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Are WeChat Conversations Admitted as Evidence by the Courts?

Example of case law

Mr. Jia was employed by company A from April 2018 to May 2020. He received a monthly salary of RMB 6,000 Yuan before taxes. After resigning, Mr. Jia brought a claim against his employer before the courts demanding a salary back payment of RMB 117,000 Yuan for the period between January 2019 and January 2020, arguing that his actual monthly salary should have been RMB 15,000 Yuan and not RMB 6,000 Yuan.

Mr. Jia submitted the following documents to the labour court in support of his claim:

- His employment contract, which provided for a monthly salary of RMB 15,000 Yuan;
- His personal banking statements, showing that in addition to a RMB 6,000 Yuan monthly payment, he also received a transfer of RMB 50,000 Yuan from company A in June 2018 and another transfer of RMB 30,000 Yuan in September 2019;
- A recording of a WeChat conversation with the company A employee in charge of salary payments, during which the latter admits verbally that the RMB 80,000 Yuan received by Mr. Jia in June 2018 and September 2019 did indeed correspond to his salary.

Company A admitted that the evidence submitted by Mr. Jia was authentic, but claimed that the RMB 80,000 Yuan were a loan and advance on expenses and not a salary.

On the basis of the bank statements and recording of the WeChat conversation, the judge confirmed that the RMB 80,000 Yuan were indeed paid as salary to Mr. Jia and that consequently, the latter's monthly salary for the period between January 2019 and January 2020 was indeed RMB 15,000 Yuan.

Accordingly, the judge ruled in favour of Mr. Jia and ordered company A to pay him the difference in salary of RMB 117,000 Yuan.

Our comments

This case is noteworthy because the judge admitted the validity of the recording of the WeChat conversation and based his decision on this recording.

WeChat is the most popular social network in China. It is used daily as a professional communication and management tool. It is also regularly used to manage attendance, send information and contracts, organise meetings, hold online meetings, etc.

One of the recurring questions being asked is whether all of these WeChat conversations, be they texts, recordings, videos, calls, content shared by users in WeChat Moments, money receipt or transfer confirmations, sharing of users' physical locations, etc. may or may not be submitted to a court as part of a labour dispute and if so, what conditions must be met in order for these exchanges to be considered admissible evidence by the judges.

As a preliminary point, readers should note that there are eight main categories of proof under Chinese law, with, on one hand, "traditional" evidence, which includes material and written proof, and, on the other hand, "new" evidence, which includes, in particular, audio-visual elements, electronic data, etc. According to the provisions of the *Interpretation of the Supreme Court on Evidence in Civil Actions*¹, WeChat exchanges fall under the electronic data category and can therefore certainly serve as evidence in legal proceedings.

At the same time, in order for any kind of evidence to be deemed admissible, the elements submitted must be shown to be (i) authentic, (ii) relevant to the dispute and (iii) legal.

Consequently, if, as part of a legal dispute, you intend to submit WeChat exchanges as evidence, we advise you to pay attention to the following aspects, so that the elements you submit are admitted by the court:

- **Systematically save the WeChat login details of each new employee:** one of the main difficulties systematically encountered when WeChat elements are submitted to the courts is proving who the owner of the WeChat account indicated in the documents submitted as evidence is. In order to address this problem, we recommend that when you first collect a new employee's personal data, you also ask them to provide their WeChat login details, in addition to the usual information such as personal address, emergency contact, copy of identity card, diplomas, etc. Furthermore, you should ensure that all employees sign the form concerning their personal data.
- **Obtain additional proof from Tencent or China Unicom/Telecom:** If you are not able to prove who the owner of a specific WeChat account is, you can (i) ask the court to obtain from Tencent or China Unicom/Telecom the name of the owner of the mobile phone number used to connect to this account, or (ii) try to prove who the owner of the account is by using photos posted on WeChat Moments.
- **Notarise Wechat exchanges:** notarising allows you to establish evidence and avoid it being lost (loss of phone, for example), while also rendering any such elements more

¹ Effective 1 May 2020

official. You can also ask the person whose WeChat exchanges with the employee in question are being used as evidence to attend the hearing in order to present their phone and its contents to the judge.

- **Never rely solely on WeChat exchanges:** one or several WeChat exchanges are generally not sufficient in litigious proceedings. Never forget that electronic evidence never carries the same probative weight as material or written evidence. It is therefore important to submit other kinds of evidence as well. Obviously, the more evidence you have, the greater the chance of having your WeChat exchanges recognised as evidence.
- **The probative value of a screenshot of a WeChat exchange is low** unless the employee in question confirms that it is authentic. Accordingly, if you only have screenshots in your possession, you will have to go back to the source of the screenshot in order to have a chance of having this evidence admitted by the judge.

On the other hand, if an employee uses WeChat exchanges against you, the best defence is often not to acknowledge their content before obtaining advice from a specialist lawyer.

Lastly, we recommend that when using WeChat on a daily basis you pay particular attention to the following good practice:

- **Never use WeChat to enter into an agreement/sign important documents:** You are strongly advised to always keep an original paper copy, hand signed by the employee in question, of each important document related to their rights and obligations, such as employment contracts and any subsequent amendments, employment contract termination agreements, resignation letters, etc. Also, if an employee resigns by WeChat, ensure that they also submit a paper copy of the resignation letter signed by hand.
- **Never use WeChat as the sole means of notifying/sending an important document:** When you wish to notify an employee of an important decision, such as a dismissal letter, an end of employment certificate, etc., you can, if you wish, send a scanned version by WeChat, but you must ensure that you also notify this document by more traditional means, namely by personal delivery against signature, by courier to the employee's residence (EMS is the Chinese express courier), etc. If the document is sent solely by WeChat, the employee could claim to have never received it.
- **Be careful of how and what you communicate on WeChat:** Company managers such as the director general, department heads and in particular the HR director often speak in the name and on behalf of the company. They must therefore ensure that they pay attention to the wording they use as well as to the content of their communications. We advise you to follow the following simple rules: (i) think carefully about the content of all messages sent by WeChat to employees and apply the same caution you would to sending something by email; (ii) avoid sending employees professional content by WeChat outside of working hours to avoid having them use it to claim overtime; (iii) keep all WeChat conversations with all employees and, in the event of a change in phone, keep a copy of all exchanges.

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