

**报名注册请填写以下信息**

**Please help me fill out following information for registration:**

**1<sup>st</sup> DELEGATE**

[公司名称] Company Name	
[公司地址] Address	
[邮政编码] Zip Code	
[参会人姓名] Name	
[职位] Position	
[电话] Phone	
[邮箱] Email	
[手机] Mobile	

**2nd DELEGATE**

[公司名称] Company Name	
[公司地址] Address	
[邮政编码] Zip Code	
[参会人姓名] Name	
[职位] Position	
[电话] Phone	
[邮箱] Email	
[手机] Mobile	

**我需要正式税务发票 I need original China Tax Invoice:**

发票抬头 Company Name:

公司地址 Address:

收件人 Name:

联系电话 Phone:

**会议酒店地址： Venue Address**

**北京：**北京保利大厦二层 1 号会议室 北京东直门南大街 14 号

**苏州：**苏州园区维景国际大酒店 苏州工业园区金鸡湖大道 1355 号

**上海：**上海古象大酒店三楼宴会厅 九江路 595 号（人民广场站）

**深圳：**金茂深圳 JW 万豪酒店三楼会议室 深圳市福田区深南大道 6005 号

**成都：**雅诗阁酒店 人民南路 4 段 3 号

**银行转账信息： Bank Transfer**

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交通银行陆家嘴支行

付款方式：现场支付(只接受现金,不接受刷卡支付) 银行转账 支票

**备注：**顾问单位、培训会员本次全天培训按照 2 人次抵扣。