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Asia Employment Law: Quarterly Review

2012-2013

ISSUE 4: FOURTH QUARTER 2013

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INTRODUCTION

Asia's legal and human resources advisors are often required to function across multiple jurisdictions. Staying on top of employment-related legal developments is important but can be challenging.

To help keep you up to date, Mayer Brown JSM produces the **Asia Employment Law: Quarterly Review**, an e-publication covering 15 jurisdictions in Asia. It is updated every quarter.

In this fourth edition, we flag and provide comment on employment law; developments during the last quarter of 2013 and highlight some of the things to look out for in 2014.

This publication is a result of ongoing cross-border collaboration between 15 law firms across Asia with whose lawyers Mayer Brown JSM has had the pleasure of working with closely for many years. For a list of contributing lawyers and law firms, please see the *contacts page*.

We hope you find this edition useful.

With best regards,

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AUSTRALIA
2012

UPDATED AS AT FEBRUARY 2013

Important: action likely required
Good to know: follow developments
Note changes: no action required

KEY

2011 TO 2012

FWA caseload statistics

General protections/adverse action claims increased by 12.6% from the previous year, with 2303 claims lodged in 2011-12.

Unfair dismissal claims increased by 9.2% - 14,027 claims were lodged in 2011-12.

Protected action ballot applications increased from 759 in 2010-11, to 1011 in 2011-12 (however, overall levels of industrial action have been declining in Australia for some time).

Enterprise agreements: the number of agreements increased by 18.8%, with 8,565 agreements lodged for approval in 2011-12.

1 FEB

New Tribunal President Appointed

Justice Iain Ross AO replaced Justice Geoffrey Giudice as President of FWA (now the FWC).

29 FEB

Equal remuneration ruling

A Full Bench of FWA (Fair Work Australia) handed down its decision in a test case seeking to increase minimum wage levels for social and community services workers, based on the equal remuneration provisions in Part 2-7 of the FW Act. In *Equal Remuneration Case* [2012] FWAFB 1000, a majority of the Full Bench (based on an earlier decision accepting that the relevant workers were paid less than other comparable employees due to their gender) decided to award substantial pay increases phased-in over an eight-year period.

More...

1 JUN

Increase in minimum wage

A Full Bench of FWA issued its decision in *Annual Wage Review 2011-12* [2012] FWAFB 5000, which increased the minimum wage in Australia by 2.9% to A$606.40 per week (or A$15.96 per hour) from 1 July 2012.

More...

Changes to regulation of the building and construction Industry

The *Building and Construction Industry Improvement Amendment (Transition to Fair Work) Act 2012* (Cth) came into operation, replacing the Office of the Australian Building and Construction Commissioner with the Fair Work Building Industry Inspectorate (this agency operates under the name 'Fair Work Building and Construction). The 2012 amendments also removed some of the regulator's investigative powers, and reduced penalties applicable to certain breaches of workplace laws – both matters of concern to employers operating in the building and construction industry.

1 JUN

Regulation of trade unions and employer organisations

Most provisions of the *Fair Work (Registered Organisations) Amendment Act 2012* (Cth) took effect. This legislation amended the Fair Work (Registered Organisations) Act 2009 (Cth), increasing the level of regulation of registered trade unions and employer organisations (and their officials) in response to allegations of corruption and mismanagement within the Health Services Union.

More...

29 JUN

Road Safety Remuneration Tribunal: open for business

The Road Safety Remuneration Tribunal (**RSRT**) started operations. Established by the *Road Safety Remuneration Act 2012* (Cth), the RSRT's role includes the making of road safety remuneration orders setting minimum conditions for employee drivers and owner drivers; and resolving disputes between drivers, employers/hirers, and other participants in the transport industry supply chain.

More...

Endeavour Coal Pty Ltd v APESMA [2012] FCA 764: Surface Bargaining not Acceptable

The Federal Court upheld a decision of a Full Bench of FWA that Endeavour Coal had engaged in surface bargaining in its negotiations with the union (APESMA). Justice Flick held that the good faith bargaining requirements in Part 2-4 of the FW Act meant that an employer must do more than 'adopt the role of a disinterested suitor' in agreement negotiations; some effort must be made to enter into an agreement, such as the employer putting its own proposals. However, limits were placed on FWA's ability to make orders preventing surface bargaining.

1 JUL

Industrial Disputes Involving Qantas: TWU v Qantas Airways Limited; Q Catering Limited [2012] FWAFB 6612; and AIPA v Qantas Airways Limited [2013] FWCFB 317

On 8 August 2012, a Full Bench of FWA rejected key claims by the TWU, including: limits on the amount of work that can be outsourced; the extension of agreement rates and conditions to contractors and labour hire staff; the union's 5% per annum wages claim (a 3% increase was awarded); confirmed the view that management has the right to manage its business (especially in a competitive operating environment such as the aviation industry); and demonstrated a reluctance to endorse union bargaining claims where these would negatively impact on efficiency and productivity.

More...

19 JUL

The second dispute, between Qantas and the AIPA representing long-haul pilots, was the subject of arbitration proceedings. A Full Bench rejected the union's job security and wages claims – while agreeing to back-date pay increases from 1 January 2012.

More...

Australian Industry Group v Fair Work Australia: Full Federal Court upholds contractor and union rights clauses

In *Australian Industry Group v Fair Work Australia* [2012] FCAFC 108 (*the ADJ Contracting Case*), the Full Court of the Federal Court rejected an argument that a job security clause in an enterprise agreement (requiring parity of pay and conditions for contractors with existing employees) is an unlawful term because it requires or permits a contravention of the general protections provisions in Part 3-1 of the Fair Work Act. It also upheld the validity of agreement clauses requiring the employer to promote union membership among its employees, and permitting union entry to the workplace for purposes of assisting employees in dispute resolution processes under the agreement.

8 AUG 2012 & 17 JAN 2013

Barker v Commonwealth Bank of Australia: Implied term of trust and confidence in question

Justice Besanko of the Federal Court of Australia held that a serious breach by an employer of its own redeployment policy amounted to a breach of the implied term of mutual trust and confidence in an employment contract, resulting in a substantial award of damages to a dismissed employee. This decision is now the subject of an appeal to the Full Court of the Federal Court. The state of Australian law regarding the implied term of mutual trust and confidence may be further clarified in the appeal proceedings.

14 AUG

Board of Bendigo Regional Institute of Technical and Further Education v Barclay : High Court overturns Federal Court decision

The High Court of Australia overturned a majority decision of the Full Court of the Federal Court. The case involved consideration of the test to be applied in determining a decision-maker's reasons for acting for the purposes of establishing whether an employer has breached the 'general protections' (or 'adverse action') provisions in Part 3-1 of the Fair Work Act. The High Court rejected the 'objective' test articulated by the majority in the Full Court, with the result that greater weight must now be given to the subjective intention of employers in adverse action cases. Despite this, given the continued overall growth in numbers of adverse action claims (see below), we anticipate that this will continue to be a high risk area for employers.

More...

3 SEP

New Gender Equity Reporting Requirements

The *Equal Opportunity for Women in the Workplace Amendment Act 2012* (Cth) was passed by Parliament, introducing more onerous reporting obligations on gender equity issues for private sector employers with more than 100 employees. Commencing with the reporting period 1 April 2013-31 March 2014, employers must provide information about their compliance with a number of 'gender equality indicators' (e.g., gender composition of the workforce and of the employer's board or other governing body, equal remuneration practices and flexible working arrangements).

More...

7 SEP

Fair Work Amendment Act 2012; Significant changes

In 2012, the Government instigated a post-implementation review of the *Fair Work Act 2009* (Cth) (**FW Act**). The independent Review Panel's Report was published in August 2012. Overall, the Review Panel found that the FW Act was meeting its objectives and (therefore) there was no case for major changes of the kind wanted by major employer groups (e.g., restrictions on union-initiated bargaining in the resources sector) but it did include 53 recommended changes. This led to the passage of the *Fair Work Amendment Act 2012* (Cth) (**FW Amendment Act**) in late November 2012, implementing around one-third of the Review Panel's recommendations including some significant changes to the FW Act provisions dealing with unfair dismissal and general protections claims, certain aspects of agreement-making, and ballots for protected industrial action. Changes have also been made to the structure and operation of Fair Work Australia (**FWA**), which from 1 January 2013 is renamed as the Fair Work Commission (**FWC**). In addition, the FWC has been given new functions in relation to default superannuation funds in modern awards.

More...

22 NOV

Employee's Fair Entitlements Guarantee on Employer Liquidation or Bankruptcy

The *Fair Entitlements Guarantee Act 2012* (Cth) took effect, replacing the General Employee Entitlements and Redundancy Scheme with a Fair Entitlements Guarantee scheme. This government-funded scheme enables employees to recover unpaid employment entitlements in the event of their employer's liquidation or bankruptcy; and increases the level of redundancy payments that are recoverable to a maximum of four weeks' pay per year of service.

More...

28 NOV

Transfer of Business: Law Reform

The *Fair Work Amendment (Transfer of Business)* Act 2012 (Cth) took effect. It protects the employment entitlements of state public sector employees when a business is transferred from a state government entity to a national system employer. This legislation is in response to increased privatisation and outsourcing activity by state governments, particularly in New South Wales and Queensland. It has important potential implications for private sector employers tendering for contracts from state public sector employers.

More...

5 DEC

5 DEC

CONTRIBUTED BY:
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AUSTRALIA 2013

Click here to view Q1 edition

KEY
- Important: action likely required
- Good to know: follow developments
- Note changes: no action required

2013 Q1

2013: PREDICTIONS FOR THE YEAR AS AT FEBRUARY 2013

2013 — CONTINUING THROUGH 2013

Phase 2 Implementation of Fair Work Act Review

Following the introduction of the *Fair Work Amendment Act 2012* (Cth), the Government is consulting with stakeholders over a second piece of legislation to implement the remaining recommendations of the Fair Work Act Review Panel. The recommendations include: extending the good faith bargaining obligations to the process of varying (as well as negotiating) an enterprise agreement; making the process for reaching greenfields agreements based on genuine negotiation between an employer and a union; facilitating the easier use of individual flexibility agreements under awards and enterprise agreements; preventing unions from instigating the process for taking protected industrial action until bargaining has commenced. It is expected that reaching a consensus on the Review Panel's remaining recommendations will be much harder to achieve than was the case with the changes reflected in the FW Amendment Act, discussed below. Further, it is unlikely that the Government will be able to obtain passage of a second piece of amending legislation through Parliament before the next federal election (see below).

More...

2013 — THROUGHOUT 2013

Work in Progress: Harmonising Health and Safety Laws Nationwide

The process of harmonising work health and safety laws across Australia's nine jurisdictions continues. As at 1 January 2013, 7 jurisdictions (the Commonwealth, New South Wales, Queensland, South Australia, Tasmania, Australian Capital Territory and Northern Territory) have passed legislation based on the *Model Work Health and Safety Act* and associated regulations. While the harmonisation process is ongoing, it is unlikely that Victoria and Western Australia will adopt the *Model Work Health and Safety Act* in the foreseeable future. The goal of nationally consistent work health and safety laws therefore remains unrealised at present.

More...

2013 — THROUGHOUT 2013

Fair Work Commission Conducts Modern Awards Review

Under the *Fair Work* (*Transitional Provisions and Consequential Amendments*) *Act 2009* (Cth), modern awards setting minimum wages and other employment conditions across industries are subject to a one-off review, two years after their commencement on 1 January 2010. Note, however, this process is unlikely to result in any major changes to minimum employment standards (such as 'penalty rates' for overtime or weekend work, a major concern for small business employers in the retail and hospitality sectors).

More...

2013 — THROUGHOUT 2013

Proposed overhaul of anti-discrimination laws

The *Human Rights and Anti-Discrimination Bill 2012* (**HRAD Bill**), has been referred to the Senate Legal and Constitutional Affairs Committee for inquiry and report by 18 February 2013. The HRAD Bill aims to consolidate into 1 statute all 5 pieces of existing federal anti-discrimination legislation. Proposed changes could include redefining the concept of discrimination, expanding the grounds of prohibited discrimination, and introducing a 'shifting burden of proof'. If enacted, these changes would enable discrimination complaints to be more easily established.

More...

2013 — THROUGHOUT 2013

Human Rights and Anti-Discrimination Laws: proposed consolidation on hold

Late last year, the Government released an Exposure Draft of the *Human Rights and Anti-Discrimination Bill 2012* (**HRAD Bill**), which proposed to consolidate all five pieces of federal anti-discrimination law into one statute.

Following widespread concern that provisions of the HRAD Bill intended to limit offensive comments would unduly impinge on free speech, and the Senate Legal and Constitutional Legislation Committee recommending the removal of these provisions, the Government has asked the Attorney-General's department to carry out further work on the proposed legislation. It is not known when the Government will bring forward new legislation consolidating the federal anti-discrimination statutes.

In the meantime, the Government has introduced into Parliament the *Sex Discrimination Amendment* (*Sexual Orientation, Gender Identity and Intersex Status*) *Bill 2013*, which would add three new protected attributes under the *Sex Discrimination Act 1984* (Cth).

2013

National Paid Parental Leave extended to Dads and Partners

The Government starts funding 'Dad and Partner Pay', a paid leave of 2 weeks at the minimum wage for fathers or other partners on the birth or adoption of a child. This is an extension to the 2011 Paid Parental Leave scheme which provides financial support to eligible working parents who are the primary carers of newborn or recently adopted children. Under the scheme, the Government funds employers to provide parental leave pay to their eligible employees for 18 weeks at the minimum wage.

More...

UPDATED AS AT END DECEMBER 2013

1 JAN

New National Building Code

The *Building Code 2013* (**Building Code**) took effect, replacing the *National Code of Practice for the Construction Industry.* The Building Code codifies previously applicable procurement rules applicable to contractors and participants in the building and construction industry, aimed at ensuring they comply with federal workplace relations laws.

More...

1 FEB

FWC Full Bench clarifies what constitutes an "arrangement" for purposes of a transfer of business

A Full Bench of the Fair Work Commission (**FWC**), in *John Lucas Hotel Management Services T/A World Square Pub v Ms Vanessa Hillie* [2013] FWCFB 1198, clarified what constitutes an "arrangement" between an old and a new employer for the purposes of determining whether there has been a transfer of business under Part 2-8 of the *Fair Work Act 2009* (Cth) (**FW Act**).

More...

22 FEB

Fair Work Amendment Bill 2013 expected to be passed during 2013

The *Fair Work Amendment Bill 2013* (**Amendment Bill**) includes further measures implementing the federal Government's responses to the 2012 Fair Work Act Review. The Amendment Bill also reflects several other "key policy priorities" of the Government.The Amendment Bill includes proposals to amend the FW Act provisions relating to:

- Union rights of entry to workplaces
- The right to request flexible work arrangements unpaid parental leave (expanding the current entitlement of parents
- Consultation over changes to rosters or working hours
- Protecting penalty rates under modern awards
- Implementing the proposed anti-bullying jurisdiction of the FWC.

More...

21 MAR

Modern Awards Review Decisions

In a series of decisions as part of its transitional review of all modern awards, the FWC has largely retained existing award arrangements in awards which relate to penalty rates and public holidays:

- In *Modern Awards Review 2012 – Penalty Rates* [2013] FWCFB 1635 (18 March 2013), the Full Bench rejected claims by employer groups (particularly those in the retail and hospitality sectors) to reduce award penalty rates for employees performing overtime and work on Sundays. However, the Full Bench indicated a preparedness to consider adopting "loaded rates" of pay, absorbing some penalty rates, in the retail and fast food awards.
- In *Modern Awards Review 2012 – Public Holidays* [2013] FWCFB 2168 (12 April 2013), the Full Bench rejected most union claims to improve arrangements for employees working on public holidays.However, in *Modern Awards Review 2012 – Award Flexibility* [2013] FWCFB 2170 (15 April 2013), the Full Bench decided to amend model award flexibility clauses, to enable "individual flexibility arrangements" (**IFAs**) varying the operation of certain award terms to be terminated on 13 weeks' notice (rather than 4 weeks' notice as applied previously).

MAR/APR

Federal Court questions granting of legal representation in FWC proceedings

In *Warrell v Walton* [2013] FCA 291, the Federal Court of Australia held that an employee's unfair dismissal case before the FWC had been conducted unfairly because the employer had been granted the right to legal representation while the employee was self-represented.Under the FW Act, parties are not entitled to legal representation in FWC proceedings unless permission is granted by the relevant tribunal member. In practice, permission for legal representatives to appear is frequently granted.

Anecdotally, it is understood that some members of the FWC are now adopting a more rigorous approach to applications for legal representation as a result of Flick J's decision.

4 APR

FWC Full Bench clarifies meaning of "casual employee" for redundancy pay purposes

In *Telum Civil* (*Qld*) *Pty Ltd v Construction, Forestry, Mining and Energy Union* [2013] FWCFB 2434, a Full Bench of the FWC ruled that construction workers engaged on a motorway upgrade were casual employees, and therefore were not entitled to redundancy pay under the National Employment Standards (**NES**) in the FW Act when they were laid off at the end of the project.

The Full Bench held that the meaning of a "casual" employee for purposes of the NES provisions should be drawn from the relevant modern award or enterprise agreement, rather than the common law. The decision had the effect of preventing the employees from claiming a "double entitlement" to some of the benefits of casual employment (e.g. a 25% loading on regular pay rates) *and* redundancy payments (from which causal employees are excluded under the NES).

22 APR

Full Federal Court awards overseas employee large payout for termination of contract

In *Cohen v iSOFT Group Pty Ltd* [2013] FCAFC 49, a Full Court of the Federal Court of Australia found that an expatriate employee was entitled to almost A$600,000 following the termination of the latest of a series of employment contracts he had entered into with an Australian company.

The Full Court rejected the employer's argument that the latest contract, entered into in 2008, was actually with its Singaporean-based entity. On the basis that the employee's real employer was still the Australian company, the Full Court determined that the employee should have been paid out the equivalent of six months' pay in lieu of notice when his position was made redundant in 2011, along with unpaid salary, annual leave and long service leave entitlements which had accrued under New South Wales legislation.

The decision is illustrative of some of the pitfalls that employers need to be aware of when posting employees overseas for secondments or on a permanent basis.

8 MAY

Coalition releases industrial relations policy

A federal election will be held in Australia on 7 September 2013, with the Labor Government widely expected to lose office.The Coalition Opposition has released its industrial relations policy, which essentially proposes to retain the current system of workplace regulation under the FW Act – with a number of "incremental and evolutionary changes" to be legislated within three months of a Coalition Government taking office.

The Coalition's "Policy to Improve the Fair Work Laws" is intended to diminish the importance of workplace relations as an election issue. It proposes relatively minor changes to the FW Act, including:

- The introduction of **new prerequisites for the taking of protected industrial action** during enterprise bargaining (e.g. that genuine and meaningful talks have first been held between the negotiating parties; and that claims made by employees/unions are not exorbitant or excessive compared with industry standards);
- Setting a **3-month period for the negotiation of "greenfields" agreements** (covering a new business venture or project), after which the FWC could approve an employer's proposed agreement (this is intended to address concerns about union "veto" rights over greenfields agreements, particularly on resources projects);
- **Making it easier for employers to enter into IFAs with their employees**, under which variations to award/agreement provisions relating to working hours, overtime and penalty rates can be agreed;
- Various measures that would **restrict or limit union rights of entry** to workplaces.
- The establishment of a new Registered Organisations Commission to oversee trade unions and employer associations and deal with complaints by their members;
- The re-establishment of the Australian Building and Construction Commission to regulate unlawful conduct in the building and construction industry.

The Coalition would request the Productivity Commission to thoroughly review the FW Act, and would then seek to implement the recommendations of this review if re-elected in 2016. Therefore, more significant workplace reforms could be expected during a Coalition Government's second term of office.

More...

9 MAY

Fair Work Commission Full Bench finds union provided sufficient notice of industrial action

In *Energy Australia Yallourn Pty Ltd v Construction, Forestry, Mining and Energy Union* [2013] FWCFB 3793, a Full Bench of the Fair Work Commission held that the union had given the employer the required detail of its proposed industrial action under the Fair Work Act 2009 (Cth).

The union had notified the employer of the employees' intention to take protected (i.e., lawful) industrial action in support of their claims for a new enterprise agreement, in the form of "bans limiting the output of individual [electricity] generators" to a certain capacity at various specified times. The employer argued that the notice was deficient because it described the outcome, rather than the nature, of the proposed industrial action.

However, the Full Bench found that while the union's notice could have been expressed more clearly, it did not need "to contain precise details of when and how every future act or omission will or may occur". The Full Bench also held that the proposed industrial action constituted a "ban" within the definition of "industrial action" under the Fair Work Act (and therefore, could constitute protected industrial action).

17 JUN

Migration Act amendments passed by Parliament

The *Migration Amendment* (*Temporary Sponsored Visas*) *Act 2013* (Cth) implemented changes to the Australian Government's "457 visa" program, which allows employers to address skills shortages by supplementing the labour market with skilled foreign workers.

Among other changes, the amending legislation introduced a requirement for sponsors to undertake labour market testing before nominating a foreign worker for a particular position. The new requirements for obtaining 457 visas will take effect no later than 30 December 2013.

More...

25 JUN

Sex Discrimination Act amendments adopted

The *Sex Discrimination Amendment* (*Sexual Orientation, Gender Identity and Intersex Status*) *Act 2013* (Cth) introduces three new protected attributes (i.e. prohibited grounds of discrimination) under federal sex discrimination legislation: sexual orientation, gender identity and intersex status.

The changes take effect on 1 August 2013, providing increased protection against discrimination for lesbian, gay, bisexual, trans, gender diverse and intersex people. Same-sex couples are now also protected from discrimination under the definition of 'marital or relationship status'.

28 JUN

1 JUL

Fair Work Act Amendments take effect

The following amendments to the *Fair Work Act 2009* (Cth) took effect on 1 July 2013:

- **Right to request flexible work arrangements** (e.g., expanding the range of employees who can make such a request, and defining the "reasonable business grounds" upon which employers may refuse a request).
- **Unpaid parental leave** (expanding the previous entitlement of parents to take concurrent unpaid parental leave from a maximum of 3 weeks to 8 weeks, and providing parents with greater flexibility as to when this kind of leave can be taken).
- **Special maternity leave** (ensuring that any period of unpaid special maternity leave taken by an employee prior to giving birth does not reduce that employee's entitlement to unpaid parental leave).

These changes were introduced by the *Fair Work Amendment Act 2013* (Cth), which also amended the *Fair Work Act* to enable the Fair Work Commission to deal with bullying claims by employees; and giving unions slightly enhanced rights of entry onto employers' premises (with effect from 1 January 2013).

More...

1 JUL

Minimum wage Increases come into effect

Increases to Australia's national minimum wage arising from the Fair Work Commission's *Annual Wage Review 2012-13* [2013] FWCFB 4000 took effect on 1 July 2013.

The decision increased the minimum wage from A$606.40 per week to A$622.20 per week (A$16.37 per hour). The wage increase applies to over 1.5 million Australian employees whose terms and conditions of employment are covered by modern awards only, and do not receive pay increases through negotiated enterprise agreements.

1 JUL

Superannuation increases kick in

The *Superannuation Guarantee* (*Administration*) *Amendment Act 2012* (Cth) commenced operation, putting into effect incremental increases in compulsory employer contributions to employees' superannuation (i.e., pension) funds from 9% to 12% of earnings by financial year 2019-2020.

As a result of the first increase from 1 July 2013, employers must now make superannuation contributions of 9.25%; and from 1 July 2014, the contribution amount will increase to 9.5%.

More...

12 JUL

Queensland Appeal Court clarifies obligations of safety regulators in bringing charges against duty-holders

In *NK Collins Industries Pty Ltd v The President of the Industrial Court of Queensland* [2013] QCA 179, the Queensland Supreme Court – Court of Appeal held that the state's safety regulator must identify and particularise in its charges the measures which should have been taken by a duty-holder to ensure health and safety, before a prosecution for breaches of workplace health and safety legislation can succeed.

The decision is significant, as it is the first major decision to apply reasoning similar to that adopted by the High Court of Australia in the landmark case of *Kirk v Industrial Court of New South Wales; Kirk Group Holdings Pty Ltd v WorkCover Authority of New South Wales* (2010) 239 CLR 531.

More...

6 AUG

Full Federal Court affirms existence of implied term of mutual trust and confidence in Australian employment contracts

In *Commonwealth Bank of Australia v Barker* [2013] FCAFC 83, a majority of the Full Court of the Federal Court of Australia (Jacobson and Lander JJ, (Jessup J dissenting)) held that, in the absence of express terms to the contrary, there is an implied term of mutual trust and confidence in every Australian employment contract.

Following the original formulation of the implied term by the House of Lords in *Malik v Bank of Credit and Commerce International SA* (*in liq*) [1998] AC 20, the majority in Barker determined that the implied term of mutual trust and confidence requires that an employer will not, without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between the parties.

On the facts before them, the majority in *Barker* found that the employer had breached the implied term when it made the employee redundant in breach of its contractual obligation to consider redeployment options, and awarded him around A$335,000 in damages.

This decision has been appealed to the High Court of Australia, the decision of which will provide much-needed clarification on the operation of the implied term of mutual trust and confidence in the Australian context.

More...

9 AUG

Social media: private life and work life collides again

In Banerji v *Bowles* [2013] FCCA 1052, the Federal Circuit Court of Australia refused to make orders to prevent the dismissal of a public servant who anonymously made a number of critical comments on Twitter about the Government and its immigration policies. In ruling that there was no unfettered freedom of political expression, Judge Neville made it clear to public sector workers across Australia that anonymous "venting" on social media about the Government's policies would be considered a breach of the Australian Public Service Code of Conduct and departmental policies on social media use.

This decision reinforces that the divide between private and public life is unclear, and will likely not become clearer in the short term as new technologies are introduced. Employers implementing or reviewing their social media policies should turn their minds to just how far they need to intrude on workers' privacy in order to protect their business interests.

More...

14 AUG

High Court finds provision of accommodation is not a "payment" that is prohibited during industrial action

In *Construction, Forestry, Mining and Energy Union v Mammoet Australia Pty Ltd* [2013] HCA 36, the High Court of Australia held that the provision of on-site accommodation to employees during a period of protected industrial action was not a "payment" that was prohibited by the *Fair Work Act 2009* (Cth). The decision highlights the need for employers to carefully consider what benefits should be withheld from employees during periods of protected industrial action under Part 3-3 of the *Fair Work Act*.

More...

7 SEP

Coalition Parties win federal election and set to implement Industrial Relations Policy

The Liberal/National Coalition's "Policy to Improve the Fair Work Laws" essentially proposes to retain the current system of workplace regulation under the *Fair Work Act 2009* (Cth) – with a number of "incremental and evolutionary changes" to be legislated within three months of the Coalition being elected to office.

As the Coalition won the federal election held on Saturday 7 September 2013, attention now turns to the new Government's prospects of implementing the policy according to its proposed timetable. Key measures proposed by the Coalition – such as limits on protected industrial action and union entry rights, and easier processes for employers to make greenfields agreements and individual flexibility arrangements with employees – are likely to be opposed by the Greens Party, which holds the balance of power in the Senate until 30 June 2014.

Note...
More...
More....

27 SEP

Federal Circuit Court supports employer's right to direct employees to take annual leave

In *United Voice v Valspar* (*WPC*) *Pty Ltd* [2013] FCCA 1437, the Federal Circuit Court of Australia rejected the union's claim that the employer (which operates the Wattyl paint manufacturing business) breached the *Fair Work Act 2009* (Cth) when it directed employees to take some of their accrued annual leave entitlements. This direction was issued as part of a plan to reduce production in response to excess capacity, in order to avoid the need for redundancies. Judge Simpson held that the direction to take annual leave was consistent with the applicable enterprise agreement and sections 88 and 93(3) of the *Fair Work Act*; and was reasonable in the circumstances.

30 SEP

Fair Work Commission Full Bench finds employer provided misleading advice about proposed agreement – but this did not preclude agreement's approval

In *Australian Municipal, Administrative, Clerical and Services Union v Yarra Valley Water Corporation* [2013] FWCFB 7453, a Full Bench of the Fair Work Commission found that the employer had misled employees about the need to change certain provisions in an enterprise agreement which a majority of employees had previously voted up. In a second ballot on the agreement, it again obtained majority support among the workforce.

The union sought to prevent the Commission from approving the agreement, arguing that the second vote had been tainted by the employer's misleading information. However, the Full Bench held that the misrepresentations related to proposed agreement provisions that were "relatively trivial in nature", and had not affected the employees' "genuine agreement" to the proposed deal as required by sections 187-188 of the *Fair Work Act 2009* (Cth).

10 OCT

Fair Work Commission preserves penalty rates in restaurant and catering industry award

In *Banking Industry Association of Queensland – Union of Employers and Others* [2013] FWC 7840, the Fair Work Commission rejected the most recent attempt by employer organisations to reduce or remove penalty rates for late night and weekend work in the context of the transitional review process for modern awards.

Deputy President Gooley found that the evidence led by the lead industry body, Restaurant and Catering Australia, did not justify a departure from the penalty rate arrangements put in place when the industry's award was made in 2008. She also found that employees in the industry who relied upon penalty rates were often low-paid and continued to be adversely affected by working irregular or unsociable hours.

Restaurant and Catering Australia has appealed the Commission's decision. In addition, employer pressure for changes to existing penalty rates provisions across a number of industries is likely to build in coming months, in light of the election of the Coalition Government on 7 September 2013 – and as part of the next scheduled review of modern awards in 2014, which is expected to be broader in focus than the transitional review process.

11 OCT

Federal Court imposes penalties on Victorian Government for adverse action Construction Code breaches

In *Construction, Forestry, Mining and Energy Union v State of Victoria* (*No 2*) [2013] FCA 1034, Justice Bromberg of the Federal Court of Australia ordered the Government of the State of Victoria to pay A$53,000 in penalties to the CFMEU for engaging in unlawful adverse action and coercion through the implementation of the State's Construction Code and Implementation Guidelines. The Victorian Government had sought to encourage bidders for government-funded work to ensure their workplace agreements were Code-compliant, in particular through the removal of prohibited "union-friendly" clauses in those agreements.

Two earlier Federal Court decisions, in which the Victorian Government's actions had been found to breach Part 3-1 of the *Fair Work Act 2009* (Cth), have now been appealed to a Full Court of the Federal Court. The newly-elected federal Coalition Government has announced that it will seek to intervene in the appeal in support of the Victorian Government's position.

This reflects the federal Government's policy approach of returning to strong regulation of the building industry, in order to limit the influence of powerful construction unions. To this end, legislation re-establishing the Australian Building and Construction Commission is expected to be introduced in the first sitting week of the new Parliament in mid-November.

More...
More...

25 OCT

Federal Court finds dismissal of union delegate did not constitute unlawful adverse action

In the latest application of the High Court's landmark *Barclay* ruling (*Board of Bendigo Regional Institute of Technical and Further Education v Barclay* [2012] HCA 32), the Federal Court found that an employer did not breach Part 3-1 of the *Fair Work Act 2009* (Cth) when it dismissed a union delegate at a coal mine.

In *Construction, Forestry, Mining and Energy Union v BHP Coal Pty Ltd* [2013] FCA 1034, Justice Collier of the Federal Court of Australia held that the company's dismissal of the union delegate was not because of his engagement in industrial activity (i.e. his role in coordinating an overtime list under the applicable workplace agreement). Rather, the delegate had been sacked for serious misconduct after he had physically and verbally abused a co-worker; and because the delegate had purported to assume authority to enforce company rules when he had no such authority.

28 OCT

Federal Circuit Court imposes penalties on Qantas for consultation breaches

In *Australian Licenced Aircraft Engineers Association v Qantas Airways Limited* (*No 2*) [2013] FCCA 1696, the Federal Circuit Court of Australia imposed penalties of around A$41,000 on the company for its failure to properly inform and consult with the union over the introduction of a new "maintenance on demand" system which led to 30 aircraft engineers being made redundant. This failure meant the number of redundancies was pre-determined by senior Qantas management, rather than the subject of the required level of consultation.

In his decision, Judge Raphael noted his "very serious concerns that the maximum penalty [for the relevant breaches] is hardly a deterrent to a major Australian public company from breaching what is a very important law". Despite this, the decision serves as a reminder to employers of the need to ensure compliance with their obligations to consult over proposed restructures under the terms of applicable modern awards or enterprise agreements.

2013: LOOKING FORWARD

PROPOSED FOR 1 JAN 2014

Specific Anti-bullying legislation introduced

The *Fair Work Amendment Act 2013* (see above) establishes an anti-bullying jurisdiction within the FWC. This will allow a worker who is bullied at work to apply to the FWC for an order to stop the bullying. Bullying will be defined as unreasonable behaviour by an individual or group that creates a risk to another worker's health and safety. Management action carried out in a reasonable manner will not constitute bullying (e.g. performance management or disciplinary action).

Remedies will include orders requiring an individual or group to stop bullying behaviour, or requiring an employer to implement anti-bullying policies and training. Orders for compensation or reinstatement will not be available.

The FWC's anti-bullying jurisdiction will commence on 1 January 2014.

More...

CONTRIBUTED BY: CORRS CHAMBERS WESTGARTH lawyers

AUSTRALIA

MORE

1 FEB 2013

New National Building Code

The Building Code was issued as a legislative instrument, to provide greater legal certainty than the previous procurement rules which operated as policy instruments only. This step was taken partly to address the issuing of building codes by state governments in Victoria and New South Wales which are inconsistent with the national code (e.g. the state codes seek to prohibit certain "union-friendly" clauses in workplace agreements entered into by building industry participants, which are permissible under the Building Code).

Developments continue to unfold in relation to the clash between federal and state building codes, with the Victorian Government recently amending its Code Guidelines after two Federal Court decisions found that their application breached federal protections of freedom of association: *Construction, Forestry, Mining and Energy Union v State of Victoria* [2013] FCA 445 (17 May 2013), and C*onstruction, Forestry, Mining and Energy Union v McCorkell Constructions Pty Ltd* (No. 2) [2013] FCA 446 (17 May 2013).

See...
And...
Back...

22 FEB 2013

FWC Full Bench clarifies what constitutes an "arrangement" for purposes of a transfer of business

Part 2-8 provides for certain employment conditions and entitlements to be transferred from the old to the new employer, for the benefit of transferring employees, where the requirements for establishing that a transfer of business has occurred are met.

The Full Bench held that although it is unnecessary that there be a contractual obligation, there will be no arrangement and, therefore, no transfer of business on the basis of a transfer of assets unless the new employer at least assumes a moral obligation, or gives an assurance or undertaking that it will act in a certain way with regard to any assets that are transferred to it from the old employer.

See...
Back...

7 SEP 2013

Coalition Parties win federal election and set to implement Industrial Relations Policy

Trade unions can expect to be the focus of significant regulatory change from the new Government: it will establish a new Registered Organisations Commission to oversee trade unions and employer associations and deal with complaints by their members, and re-establish the Australian Building and Construction Commission to regulate unlawful conduct in the building and construction industry.

One of the Coalition's main election policies was to introduce a significantly more generous paid parental leave scheme than that currently in operation. If this policy is implemented, the minimum paid parental leave entitlements of mothers following the birth of a child will increase from 18 weeks' pay at the national minimum wage – to 26 weeks' pay at the employee's actual wage, capped at A$150,000 per annum. This scheme will be funded partly through a 1.5% levy on all companies with taxable income over A$5 million.

The Coalition will request the Productivity Commission to thoroughly review the FW Act, then seek to implement the recommendations of this review if re-elected in 2016. Therefore, more significant workplace reforms could be expected during a Coalition Government's second term of office.

Back...

CONTRIBUTED BY: CORRS CHAMBERS WESTGARTH lawyers

CHINA
2012

UPDATED AS AT FEBRUARY 2013

KEY

- **Important:** action likely required
- **Good to know:** follow developments
- **Note changes:** no action required

13 FEB

Democratic Management of Enterprises: New Nationwide Provisions

The "Provisions on the Democratic Management of Enterprises" were issued recently under the All China Federation of Trade Unions. The provisions urge enterprises to establish 'democratic management systems' with labour unions, to increase transparency, and also to give employees a greater say in the management of the company.

More...

19 APR

New National Standards on Personal Information Protection to be Adopted

A set of new national standards, namely, "Information Security Technology - Guide for Personal Information Protection" (Guide) is expected to be adopted.

More...

4 MAY

National Maternity Leave Extended to 14 Weeks: State Council Approves in Principle

On 18 April 2012, the Special Regulations on Labour Protection of Female Employees (Draft) were reviewed and passed in principle by the Standing Committee of the PRC State Council.

More...

MAY

Guangdong's Regulations on the Democratic Management of Enterprises (third amendment) interpretation

The Guangdong's Regulations on the Democratic Management of Enterprises (third amendment) went through its first reading in the People's Congress Standing Committee in 21 July 2010. The Draft was open to public consultation in May 2012. It will be presented to the Standing Committee in September 2012.

More...

8 JUN

Labour Disputes Trials: The Fourth Interpretation on Application of Laws (Draft for Consultation)

The PRC Supreme People's Court released the Fourth Interpretation on Certain Issues regarding Application of Laws in Trial of Labour Disputes (Draft for Public Consultation).

More...

30 JUN

Exit and Entry of Citizens: National Legislation passed, 30 June 2012

The New Law will take effect on 1 July 2013 and will apply to the exit-entry administration of both Chinese and foreign nationals.

More...

23 NOV

Labour Dispatch Companies: Proposed Amendments to the PRC Employment Contract Law

Anticipated changes to PRC Employment Contract Law in November 2012 will affect labour dispatch companies, if approved. Changes are likely to be retroactive and will, impact all existing and new labour dispatch companies.

More...

CONTRIBUTED BY: MAYER·BROWN JSM

CHINA 2013

Important: action likely required
Good to know: follow developments
Note changes: no action required

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2013 Q1

2013: PREDICTIONS FOR THE YEAR AS AT FEBRUARY 2013

KEY

Regulations on the Special Working Hours Scheme Introduced at National Level during 2013

2013

UPDATED AS AT END DECEMBER 2013

Shanghai Implementation of Method of Work-related Injury Insurance effective 1 January 2013

The Method specifies the respective responsibilities of the dispatch entity and the service-receiving entity and adjusts the base of the invalidity allowance to the "salary of the principal".

More...

1 JAN

Jiangsu Labour Contract Regulations Amendments: Passed 15 January 2013, Effective May 2013

The draft amendment provides that the number of employees participating in labour dispatch should not exceed 30% of the total number of employees (with a maximum of 50%). It also encourages companies and employees to form a long term stable employment relationship. It clarifies the mode of social insurance taken out by the cross-locality labour dispatch employees.

15 JAN

Non-Compete Clauses and Other Employment Matters: Judicial Interpretation IV Effective 1 February 2013

Interpretation IV issued by the PRC Supreme People's Court addresses non-compete covenants and various other employment issues, and will significantly impact several important areas of PRC employment law practice.

More...

1 FEB

Personal Data Protection: National Guidelines for Public and Commercial Services Effective 1 February 2013

1 FEB

Work-Related Injury Insurance: Opinion on the Implementation Rules of the Regulations

The Ministry of Human Resources and Social Security (MOHRSS) released the *Opinions on Certain Issues Concerning the Implementation of the Regulations on Work-Related Injury Insurance* (the "Opinions"). According to the Opinions, "during the period of a work-related trip" shall be determined by taking into account whether the employee was assigned by his or her employer to take the trip, and whether the employee's accidental injury was caused by or while doing his or her job. The Opinions provide that, in the event that an eligible contractor, in violation of the laws or regulations, contracts or subcontracts contracting services to an ineligible organisation or natural person, and that a labourer employed by such organisation or natural person is injured or dies in the course of his or her service, the eligible contractor shall bear liability for work-related injury insurance entitlements which ought to have been borne by an employer as required by law.

More...

25 APR

Tianjin: An Employer in Breach of Statutory Social Insurance Contributions Gives an Employee the Right to Terminate

An employee is entitled to unilaterally terminate the employment and claim statutory severance if the employer fails to make the statutory social insurance contribution on a timely basis and in full. Even if the employer and employee have mutually agreed not to contribute, or to underpay the social insurance premium, such an agreement will be deemed void and the employer in breach of its statutory obligations.

More...

1 MAY

Jiangsu Province: Labour Contract Regulations Amendments effective 1 May 2013

1 MAY

Labour Dispatch: PRC Labour Contract Law Amendments Effective July 2013

The amendments define labour dispatch arrangements with a view to mainstreaming and better controlling the use of third party (or agency) employment arrangements.

More...

Exit and Entry of Citizens: Control Law Take Effect 1 July 2013

The Law of the People's Republic of China on the Control of the Exit and Entry of Citizens came into effect as of 1 July 2013 and applies to the exit-entry administration of Chinese and non-Chinese nationals.

More...

1 JUL

1 JUL

Administrative Licence for Labour Dispatch Services: Requirements

On 20 June, the Ministry of Human Resources and Social Security (MOHRSS) released the *Implementing Measures for Administrative Licence for Labour Dispatch* (the "Measures"), effective as of 1 July 2013. The Measures provide that an enterprise operating labour dispatch services shall file an application for administrative licence with the local human resources and social security department. Without a licence, no entity or individual may operate labour dispatch services. The Measures provide that an enterprise that applies for operating labour dispatch services must meet the following requirements: (1) the registered capital shall not be less than CNY2 million; (2) it has fixed business premises and facilities appropriate to the services; and (3) it has a labour dispatch management system that complies with the provision of laws and administrative regulations. The Measures also require that labour contracts and labour dispatch service agreements concluded after 28 December 2012 and before 30 June 2013, shall be fully performed in accordance with the PRC Labour Contract Law Amendments as of 1 July 2013.

More...

Guangdong Province Issues New Notice on Payment of Union Fees

The *Interim Measures of Guangdong Province on Administration of the Collection of Union Fees* (the "Measures"), which was issued jointly by the Guangdong Federation of Trade Unions, the Guangdong Taxation Bureau and the Guangzhou Branch of People's Bank of China, came into effect as of 1 July 2013. In light of the Measures, the union fees (including union preparation fees) in Guangdong province will be collected by the local tax authorities on behalf of union authorities. Specifically, from 1 August 2013, employers which have already established company trade union, as well as those which have not yet established company trade union within 6 months after the company's establishment or starting operations, should declare and pay the union fee or union preparation fee (equivalent to 2% of the total wages of all its employees) for the period after July 2013 (inclusive) directly to local tax authorities. Despite the above requirements, Guangdong Provincial Federation of Trade Unions has further clarified that it does not require payment of union preparation fees from those companies with fewer than 25 employees which have not yet established a trade union. Please also note that whether such Measures have the force of law still remains controversial; local employers are advised to keep abreast of progress of relevant enforcement actions.

More...

1 JUL

Public Comments Sought on PRC Labour Dispatch Provisions

The Ministry of Human Resources and Social Security (MOHRSS) released the *Circular of the Ministry of Human Resources and Social Security on Seeking Public Comments on the Several Provisions on Labour Dispatch (Draft for Comments)* (the "Draft Provisions") on 7 August, 2013 and solicited public comments with the goal of implementing the Amendment to the PRC Labour Contract Law and regulating labour dispatch. The Draft Provisions, for the first time, clearly defined "Labour Dispatch", specified the applicability of Labour Dispatch and provided the maximum percentage of dispatched staff to the total number of the workforce (i.e. 10%). The Draft Provisions further delineated the statutory obligations of the labour dispatch company and host entity, elaborated the circumstances under which the host entity was entitled to return the dispatched staff and the payment of statutory economic compensation, and provided the procedures for terminating a labour contract under a labour dispatch. Details concerning for labour remuneration standard and social insurance under cross-region labour dispatch arrangement were provided and the penalty for breaching the labour dispatch restrictions was reiterated in the Draft Provisions. Public comments were invited until 7 September, 2013.

More...

1 JUL

7 AUG

China's New Entry-Exit Rules for Foreigners Take Effect

The PRC State Council released the Administrative Regulations of the People's Republic of China on Entry and Exit of Foreigners on 12 July 2013 (the "New Regulations") to implement the Exit-Entry Administration Law of the People's Republic of China (the "New Law"). The New Regulations came into force on 1 September 2013. The Detailed Rules for the Implementation of the Law of the People's Republic of China Governing the Administration of the Entry and Exit of Foreigners (the "Old Regulations") have been repealed. The New Regulations increased the categories of ordinary visa from 8 classes to 12 classes. The 4 new classes of visa are M visa (Maoyi, i.e., commerce), Q visa (Qinshu, i.e., relatives), R visa (Rencai, i.e., people with special skills), and S visa (sishi, i.e., personal affairs). The applicable respective scopes of the original F, X and Z visas were also adjusted. One of the highlights of the New Regulations is that it recognises that foreign students can undertake off-campus work legally. It is stipulated that where a foreigner holding a study-type residence permit needs to do off-campus work or internship, such foreign student should obtain the consent of the university and apply to the entry-exit administration of a competent public security authority for an endorsement as to the time period and the location of the internship or off-campus work. Without such endorsement, foreign students are not allowed to do off-campus work or internship.

More...

1 SEP

Anhui Province's Implementation Rules for Regulations on Work-related Injury Insurance take effect

The newly revised Anhui Province's implementation rules for the Regulations on Work-related Injury Insurance (the "Rules") came into force on 1 September 2013. The Rules clarify the relevant operation details based on the amendments in the Regulations on Work-related Injury Insurance in 2010

More...

1 SEP

Shandong Provincial Employment Contract Regulations take effect

On 1 August 2013, the Shandong Province People's Congress revised the Shandong Provincial Employment Contract Regulations (the "Revised Regulations"). The Revised Regulations came into force on 1 October 2013.

The highlights of the Revised Regulations are as follows:- First, the system of suspension of employment contracts was established. The Revised Regulations stipulate the requirements for the suspension, allow employers to suspend the contribution of social security contributions and provide that the suspension period would not be counted into the employee's years of service. Second, the scope of interpretation of two consecutive fixed-term employment contracts was broadened. Where a fixed-term employment contract is concluded within 3 months of the rescission or termination of a previous fixed-term employment contract, two consecutive fixed-term employment contracts would be deemed to have been concluded. Third, the Revised Regulations state that employers may need to pay employees double wages each month if the employees' employment contracts expire if the employment contract is not renewed and the employers fail to conclude a written employment contract in a timely manner. Fourth, the employment relationship is deemed to be established from the first day when the employee attends pre-employment training or education arranged by the employer. Fifth, the Revised Regulations also provide explicitly that the employer is under the obligation to keep employees' personal information confidential, which information should not be disclosed or used without consent.

More...

1 OCT

Administrative Provisions on the Declaration and Payment of Social Insurance Premium take effect

The Administrative Provisions on the Declaration and Payment of Social Insurance Premium (the "Provisions") issued by the Ministry of Human Resources and Social Security on 26 September 2013 came into effect on 1 November 2013. The Provisions reaffirmed and refined employers' obligations to pay social security under the PRC Social Insurance Law. An employer is required to apply for social security registration and to declare and pay the social security premium for its employees within 30 days from the commencement date of their employment. If an employer fails to make full payment of the social security premium within the time limit or fails to make a supplementary payment in accordance with the Provisions, the social insurance agency may check an employer's deposit account at the employer's deposit bank or other financial institution according to the PRC Social Insurance Law. The social insurance agency can make an application to the relevant administrative department of social insurance for the allocation and transfer of the social insurance premium. In addition, the Provisions require the employers shall inform their employees of the details of payment of social insurance premiums on a monthly basis. Employers shall provide their employees with general information concerning the payment of social insurance premiums every year, at the Employees' Assembly or on a noticeable bulletin board for the employees' perusal. The breakdown of such declared contributions and any changes thereto must be acknowledged and signed by employees. Employers should retain and make these breakdowns available for inspection.

More...

1 NOV

Jiangxi Province's Provisions on Enterprise Collective Wage Bargaining take effect

The Provisions on Enterprise Collective Wage Bargaining passed by the Jiangxi Province People's Congress came into effect on 1 November 2013. The Provisions consist of 8 chapters and 43 provisions. The provisions regulate the representatives of the collective wage bargaining, the procedures for the negotiations, regional and industrial collective wage bargaining, dispute resolution, and legal liabilities.

More...

1 NOV

CONTRIBUTED BY: MAYER · BROWN JSM

HONG KONG

2012

UPDATED AS AT FEBRUARY 2013

Important: action likely required
Good to know: follow developments
Note changes: no action required

KEY

JAN

Chan Wai Ho v Civil Service Bureau: Costs were Awarded in a Discrimination Claim to Discourage Abuse of Discrimination Ordinances

The District Court exercised its discretion to order costs against a plaintiff for bringing a frivolous claim.

More...

Statutory Holiday Law Amended: General Holidays and Employment (Substitution of Holidays) (Amendment) Ordinance

Should either of Chinese New Year's Day or the day following the Chinese Mid- Autumn Festival fall on a Sunday, then the following Monday (rather than the preceding Saturday) will be a statutory holiday.

More...

JAN

Proposed Law: Will Hong Kong's Unreasonable Termination Provisions Get More Teeth?

The government submitted proposed amendments to the Employment Ordinance (the **"EO"**) to the Legislative Council. One proposed change gave employers the option not to re-employ an individual, but instead to pay increased compensation of HK$50,000 (maximum).

More...

FEB

Cantor Fitzgerald Europe & Ors v. Boyer & Ors.: When Senior Employees leave

Cantor had sued four employees who resigned on the same day to join another business. The Court held that each of the four defendants had not breached their duty of fidelity or fiduciary duties to Cantor even though each of them were fully aware that the others were negotiating to join another business; The Court also held that the relevant defendant had not breached their express contractual obligation to notify Cantor if he was at any time invited or approached to take up employment, or enter into a business relationship, with a "competitor".

More...

FEB

Kwan Francis Hung Sang v. Hong Kong Exchanges and Clearing Limited: Threat of Dismissal May Amount to Constructive Dismissal

The Court of First Instance considered that informing an employee that he should resign or else he would be dismissed could amount to constructive dismissal. However, in this case the employee had signed a separation agreement and even if he had a valid constructive dismissal claim, such a claim had been compromised.

More...

MAR

Government Employees Given Paternity Leave

Eligible male employees are permitted to take 5 working days of paternity leave on full pay.

More...

APR

Sexual Orientation: A Legislative Debate

A debate was held in LegCo as to whether or not to introduce legislation prohibiting discrimination on the ground of sexual orientation.

More...

MAY

SkyTech Construction Limited v. Mr. Liu Sau Wai: Pooled Workers - Employees or Independent Contractors?

This High Court case considered a pool of workmen who shared a contract sum for completing the required tasks to be employees.

More...

JUN

Mandatory Provident Fund (MPF): Relevant Income Levels were Adjusted

The 'Maximum Relevant Income' was increased from HK$20,000 to HK$25,000 with effect from 1 June 2012 by virtue of the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011 and the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2011. The Minimum Relevant Income was adjusted to HK$6,500.

More...

JUN

The Protection of Wages on Insolvency (Amendment) Ordinance 2012 came into effect.

It amends the Protection of Wages on Insolvency Ordinance to expand the scope of the Protection of Wages on Insolvency Fund to cover pay for untaken annual leave and untaken statutory holidays under the Employment Ordinance.

More...

JUN

Resolution to Increase Levels of Compensation under the ECO

The Legislative Council passed a resolution on 17 July 2012 increasing the amounts of 8 compensation items payable under the Employees' Compensation Ordinance Cap. 282 (ECO) in view of the increase in the Statutory Minimum Wage.

More...

JUL

Mandatory Provident Funds Schemes: Increase in Allowable Deduction for Mandatory Contributions

Allowable deduction increased from HK$12,000 to HK$14,500 for 2012/13, and to HK$15,000 for the year of assessment 2013/14 onwards

More...

JUL

Employees' Compensation Ordinance

Revised levels of compensation under the Employees' Compensation Ordinance took effect.

More...

JUL

Personal Data (Privacy) (Amendment) Ordinance 2012 sets out a Number of Changes to the Personal Data (Privacy) Ordinance

Part 1: Has Teeth and Can Bite
Part 2: Data Users' Obligations Extended
Part 3: Privacy Commissioner has New Powers
Part 4: A New Criminal Offence is Created

JUL

Increase in Minimum Wages for Domestic Helpers

The Minimum Allowable Wage (MAW) for foreign domestic helpers was increased by $180 from $3,740 to $3,920 per month, up 4.8 per cent. The new levels of the MAW and the food allowance will apply to all contracts signed on or after 20 September 2012.

More...

SEP

Kwan Siu Wa, Becky & Ors v. Cathay Pacific Airways Limited: Court of Final Appeal ruled on calculation of annual leave pay

The Court determined that where an employer provides more annual leave days than required under the Employment Ordinance and does not distinguish between statutory annual leave and any contractual excess leave, then the employer runs the risk of having to pay annual leave pay in accordance with the statutory rate of annual leave pay for all annual leave granted, including the contractual excess.

More...

SEP

Cathay Pacific Airways Ltd and Others v Campbell Richard Blakeney-Williams and Others

The Court of Final Appeal ordered Cathay Pacific to pay HK$850,000 in damages to each of the 18 pilots it had terminated in 2001. The pilots, known collectively as the 'Cathay Pacific 49ers', were fired during an industrial dispute over pay and working hours.

More...

SEP

Personal Data (Privacy) Amendment Ordinance 2012

The provision relating to direct marketing and the legal assistance scheme took effect.

OCT

Changes to European Prospectus Rules Offer Relief to Asia-based Issuers

Amendments to the European prospectus rules, may make the operation of certain employee stock plans in Europe, by multinationals listed outside Europe, cheaper and more straightforward. However, it appears that any major relaxation of the rules for such companies might not actually come into force (if indeed it does) for some time yet.

More...

OCT

Sunny Tadjudin v Bank of America: Guidance on Establishing Unfair Pay on the Basis of Gender

The Court of Appeal decided that in bringing a claim for sex discrimination for treating the claimant less favourably than male colleagues in relation to her salary and bonus, a claimant does not have the prerogative to choose any comparator, regardless of suitability; also, the claimant cannot make an allegation of general discriminatory practice without any basis and hope to obtain documents from her employer to then substantiate the allegations; also, statistical evidence of other staff members' remuneration may not be useful and relevant in every discrimination case.

More...

OCT

Mandatory Provident Fund Schemes (Amendment) Ordinance 2012

The "Employee Choice Arrangement" was launched, providing 2.35 million employees with the option of transferring a portion of their mandatory contributions and investment returns to an MPF trustee and scheme of their own choice on a lump-sum basis once every year. Employees may also opt to make no changes.

NOV

Sexual Orientation: Anti-Discrimination Legislation:

Lawmakers rejected a motion calling for a public consultation to introduce a law to ensure equal rights for people of all sexual orientations.

NOV

Standard Working Hours: Policy Study

The Labour Department published a policy study on standard working hours addressing, among other things, the possible impact of introducing standard working hours in Hong Kong.

More...

NOV

Paternity Leave

The Labour Advisory Board endorsed the government's proposal for 3 days' statutory paternity leave at 80% of pay for both married and unmarried male (non-Government)employees

NOV

CONTRIBUTED BY: MAYER·BROWN JSM

HONG KONG 2013

Important: action likely required
Good to know: follow developments
Note changes: no action required

KEY

2013 Q1

Click here to view Q1 edition

2013: PREDICTIONS FOR THE YEAR AS AT FEBRUARY 2013

New Domestic Workers' Convention:

Will Hong Kong add the 2012 United Nations Convention on Domestic Workers as a legislative agenda item? The Convention seeks to provide domestic workers with the same basic labour rights as other employees.

More...

There will be no Public Consultation on Sexual Orientation Anti-Discrimination Legislation in 2013:

In his Policy Address, Hong Kong's Chief Executive confirmed there will be no public consultation process following, and despite, intense public and legislative debate during 2012.

More...

Paternity Leave:

Legislation is expected to be enacted in 2013 providing for 3 days of paternity leave at 80% of pay for eligible male employees, both married and unmarried. This is separate from the paternity leave entitlements of Hong Kong Government's eligible male employees who, effective 1 April 2012 receive 5 days on full pay.

New Board Diversity Policy and Reporting Requirements from September 2013:

The Stock Exchange of Hong Kong Limited will require listed issuers to comply with new Listing Rules to include, and report on, board diversity in the Corporate Governance Code and Corporate Governance Report. The term diversity has not been defined.

More...

Contracts (Rights of Third Parties) Bill 2013

The Bill proposes a variation to the common law rule of privity which would enable a non-party to a contract to enforce term(s). Proposed exceptions include employment contracts.

More...

Personal Data (Privacy) (Amendment) Ordinance 2012

The remaining 2 changes will be introduced this year. The first change was introduced in October 2012. Provisions relating to direct marketing will take effect on a date to be announced (tentatively 1 April 2013). Provisions relating to the legal assistance scheme will take effect on a date to be announced. See also commentary in 2012 section.

More...

The 2012 Debate on Standard Working Hours will continue in 2013

The Labour and Welfare Bureau will set up a Special Committee on Standard Working Hours in the first quarter of 2013

More...

Team Moves and Post-Termination Obligations:

The 2012 High Court case of *Cantor Fitzgerald v. Boyer & Ors* will come up for hearing on appeal. Cantor Fitzgerald brought proceedings against former employees alleging they were acting in breach of their employment contracts and of various fiduciary duties.

Minimum Wage Rate will increase to $30 per hour on May 31, 2013

More...

The Commission on Poverty will review Social Security and Retirement Protection.

More...

Chinese New Year February 2013: February: Saturday General Holidays changes take Effect

Lunar New Year's Day falls on a Sunday and means employees will benefit with more time off under the new General Holidays and Employment Legislation (Substitution of Holidays)(Amendment) Ordinance 2011.

More...
More...

York Chow announced as EOC Chairman effective 1 April 2013

More...

Chief Executive's 2013 Policy Address: Employers Take Note

Chief Executive Leung Chun-ying's maiden policy address on 16 January 2013 contained some important employment, benefits and pensions law- and policy-related comments.

More...

UPDATED AS AT END DECEMBER 2013

Unlawful Disability Discrimination in the Workplace

In *Kan Che Sing v. Lucky Dragon Boat (Belvedere) Restaurant Limited*, the Plaintiff, Mr Kan Che Shing (Kan), sued his former employer, Lucky Dragon Boat (Belvedere) Restaurant Limited (the "Defendant"), for direct and indirect disability discrimination. Although the Defendant made no explicit remarks about Kan's disabilities in terminating his employment, the Court found that the reason for Kan's dismissal was due to his injuries. On this basis, the Court ruled in favour of Kan and awarded damages for injury to his feelings and loss of income.

More...

The MPFA successfully brought a Civil Claim against an Employer for Outstanding MPF Contributions plus Surcharge

The Mandatory Provident Fund Schemes Authority (MPFA) successfully obtained judgment against an employer in the District Court for failing to make mandatory contributions in respect of an employee. While the outcome of this case revolves around certain specific facts, it serves as a timely reminder to employers of their obligations to make mandatory contributions to the MPF.

More...

LegCo Discussed Paternity Leave Proposal

Following the implementation of a pilot scheme in 2012 which gave male civil servants 5 days' paternity leave, the Labour Advisory Board (LAB) endorsed the Government's proposal to give other new fathers 3 days' paternity leave at 80% pay. A proposal on legislating for paternity leave was tabled for discussion in the Legislative Council Panel on Manpower in January. Legislation has not yet been finalised but is anticipated during 2013.

More...

Special Committee on Standard Working Hours Established

The Chief Executive, CY Leung, followed through with his election manifesto promise to "establish a special taskforce to undertake a study on improving protection for workers in high-risk occupations in relation to insurance, compensation for work injuries, therapy and rehabilitation". The Special Committee on Standard Working Hours (SWH) comprises government officials, representatives of labour unions and employers' associations, academics and community leaders. The role of the Special Committee is to study the issues related to SWH and put forward policy recommendations that could best suit the overall interests of Hong Kong.

More...

Commission on Poverty: Second Meeting:

The Commission on Poverty has been tasked with reviewing Social Security and Retirement Protection. The March meeting focussed largely on the setting of a poverty line for Hong Kong.

More...

Definition of 'Continuous Contract': Should the 4-18 Requirement be Relaxed?

The Legislative Council Panel on Manpower reviewed and discussed a briefing paper submitted by the Labour and Welfare Bureau of the Labour Department in November 2011. The paper detailed the results of a special topic enquiry into the status, numbers, legal employment protections and benefits entitlements of short duration and short working hours employees ("SDWH employees"). These are employees who work for short durations or shorter working hours and whose employment status, therefore, does not qualify as falling within the definition of 'continuous contract'. The enquiry came about following calls for a review of SDWH employees' status whose employment situation is generally regarded as less secure and less protected than those employees engaged under a continuous contract. It remains to be seen whether the Administration will propose a relaxation of the 4-18 requirement following the results of this special topic enquiry.

More...

Increased Protection Anticipated for Employees Participating in Trade Union Activity:

On 19 March 2013, the Legislative Council Panel on Manpower reviewed and discussed a briefing paper submitted by the Labour and Welfare Bureau of the Labour Department. The paper proposes amendments to the Employment Ordinance which currently requires Labour Tribunal orders for the re-instatement or re-engagement of an employee to be made with the consent of both parties. The proposal is that this consent requirement on the employer's part be removed. If passed, employees' protection against trade union-related employment bias would be increased. However, it is uncertain at this point whether the proposed bill will in fact be introduced. This development is a narrowing of the 2012 discussions (about the removal of employer consent requirements) which were not limited only to trade union-related disputes.

More...

All eyes on Health Alerts for Avian Influenza

More...

Personal Data: Amendment to Personal Data (Privacy) Ordinance took Effect 1 April 2013

The new provisions relating to direct marketing and legal assistance for aggrieved individuals introduced by the Personal Data (Privacy) (Amendment) Ordinance 2012 took effect on 1 April 2013. Of note under the Amendment Ordinance is that the Privacy Commissioner may provide various forms of legal assistance to an aggrieved person who has a right to claim compensation in relation to his personal data under the Personal Data (Privacy) Ordinance from a data user for damage suffered by him as a result of the data user's contravention of that Ordinance.

More...

Under the Spotlight: Trade Unions and Employment Rights

The very public strikes in Central by Hong Kong's dock workers have sparked discussions and significant media coverage about the lack of collective bargaining power on the part of Hong Kong's labour unions. They have also prompted scrutiny of the employment protections available to Hong Kong workers more generally. It remains to be seen whether these strikes will promote a review of trade union effectiveness and general labour rights.

York Chow became chairman of the Equal Opportunities Commission effective 1 April 2013

2014 General Holidays for 2014 announced

More...

Minimum Wage Rate will increase to $30 per hour effective May 31, 2013

Landmark Court of Appeal Ruling on Transgender Marriage

The Court of Final Appeal judicial review case of W v The Registrar of Marriages [2013] HKCFA 39 confirmed the right of post-operative transsexuals to marry in their reassigned sex under Article 37 of the Basic law and Article 19(2) of the Hong Kong Bill of Rights. The Court of Final Appeal recommended consequential legislative amendments be made to the Marriage Ordinance Cap. 181.

The judgement was welcomed by the Equal Opportunities Commission which issued a statement commenting: *"The EOC calls on the Government to concretely and promptly take action to address the legal amendment recommended by the Court of Final Appeal, and enable transgender individuals to access the full range of their legal rights in their adopted gender, including the right to marry. This includes reviewing and amending the relevant clauses of the Marriage Ordinance. Doing so would bring Hong Kong in line with a number of overseas jurisdictions, where a transgender individual could legally marry in their identified gender. The Government should show initiative to proactively address the issue and to raise awareness"*

W v The registrar of marriages [2013] HKCFA 39

EOC Responds to Court of Final Appeal Ruling on the "W" Case on Transgender Marriage

Labour Department Increases Focus on Prosecuting Wage Defaults by Employers

Cases brought by the Labour Department against employers who default on wage and related payments have lead to personal sanctions against company directors including imprisonment. One employer was fined HK$118,000 under the Employment Ordinance for wage offences and defaulting on payment of a sum awarded by the Labour Tribunal. The prosecution was brought by the Labour Department.

More...
More...
More...
More...
More...

High Court Awards HK$15.8 million against Employer for Wrongful Termination and Breach of Implied Term of Trust and Confidence

The case of Grant David Vincent Williams v. Jefferies Hong Kong Ltd HCA 320/2011 illustrates how an employer can breach the implied duty of mutual trust and confidence it owes its employee in the way it treats that employee leading up to his or her summary dismissal. Although in Hong Kong an employee does not have the right to bring a claim for "unfair dismissal", if the employer's conduct towards the employee during employment leading up to a dismissal is irrational, this can be a breach the employer's duty of mutual trust and confidence giving rise to substantial damages. We understand the Defendant is not appealing.

More...

Recruiting Employers Take Note: Equal Opportunities Commission (EOC) provides Legal Assistance to Job Applicants in Pregnancy Discrimination Case

The EOC issued legal proceedings under the Sex Discrimination Ordinance, Cap. 480 in the District Court, on behalf of two female security guards who allege that a potential future employer discriminated against them by not offering them employment because they were pregnant.

More...

Equal Opportunities Commission (EOC) Chairperson urged Dialogue on Legal Protection for Sexual Orientation and Gender Identity

EOC Chair, Dr York Chow says diverse views over issues of gender, sexual orientation and the law need to be fully discussed in public in order to help overcome stereotyping and discrimination. This come 6 months after the Chief Executive's (CE) January 2013 Policy Address in which the CE stated, "The Government understands that this is a highly controversial issue which must be tackled cautiously. We will continue to listen to different views from various sectors. At present, we have no plan to conduct consultation."

More...
More...

Standard Working Hours Committee holds second meeting

The Committee announced it will commission a research consultant to carry out a dedicated working hours survey in 2014 to investigate, identify policy options, and conduct a two-stage public engagement and consultation process. It is anticipated that the consultation will focus on 6 particular business areas.

More...

The Office of the Privacy Commissioner for Personal Data (PCPD) issued Guidance on Preparing Privacy Notices

The PCPD's *Guidance on Preparing Personal Information Collection Statement and Privacy Policy Statement* is free and is designed to help organisations prepare clear and informative privacy notices and which comply with their obligations under the Personal Data (Privacy) Ordinance.

More...

High Court decides 1,000 metre Restrictive Covenant is Reasonable

In *Pure International (HK) Ltd v Lo Yan Chan Kenneth* [2013] HKEC 1092 the Court of First Instance considered the validity of a six-month restriction seeking to prohibit a former fitness-instructor employee from working in a similar capacity within 1,000 metres of the former employer's key location. The restrictive covenant was deemed reasonable to protect the commercial interests and goodwill of the former employer company.

More...

Legislative Council's Panel on Manpower July Meeting Update

The Panel met on July 31 and discussed issues relating to the sudden death of employees at work and payment of employees' compensation; the scope of the Employees Compensation Assistance Scheme; the ongoing review of the continuous contract requirement under the Employment Ordinance; and the progress of the work of the Standard Working Hours Committee.

More...

Foreign Financial Institutions Take Note: Foreign Account Tax Compliance Act (FATCA) Postponed

FATCA is US legislation that seeks information on US taxpayers' investments outside the United States and which will impose withholding taxes if not received. FATCA's provisions, originally due to come into effect in January 1, 2014, have now been postponed by 6 months to July 2014. This means there is more time to comply with the FATCA withholding, account documentation, and due diligence requirements. Despite this postponement, it is important that Hong Kong's foreign financial institutions plan ahead now and make the appropriate process and technology changes to comply with FATCA. The government is hoping to obtain exemptions for MPF schemes.

Also of note is that if a jurisdiction enters into an Intergovernmental Agreement to implement FATCA, the reporting and other compliance burdens on the financial institutions in that jurisdiction may be simplified and those financial institutions may not be subject to withholding under FATCA. The Hong Kong government is considering this.

IRS
Government and MPF Schemes

Labour Tribunal Hearing in the Absence of Hospitalised Defendant Challenged on Appeal

The Court of First Instance allowed an appeal by the defendant company to challenge the fact that the Presiding Officer of the Labour Tribunal had decided to proceed with hearing the case in the absence of the defendant Company when the company representative was, in fact, hospitalised and unable to attend.

More...

District Court decides 12-month restrictive covenant is unenforceable

In *Union Gain v Chu Wilton Lucas*, the District Court considered the validity of a 12-month restriction seeking to prohibit a former hair stylist employee from engaging in the provision of hair services within 1/2 mile of the former employer. The covenant was deemed unreasonable because it extended to prohibit the employee from serving new customers even though the former employer has no connection with such customers.

More...

Maritime Labour Convention (MLC) Now in Force

The MLC came into force on 20 August, 2013 in jurisdictions of those ILO member states that have ratified it. It brings together minimum standards to ensure decent working conditions for seafarers. Under the MLC, every seafarer has the right to: a safe and secure workplace that complies with safety standards; fair terms of employment; decent working and living conditions on board ship; health protection, medical care, welfare measures and other forms of social protection. The Convention has been ratified by 51 countries to date. Hong Kong proposes not to ratify the Convention but instead to amend existing legislation and has gazetted the Merchant Shipping (Seafarers) (Amendment) Bill 2013.

The Convention
The HongKong Bill

Company director fined for wage offences

Cases brought by the Labour Department against employers who default on wage and related payments have led to personal sanctions against company directors. Two directors were fined HK$60,000 and HK$80,000 under the Employment Ordinance for their consent, connivance or neglect in wage offences.

More...
More...

UN Domestic Workers Convention (the Convention) 189 is now Binding International Law

The Convention seeks to extend basic labour rights to domestic workers around the globe. To date, eight ILO member States (Bolivia, Italy, Mauritius, Nicaragua, Paraguay, Philippines, South Africa and Uruguay) have ratified the Convention. Since the Convention's adoption, several countries have passed new laws or regulations improving domestic workers' labour and social rights, including Venezuela, Bahrain, the Philippines, Thailand, Spain and Singapore. Legislative reforms have also begun in Finland, Namibia, Chile and the United States, among others. Several others have initiated the process of ratification of ILO Convention 189, including Costa Rica and Germany. To date, China has not ratified the Convention. Whether Hong Kong will respond with any consequential policy or legislative changes for its 300,000+ domestic worker population remains to be seen.

More...
UN ILO Domestic Worker Portal

HKeX Board Diversity Policy and Reporting Requirements are Now in Effect

More...

Minimum Allowable for foreign domestic helpers to increase

The Minimum Allowable Wage for foreign domestic helpers is to be increased by to $4,010 per month.

More...

Standard Working Hours Committee holds fourth meeting

The Labour and Welfare Bureau set up a Special Committee on Standard Working Hours in the first quarter of 2013. The Committee on Standard Working Hours has now held its fourth meeting and is considering the progress reports of its two working groups (WGS) on "Working Hours Consultation" and "Working Hours Study". The WGS will carry out comprehensive consultation in 4 direction namely to consult (i) the sectors with relatively long working hours mentioned in the Report of the Policy Study on Standard Working Hours, (ii) specific occupations/professions, (iii) the general public, and (iv) other major industries and organisations. Over 30 consultation sessions, including consultation forums, symposia and meetings with individual organisations are expected to be convened in the first half of 2014.

More...

Maximum mandatory contribution to be increased

On 17 July 2013, the Legislative Council passed an amendment to increase the maximum relevant income level from $25,000 to $30,000 per month, with effect from 1 June 2014. Accordingly, the maximum mandatory contribution amount will increase from $1,250 to $1,500 per month from 1 June 2014.

More...

2013: LOOKING FORWARD

Paternity Leave Legislation Update

The bill was expected to be introduced at the beginning of the 2013-2014 legislative session providing for 3 days of paternity leave at 80% of pay for eligible male employees, both married and unmarried. However, this has been delayed and is now likely to take place in 2014.

More...

Contracts (Rights of Third Parties) Bill 2013

The Bill proposes a variation to the common law rule of privity which would enable a non-party to a contract to enforce the terms. The Bill excluded certain kinds of contracts, including a contract of employment against an employee. The Consultation Bill is expected to be introduced into the Legislative Council in early 2014.

More...

Domestic Workers' Convention

No discussions as to whether Hong Kong will add the 2012 United Nations Convention on Domestic Workers as a legislative agenda item. The Convention seeks to provide domestic workers with the same basic labour rights as other employees.

Discrimination Law Review

A consultation paper is being drawn up to consider proposed amendments to the Anti-Discrimination Ordinances. These amendments are likely to involve substantive changes. A public consultation is expected to be launched some time in 2014.

More...

CONTRIBUTED BY: MAYER • BROWN JSM

INDIA
2012

UPDATED AS AT END APRIL 2013

- Important: action likely required
- Good to know: follow developments
- Note changes: no action required

KEY

19 DEC 2011

Maternity: Increase in Minimum Medical Bonus

The Maternity Benefit Act, 1961 entitles every woman who is entitled to maternity benefits, to a medical bonus where the employer has not provided pre-natal confinement and post-natal care, free of charge. Medical bonus has been increased to a minimum of IN$3500. It was previously IN$2500.

Death of Employee: Increase in Dependent Benefit

The Employees' State Insurance (Central) Rules, 1950, as prescribed under the Employees State Insurance Act 1948, Act, regulate the quantum of benefits payable to an employee's dependants when an employee dies as result of an injury sustained at work. The minimum monthly amount payable to a dependant has been revised to IN$1,200.

1 MAR

Employees' State Insurance: Revised ESI Inspection Guidelines

The Employees' State Insurance Corporation (ESIC) amendments to the ESI Inspection Policy took effect from 1 April 2012. The policy aims to create a sense of co-operation between the beneficiaries, employers and ESIC and advocates taking stringent action against defaulting employers.

More...

1 APR

Employees' Provident Fund Scheme Amendments

The Ministry of Labour and Employment has, by a notification dated 4 May 2012, introduced amendments to Employees' Provident Fund Scheme 1952. Employers are now required to prepare contribution cards and submit returns electronic format and also to provide employees who are joining or leaving service with relevant forms for the opening and transfer of their provident fund accounts. Similar amendments apply to international workers by virtue of paragraph 83 of the Scheme.

More...

4 MAY

Disabled Employees and Dependents: ESI Claims Procedures

A notification dated 7 May 2012 was issued amending certain provisions of the Employees' State Insurance (General) Regulations, 1950 to simplify the procedure for the submission of claims by disabled employees or their dependants to obtain benefits.

More...

7 MAY

'Excluded Employee' Definition: Employees' Provident Fund Scheme

The Scheme requires an employer to make contributions in respect of an international worker unless the international worker is an 'excluded employee'. The Ministry of Labour extended the definition of 'excluded employee.'

More...

24 MAY

International Workers (IWs): Employees' Provident Fund Scheme

The Employees' Provident Fund Organization published frequently asked questions in respect of international workers clarifying the provident fund scheme provisions applicable to IWs.

More...

25 MAY

Provident Fund Commissioners' Powers Curtailed: Employees' Provident Fund Scheme

Section 17 of the Employees' Provident Fund Act (EPFA) provides that an establishment (where 20 or more employees are employed) can obtain an exemption from the provisions of the EPF Act, provided it has set up a private provident fund trust to implement a social security scheme which is as, or more, beneficial to its employees, than the EPFA and the Scheme.

More...

24 JUL

Principal Employer not responsible for Contract Labourer's Provident Fund Contributions

Group 4 Securitas Guarding Ltd v Employees Provident Fund Appellate Tribunal & Ors

More...

20 SEP 2011
REPORTED IN 2012

International Workers: Amendment to Refund of Provident Funds

The Government of India has amended the refund clause. According to the newly amended clause, International Workers (IW) who are covered under an Social Security Agreement between India and their home country may withdraw their accumulated Provident Fund balances under the Scheme on ceasing to be an employee in an establishment covered under the EPF Act (regardless of whether they have reached the age of 58 or not). The Provident Fund accumulations can be paid to the IW into their bank account directly or through the employer.

More...

5 OCT

Pensions: Calculation of Eligible Service for International Workers

The Ministry of Labour and Employment has clarified that in respect of an international worker from a country with which India has executed an SSA, eligibility for pension is determined on the total number of years of service rendered by the international worker under the social security programme of his home country together with the number of years of service rendered in India in an establishment covered under the EPS.

More...

5 OCT

Form 11 Revised: Employees Provident Fund Scheme

An Indian employee having worked, or going to work, in a country with which India has a SSA is to be treated as an international worker. With a view to identify such Indian workers, Form 11 has been revised. Henceforth, it has to be mentioned in Form 11 whether the concerned individual had contributed to the social security program of a country with which India has an SSA.

15 OCT

Proposed for Amendment to Minimum Wages Act, 1948 [MWA]

The Government of India is considering increasing penalties under the MWA for non-compliance Details and decision are pending.

More...

5 DEC

Limitation Period on Inspections: Employees' State Insurance Act, 1948 (ESI Act)

ESIC has limited the right of SSOs to call for records relating to 5 years prior to the date of inspection. There is now further clarity on the duration for which records under the ESI Act need to be retained by an employer.

More...

20 DEC

OTHER DEVELOPMENTS

Employee Consent Required on Transfer of Business: Industrial Disputes Act, 1947

Sunil Kr. Ghosh v. K. Ram Chandran

More...

18 NOV 2011

Social Security and Pensions: India enters Social Security Agreement with Netherlands

The Government of India entered a Social Security Agreement (SSA) with the Kingdom of Netherlands.

More...

Commercial Establishments in Maharashtra: No Child Labourers and e-filing:

Proposed amendments to the Bombay Shops and Establishments Act, 1948 would, if approved, require all shops and commercial establishments in Maharashtra to display a notice stating that "No child labourers are engaged"

More...

1 DEC 2011

3 JAN 2012

Employment Visa: Relaxation of Rules on Change of Employment

Foreign nationals may now change their employer during the currency of their employment visa if the transfer of employment is between the registered holding company and its subsidiary or between subsidiaries.

More...

Bank Compensation Guidelines issued by Reserve Bank of India

The RBI circulated new guidelines for all private sector and foreign banks in India titled *"Guidelines on compensation of Whole Time Directors/Chief Executive Officers/Risk takers and Control Function staff, etc."*

More...

3 JAN 2012

13 JAN 2012

Companies should review their Secondment Agreements: Creation of Permanent Employment and Taxation Implications

Centrica India Offshore Pvt. Ltd vs. CIT (AAR No. 856 of 2010)

More...

Punjab Labour Welfare Fund: Revised Contribution Rates

The rates of welfare contributions have now been increased for employers and employees from IN$10 and IN$5 to IN$20 and IN$10 respectively.

More...

14 JAN 2012

11 APR 2012

IT Businesses Take Note: Software Development is a 'Manufacturing Process'

The Assistant Director, ESIC v M/s Western Outdoor Interactive Pvt. Ltd. & Others,

More...

Principal Employer held responsible to pay 'gratuity' to contract employee in the event of contractor's default

Superintending Engineer, Mettur Thermal Power Station, Mettur vs. Appellate Authority, Joint Commissioner of Labour, Comimbatore & Anr

More...

11 JUL 2012

18 JUL 2012

Increase in Wage Limit – Payment of Wages Act, 1936

The provisions of the Payment of Wages Act, 1936 were applicable to employees earning IN$10,000 or less, per month. By a notification dated 11 September 2012, the Ministry of Labour and Employment has increased this wage limit to IN$18,000 per month.

IT/ITES Companies no longer exempt from Karnataka Industrial Employment (Standing Orders) Act, 1946 (SO Act)

IT/ITES companies in Karnataka have, until recently enjoyed a blanket exemption from the Industrial SO Act.

More...

11 SEP 2012

24 SEP 2012

INDIA 2013

Important: action likely required
Good to know: follow developments
Note changes: no action required

KEY

Click here to view Q1 edition

2013 Q1

2013: PREDICTIONS FOR THE YEAR AS AT FEBRUARY 2013

Women at Work: Protection against Sexual Harrassment

On 3 September 2012, the Lok Sabha (the Lower House of the Parliament) passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012. The Bill was also passed by the Rajya Sabha (Upper House of Parliament) in February 2013. The Bill now remains to be notified by the government to become binding Law.

More...

2013

Increased Legal Protection for Contract Employees:

In a proposal to amend the Contract Labour (Regulation and Abolition) Act, 1970, the Central Government is seeking to reduce the disparity between permanent and temporary staff.

More...

2013

Prohibition against Child Labour

The Child Labour (Prohibition And Regulation) Amendment Bill, 2012 seeks to introduce a complete ban against the employment of children under the age of 14, in any industry, and against the employment of children below 18 in hazardous industries. The Bill has been approved by the Union Cabinet and is yet to be introduced to Parliament by the Ministry of Labour and Employment.

More...

2013

Ministry of Labour Moots Proposal to increase provident fund wage limit

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 currently requires employers to make provident fund contributions to employees earning more INR 6,500 or less. An increase in this wage limit to INR 15,000 is being mooted by the Ministry of Labour and Employment.

2013

Withdrawal of resignation by an employee - *India Yamaha Motors (Pvt.) Ltd. vs. Labour Court – II and Anr.* (2012 LLR 1276)

The Allahabad High Court considered whether an employee who has tendered his resignation, intending it to be effective on a prospective date, can withdraw it if it has already been accepted by the employer in accordance with the service rules. The employee tendered his resignation by providing one month's notice (where the effective last date of employment was one month away), as required under the terms of his employment. A clause in the certified standing orders (**Service Rules**) of the establishment provided for the acceptance of the resignation with immediate effect at the discretion of the employer, on the payment of wages for the unexpired period of notice. The employer exercised his right and accepted the employee's resignation before the expiry of the notice period and paid for the remaining notice period. The court upheld the provision of the Service Rules and held that once the resignation has been accepted by the employer, and appropriate payments are made to him, the employee does not have a right to withdraw his resignation.

Notes...
More...

JAN 2013
DECIDED ON 4 OCT 2012

UPDATED AS AT END DECEMBER 2013

Social Security Agreement signed between India and Austria

India and Austria have entered into a Social Security Agreement which will provide for the following social security benefits to Indian nationals working in Austria:

a) For short term contracts up to 5 years, no social security contribution will need to be paid under Austrian law by the detached workers provided they continue to make social security payments in India;

b) The above benefits will be available even when an Indian company sends its employees to Austria from a third country;

c) Indian workers will be entitled to bring back the social security benefits if they relocate to India after the completion of their service in Austria;

d) Self-employed Indians in Austria will also be entitled to bring back social security benefits on their relocation to India;

e) The period of contribution in one contracting state will be added to the period of contribution in the second contracting state for the purposes of determining eligibility for social security benefits.

More...

4 FEB

Amendments to the Employees' Pension Scheme, 1995 [EPS]

Paragraph 16(5)(b) of the EPS deals with the benefits that accrue to a deceased member's dependants where the deceased employee has not rendered pensionable serviceand provides that *"If the deceased member had not rendered pensionable service on the date of exit from the employment which would have made him entitled to a monthly members pension under paragraph 12, but had opted to retain the membership of this Scheme under sub para (8) of paragraph 12, the nominee or the dependant father or the dependant mother as the case may be shall be entitled to a withdrawal benefit as provided in paragraph 14."*

Paragraph 14 provides for an employee's entitlement to withdrawal benefit, when he has not rendered pensionable service. Under the amended paragraph 16(5) (b), in the case of a deceased member, the nominee or the dependant father or the dependant mother, as the case may be, will be entitled to this benefit in the manner laid down in Table D set out in the EPS. The withdrawal benefits provided for in Table D vary depending on the number of years of service rendered.

More...

14 FEB

Social Security Agreement signed between India and Portugal

India and Portugal have signed a social security agreement which will help both countries garner more investment and work opportunities for nationals of India and Portugal and enhance cooperation on social security between the two countries. The agreement provides various benefits to Indian nationals working in Portugal, the most significant of which include:

a) For short term contracts up to 5 years, no social security contribution will need to be paid under the Portuguese law by the detached workers provided they continue to make social security payments in India;

b) In order to have the benefit relating to non-payment of social security contributions, the employee need not be deputed directly from India. This benefit will be available even when an Indian company sends its employees to the Republic of Portugal from a third country;

c) Indian workers will be entitled to the export of social security benefits if they relocate to India after the completion of their service in the Republic of Portugal;

d) Self-employed Indians in the Republic of Portugal will also be entitled to export their social security benefits when they return to India;

e) The period of contribution in one contracting state will be added to the period of contribution in the second contracting state for the purposes of determining eligibility for social security benefits.

More...

4 MAR

Amendment to the Indian Penal Code, 1860 [IPC] - Criminalization of Sexual Harassment and Employers' Reporting Obligations

Sexual harassment has been made a criminal offence in India through the introduction of Section 354A of the IPC (which is the comprehensive code defining and penalizing criminal acts).

Note...
More...

2 APR

Amendments Proposed: Employment Exchanges Act, 1959

The Ministry of Labour and Employment proposed to the Rajya Sabha (Upper House of Parliament) various changes to the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 ("EEA") including the following:

1. To change the title of the Act to the *Employment Guidance and Promotion Centres* (*Compulsory Notifications of Vacancies*) *Act, 1959*.
2. To change the name "Employment Exchanges" to "*Employment Guidance and Promotion Centres*."
3. To amend section 2(g) of the EEA to modify the definition of "*establishment in private sector*" to mean an establishment which is not in the public sector and where ordinarily ten or more people are employed to work for remuneration;
4. To introduce a new section 5A to provide that the appropriate Government may, by notification in the Official Gazette, require any class or category of establishments in the private sector employing less than 25 persons to furnish such information or return as may be prescribed in relation to vacancies that have occurred or are about to occur in that establishment. Therefore the effect of these proposed changes read together would be that a specific category of private sector establishments (i.e. establishments employing ten or more persons but less than 25 persons) may be required to furnish returns.
5. To introduce for the first time imprisonment as a penalty for repeated offences. Also a specific penalty of up to INR5,000 for contravention of section 5A.

More...

22 APR

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:

This bill was passed by the Lok Sabha (Lower House of Parliament) in September 2013 and by the Rajya Sabha (Upper House of Parliament) in February 2013. It further received the assent of the President of the Republic of India and was notified by the Government of India in April 2013 for the purpose of information. The legislation will come into effect on a date in the future, to be notified by the Government of India. Among other things, this legislation requires an employer to:

a) Provide a safe working environment for women;

b) Constitute an internal inquiry committee and display the order constituting the committee so that it can be easily seen;

c) Undertake workshops and training programmes at regular intervals for the purpose of raising employee awareness about sexual harassment;

d) Provide assistance during an inquiry relating to a complaint of sexual harassment;

e) Promptly initiate action in accordance with the recommendations provided by the committee on the basis of the inquiry;

f) Treat sexual harassment as misconduct, take appropriate action in response to such misconduct, and keep members of the internal inquiry committee informed.

More...

25 APR

Maternity: Proposed Increase in Medical Bonus for Confinement Expenses

Rule 56-A of the Employees' State Insurance (Central) Rules, 1950 (the **ESI Rules**) titled *Confinement Expenses* provides that a woman covered by the Employees' State Insurance Act, 1948 (the **ESI Act**) shall be paid a sum of INR2,500 as medical bonus on account of confinement expenses. This medical bonus is paid to pregnant women where medical facilities under the Employees' State Insurance Scheme are not available. Through a notification dated 3 July 2013, the Ministry of Labour and Employment has proposed to increase the amount of medical bonus payable to eligible women from INR 2,500 to INR 5,000.

This proposed amendment is currently in the form of draft rules and has been published for the information of the public. These draft rules were to be taken into consideration by the Government after the expiry of 30 days from the date of publication of this notification in the Official Gazette. The public have the right to send in any objections or suggestions in respect of the draft rules within the above mentioned 30 day period. These suggestions and comments are normally considered by the Central Government before giving final sanction to an amendment. While this 30 day period has already passed, there appears to be no official notification from the Government bringing this amendment into force yet.

3 JUL

Changes to Form 13 of Employees' Provident Fund

Para 57 of the Employees' Provident Fund Scheme (the EPF Scheme) provides for the transfer of an individual's EPF account when he or she changes employment. In order to transfer the available funds, the individual has to make an application in Form 13 to the Jurisdictional EPF Commissioner. Form 13 has now been revised by the Employees' Provident Fund Organization through a circular dated 25 July 2013. The release of this revised form is considered to be the first step towards the launch of online transfer claim facilities.

The main changes to Form 13 are;

(i) Form 13 will now be called the 'Transfer Claim Form';

(ii) The form can now be presented after verification, either by the present employer or previous employer. Previously, the form could be submitted after verification by the present employer only.

(iii) The form has been redesigned and divided into Part A (member's personal details), Part B (previous account details) and Part C (present account details)

(iv) Form 13 can be submitted both online (shortly) as well as in physical form. Once online submissions are active, the time of expected to complete transfers may be reduced to as little as 15 days.

More...

25 JUL

Amendment to the Industrial Employment (Standing Orders) Punjab Rules, 1949

Section 3(1) of the Industrial Employment (Standing Orders) Act, 1946 (**SO Act**) lays down that an employer of an industrial establishment must submit draft standing orders, which are essentially a form of service rules, to the authorities within 6 months of the Act becoming applicable to the concerned establishment. Section 3(2) further provides that such a draft should include provisions in relation to every matter set out in the Schedule that is appended to the SO Act. The Schedule includes a list of matters such as classification of workmen, shift working, attendance and late coming etc. By virtue of this notification, dated 6 August 2013, issued by the Haryana Labour and Employment Department, an additional matter has been added to the schedule namely 'Age of Superannuation of a workman'. Henceforth, the standing orders of establishments in Haryana must also necessarily include a provision on the age of superannuation or retirement. Many other states, such as Karnataka, have already made similar amendments to the applicable state specific Rules.

Section 12-A of the Act also provides that the model standing orders as provided in the Act shall be deemed to have been adopted by every establishment to which this Act applies, till such time the standing orders as finally certified under this Act come into operation. In this context, the above mentioned notification also makes an amendment to the model standing orders by including a provision which states that where the workmen and employer have not agreed on any specific age of retirement or superannuation, retirement/superannuation shall be on the completion of 58 years by the workman. While the SO Act is applicable to commercial establishments in various states, such as Karnataka, it has not yet been made applicable to commercial establishments in Haryana. Therefore, in Haryana, the SO Act will only be applicable to establishments such as factories, mine and plantations.

6 AUG

Notification of Social Security Agreement with Hungary

Indian authorities have issued a circular notifying that the Social Security Agreement (**SSA**) that India had signed with Hungary took effect from 1 April 2013. India and Hungary had signed the SSA on 2 February 2010. While India has signed a number of such agreements, they only come into force once notified. This agreement will help India and Hungary in garnering more investment and work opportunities for nationals of both countries and also enhance cooperation on social security between the countries. This agreement also provides various benefits to Indian nationals working in Hungary. SSAs usually provide for the following social security benefits to Indian nationals working in the other country which is a party to the SSA:

- For short term contracts up to 5 years, no social security contribution would need to be paid under the other country's law by the detached workers provided they continue to make social security payments in India.
- The above benefits shall be available even when the Indian company sends its employees to that country from a third country.
- Indian workers shall be entitled to bring back the social security benefit if they relocate to India after the completion of their service in that country.
- The self-employed Indians in the other country would also be entitled to bring back social security benefit on their relocation to India.
- The period of contribution in one contracting state will be added to the period of contribution in the second contracting state for determining the eligibility for social security benefits.

The Union cabinet, on 29 August 2013, also approved the SSA between India and Canada. The SSA between India and Canada was signed on 6 November 2012. Once both nations have completed their legislative processes, this SSA is expected to come into effect sometime in 2014.

More...

29 AUG

Proposed Amendment to widen the application of the ESI Act

The Employees' State Insurance Act, 1948 (the ESI Act) applies to employees earning INR 15,000 per month and less. Covered employees enjoy various medical, insurance and hospitalization benefits under the ESI Act. Based on reports in various leading dailies we understand that the labour ministry proposes to increase the salary cap of beneficiaries from INR 15,000 to INR 25,000.

This move is expected to bring further millions of industrial workers within the scope of the ESI Act. However, there appears to be no official notification in this regard yet. The last increase in the salary ceiling under the ESI Act was made in May 2010, when it was raised to INR 15,000 from INR 10,000. While this move appears to be employee friendly on the face of it, it must be remembered that the employers and employees will have to contribute to the ESI corpus, and consequently the take-home salary may actually reduce for those who are now getting added to the ESI pool. In light of this move by the Ministry, there are also demands to increase the wage threshold under the Employees' Provident Fund and Miscellaneous Provisions Act, 1962 from INR 6,500 to INR 10,000.

More...
More...

OCT

CONTRIBUTED BY: TRILEGAL

INDIA

MORE

1 APR 2012

Employees' State Insurance: Revised ESI Inspection Guidelines

The Guidelines lay down the following:

- **Inspections:** Newly covered units, defaulting units and closed units will be inspected in that order of priority before existing units. Units employing 250 or more workers will be inspected once in every 2 years while units employing less than 250 workers will be inspected once in every 3 years. Security, manpower, housekeeping and labour supply agencies will be inspected annually. The inspection time period will normally extend to one year's records. The Regional Director/ Joint Director may require records for the previous 5 years.
- **Prosecution:** Any prosecution for non-production of a record must be initiated within 1 year of the first visit by the SSO. Sanctions for prosecution are usually to be issued against chronic and wilful defaulters and not in the routine course of inspections.
- **Surveys and Complaints:** The SSO is also required to verify the books of accounts; examine the premises and interact with employees to ascertain if they have received their ESI cards and ascertain compliance before concluding an inspection. In the event that a complaint is received, provided it contains verifiable facts, surprise checks can be conducted. If the facts are not verifiable, the complaint will be examined by a Regional Office/District Office of the ESI to ascertain authenticity, subsequent to which an employer can be called upon to show cause and comply.

Back...

4 MAY 2012

Employees' Provident Fund Scheme Amendments

Further, employers must now have the application for the transfer of the provident fund balance completed and attested by the employee when an employee joins. The employer is then required to forward the attested documents to the Commissioner or another officer authorized by the Commissioner within 5 days of receipt of the attested document(s).

Back...

7 MAY 2012

Disabled Employees and Dependents: ESI Claims Procedures

In the case of permanent disablement benefits and dependent benefits, claims need to be made for the first payment only. No claims need to be submitted for subsequent periodical payments.

Certain declarations, certificates and forms previously submitted twice a year, need now only be submitted once a year in January.

The attendance of the disabled employee and dependents employee before the Branch Manager has been reduced to once a year.

Back...

24 MAY 2012

'Excluded Employee' Definition: Employees' Provident Fund Scheme

An excluded employee, under paragraph 83 of the Scheme included an employee who is an international worker, contributing to the social security scheme of his home country, as a detached worker, in accordance with the provisions of a social security agreement entered into between India and his home country. By an amendment dated 24 May 2012, the Ministry of Labour and Employment extended the definition of an excluded employee to include an international worker who is from a country which has entered into a bilateral comprehensive economic agreement with India before 1 October 2008 and this agreement has a specific clause excluding persons from either country from contributions to the social security fund of the other country and where in accordance with such clause, the employee continues to contribute in his home country.

Back...

25 MAY 2012

International Workers (IWs): Employees' Provident Fund Scheme

Under the Scheme, provident fund accounts of employees (not classified as IWs) receiving no contributions for more than 36 continuous months become inoperative or dormant and no longer accrue interest. This provision does not apply to IWs with the exception that IWs' provident fund accounts will continue earn interest until the amount in the account is withdrawn.

Indian employees sent abroad to a country with which India does not have a Social Security Agreement, will continue to be members of the provident fund in India as if they were a domestic Indian employee. Regardless whether their salary is actually paid in India or offshore, provident fund contributions must be made and all other rules will continue to apply if the salary is deemed 'payable' in India.

Back...

24 JUL 2012

Provident Fund Commissioners' Powers Curtailed: Employees' Provident Fund Scheme

During the pendency of such an application for exemption, regional Provident Fund Commissioners, under paragraph 79 of the Scheme, may grant relaxation to such establishments from compliance with the provisions of the EPF Act and the Scheme. The Employees Provident Fund Organization has by a notification dated 24 July 2012 withdrawn this power.

By virtue of this notification, an order of relaxation under paragraph 79 has become redundant. Further, all establishments which currently have a relaxation and are enjoying tax benefits under the Income Tax Act, 1961 are required to obtain an exemption under section 17 of the EPF Act before 31 March 2013 to continue enjoying these benefits.

Back...

20 SEP 2011 REPORTED IN 2012

Principal Employer not responsible for Contract Labourer's Provident Fund Contributions

By virtue of section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, an employer is required to make contributions to the provident fund accounts of each of its employees, including contract employees. However, this case held that when the contractor is an independent legal entity with a large workforce and engaged in providing services to various clients, the onus to make provident fund contributions is not on the principal employer and nor will a principal employer be held liable in case of non-compliance. While this case is binding only on establishments in Delhi, it provides fuel for principal employers in other parts of the country to make similar assertions.

Back...

5 OCT 2012

International Workers: Amendment to Refund of Provident Funds

Previously, International Workers (IW) could withdraw provident fund accumulations on retirement from service any time onlyafter attaining 58 years of age. This rule on withdrawal was applicable irrespective of whether such expatriates came from countries with which India has signed a bilateral Social Services Agreement. Provident fund dues could be paid only to the expatriates/IWs bank account in India.

Back...

5 OCT 2012

Pensions: Calculation of Eligible Service for International Workers

For example, if an employee has been employed in his home country for a period of 20 years and in India for a period of 7 years, the employee's eligible service in India would be 27 years. However, it is relevant to note that the calculation of pension is made only on the number of years during which contributions were made on behalf of and by the employee under the EPF Act. In the example above, the international worker's pension would be calculated on the 7 years during which contributions were made on his behalf under the EPF Act.

Under Employees Pension Scheme, 1952 (**EPS**) (administered within the ambit of the EPF Act), an Indian employee is usually eligible for pension upon his retirement, if the employee has rendered a minimum eligible service of 10 years.

Back...

20 DEC 2012

Limitation Period on Inspections: Employees' State Insurance Act, 1948 (ESI Act)

While this amendment introduced a limitation on the period of order and the inspections carried out by SSOs, the period for which *test inspections* could be conducted was not clear.

In order to prohibit the ESIC from calling for records and registers of an establishment for earlier periods, the ESIC issued a notification on 20 December 2012, limiting the period of *test inspections* (as permitted under Section 45) to 5 years prior to the date on which the contribution became payable, thereby aligning the periods of inspection.

By virtue of this notification, *test inspections* must be conducted such that the stipulation under section 45-A (limiting orders to 5 years) is followed.

Section 45 of the ESI Act empowers certain Social Security Officers (SSOs) to carry out inspections of employer establishments to determine employers' compliance with the ESI Act. The ESIC is empowered to carry out re-inspections or *test inspections*, to determine the accuracy of such an inspection conducted by SSOs.

Back...

18 NOV 2011

Employee Consent Required on Transfer of Business: Industrial Disputes Act, 1947

Section 25FF of the Industrial Disputes Act, 1947 (**ID Act**) deals with the transfer of undertakings. This section is unclear on whether employee consent is required to transfer the employment of employees to the transferee undertaking at the time of the transfer. The Supreme Court of India in *Sunil Kr. Ghosh v. K. Ram Chandran*, has held that "*It is settled law that without consent, workmen cannot be forced to work under different management and in that event, those workmen are entitled to retirement /retrenchment compensation in terms of the Act.*" Being a Supreme Court judgement, this is now arguably the law of the land on this topic and companies would be expected to obtain employee consent at the time of transferring their employment in a business transfer.

Back...

1 DEC 2011

Social Security and Pensions: India enters Social Security Agreement with Netherlands

A SSA is an agreement regulating the procedure for providing social security to citizens of a country who reside in another country. The SSAs allow employees of either state to continue contributing to the social security schemes of their home countries while on deputation to the other country for short periods of time such as 60 months. During 2012 India also signed SSAs with Finland, Sweden and Canada.

Back...

3 JAN 2012

Commercial Establishments in Maharashtra: No Child Labourers and e-filing:

in "DVB-TT Surekh Font" and with a lemon-yellow colour background written in navy-blue colour.

- submit statements, application for registration, renewal of registration certificate, application for exemption, notices or any other application or documents and fees as prescribed in these rules, electronically.
- pay the electronic transaction charges for availing e-services for submitting statements, applications for registration, renewal of registration certificate, application for exemption, notices or any other application or documents and for paying fees prescribed in these rules, electronically.

Back...

3 JAN 2012

Employment Visa: Relaxation of Rules on Change of Employment

The Ministry of Home Affairs requires that any such change of employment is subject to the following conditions:

- Prior approval of the Ministry of Home Affairs
- The foreign national is employed at a senior level
- The foreign national fulfils all other conditions stipulated for grant of employment visa
- Provision of a certificate by the holding company confirming that the proposed new employer is a subsidiary of the holding company
- No objection from the company from where the foreigner is seeking change of employment
- Submission of justification from the holding company warranting change of employment
- Change of employment between the holding company and its subsidiary and vice versa or between two subsidiaries is permitted only once during the currency of 5 years on employment visa
- The 5 year validity of the employment visa would continue to be computed from the date of issue of the original employment visa and will not start afresh on change of employer

Previously, if a foreign national wanted to change employment to another company/organization, he/she would have to leave the country and apply for a fresh employment visa.

Back...

13 JAN 2012

Bank Compensation Guidelines issued by Reserve Bank of India

The guidelines require banks to consider the following when finalizing the remuneration of certain senior employees:

The compensation payable to the employees mentioned above should, inter alia, maintain a reasonable balance between fixed and variable pay, provide for deferral of variable pay, ensure that there is no provision of guaranteed bonus and also include a right to hold back payment of variable compensation in certain scenarios.

Further, in the event of an adverse performance, the bank should also retain the option to claw back deferred compensation i.e. the employee may be required to return previously paid or vested remuneration to the bank under certain circumstances

Additionally, banks will also be required to make disclosure on remuneration on an annual basis.

It is hoped that these measures will ensure that management takes responsible decisions in relation to the operations of the bank, and also see to it that senior management do not take home large bonuses in the event of adverse performance.

Back...

14 JAN 2012

Companies should review their Secondment Agreements: Creation of Permanent Employment and Taxation Implications

It is a common practice to see Secondment Agreements between multinational companies where seconded employees typically remain within the legal employment of the foreign entity, work under the direction and control of the Indian affiliate, the foreign entity pays the salary to the seconded employees but seeks reimbursement from the Indian affiliate.

International assignment programmes of this nature have long been a matter of dispute and an area of concern for many companies in India from a taxation standpoint. In the case of Centrica India Offshore Pvt. Ltd vs. CIT (AAR No. 856 of 2010)., the Authority for Advance Rulings (AAR) discussed the concept of 'economic employer' and held that employees' secondment arrangement gives rise to a service PE for overseas entities as per the Double Taxation Avoidance Agreements between India-UK and India-Canada.

Companies should note that sending employees to India even through a secondment agreement could amount to constitution of a Service PE in India unless the agreement is drafted carefully.

Once it has been determined that a foreign entity has a permanent establishment in India, its profits can be taxed in India. In the background of this ruling, it is advisable for companies to review their existing and new secondment agreements and analyze the possible risk of PE exposure to the foreign enterprises.

Back...

11 APR 2012

Punjab Labour Welfare Fund: Revised Contribution Rates

Section 9-A of the Punjab Labour Welfare Fund Act, 1965 (as applicable in Haryana) mandates that an employer and an employee would be required to make labour welfare contributions to the Punjab Labour Welfare Fund at specified rates. The Haryana Legislature, by a notification dated 11 April 2012, has revised the rates of contributions required to be made under section 9A. The rates of welfare contributions have now been increased for employers and employees from INR10 and INR5 to INR20 and INR10 respectively. Therefore, an employer would now be required to mandatorily contribute INR20 per employee per month on his own behalf and INR10 per employee per month on behalf of each employee, to the Punjab Labour Welfare Fund. Commercial establishments located in Gurgaon were required to take specific note of this amendment and remit contributions at the increased rates.

Back...

11 JUL 2012

IT Businesses Take Note: Software Development is a 'Manufacturing Process'

In a recent decision of the Bombay High Court in *The Assistant Director, ESIC v M/s Western Outdoor Interactive Pvt. Ltd. & Others,* a case in the context of the ESI Act, software development was held to be a 'manufacturing process' and firms involved in the creation of software were held to be 'factories' under the ESI Act. An immediate consequence could be that labour authorities will use this judgment to proceed against IT companies on the basis that they are factories and demand compliance with various additional laws. These additional compliances could be manifold – not only would compliance with the Factories Act prove tedious (which could significantly impact the start-up time of such businesses), various other labour laws (such as Standing Orders Act, etc), as well as provisions of the Industrial Disputes Act, 1947 (relating to retrenchments, closure, need for government approvals for the same, etc.) would also apply that would make overall compliance more onerous and adversely impact the comparative flexibility IT companies today enjoy in managing employee relations.

Back...

18 JUL 2012

Principal Employer held responsible to pay 'gratuity' to contract employee in the event of contractor's default

Section 21 (4) of the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA), mandates that a principal employer is responsible for the payment of 'wages' to a contract employee in the event of a contractor's failure to pay within the stipulated timelines or in the event of a contractor making a short payment. The principal employer then has the ability to recover the amount paid as 'wages', from the contractor. The Madras High Court, in its judgment in the case of Superintending Engineer, Mettur Thermal Power Station, Mettur vs. Appellate Authority, Joint Commissioner of Labour, Comimbatore & Anr, held that 'gratuity' payable under the Payment of Gratuity Act, 1972, is a sum which by reason of the termination of employment of the person employed is payable under a law and accordingly would fall within the definition of wages for the purposes of the CLRA. Consequently, by virtue of section 21 (4) of the CLRA, the onus of payment of gratuity would lie on the principal employer in the event of a contractor's failure to pay.

Back...

24 SEP 2012

IT/ITES Companies no longer exempt from Karnataka Industrial Employment (Standing Orders) Act, 1946 (SO Act)

The last notification granting an exemption to such establishments from complying with all the provisions of the SO Act in Karnataka was issued in August 2009. The exemption was valid for a period of 2 years and expired in August 2011. IT/ITES establishments engaging 50 or more workmen would now be required to formulate standing orders under the SO Act after the exemption from this requirement was lifted by the Karnataka government after more than a decade. The due date to submit draft standing orders was set as 31 December, 2012. Establishments, who have failed to submit draft standing orders within this deadline, may be held liable for non-compliance with the SO Act. While these Companies have to submit draft standing orders, they are exempt from other provisions of the SO Act till 31 March 2013. Further, it is important to note that IT/ITES establishment would be governed by the model standing orders prescribed under the Karnataka Industrial Employment (Standing Orders) Rules, 1961 from 1 April 2013 up to the period when the establishment has obtained certification of its standing orders from the Labour Commissioner.

Back...

JAN 2013 DECIDED ON 4 OCT 2012

Withdrawal of resignation by an employee - India Yamaha Motors (Pvt.) Ltd. vs. Labour Court – II and Anr.(2012 LLR 1276)

This decision highlights the importance of carefully structuring checks in service regulations and employment agreements allowing the employer some flexibility to prevent an employee from withdrawing resignations after a period. While employers cannot unilaterally reduce or waive an employee's notice of resignation (without payment) such that the resignation is no longer voluntary, they should try and structure service regulations and employment agreements in a way that they retain their ability to (i) accept a resignation before its effective date; (ii) prohibit withdrawal of resignation upon acceptance; and (iii) pay compensation in lieu of notice if notice period is reduced. The last provision may particularly be useful in instances where the employer – employee relationships are not terminated on cordial terms.

Back...

2 APR 2013

Amendment to the Indian Penal Code, 1860 [IPC] - Criminalization of Sexual Harassment and Employers' Reporting Obligations

Under the IPC, *sexual harassment* has been defined to include: making sexual advances, demanding sexual favors, making sexually colored remarks, and showing pornography against the will of the woman. Related acts such as the use of criminal force with the intent to disrobe a woman, voyeurism and stalking have also been made punishable criminal offences under sections 354B, 354C and 354D respectively.

The guidelines and norms relating to sexual harassment in the workplace were laid down by the Supreme Court in *Vishaka v State of Rajasthan and Ors.* (JT 1997(7) SC 384) and specify that where any conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. With sexual harassment constituting a specific offence under section 354A of the IPC, an employer may now be under an obligation to report acts of sexual harassment in the workplace to the police. This may not be an entirely welcome obligation on employers.

Back...

CONTRIBUTED BY: TRILEGAL

UPDATED AS AT FEBRUARY 2013

INDONESIA

2012

Important: action likely required

Good to know: follow developments

Note changes: no action required

KEY

17 JAN

Contractual Protection for Outsourced Workers

The Court has endeavoured to protect outsourced workers by requiring either:

(a) A permanent employment agreement, or

(b) In the case fixed term employment is used, there must be an arrangement called Transfer Undertaking Protection of Employment (known as "TUPE"). Under a TUPE arrangement, where the user of the fixed term workers enters into another outsourcing agreement with a new labour supplier, that new labour supplier must take on the fixed term workers of the previous labour supplier as the successor employer.

29 FEB

No Foreign CEOs or COOs?

Certain positions are not permitted to be held by expatriates including 'Chief Executive Officer'. The Minister later explained that the term 'Chief Executive Officer' used in his Decree does not mean the President Director or other executive officer of a company but refers to the head of human resources or administration. He defended his position based on Code #1120 under an outdated version of the International Standard Classification of Occupations (ISCO). Under the current ISCO, 'Chief Executive Officer' falls under 1210.

20 JUN

Constitutional Court Decision on Termination Due to Closing (and Impact on Downsizing)

The Labour Law permits the lawful termination of employees when a business shuts down. Employee entitlements have then depended on whether there have been 2 years' continuous financial losses or whether the shutdown is essentially a discretionary closing for reasons of efficiency. The Constitutional Court ruled that these provisions of the Labour Law can only be used where the company is permanently closing.

MORE: This is crucial since these same sections of the law have to date been broadly construed to permit an employer to downsize a part of the workforce for reasons of efficiency. The ability of an employer to terminate staff for reasons of efficiency is now unclear. The court ruled that employment termination is the last resort and that every effort must be made to reduce costs first including:

1. To reduce the wages and facilities of senior employees (i.e., the managers and directors);
2. To reduce the work shifts;
3. To limit/eliminate overtime;
4. To reduce working hours;
5. To reduce the working days;
6. To suspend the workers in rotation temporarily;
7. Not to extend contract workers, and
8. To provide pensions to qualifying employees

29 JUN

Education Sector: Foreign Employee Terms Limited

Restrictions have been imposed on expatriate positions in the education sector including, inter alia, that such positions can only be held for up to 5 years, except for the positions of director and commissioner nominated by the foreign investor.

29 JUN

Investigation into Outsourcing and Sub-Contracting:

The Ministry of Manpower issued a circular letter to implement Constitutional Court Decision No. 27/PUU-IX/2011, dated 17 January 2012. Requiring regional authorities to collect data on outsourcing of labour supply and subcontracting of services amongst companies.

19 NOV

Compliance Deadline November 2013: Outsourcing and Subcontracting

In an effort to permit legitimate outsourcing but also to eliminate outsourcing which circumvents workers' rights, the Ministry of Manpower issued Regulation 19. It also clarifies the situation regarding subcontracting of work between companies. All parties have until mid-November 2013 to conform with these new rules.

Unscrupulous companies were found to have engaged with outsourcing companies to avoid directly hiring their workers and taking on the liabilities associated with having their ownpermanent employees. Several labour supply entities had been thinly capitalized and failed to honour their obligations to the employees. The legislature therefore enacted rules (Article 66 of the Labour Law) restricting outsourcing to non-core activities and required the labour supplier entity to be specially licensed among other things. These basic rules have been expanded upon by Regulation 19.

Less well known is that certain requirements apply to subcontracting of services (Article 65 of the Labour Law). All subcontracts of services are also subject to various new restrictions (non-core activities only) and registration requirements for the service contracts themselves and various supporting documents.

CONTRIBUTED BY: SSEK Indonesian Legal Consultants

INDONESIA
2013

Important: action likely required
Good to know: follow developments
Note changes: no action required

KEY

Click here to view Q1 edition

2013 Q1

2013: PREDICTIONS FOR THE YEAR AS AT SEPTEMBER 2013

Union Activity Increases in 2013

Unions are not very well developed in Indonesia. This is partly because Indonesian employment standards are so generous, the absence of "termination at will" in Indonesia and requirement for judicial approval of terminations results in fairly high compliance with employment standards. However, unions have become increasingly active during 2013.

Court Raises the Bar for Terminating Employees in Indonesia...

2013

Minimum Wage Increases

The minimum wage has been increased by 40% in most regions. Many unions have demanded that the salary of all employees must be arbitrarily increased by an amount equal to the increase in minimum wage. In at least one case, the Labour Court has upheld that interpretation which is now under appeal in the Supreme Court.

Many employers have successfully applied to regional authorities for exemption from the minimum wage increase on financial grounds. Hundreds of these exemption approvals have been recently overturned by the Administrative Court which are now under appeal in the Supreme Court.

Various federations of unions are now calling for strikes to demand minimum wage increases of up to 100%.

The recent Presidential Instruction No. 9 of 2013 dated September 27, 2013 and MOMT Regulation No. 7 of 2013 dated October 2, 2013 regarding Minimum Wage provide that minimum wage decision making by regional governments must take into account "Decent Living Component", productivity and economic growth.

A Guide to Indonesian Employment Law...

2013

Increased Focus on Protecting Fixed Term Contract and Daily Workers

There are many restrictions and requirements on the use of fixed term contracts and daily workers. Many employers do not know all the requirements. The Ministry of Manpower investigators are getting much more active in enforcing these rules: limits on term and number of extensions, requirements for social security and annual leave for all workers, minimum wage on piece work and daily wages etc. The main sanction for non-compliance with the relevant rules is the conversion of such workers into permanent employees, which has significant consequences.

A Guide to Indonesian Employment Law...

2013

UPDATED AS AT END DECEMBER 2013

Limitation Period on Employee Claims Struck Down

The two year limitation period for employees to file claims for wages and benefits under Article 96 of the Manpower Law has been struck down by Constitutional Court Decision No.100/PUU-X/2012. Given the resulting increased risk of old claims, employers are well advised to properly document and process employee terminations.

11 SEP

Outsourcing of Labour Supply Restricted to Five Circumstances

Under Section 17(2) of Reg. 19, the type of work that can be delegated to the Labour Supplier must be "supporting services or activities that are not directly related to the main production process". Section 17(3) states that "supporting services as intended by section (2) shall include (*meliputi*):

a. Cleaning services;
b. Catering services for employee/labour;
c. Security services;
d. Supporting services in mining and oil industry; and
e. Transportation services for employee/labour".

The Ministry of Labour has recently issued a ruling letter to our firm confirming that these are the only circumstances in which outsourcing of labour supply is permitted.

The Ministry of Labour also confirms that any activities outside of these five circumstances can be outsourced through a services agreement arrangement (rather than outsourcing of labour supply) provided that the intended activities fall within the ancillary activities identified in the relevant industry association "Flowchart" and user company's "Description" as being open to outsourcing by services agreement.

19 SEP

Increased Protection for Outsourced Workers: Regulation 19

The Ministry of Labour recently issued Regulation 19 clarifying the restrictions and requirements applicable to the outsourcing of labour supply and subcontracting of work between companies. The focus of attention has been on outsourcing – labour supply. However, all subcontracts of services are also subject to various new restrictions (i.e., non-core activities only), registration requirements for the service contracts themselves, and various supporting documents under Regulation 19.

Some industry associations have issued the necessary "Flowchart" describing the core activities in their respective industries in contrast with the ancillary activities that can be subcontracted to service providers. Many industry associations have not yet issued such Flowcharts. All companies wishing to enter into or continue services agreements after November 19, 2003, must file their own "Description" of core vs. ancillary activities at the Ministry of Labour which must be consistent with the industry Flowchart.

The Ministry of Labour has recently published SE.04/Men/VIII/2013 which was dated August 26, 2013 regarding Guidelines for Implementing Regulation of MOMT Reg. No.19 of 2012. This decree clarifies the procedures and forms to file outsourcing related documents with the Ministry of Labour.

Controversy Over Outsourcing Regulation in Indonesia: Third-Party Contracting Arrangements

19 NOV

CONTRIBUTED BY: SSEK Indonesian Legal Consultants

UPDATED AS AT FEBRUARY 2013

JAPAN
2012

Important: action likely required

Good to know: follow developments

Note changes: no action required

KEY

Workplace Bullying and Harassment

The "Roundtable Conference Regarding Workplace Bullying and Harassment" was held by the Ministry of Health, Labor and Welfare ("MHLW").

On 15 March 2012, the MHLW released "Proposals for the Prevention and Settlement of Workplace Power Harassment" for preventing and settling workplace power harassment.

More...

30 JAN

Amendment to the Code of Civil Procedure Concerning International Jurisdiction

The Code of Civil Procedure was amended to provide that if an employee files a civil lawsuit against an employer in relation to their employment relationship, venue will lie in the place where the employee provides his/her services under the relevant employment contract. Furthermore, this amendment will limit the enforceability of an agreement between an employer and employee regarding the place of international jurisdiction.

More...

1 APR

Amendment to the Child Care and Family Care Leave Act

An amendment to the Child Care and Family Care Leave Act became fully effective on 1 July 2012 when a grace period for small and medium sized companies expired. The amendment includes a shortened working hours system for employees who care for a child less than three years old, and leave to care for a family member (up to five days per year).

More...

1 JUL

Amendment to the Immigration Control Act

On 9 July 2012, a new Residence Card system was introduced. A Residence Card is issued for all foreign nationals who stay in Japan on a visa with an effective period of 6 months or more. A foreign national who has a Residence Card must be registered in a resident register of the relevant municipal government. Further, re-entry permit requirements were relaxed; i.e., no re-entry permit is required when a foreign national who has a valid passport and a Residence Card leaves Japan temporarily and returns to Japan within one year.

More...

9 JUL

Adoption of the "Termination of Employment Doctrine"

The Labour Contract Act was amended and the "Termination of Employment Doctrine" was adopted. Under this doctrine, which has been established by court precedents, a fixed-term employment contract will be deemed as renewed if certain conditions are met.

More...

10 AUG

Amendment to the Worker Dispatch Act

Under the amendment to the Worker Dispatch, hiring dispatched workers by the day or for a term of 30 days or less is prohibited. A dispatching company shall endeavour to take measures to promote shifting dispatched workers who are hired on a fixed-term basis to indefinite-term employees. There are other amendments to improve the working conditions of dispatched workers. A dispatched worker means a temporary worker employed by a temporary agency and dispatched to a receiving company.

More...

1 OCT

CONTRIBUTED BY: ANDERSON MŌRI & TOMOTSUNE

JAPAN
2013

Important: action likely required
Good to know: follow developments
Note changes: no action required

Click here to view Q1 edition

2013 Q1

UPDATED AS AT END SEPTEMBER 2013

KEY

Dispatched Workers Deemed "Employees"

The Yamaguchi District Court ruled on 13 March 2013 that Plaintiffs who were working for the Defendant Mazda Motor Corporation ("Mazda") as dispatched workers (i.e., workers employed by a temporary agency and dispatched to Mazda) enjoyed a direct employment relationship with Mazda, based on the fact that Mazda was actually controlling the working conditions of the dispatched workers and utilised the workers for a long term in circumvention of the Worker Dispatch Act.

MAR

New Classification of Employee Under Discussion: "Regular Employee for Specific Job/Working Place"

A "Regular Employee for Specific Job/Working Place" is designed to provide more flexibility to both an employer and an employee. An employer may then terminate the employment if the specific job or the specific working place is abolished. An employee may enjoy the position of a regular employee without the risk of transfer to a different job/working place. For the time being, this is still under discussion and the government has declined to relax the restrictions on unilateral termination of employment.

More...

MAR - APR

New Employment Rate for the Disabled

Effective 1 April 2013, employers that hire 50 employees or more must ensure that at least 2.0% of their workers are disabled, an increase from 1.8%.

More...

APR

Persons are Eligible to Use the Continuous Employment System Limited.

Effective from 1 April 2013 (subject to certain transition period), employers may no longer limit the scope of eligible employees by setting certain criteria such as a satisfactory level of performance.

More...

APR

Fixed-Term Employment Contracts to Indefinite Term Employment Contracts

Effective 1 April 2013, employees with a fixed-term contract and a total of five or more years of service can upon request automatically convert to a contract with an indefinite term. Furthermore, employers will be prohibited from imposing on fixed-term employees working conditions that are unreasonably different from those of indefinite-term employees.

More...

APR

Increased Obligation to Employ Disabled

Effective 1 April 2013, employers that hire 50 or more employees must ensure that at least 2% of their workers are disabled, an increase from 1.8%.

More...

APR

Strengthened Regulation of 65 as Minimum Retirement Age

Effective 1 April 2013 (subject to a certain transition period), employers are restricted from using certain criteria such as performance levels as a means of limiting the scope of employees who qualify for continuous employment until age 65.

More...

APR

Fixed-Term Employment Contracts Automatically Convert to Indefinite Term Employment Contracts

Effective 1 April 2013, employees with a fixed-term contract and a total of five or more years of service can, upon request, automatically convert to a contract with an indefinite term. Furthermore, employers will be prohibited from imposing on fixed-term employees working conditions that are unreasonably different from those of indefinite-term employees.

More...

APR

Increased Employment Protection of Disabled

Amendments have been enacted to prohibit discrimination of the disabled in relation to employment, and to require an employer to take measures to improve the working environment for the disabled. Most of the amendments will come into force on April 1, 2016 and government guidelines will be issued to provide more details before then.

More...

JUN

Long Hours Review by MHLW in September

The Ministry of Health, Labor and Welfare announced that during September 2013 it will conduct closer investigations of employers who are reported to be forcing employees (especially of young age) to work long hours. The investigation is targeted at so-called "black" companies which use employees like disposable goods, by forcing them to work long hours and/or in poor working conditions.

More...

AUG

2013: LOOKING FORWARD

Expected Review of the Statutory Minimum Wage

The statutory minimum wage, which is approximately 650 yen to 850 yen per hour, depending on the place of work, will be reviewed around September - October 2013 (annual review).

SEP TO OCT

CONTRIBUTED BY: ANDERSON MŌRI & TOMOTSUNE

MALAYSIA
2012

UPDATED AS AT FEBRUARY 2013

Important: action likely required
Good to know: follow developments
Note changes: no action required

KEY

1 APR

Employment (Amendment) Act 2012

This Act introduced amendments to approximately 33 sections in the Employment Act 1955

More...

Employment (Amendment of First Schedule) Order 2012

The First Schedule of the Employment Act 1955 which relates to the types of employees who are afforded protection under the Act was amended. With the new amendments brought about by the Employment (Amendment of First Schedule) Order 2012, the salary threshold has been increased from M$1,500 to M$2,000. This means that an employee who earns a monthly salary of M$2,000 or below is now covered by the Act.

More...

1 APR

Zainon Binti Ahmad and 690 Ors v. Padiberas Nasional Berhad

The Federal Court had opined that a Voluntary Separation Scheme (VSS) was a separate and independent contract intended to mutually override and terminate an existing contract of employment. Although it was not expressly stated that the VSS would extinguish the rights and obligations under the contract of employment upon mutual termination, the rescission resulted in the extinguishment of rights under the former contract of employment. Once the employee has of his own will accepted the benefits under the VSS, resigned and signed a full and final settlement, he cannot then turn around and ask for any other benefits.

More...

16 JUL

Introduction of Private Retirement Schemes (PRS)

On 18 July 2012, the Prime Minister officially launched the Private Retirement Scheme in Malaysia, a voluntary, long-term investment scheme designed to help individuals accumulate savings for retirement. The scheme is meant to complement, and not replace, the existing mandatory contributions made to the Employees Provident Fund (EPF). Both individuals and employers can participate in the PRS as contributors.

More...

18 JUL

Dynacraft Industries Sdn Bhd v. Kamaruddin bin Kana Mohd Sharif & Ors

In the mergers and acquisitions-type context where businesses are being acquired resulting in a change of ownership in the business and the employees of the business acquired are offered continued employment with the acquirer or purchaser of the business, the Federal Court held that in applying the principle of last in, first out (LIFO), the period of service which an employee has served with an entirely separate legal entity should be taken into account, instead of confining it to the actual years of service the employee had served with his present employer.

More...

1 AUG

Order 53 of the Rules of Court 2012 takes effect

Order 53 of the Rules of the High Court 1980 relating to Applications for Judicial Review was replaced with Order 53 of the Rules of Court 2012. Under the new Rules, the time limit to file an application for judicial review has been extended from 40 days to 3 months from the date when the ground of application first arose or when the decision is first communicated to the applicant. The new Rules has also inserted a new provision which allows the Court to grant an extension of time within which to file an application for judicial review if it considers that there is a good reason for doing so.

More...

15 AUG

CONTRIBUTED BY: Shearn Delamore &co.

MALAYSIA
2013

Click here to view Q1 edition

UPDATED AS AT END DECEMBER 2013

- **Important:** action likely required
- **Good to know:** follow developments
- **Note changes:** no action required

2013 Q1

KEY

Personal Data Protection Act 2010 expected to become law during 2013

The Personal Data Protection Act 2010 which was enacted to regulate the processing of personal data in commercial transactions and applies to any person who processes and any person who has control over or authorizes the processing of any personal data in respect of commercial transactions is set to come into force sometime during 2013.

More...

1 JAN

Minimum wage rate fixed at M$900 per month

The minimum wage rate of an employee in Peninsular Malaysia is fixed at M$900 per month whilst the minimum wage of an employee in Sabah, Sarawak and the Federal Territory of Labuan is fixed at M$800 per month. The Minimum Wages Order 2012 will be applicable to employers who employ five workers or less effective 1 July 2013.

More...

1 JAN

Person eligible to receive invalidity pension increased to 60 years old

Pursuant to the Employees Social Security (Amendment) Act 2012 which takes effect on 1 January 2013, the age at which a person is eligible to receive invalidity pension under the Employees Social Security Act 1969 has been increased from 55 to 60 years.

More...

1 JAN

Foreign Workers to pay Government Levy themselves

The Government announced on 30th January 2013that foreign workers are now responsible for paying the Government levy. Previously, employers were responsible for this payment.

30 JAN

Retirement Age be set at 60 years old

As of 1 July 2013, pursuant to the Minimum Retirement Age Act 2012, the retirement age of employees in the private sector shall be upon the employee attaining the age of sixty (60) years.

More...

1 JUL

EPF Contribution Rates amended in line with Minimum Retirement Age Act 2012

Effective August, 2013 and in line with the Minimum Retirement Age Act 2012 (effective July 1st, 2013), the Employees' Provident Fund (EPF) has amended contribution rates to bring them in line with the minimum retirement age of 60. These amendments are effective with the August 2013 salary/wage (September 2013 contribution). The two categories of employees affected by the changes are:

a. Employees age less than 60:

i. Earning less than RM5,000 per month: a cumulative statutory contribution rate of 24% (13% employer's share and 11% employee's share) for employees earning RM5,000.00 and below each month

ii. Earning over RM5,000 per month: a cumulative statutory contribution rate of 23% (12% employer's share and 11% employee's share)

iii. For both wage categories above, coverage has been extended from age 55 to 60 years (subject to the salary/wage in Part A, Third Schedule, EPF Act 1991).

b. Employees age 60 and above, up to 75:

The cumulative statutory contribution rate is half (50%) of the statutory contribution rates for both employees and employers stipulated above for employees age less than 60 (subject to the salary/wage in Part C, Third Schedule, EPF Act 1991).

More...

AUG

Personal Data Protection Act (PDPA) 2010 commences

On 15th November 2013, the PDPA came into effect with an objective of regulating the collection, storage, processing and use of any personal data. The PDPA applies to any person who processes, has control over or authorises the processing of personal data in respect of commercial transactions but it does not apply to federal and state governments, and personal data processing outside Malaysia. With the implementation of the PDPA, current data privacy policies and processes in use by organisations will need to be reviewed.

More...

15 NOV

CONTRIBUTED BY: Shearn Delamore &co

INDEX

NEW ZEALAND

2012

UPDATED AS AT FEBRUARY 2013

- **Important:** action likely required
- **Good to know:** follow developments
- **Note changes:** no action required

KEY

14 MAY

The Employment Relations (Secret Ballot for Strikes) Amendment Act 2012

This amendment to the Employment Relations Act makes it compulsory for unions to use secret ballots when employees vote whether to strike. The amendment is intended to provide anonymity for employees during a voting process on proposed strike action.

More...

CONTRIBUTED BY: Simpson Grierson

NEW ZEALAND 2013

Important: action likely required
Good to know: follow developments
Note changes: no action required

KEY

2013 Q1

Click here to view Q1 edition

2013: PREDICTIONS FOR THE YEAR AS AT FEBRUARY 2013

An Independent Taskforce on Workplace Health and Safety released consultation paper

An Independent Taskforce on Workplace Health and Safety released a consultation document calling for submissions on how to improve New Zealand's workplace health and safety record. The Taskforce is due to report back to the Government by 30 April 2013 with its recommendations.

More...

2013

Extension of flexible working arrangements from carers to all employees

Currently employees who are caregivers for their dependents may request flexible working arrangements. It is proposed that the right to ask for flexible working arrangements be extended to all employees.

More...

2013

Partial pay for partial strike

This proposed amendment will allow employers to make partial pay reductions in cases of partial strike action by employees.

More...

2013

Employers able to opt out of bargaining for a multi-employer collective agreement (MECA)

The Government is proposing that employers be allowed to opt out of multi-employer collective bargaining before negotiations for a multi-employer collective agreement begin and opt for site specific bargaining instead.

More...

2013

Employers permitted to initiate bargaining at the same time as unions

Currently a union can initiate bargaining no earlier than 60 days before a collective agreement expires, but an employer cannot initiate bargaining any earlier than 40 days before the collective agreement expires. The same period of time to initiate bargaining will be set for both employers and unions. If there is an applicable collective agreement in force, neither a union nor an employer will be able to initiate bargaining earlier than 60 days before the date on which the collective agreement expires.

More...

2013

Proposed amendments to Part 6A of the Employment Relations Act

The objective of Part 6A is to provide continuity of employment for employees in specific industries when a business is restructured or sold. Proposed amendments are announced on 30 October 2012.

More...

2013

Notice to be required of planned strikes or lockouts in all industries

Currently, notice of a planned strike or lock-out must be given where "essential services" are involved. It is proposed that the requirement to give notice be extended to all businesses.

More...

2013

Removal of '30-day' rule

Currently new employers are automatically covered by the applicable collective agreement for the first 30-days before deciding whether to join the union. It is proposed that this rule be removed.

More...

2013

Removing requirement to conclude collective bargaining

This proposed amendment will remove the current requirement to conclude a collective agreement unless there are genuine reasons not to, while retaining the requirement to bargain in good faith.

More...

2013

UPDATED AS AT END DECEMBER 2013

New Workplace Health and Safety Agency to be established

The Government announced its intention to set up a stand-alone Crown health and safety agency to focus on workplace health and safety. Legislation to establish the agency is expected to be introduced to Parliament in June 2013, with the intention of having the new agency up and running by 1 December 2013.

More...

21 FEB

Privacy Amendment Act 2013

A new Part introduced into the Privacy Act 2003 enables the sharing of personal information between, or within, agencies to facilitate the provisions of public services. The purpose of this Part is to reduce uncertainty about whether personal information can be lawfully shared for the provision of public services. The Amendment Act also removes the word "imminent" from the exception to the requirement not to disclose personal information – now, an agency has to provide disclosure is necessary to prevent only a serious (and not an "imminent") threat to public health or safety.

More...

26 FEB

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013

The Government has passed a Bill to make Monday a public holiday when Waitangi Day or ANZAC Day falls on a weekend. Previously, if these days fell on a weekend, employees did not receive a day off work (if that day was not otherwise a working day for them). The change means that if Waitangi Day and Anzac Day fall on a Saturday or Sunday, and that day is not otherwise a working day for an employee, then they will be treated as falling on the following Monday.

More...

17 APR

Independent Taskforce on Workplace Health and Safety recommends Major Changes

In May 2012, the Government announced the appointment of an Independent Taskforce on Workplace Health and Safety to evaluate whether the workplace and safety system in New Zealand is adequate. On 30 April 2013, the Taskforce released its report. The report advocates major systemic changes in order to reduce New Zealand's high rate of serious injuries and fatalities, with the goal of New Zealand's workplace health and safety performance becoming recognised as among the best in the world in 10 years' time.

In order to address the system's failings, the Taskforce recommends a broad-based approach involving change on a number of fronts including:

1. Legislative change to replace the existing complex, confusing and outdated framework of laws;
2. Replacing the The Health and Safety in Employment Act 1992 with a new, comprehensive legislation which increases certainty by clarifying compliance requirements and the consequences of non-compliance;
3. Introduction of a new, stand-alone health and safety regulator with statutory functions and powers, including the right to make public information on enforcement actions once the appeal period had expired. Inspectors would also be able to enter into enforceable undertakings with any person controlling a business or undertaking in order to put right an alleged breach to a required standard in a specified timeframe.

More...

26 APR

Major Employment Changes Anticipated: the Employment Relations Amendment Bill 2013 [ERAB]

The ERABwas introduced into Parliament on 26 April 2013. This Bill contains the proposed changes indicated by the National Party in its pre-election manifesto at the end of 2011 and which were formally announced in 2012. Key proposed changesunder ERAB include:

- The extension of flexible working arrangements so any employee, not just caregivers, can ask for flexible work. Employees will also be able to ask for flexible work arrangements from the start of their employment;
- A return to the original position in the Employment Relations Act where the duty of good faith does not require the parties to conclude a collective agreement. Instead, the Employment Relations Authority may declare whether collective bargaining has concluded;
- Allowing employers to opt out of multi-employer bargaining before negotiations for a multi-employer collective agreement start and to opt for site-specific bargaining instead;
- Allowing for partial pay reductions in cases of partial strike action;
- Removing the 30-day rule that forces non-union members to take union terms and conditions. Currently new employers are automatically covered by the applicable collective agreement for the first 30-days before deciding whether to join the union. It is proposed that this rule be removed;
- Allowing employers to initiate bargaining at the same time as unions. Currently, a union can initiate bargaining no earlier than 60 days before a collective agreement expires, but an employer cannot initiate bargaining any earlier than 40 days before the collective agreement expires. Under this change unions and employers will be able to initiate bargaining at the same time. The timeframe will be no earlier than 60 days before the expiry of the collective agreement;
- Changing Part 6A so employers have greater certainty over the transfer of employees in certain industries such as cleaning, catering, orderly and laundry – if there is a restructuring or change in the contracted service provider. Small to medium-sized enterprises with fewer than 20 employees will also be exempt from the obligation to transfer over employees' employment;
- Greater clarity as to what confidential information employers are required to provide to affected workers in situations such as dismissal or redundancy;
- Requiring parties to provide notice of a strike or lock-out, no matter what industry;
- Providing that an employer may impose certain restrictions on an employee's breaks where it is reasonable and necessary having regard to the nature of the employee's work. An employer may not be required to provide rest breaks and meal breaks if the employer and employee agree that the employee is to be provided with compensatory measures, or, having regard to the nature of the work performed by the employee, the employer cannot reasonably provide the employee with rest breaks and meal breaks;
- Resolving employment disputes more efficiently. The Authority will have to either provide an oral determination at the end of its hearing, followed by a written record within three months; or at the end of the hearing provide an oral indication to the parties, subject to additional information being received. Again, a three-month deadline would apply from when the additional information is received.

More...
More...

30 APR

Good Governance Practices Guideline for Managing Health and Safety Risks.

The Ministry of Business, Innovation and Employment and the Institute of Directors In New Zealand Inc, released the Good Governance Practices Guideline for Managing Health and Safety Risks. The Guideline sets out a framework for how directors can lead, plan, review and improve health and safety in the workplace. The Guideline is not a statutory document but was released to address the recommendations contained in the final report of the Royal Commission on the Pike River Coal Mine Tragedy.

More...

MAY

Health and Safety (Pike River Implementation) Bill

The Bill establishes WorkSafe New Zealand, a new workplace health and safety agency as a Crown Entity. Worksafe New Zealand will assume the operational functions currently undertaken by the Ministry of Business, Innovation and Employment relating to workplace health and safety. The Bill also addresses the management of hazards in New Zealand's mining industry following the report from the Royal Commission on the Pike River Coal Mine Tragedy. The Bill is currently before the Transport and Industrial Relations Select Committee and a report is expected from the committee in October 2013.

More...

24 JUN

Working Safer: A Blueprint for Health and Safety at Work

Working Safer – A Blueprint for Health and Safety at Work was released by the government and outlines a "package of changes" aimed at improving New Zealand's workplace health and safety system. The document responds to the concerns raised by both the Independent Taskforce on Workplace Health and Safety and the Royal Commission's Report on the Pike River Tragedy. Key changes as outlined in Working Safer include:

- The Health and Safety in Employment Act 1992 (HSE Act) will be replaced by a new Act to be based on the Australian Model Workplace Health and Safety Law. The first Health and Safety at Work Bill will be introduced to Parliament in December 2013 and is expected to come into force by December 2014.
- The new Act will introduce the concept of a PCBU or "Person Conducting a Business or Undertaking" which is designed to allocate duties to those people in the best position to manage health and safety risks in the workplace.
- The introduction of a new due diligence duty for those persons who occupy a governance role. A director will be equal to the governance role of officers under the new Act.
- A new tiered penalty structure will be introduced and it is expected that penalty levels will increase across the board.
- New regulations, guidance and Approved Codes of Practice (ACOPS) to assist PCBU's and workers.
- Increased powers of workplace inspectors to enforce the new Act.
- Increased focus on high hazard workplaces particularly the regulation of hazardous substances in the workplace.
- An outline of the functions of the new regulator, Worksafe New Zealand which is expected to be functioning by December 2013.

More...

7 AUG

Sexual harassment considered a potential health and safety hazard in workplace

D v E [2013] NZERA Auckland 338

The Employment Relation Authority recently determined that sexual harassment is a potential health and safety hazard in the workplace.

An employee alleged that she had been sexually harassed in the workplace, and that she was constructively dismissed as a result. Although not finding in the employee's favour in relation to her claim for constructive dismissal, the Authority determined that the employer's obligations under the Health and Safety in Employment Act 1992 (**HSEA**) (to take all practicable steps to ensure the health and safety of employees at work) extended to preventing sexual harassment in the workplace.

The Authority determined that while the employer had taken some steps to remove or manage the risk of sexual harassment, the steps taken did not go far enough to meet its obligations under the HSEA. Specifically, while the employer had implemented a sexual harassment prevention policy, it had failed to regularly or periodically bring this to its employees' attention.

More...

5 AUG

Good faith obligations extend to bringing criminal charges to employer's attention

A v B [2013] NZERA Auckland 331

The Employment Relations Authority recently refused to grant interim reinstatement to an employee who had been dismissed after being charged with a criminal offence and had failed to bring full details to his employer's attention.

The employee had been arrested and charged with a criminal offence before commencing his employment with the employer. The employer subsequently became aware of the charges and commenced an investigation. It was agreed that the employee was to keep his employer up-to-date with any developments in the case against him. However the employee failed to notify the employer when the initial charge was substituted with four more serious charges. The employee was dismissed, and sought interim reinstatement.

The Employment Relations Authority considered that the employee's good faith obligations required him to be "open and communicative with his employer" work collaboratively with his employer during the investigation, and act in a manner that was "beyond reproach".

The Authority found that the employee should have provided his employer with up-to-date relevant information relating to the charges against him, and particularly when information was requested by the employer during the investigation.

The Authority also found there was a genuine risk that the employer's clients would take their business elsewhere if they became aware of the employee's criminal charges, and that the employer would likely suffer reputational damage as a result.

More...

9 AUG

CONTRIBUTED BY: Simpson Grierson

PHILIPPINES

2012

UPDATED AS AT FEBRUARY 2013

KEY

- **Important:** action likely required
- **Good to know:** follow developments
- **Note changes:** no action required

20 JAN

Repealing Articles 130 and 131 of the Labor Code

Articles 130-131 of the Labor Code which prohibits women workers from being employed or permitted or suffered to work at night, except for certain instances, were repealed.

More...

13 MAY

Mandatory registration of all contractors

D.O. No. 18-A provides for rules on contracting and sub-contracting and the mandatory registration of all contractors with the DOLE. Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting, which is prohibited.

More...

22 MAY

Amendment to the Guidelines on the Implementation of the Special Leave For Women Employees in the Private Sector

Pursuant to the Magna Carta of Women, every female employee is given a leave entitlement of two (2) months with full pay from her employer following surgery caused by gynecological disorders. This leave benefit is different from the SSS sickness benefit.

More...

9 AUG

Payment of Wages Due to Cases of Suspension from Work on Calamity Stricken Areas

The Department of Labor and Employment issued an advisory regarding the payment of wages due to cases of suspension of work in calamity stricken areas pursuant to Presidential Proclamation or similar issuances. This is particularly applicable to the 7 August 2012 suspension of work in various parts of Metro Manila.

More...

7 SEP

The Philippines has become the second country to ratify the ILO Convention 189 on Decent Work for Domestic Workers

The ILO accepted the Philippine instrument of ratification of ILO Convention No. 189 or the Decent Work for Domestic Workers Convention.

More...

16 NOV

Employers should comply with the rules regarding the payment of 13th month pay to employees

Employers were reminded to comply with the rules regarding the payment of 13th month pay to employees. Every covered employer should submit a report of his compliance with the law to the nearest Regional Office not later than 15 January each year.

More...

29 NOV

Accreditation procedure for establishments duly registered in the Phil-JobNet

The Bureau of Local Employment shall implement an accreditation procedure through the issuance of a "Seal of Accreditation" and Certificate of Accreditation to establishments duly registered in the Phil-JobNet, to be posted/displayed in conspicuous place of the establishment/companies. Among others, this is in fulfillment of the government's obligation as a signatory to the ILO Convention 88, which mandates ratifying countries to create and maintain free employment services.

More...

5 DEC

Guidelines on the issuance of the Child Labor-Free Establishment/Zone

The guidelines on the issuance of the Child Labor-Free Establishment/Zone Seal includes the coverage, criteria, documentary requirements, etc. in order to be entitled to the Child Labor-Free Establishment/Zone Seal. This seal is intended as a badge of honor or Department of Labor and Employment (DOLE) guarantee that gives assurance to brand owners and consumers that the products or services offered are not tainted with child labor. Further, the DOLE gives a number of incentives and benefits to those with this seal.

More...

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PHILIPPINES
2013

Important: action likely required
Good to know: follow developments
Note changes: no action required

KEY

2013 Q1

Click here to view Q1 edition

2013: PREDICTIONS FOR THE YEAR AS AT FEBRUARY 2013

Will the House Bill concerning the expansion of rights for Persons with Disabilities be signed into law?

House Bill 5475, which aims to amend R.A. No. 7277, and expand the positions reserved for Persons with Disabilities is awaiting deliberations.

More...

2013

Worker Skills: Will National Qualifications Framework be implemented in the Philippines?

More...

2013

UPDATED AS AT END DECEMBER 2013

Domestic Workers Act or "Batas Kasambahay" enacted

On January 18, 2013, President Benigno Aquino III signed into law "The Domestic Workers Act." This law aims to protect the rights and to regulate the working conditions of domestic helpers. The Law is comprehensive in scope and covers the employment contract, the privileges entitled to domestic workers, and the valid grounds for termination of the employment. In sum, the law seeks to set a standard a labor standard for domestic workers.

More...

JAN

CCT Conditions include Child Labor Protection

The modified Conditional Cash Transfers for Families in Need of Special Protection will provide beneficiaries with P300 per month per child for a maximum of three children for education grants, and P500 per month per household for health grants. The grants shall be released monthly subject to compliance with certain conditionsone of which is that theparents must ensure that their children do not stay or work in the streets or in hazardous occupations.

More...

JAN

Technical Education and Skills Development Authority (TESDA) prioritizes training regulations

TESDA will prioritize the development of training regulations for three qualification titles in the solid waste industry, namely, site foreman; spotter, or tumbalero; and palero Industry experts Solid Waste Management Association of the Philippines (SWAP) and Solid Waste Contractors Association of the Philippines (SWACAP) identified the priority qualification titles on the basis of the needs of the industry sector and nationwide application in terms of public investment opportunities.

More...

JAN

The DOLE Integrated Livelihood Program towards Community Enterprise Development (DILP); Special Protections in 2013

The DILP will develop, nurture, and sustain income-generating and job-creating enterprises across the regions. The DILP is one of DOLE's program enrolled under the government's Community-Based Employment Program (CBEP) which aims to generate sustainable local enterprises towards increased self-employment and productivity across the regions. The DILP is designed to organize and focus services delivery of various government agencies and private organizations to achieve a systematic and rational convergence of services and assistance to the community.

More...

MAR

Philippines Overseas and Employment Administration ("POEA") and Bureau of Immigration ("BI") signs accord for shared database

Under the MOA, the POEA shall provide and extend legal assistance to victims of illegal recruitment and trafficking in persons referred by the BI; provide technical assistance and necessary certifications to cases handled by BI; and provide assistance to immigration officers in answering queries on Overseas Filipino Workers (**OFWs'**) travel exit documents.

On its part, the BI shall strictly implement the validation of travel exit documents; endorse suspected illegal recruitment cases to POEA for investigation; intensify intelligence efforts in checking legitimate departing OFWs and/or those tourists profiled as workers; and enforce watchlist orders and/or hold departure orders against illegal recruiters and human traffickers.

Implementation began in August 2013.

More...

AUG

Maritime Labour Convention comes into force and implemented in the Philippines; Process Issuances enforced in the Philippines

The MLC, 2006 came into force in August 2013, one year after the Philippines submitted its instrument of ratification in the ILO in Geneva on 20 August last year.

With its entry into force, the MLC, 2006 is now the "fourth pillar" of the international regulatory regime for quality shipping, complementing the key conventions of the International Maritime Organization (IMO), such as the Convention for the Safety of Life at Sea, 1974, as amended (SOLAS); Convention on Standards of Training, Certification and Watchkeeping, 1978, as amended (STCW); and Convention for the Prevention of Pollution from Ships, 73/78 (MARPOL).

The tripartite process issuances on the MLC, 2006 are as follows:

1. D.O. No. 129, the "Rules and Regulations Governing the Employment and Working Conditions of Seafarers Onboard Ships Engaged in Domestic Shipping"
2. D.O. NO. 130, the "Rules and Regulations on the Employment of Filipino Seafarers Onboard Philippine-registered Ships Engaged in International Voyage"
3. D.O. No. 130-A, or "Guidelines on the Authorization of Recognized Organizations to Conduct Inspection and Certification of Philippine-Registered Ships Engaged in International Voyages"
4. Labor Advisory No. 02-2013, the "Requirements for Compliance with MLC, 2006"
5. D.O. No. 132, the "Guidelines on Maritime Occupational Safety and Health".

More...

AUG

D.O. No. 129 Series of 2013 issued to ensure benefits and decent working conditions for domestic seafarers

D.O. No. 129 applies to ship owners and seafarers where an employer-employee relationship exists and covers Philippine registered ships engaged in domestic shipping other than warships and naval auxiliaries; government ships not engaged in commercial operation; and fishing vessels.

The said D.O. No. 129 outlines the minimum requirements for seafarers to work on a ship. Furthermore, it provides that there shall be an agreement in writing between the seafarer and shipowner, which agreement shall outline these minimum requirements. Furthermore, the seafarers are guaranteed their right to security of tenure and right to self-organization and collective bargaining.

More...

2013

NLRC issues A.O. No. 02-08 to regulate the inhibition of cases

Administrative Order No. 02-08, Series of 2013 was issued to prevent labour arbiters from inhibiting themselves in handling cases, especially during execution proceedings, which caused unwarranted delays in the resolution of cases.

Under the order, a Labour Arbiter may inhibit himself or herself from handling a case for just and valid reasons. However, all inhibitions from handling a case, to be effective, must be with the prior approval of the Executive Labour Arbiter. Only after such approval will the Order of Inhibition be issued.

In case of inhibition of a Commissioner from handling a case, the prior approval of the Chairman is necessary if the inhibition will result in the creation of a Special Division. The Executive Labor Arbiter's or the Chairman's approval or disapproval of inhibitions will be attached to the records of the case, copy furnished the Research, Information and Publication Division (RIPD).

More...

2013

Government Service Insurance System ("GSIS") resumes payment of EC survivorship benefit

The State pension fund, Government Service Insurance System (GSIS), resumed payment of the suspended survivorship pension of qualified Employees' Compensation (EC) pensioners and dependents. This benefit is targeted at surviving members of the families of employees who have died from work-connected accidents, diseases or disabilities.

By way of background, in 2006, the previous GSIS administration decided to suspend the payment of the pension after the five year guaranteed period. However, pursuant to the new Employees' Compensation Commission resolution, the suspension of such payment has been lifted.

More...

CONTRIBUTED BY: ROMULO
ROMULO MABANTA BUENAVENTURA SAYOC & DE LOS ANGELES

UPDATED AS AT FEBRUARY 2013

SINGAPORE

2012

KEY

- **Important:** action likely required
- **Good to know:** follow developments
- **Note changes:** no action required

17 FEB

Increase in CPF contribution rates for older workers from September 2012

From September 2012, the government will raise CPF contribution rates for older workers aged 50 to 65. For employees aged between 50 and 55, their contribution rates will increase by 2.5 percentage points (2 percentage points from the employer and 0.5 percentage points from the employee) to bring their total CPF contributions up to 32.5% from 30%. For employees between 55 and 60, their contribution rates will increase by 2 percentage points (1.5 percentage points from the employer and 0.5 percentage points from the employee). Lastly, for employees between 60 and 65, their employer contribution rate will increase by 0.5 percentage points, with no increase in their employee contribution rate. Additionally, self-employed individuals who are aged 50 and above also had their Medisave contributions increased from 9 to 9.5 percentage points from 1 January 2013.

More...

23 MAY

National Wages Council ('NWC') Guidelines 2012/2013

On 23 May 2012, the NWC issued their wage and wage-related guidelines for 2012/2013. Some notable recommendations by the NWC were for companies to have built-in wage increases for 2012/2013 by taking into account the prevailing labour market conditions and respective business performance and prospects. Another recommendation was for companies to reward employees through variable wage components in line with the companies' performance and workers' contribution.

More...

1 JUN

Work Injury Compensation Act Amendments

On 1 June 2012, the Singapore Parliament passed amendments to the Work Injury Compensation Act ('WICA'), which were made on the basis of striking a fair balance between compensation for injured employees and the obligations placed on employers / insurers.

More...

4 JUN

Domestic Helpers: External Cleaning Regulations

On 4 June 2012, the Ministry of Manpower issued new rules under Under Regulation 2 of the Fourth Schedule to the Employment of Foreign Manpower (Work Passes) Regulations employers are prohibited from allowing their FDWs to clean the exterior facing of any window not located on the ground level or not facing a common corridor, unless the window is fitted with a safety grille that only allows extension of the arms beyond the window ledge. In addition, employers must ensure that during the cleaning process that the FDW remains inside the room and is supervised by the employer or a representative who can conduct such supervision. Employers who fail to comply may be prosecuted and upon conviction be fined up to S$5,000 and/or jailed up to 6 months. They may also be permanently barred from hiring an FDW.

More...

11 JUN

Singapore Ratifies the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

The Government of Singapore deposited the instrument of ratification with the International Labour Office on 11 June 2012. Singapore is the 23rd member State to ratify the Convention. Singapore had already launched a comprehensive national "Workplace Safety and Health Strategy 2018" which outlines a strategic and long-term approach to achieve sustained and continuous improvement in WSH standards. The ratification will align Singapore's efforts with international labour standards, and provides Singapore with an international instrument and a normative system to guide implementation of Singapore's comprehensive "Workplace Safety and Health Strategy 2018".

More...

31 JUL

A restrictive covenant for an indefinite period is necessarily unenforceable in the context of an employment contract

In Smile Inc Dental Surgeons Pte Ltd v. Lui Andrew Stewart [2012] 4 SLR 308, The employment agreement contained a restrictive covenant prohibiting the respondent from practicing within 3 kilometres of the Smile clinic for an indefinite period of time. The respondent subsequently went on to set up a competing clinic a 5 minute walk away from the appellants. The court found in favour of the respondent and held that, save for exceptional circumstances, the absence of a time limit alone is sufficient to find a restrictive covenant unreasonable and unenforceable.

7 AUG

Deferred Bonus Forfeiture Clause Deemed an Unreasonable Restraint of Trade

Mano Vikrant Singh v. Cargill TSF Asia Pte Lt [2012] 4 SLR 371

The employer's terms and conditions for deferred bonus payments, stated that a part of the bonus amount earned by the employee would be paid in stages over 3 years, the deferred portion accruing interest in the meantime. The deferred bonus portion was only payable if the employee did not join a competitor for 2 years. The Court of Appeal held that the deferred bonus scheme constituted an indirect restraint on trade and also that the restraint of trade was not reasonable and therefore unenforceable.

1 SEP

Foreign Workers: Regulations for Dependent Visas

With effect from 1 September 2012, Work Pass Holders face tighter criteria when applying to sponsor dependents. For example, S Pass and Employment Pass (EP) holders need to earn a fixed monthly income of at least S$4,000, which is an increase of S$1,200 over the previous threshold. Furthermore, P1 and P2 Pass holders will no longer be able to sponsor their parents-in-law, although P1 and P2 pass holders may still sponsor their spouses and children.

More...

9 NOV

Foreign Workers: Amendment to Employment of Foreign Manpower Act

The Employment of Foreign Manpower Act ('EFMA') prescribes the responsibilities and obligations regarding the employment of foreign workers. Substantial amendments were made to the act in 2012 that were aimed at enhancing the government's ability to allow for a calibrated and appropriate response to different types of contraventions and to allow the Ministry of Manpower to step up enforcement actions against errant employers, foreign workers and syndicates expeditiously and effectively.

More...

27 NOV

Professional Golf: Prohibition Against Playing in Other Tournaments Deemed an Unreasonable Restraint of Trade

Pilkadaris Terry and others v Asian Tour (Tournament Players Division) Pte Ltd and another and another suit [2012] SGHC 236

The High Court held that the doctrine of restraint of trade was not limited to employment contracts, sale of business contracts and that the doctrine applied equally to sports associations. The plaintiffs were professional golfers who had entered into agreements with the defendant golf association. The agreements had attempted to restrain the plaintiffs from taking part in any other tournament scheduled on the same day, or seven days immediately before, or after, a tournament organised by the defendant.

More...

CONTRIBUTED BY: RAJAH TANN

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SINGAPORE 2013

2013 Q1

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KEY

- **Important:** action likely required
- **Good to know:** follow developments
- **Note changes:** no action required

2013: PREDICTIONS FOR THE YEAR AS AT FEBRUARY 2013

2013

Employment Act 2013: Public Consultation

The Ministry of Manpower announced that it would review the Employment Act ('EA') to ensure that the EA remains relevant to the changing workforce profile. For example, the increasing proportion of professionals, managers and executives ('PME's) in the workforce; rising salary levels, and evolving employment norms and practices. A public consultation was held from 19 November 2012 through 11 January 2013 to seek feedback on the issues for review.

More...

2013

Maritime Labour Convention Ratified

Singapore ratified the 30th ratification of the Maritime Labour Convention, 2006 ('MLC 2006') on August 2012 which will come into force 20 August 2013. The MLC 2006 establishes minimum requirements for almost all aspects of working conditions for seafarers including, but not limited to, conditions of employment, minimum wages, hours of work and rest, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security protection.

More...

2013

Work Pass: Administrative Fee Changes

From 1 April 2013, administrative fees will rise sharply for applications of all work passes, as the Ministry of Manpower seeks to address rising costs and to bring the fees closer to the actual costs of providing work pass services. Key changes include increasing application fees from a flat S$20 for all passes, to S$70, S$60 and S$30 for Employment Pass, S Pass and Work Permit applications respectively.

More...

2013

Weekly Rest Days for Foreign Domestic Workers (FDW)

Following an amendment to the Fourth Schedule to the Employment of Foreign Manpower (Work Passes) Regulations 2012, all FDWs who are issued with a Work Permit on or after 1 January 2013 will be entitled to one rest day every week. Employers may compensate their FDWs in lieu of the weekly rest day if there is a mutual written agreement between both parties. The amendment also requires that any such compensation should amount to at least one day's salary or a replacement rest day taken within the same calendar month.

More...

2013

Proposed Workplace Safety and Health (Work-at-Heights) Regulations

In 2012, a review conducted by the Ministry of Manpower revealed that, in comparison to other countries, current legislation in Singapore on safety for employees who work at heights was inadequate in many areas. This includes organization and planning requirements , authorization to carry out activities at heights and the use of an industrial rope access system. The proposed "Workplace Safety and Health (Work-at-Heights) Regulations 2013" will come into effect in April 2013 and will impose additional duties on employers on this front.

More...

JAN

Non-compete Clause Unenforceable For Too Wide A Scope

In *Centre for Creative Leadership (CCL) Pte Ltd v Byrne Roger Peter and others* [2013] SGHC 4, the Plaintiff sued two ex-employees for, among others, breach of a non-compete clause. In analysing the enforceability of the non-compete clause, the court discussed the reasonableness of each element of the clause in terms of the duration, geographic scope, activity and parties or persons covered. After analysing each factor, the court found that looking at the totality of the circumstance the clause was unenforceable. First, the court found that the duration of 12 months had no rational or reasonable basis and appeared to have been 'plucked out of thin air'. Second, the court found that the geographic scope of the clause was too wide, as it prevented a former employee from soliciting business from a client in any city even where the Plaintiff had no office of its own in that city. Last, the court found that scope of persons or clients covered under the clause was too wide. This was because the clause would extend to clients to whom the employee may have generated, designed, delivered or provided programmes or other services, but who would otherwise have no actual interaction with such a client.

UPDATED AS AT END DECEMBER 2013

FEB

High Court Finds CEO was Constructively Dismissed

In *Cheah Peng Hock v Luzhou Bio-Chem Technology Limited* [2013] SGHC 32, the Plaintiff was employed by the Defendant as a CEO. In August 2009, the Plaintiff left the Defendant's employment claiming that he had been constructively dismissed and sought contractual damages. The Plaintiff argued that there had been a repudiatory breach of an implied term of mutual trust and confidence to provide the Plaintiff with general authority in the daily management and revamping the organisational structure of the Defendant company, which caused the Plaintiff to leave the Defendant's employment.

In finding for the Plaintiff, the court found that the Defendant had committed a repudiatory breach of an implied term of trust and confidence through the Defendant's deliberate and systematic undermining of the Plaintiff's position in the company through the appointment of a co-CEO, the exclusion of the Plaintiff from meetings, and the removal of the Plaintiff's access to the company car. Based on these factors, the court found that the Plaintiff had been constructively dismissed by the Defendant and awarded the Plaintiff damages.

FEB

Enhancements To Foreign Manpower Policy For Quality Growth And Higher Wages

In line with the 2013 Budget Statement, the Ministry of Manpower will be tightening the requirements for eligibility for S Pass holders in all sectors. The key changes include raising the qualifying salary criteria for S Pass from S$2,000 to S$2,200, which will take effect from 1 July 2013 for new applications, and progressive increases in Foreign Worker Levies for both S Pass and Work Permit holders, which will take place from 1 July 2014 to 1 July 2015. There will also be a reduction in the Dependency Ratio Ceilings ('DRC') from 45% to 40% and a reduction in the S Pass sub-DRC from 20% to 15%. The DRC refers to the maximum permitted ratio of foreign workers to the total workforce that a company in the stipulated sector is allowed to hire.

More...

MAR

Changes To The Employment Act

On 17 April 2012, the Ministry of Manpower announced that it would be reviewing the Employment Act (Cap 91, 2009 Rev Ed) ('EA'), the first major review of the EA since 2008. Given the scope of the review and the complexity of issues, it was announced that the review would be conducted in two phases. Phase 1 would cover issues which include extending the coverage of the EA, improving employment standards and benefits for employees, and reducing rigidity and augmenting flexibility for employers. Phase 2 would cover issues relating to employer-employee dispute resolution mechanisms, as well as non-traditional work arrangements such as contract workers, freelancers and self-employed persons.

More...

MAR

More Flexibility For Service Sector Businesses In Deploying and Upgrading The Skills Of Foreign Manpower

From 1 July 2013, businesses in the Service sector can offer their Work Permit Holders the flexibility to work across different job functions within the same firm. This will help businesses reduce their need for additional manpower as well as optimize and adjust their deployment of employees in accordance with changes in demand. Separately, more Work Permit Holders will be able to upgrade from the 'Unskilled' (R2) status to 'Skilled' (R1) status if they earn a fixed monthly salary (including fixed allowances) of at least S$1,600 and have at least 4 years of working experience in Singapore. This inclusion of an additional route to upgrading the skills of foreign manpower will result in lower worker levy rates for employers, as well as allowing employees to upgrade their capabilities and earn better wages.

More...

MAR

Ministry Of Manpower Releases Guide For Employers On Weekly Rest Days For Foreign Domestic Workers

All foreign domestic workers who have their work permits issued or renewed from 1 January 2013 onwards are entitled to a weekly rest day or compensation in-lieu. The Ministry of Manpower has released a guide for employers.

More...

MAR

National Wages Council Invites Views On Annual Wage Guidelines

The National Wages Council ('NWC') announced that it would meet in April and May this year to discuss and consider the wage and wage-related guidelines for 2013/2014. Members of the public and stakeholders are encouraged to send in their views to the Secretary of the NWC. Such feedback will be taken into consideration in the NWC's deliberations, along with other relevant factors such as Singapore's economic performance, the global, regional and local economic outlook, as well as Singapore's competitiveness, labour market conditions, inflation and productivity.

More...

APR

Work Pass Administrative Fee Changes (effective 1 April 2013)

From 1 April 2013, administrative fees will rise sharply for applications of all work passes, as the Ministry of Manpower seeks to address rising costs. Such fees are paid for by employers but were priced substantially below cost recovery when they were first introduced in 2005. Key changes include increasing application fees from a flat S$20 for all passes, to S$70, S$60 and S$30 for Employment Pass, S Pass and Work Permit applications respectively. There are also increases between S$10 to S$30 for renewal and issuance fees. In addition, card replacement fees will go up from a flat rate of S$60 to S$100 for first-time losses, and S$300 for second-time losses.

More...

APR

New Programs To Help Singapore Nationals re-Join The Workforce And for Employers To Improve Workplace Practices (effective 1 April 2013)

From 1 April 2013, a program entitled 'WorkPro' will be introduced to provide support to encourage economically inactive locals, which includes women and mature residents, to return to active employment. This will come about mainly through a variety of funding support, such as an incentive for employers to implement flexible work arrangements, as well as a Retention Bonus for individuals who have not been working for 3 months or more. Separately, to help employers improve workplace practices, 'Enterprise Training Support' ('ETS') will be introduced to offer a wide range of assistance to enhance the training and human resource capabilities of employers, by giving employers incentives to assist and plan their employees' career development. Through the ETS, employers can receive funding for their employees' training, developing training plans customised to employees, as well as for enhancing the company's human resource and management functions.

More...

MAY

Marriage And Parenthood Package (effective 1 May 2013)

In support of a pro-family environment in Singapore, the Ministry of Manpower announced the enhanced Marriage and Parenthood Package, which will take effect from 1 May 2013. However, employers are encouraged to implement such new benefits for any Singapore citizen births from 1 January 2013. The key enhancements include extending maternity protection to cover the full pregnancy period, instead of the current 3 months (for retrenchment) and 6 months (for dismissal) before delivery; introduction of shared parental leave to enable fathers to share up to 1 week of the mother's maternity leave; introduction of a 1 week Government-paid paternity leave; extension of 2 days childcare leave for parents of children between the ages of 7 and 12, and the provision of Government-paid adoption leave for 4 weeks.

More...

31 MAY

Government Accepts National Wages Council's Recommendations For 2013/2014

The Government announced that it has accepted the National Wages Council's ("NWC") recommendations for 2013/2014 to raise real wages for workers by improving productivity, and to achieve higher wages for low-wage workers. Most notably, the Government supported the NWC's proposition to build on its recommendation in 2012 to give low-wage workers larger built-in wage increases. Further to this, the Government stated that it will lead by example, not only as an employer but also as a service buyer and will continue to take reference from the NWC guidelines in its annual wage adjustment. Service suppliers to the public sector are also strongly encouraged by the Government to adopt the NWC recommendations on wage increments for workers.

More...

24 JUN-JUL

Public Consultation Held On The Proposed WSH (Asbestos) Regulations

The Ministry Of Manpower ("MOM") conducted a public consultation on the proposed Workplace Safety And Health (Asbestos) Regulations ("WSH Asbestos Regulations"). The Regulations are intended to replace the existing Factories (Asbestos) Regulations, which were enacted in 1980 to protect workers from exposure to asbestos in factories which use or manufacture asbestos products. In reviewing the Factories (Asbestos) Regulations, the MOM found that as the bulk of asbestos-related work now involves the removal of in-place asbestos-containing material ("ACM") rather than the actual manufacture of ACM, it was necessary to amend the existing legislation to protect those carrying out demolition, alterations and maintenance work involving ACM. Some of the key changes include: licensing of asbestos removal contractors, having a plan of work for asbestos removal and updating technical requirements for asbestos removal work. The date on which the regulations will come into effect has yet to be confirmed.

More...

24 JUN

Ministry issues Tripartite Guidelines on Job Flexibility Scheme for Service Sector Employers

The Ministry Of Manpower ("MOM") announced that the Job Flexibility Scheme in the Services sector will be implemented on 1 July 2013. This scheme allows Work Permit holders in the services sector to be deployed across occupations within the same business, over and above the occupation specified on the Work Permit. The Guidelines set out the principles on how employers may exercise this new capability and also reminds employers of their legal and contractual obligations. Such obligations include seeking notice and consent from the foreign employees before assigning additional or new roles; mandatory rest days, hours of work and other conditions of service under the Employment Act, and ensuring that the foreign employee remains employed under the same company and sector as specified on the Work Permit card.

More...

22 JUL

Second Phase Review and Public Consultation on Employment Legislation: Deadline October 30, 2013

The Ministry of Manpower ("MOM") announced that it has embarked on the second phase of reviews of the Employment Act ("EA") and the Employment of Foreign Manpower Act ("EFMA"). The public may send their views by mail or email by 30 October 2013. The second phase of review of the EA will focus on issues relating to further protection for the well-being of vulnerable workers, particularly those in non-traditional work arrangements. Such arrangements include workers who engage in contract work, outsourcing work and freelancing work. Some issues that were highlighted include the requirement for a minimum service period qualification for leave entitlements with respect to contract workers; additional protection for salary defaults for outsourced workers, and freelancers who exhibit employee-like characteristics but do not benefit from the protection under the EA. As for the EFMA, the MOM has only stated so far that it will be reviewing existing rules relating to the employment of foreign workers, such as circumstances under which foreign workers could be allowed to change employers. Presently, no further information is available as to when the MOM will respond after it has consolidated the public's views.

More...

1 AUG

Changes To Entrepass Framework

On 1 August 2013, the Ministry of Manpower ('MOM') had introduced changes to the EntrePass framework to attract more innovative types of foreign entrepreneurs to Singapore. These changes came into effect on 1 September 2013. The EntrePass is a type of work pass that was first introduced in 2003 to attract foreign entrepreneurs who wish to start a business in Singapore. The new revisions will make it more difficult to qualify for the EntrePass scheme. In addition to the existing criteria, applicants must now fulfil a new condition to show that their business is innovative. There are several ways applicants can satisfy this condition, including holding a licensed intellectual property ('IP') recognised by an approved national IP institution, or receiving funding from a recognised third-party venture capitalist accredited by a Singapore Government Agency, among other means set out by the ministry. Further, there will also be a mid-year audit check on the progress of the business, and applicants will have to demonstrate efforts that they have scaled up their business. For example, applicants may show documents such as tenancy agreements, staff employment contracts/CPF statements or research collaboration milestones. Last, the renewal framework will also be changed to more progressive criteria which will be commensurate with the number of years that the business has been operating in Singapore.

More...

23 SEP

Firms to Consider Singaporeans Fairly for Jobs

The Ministry of Manpower ('MOM') announced new rules, known as the Fair Consideration Framework ('FCF') that requires employers to consider Singaporeans fairly before hiring Employment Pass ('EP') holders. Firms with discriminatory hiring practices will be subject to additional scrutiny and may have their work pass privileges curtailed. These changes are intended to reinforce expectations for employers to consider Singaporeans fairly for job opportunities and to enhance job market transparency.

Key features of the FCF include (1) from 1 August 2014, all firms making new EP applications must first advertise the job vacancy for at least 14 calendar days on a new jobs bank administered by the Singapore Workforce Development Agency ('WDA') before submitting an EP application to the MOM; (2) MOM and other government agencies will also actively identify and assess firms that may have scope to improve their hiring and career development practices and direct these firms to take certain actions; (3) from January 2014, the qualifying salary for new EP applications will be raised from S$3,000 to S$3,300, in line with rising salaries. The MOM has also indicated that the changes are part of a broader effort to ensure that good jobs continue to be created for Singaporeans but clarified that it was not about 'Hire Singaporeans First, or Hire Singaporeans Only'. The FCF was intended only to create a fair opportunity for Singaporeans.

More...

25 SEP

Ministry of Manpower ('MOM') takes action against 10 companies for discriminatory job advertisements

The MOM took action against 10 companies after investigations found their job advertisements to be discriminatory and not aligned with the Tripartite Guidelines on Fair Employment Practices issued by the Tripartite Alliance for Fair Employment Practices ('TAFEP').

Under the Tripartite Guidelines, employers who advertise a position requiring a specific attribute which may be viewed as discriminatory should ensure that the attribute is indeed a requirement of the job, and state the reason for the requirement in the advertisement. For example, words or phrases that exclude Singaporeans or indicate preference for non-Singaporeans and those that exclude or indicate a preference for a certain age group or gender should not be used in job advertisements. The 10 companies were not able to provide valid justifications for restricting their recruitment to exclusive groups.

This investigation was similar to an earlier investigation by MOM in March 2013 regarding discriminatory job advertisements posted by 2 companies, who had to put up public apologies. Similarly, the 10 companies were also required to put up online public apologies for 30 days and were barred from hiring new foreign workers for the 30-day period as well as for 6 months following the publication of these apologies. The MOM emphasized that it expected all employers doing business in Singapore to comply with the TAFEP and took non-compliance with the TAFEP seriously.

More...

17 OCT

Employment Agent on Suspension Order Fined $30,000 for Non-Compliance with Employment Agencies Act

Sunway Employment Pte Ltd ('Sunway'), an employment agency ('EA'), was convicted of entering into new placement agreements with new clients while under a suspension order. The order had been imposed by the Ministry of Manpower ('MOM') while Sunway was under investigation for a separate illegal employment offence. A suspension order forbids an EA from entering into new recruitment or placement agreements with new clients and may only carry on its existing business. Despite being fully aware of the restrictions under the suspension order, Sunway had continued to enter into new placement agreements with new clients. Sunway was able to circumvent MOM's Work Pass On-Line ('WPOL') system by using the SingPass password of two of its new clients to submit online work pass applications and had received a total of S$5,522 as placement fees from the new clients. In addition to the new placement agreements, Sunway had also continued to actively recruit new Foreign Domestic Workers ('FDW') to meet the demands of its clients while it was under the suspension order.

Sunway is the first EA to be convicted of such an offence since the revised Employment Agencies Act ('EAA') came into effect in April 2011, which saw the penalties for this offence increased to S$80,000. Sunway pleaded guilty in the Subordinate Courts to the charge under section 12(1) of the EAA, and was fined $30,000.

More...

25 OCT

Victims of workplace attacks qualify for compensation (Kee Yao Chong v S H Interdeco Pte Ltd [2013] SGHC 218)

The Singapore High Court has ruled that workers who were attacked by their colleagues at their workplace stand to qualify for compensation from their employer for their injuries. The judge ruled that such deliberate attacks, especially where the victim did not expect the assault, count as workplace 'accidents' under the Work Injury Compensation Act ('WICA').

The case involved an apprentice carpenter, who was set alight by a co-worker. Previously, the Assistant Commissioner of Labour had ruled that the victim could not claim compensation from his company, because no 'accident' had taken place within the context of the WICA. This was overturned in the High Court by Judicial Commissioner George Wei on the basis that the WICA is a piece of 'social legislation' and that the term 'accident' should be defined broadly enough 'such that it encompasses an event which is unexpected or unforeseen even though [it] was deliberately caused by another individual, rather than only events which happen without deliberate cause'.

Further, the judge also disagreed with the Assistant Commissioner of Labour that the victim's injuries were not work-related. On the facts, the apprentice had had brushed an acrylic strip he was holding against his co-worker. The incident escalated when the co-worker's demand for an apology was ignored and the co-worker then flung thinner on the apprentice and set him on fire. The judge explained that the altercation was work-related because the two employees were not 'on frolics of their own' when the incident happened. On the contrary, the 'argument had taken place between co-workers in a shared workspace as a result of an incident when both were carrying out their work assignments'. The judge took the view that interaction between fellow employees/workers was an ordinary incident of employment even if the workers are not engaged in the same task, and especially when they are working on assigned tasks in a shared workspace. The sum of compensation would be determined at a later date.

More...
More...

29 OCT

Ministry of Manpower ('MOM') takes action against 61 companies for crane safety lapses

The MOM took action against 61 companies for crane safety lapses following inspections of 90 workplaces between July 2013 and September 2013. The inspections were part of an enforcement operation focusing on the safety of crane operations in the construction and manufacturing sectors, and were part of MOM's ongoing enforcement efforts to correct poor Workplace Safety and Health ('WSH') practices at various workplaces. The MOM officers had uncovered 189 contraventions of the WSH Act at the workplaces inspected, and issued 107 Composition Fines to the 61 companies, as well as Notices of Non-Compliance and Stop-Work Orders. Common contraventions uncovered included the failure to maintain cranes in good working condition, failure to implement safe lifting plans and using either defective lifting gears or lifting gears not examined by an Authorised Examiner. The MOM emphasised that crane safety remained a high priority for MOM because of the sheer size of cranes and the nature of lifting operations. Occupiers and employers were reminded to take their obligations to ensure the safety and health of their workers seriously. Companies and individuals alike may be liable for safety lapses and consequently, prosecution under the WSH.

More...

1 NOV

Public Consultation On Review Of The Industrial Relations Act

On 1 November 2013, the Ministry of Manpower ('MOM') invited members of the public to provide feedback on a review of the Industrial Relations Act ('IRA'). The IRA is a framework for the prevention and settlement of trade disputes through collective bargaining, conciliation and arbitration. In 2002, the IRA was amended to introduce limited representation to allow rank-and file ('R&F') unions to also represent certain managers and executives on an individual basis in certain types of disputes. In 2011, it was amended again to establish a tripartite mediation process for managers and executives in the non-unionised sector for certain disputes. The consultation will end on 21 November 2013.

In the latest review, the focus will be on building on the 2002 amendments to also allow R&T unions to represent professionals, managers and executives ('PMEs') collectively. For example, to have collective representation for PMEs in all industrial matters except for areas such as promotion, transfer, employment, termination, dismissal and assignment of duties which are the prerogative of employers. Another proposed change would be extending the areas for limited representation to include re-employment disputes. This was because re-employment had become a common employment issue that was suitable for individual representation due to the need to consider factors such as individual performance and medical fitness.

More...

CONTRIBUTED BY: RAJAH TANN
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MORE

1 JUN 2012

Work Injury Compensation Act Amendments

1. Compensation limits for death, total permanent incapacity and medical expenses were all increased from their last revision in 2008. For example, the previous limit for death was S$47,000 to S$140,000 while the new limit is S$57,000 to S$170,000. This is in line with the Ministry of Manpower's regular review to ensure that WICA compensation matches increase in nominal wages and rising medical costs.
2. Compensation will not be allowed for work-related fights. As such, employers will generally not be liable under WICA to compensate workers who are injured in work-related fights, except in certain scenarios such as when the worker was a victim and did not participate in the fight, or when he was injured while exercising private defence, or instructed to break up the fight, safeguard life/property or maintain law and order.
3. The scope of compensable diseases was expanded. Previously, diseases were compensable only when they were listed in the Second Schedule, for example noise-induced deafness, or as a result of a specific accident at work. With the change, diseases contracted due to work-related exposure to chemical or biological agents will be compensable. The Second Schedule will also be refined to include a new occupational disease (exposure to excessive heat) and broaden the scope of some of the existing occupational diseases.
4. Work-related exclusion clauses in insurance policies, with the exception of clauses relating to asbestos, will be prohibited for the purpose of WICA insurance. With these changes, insurers will be liable to make payment of the compensation even if work-related exclusions exist in the insurance policy. Insurers will continue to be able to seek contractual recovery from the employer if such recovery is allowed in the insurance policy.
5. in the event that there are multiple parties providing insurance coverage for workers, the employer's insurance policy will first be used to satisfy a claim. This clarification will avoid undue delay in processing compensation for the injured worker as previously, various insurers tended to dispute liability in the event of a claim.

More...
Back...

MAR 2013

Changes To The Employment Act

A public consultation on the proposed changes to the EA pursuant to Phase 1 was held between 19 November 2012 and 11 January 2013. Following the public consultation, the Acting Minister for Manpower, Mr Tan Chuan-Jin, announced on 14 March 2013 that Phase 1 of the review had been completed and the EA would consequently be amended. These changes will be tabled in Parliament in the second half of 2013 and are expected to come into force in the first half of 2014. As for Phase 2 of the review, the Acting Minister stated that it would begin in the second half of 2013.

Key changes under Phase 1 include increased protection for two categories of workers. First, the scope of certain EA provisions will be expanded to include junior Professionals, Managers and Executives ('PME') who earn up to S$4,500 a month. Examples of such provisions include sick leave benefits and protection against unfair dismissal. Second, the salary threshold for non-workmen will be increased from S$2,000 to S$2,500. This will bring more employees under the scope of the benefits contained in Part IV of the EA.

Other changes include limiting employer's liability for sick leave and medical examinations; making it mandatory for employers to keep payslips and employment records; introducing caps on deductions from employee salaries; reduction of the qualifying period for retrenchment benefits, and expanding the protection of collective agreements in the event of a transfer of employees.

More...
Back...

UPDATED AS AT FEBRUARY 2013

SOUTH KOREA

2012

Important: action likely required

Good to know: follow developments

Note changes: no action required

KEY

1 JAN

Provision of written employment agreements upon execution or revision

Employers must provide written employment agreements to employees upon the execution or revision of the employment agreement.

Calculation of Ordinary Wages

In a decision rendered by the Supreme Court, it was found that certain fixed bonuses paid regularly may be within the scope of "ordinary wages." Ordinary wages are the basis of calculation of overtime, compensation for unused leave, among others. The Supreme Court has remanded the matter to the Daegu High Court, where we understand that parties have settled. However, the Supreme Court case has practical precedential effect and subsequent lower court decision have been in line with the decision. Since it is common practice in many companies in Korea to provide regular fixed bonuses throughout the year, the financial impact may be significant.

29 MAR

1 JUL

The 2012 minimum wage rate was set at KRW 4,580 per hour

More...

Interim Severance Payouts of Retirement Benefits Restricted

Interim severance payouts are generally disallowed and may be permitted only under special circumstances prescribed by the Presidential Decree (e.g., purchase of a home, bankruptcy, family illness, etc.).

More...

26 JUL

2 AUG

Employees are entitled to Childcare Leave

Employees may select either childcare leave or work reduction schedule (15-30 hours per week), or combination of both, during an employee's childcare period (until child is 6 years of age).

More...

Obligation to Hire Illegally Dispatched Workers

Any company found to use illegally dispatched workers in violation of the Protection of Dispatched Workers Act may be obligated to hire such illegally dispatched workers as employees immediately.

More...

2 AUG

Employees entitled to 90-day Family Care Leave

The family care leave system may be used by a worker if his/her family member (parents, children, spouse and spouse's parents) needs care due to a sickness, an accident or old age. Employees are permitted to take family care leave of up to 90 days upon request.

More...

2 AUG

Employees are entitled to 5-day Paternity Leave

The paternity leave can be comprised of 3 days of paid leave, with up to 2 additional unpaid days of leave.

More...

2 AUG

Maternity Leave/ miscarriage or stillbirth leave

The government will provide the maternity leave benefit (up to 1.35 million KRW per month) for 90 days in the case of priority support companies and 30 days in the case of large enterprises. An employee who has a miscarriage or stillbirth is granted 5-90 days of miscarriage or stillbirth leave depending on the pregnancy period, along with miscarriage or stillbirth leave benefits.

More...

2 AUG

Annual Paid Leave of up to 15 days

15 days of annual paid leave shall be granted to employees even when the employee has less than 80% attendance in the previous year. Employees are entitled to annual paid leave starting from 6 months (or earlier) from the date on which 1 year elapses from the day.

More...

2 AUG

Waiting Time

Waiting time under the employer's supervision and control shall be included in the calculation of working hours.

More...

2 AUG

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SOUTH KOREA
2013

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UPDATED AS AT END SEPTEMBER 2013

Important: action likely required
Good to know: follow developments
Note changes: no action required

KEY

1 JAN — Full Payment of Severance for Company with 4 employees or less

A Company with 4 employees or less became obliged to provide severance pay starting from December 1, 2010, provided that companies were permitted to pay 50% of statutory severance or more until December 31, 2012 as an interim measure. Starting from January 1, 2013, any such company with 4 employees or less shall be required to provide full severance payment to its employees.

More...

1 JAN — Monetary Contribution In Lieu of Hiring of Disabled Workers

The mandatory monetary contribution in lieu of hiring disabled workers was increased from KRW 590,000 to KRW 626,000 per month. Including the additional penalties imposed on the number of disabled workers hired which is short of the statutory minimum, the total contribution may be up to KRW 1,015,740 per month, which is the equivalent of one month's salary at minimum wage.

More...

1 JAN — The 2013 minimum wage rate was set at KRW 4,860 per hour

More...

1 JAN — Employment Facilitation Subsidy

A Company is required to apply for the Employment Facilitation Subsidy on a quarterly basis (previously, every 6 months), which is provided to companies which facilitate employment opportunities by improving working environment or change of working conditions.

25 JAN — Government assistance for employment insurance premiums

Under the new Act on the Collection, etc. of Premiums for Employment Insurance and Industrial Accident Compensation Insurance, the government may provide 50% of the employment insurance premium borne by the employer and employee with regard to employees whose monthly wages are less than KRW 1.3 million.

1 APR — Government to provide assistance to Companies taking Measures to avoid Lay-offs

Under the new Employment Insurance Act, the government may provide assistance to companies suffering financial difficulties if the company maintains its current number of employees through alternative measures including encouraging use of leave, reduction of work hours etc., instead of implementing restructuring (e.g. lay-off).

24 APR — 2014: Introduction of Public Notification of Employment Type by Employers

A company employing more than 300 full-time workers is required to publicly notify the employment type of its workers on the Ministry of Employment and Labor's website every year from 2014 onwards. The notice should include the number of workers in each of the following categories: workers whose term of employment contract is not decided, fixed-term workers and other short-term workers, daily workers, telecommuting workers, and unaffiliated workers (service, dispatch, subcontractors, etc.).

More...

19 JUN — Adjustment to Maximum Time-off Limit

Under the paid time-off system applicable to union officers conducting union activities, the existing categories of workplaces with less than 50 union members and between 50 and 99 union members will be combined into one category consisting of workplaces with less than 100 union members. With regard to this category, the maximum time-off limit will be a total of 2000 hours every year. Where a company has multiple workplaces throughout the nation with more than 1000 union members in total, between 10% and30% of additional hours will be provided in consideration of travel time and etc.

More...

1 JUL — Clarification of Areas where Discriminatory Treatment is Prohibited

The Act on the Protection of Fixed-term and Part-time Employees and the Act on Protection of Dispatched Workers regulations have been amended to clarify the areas in which disadvantageous and/or discriminatory. treatment without any justifiable reason is prohibited. These include: matters relating to wages, (regular/special holiday) bonuses, performance-based benefits, and other matters relating to welfare benefits.

More...

23 SEP

CONTRIBUTED BY: KIM & CHANG

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SRI LANKA

2012

UPDATED AS AT FEBRUARY 2013

Important: action likely required

Good to know: follow developments

Note changes: no action required

KEY

FEB

Employees' Provident Fund Amendment: Monthly e-Returns or Employers Risk Surcharges

The Employees' Provident Fund (Amendment) Act, No. 2 of 2012 required that, starting July 1, 2012, employers with over 50 employees must submit accurate, monthly e-returns together with any necessary contributions to the Commissioner-General of Labour, with a copy to the Central Bank of Sri Lanka, no later than the end of the succeeding month. Absent an explanation deemed satisfactory by the Commissioner, an employer's failure to submit e-returns that are accurate and timely will give rise to a surcharge of 2% of the amount of any contribution required for every completed month or part-month until the e-return is received by the Central Bank of Sri Lanka.

More...

CONTRIBUTED BY: John Wilson Partners

SRI LANKA

2013

Important: action likely required
Good to know: follow developments
Note changes: no action required

KEY

2013 Q1

Click here to view Q1 edition

UPDATED AS AT END DECEMBER 2013

1 JAN

2013 Minimum Wage increases announced

Effective January 1, 2013, the minimum wages decided by the Wages Boards for the following trades have been increased: Building Trade; Beedi Manufacturing Trade; Brick and Tile Manufacturing Trade; Coconut Growing Trade; Retail and Wholesale Trade; Textile Manufacturing Trade; Cinema Trade; Printing Trade; Biscuit and Confectionery Manufacturing (including Chocolate Manufacturing) Trade; Rubber Export Trade; Security Trade; Tea Export Trade; Prawn Culture and Export Trade; Plumbing Trade; Batik Trade; Ceramic Trade; Rubber (including Tire Manufacturing and Re-Building) Plastic and Petroleum Resin Products Manufacturing Trade; Tobacco Trade; Pre-School Trade; Glassware Manufacturing Trade.

1 MAR

2013 Minimum Wage increases announced

Effective March 1, 2013, the minimum wages decided by the Wages Board for the following trades have been increased: Match Manufacturing Trade; Metal Quarry and Metal Crushing Trade; Cigar Manufacturing Trade; Motor Transport Trade; Tanning, Foot ware and Leather goods Manufacturing Trade; Hosiery Trade; Journalist Trade; Nursing Home Trade.

1 APR

2013 Minimum Wage increases announced

Effective April 1, 2013, the minimum wages of the following Wages Boards have been increased: Hotel and Catering Trade, Liquor and Vinegar Trade; Baking Trade; Coir Mattress and Bristle Fibre Export Trade.

1 SEP

2013 Minimum Wage increases announced

Effective from 1st September 2013, the minimum wage for the Ice and Aerated Water, Cordials and Jam Manufacturing Trade has been increased.

CONTRIBUTED BY: John Wilson Partners

UPDATED AS AT FEBRUARY 2013

TAIWAN
2012

Important: action likely required
Good to know: follow developments
Note changes: no action required

KEY

1 FEB

Overseas Employees: 3 year Employment Term

Where foreign nationals are hired to engage in ocean fishing work, work of domestic helpers, or work designated by the central competent authority, the term of the employment permit shall not be longer than 3 years in principle. However, the employers may apply for an extension subject to the requirements of the Act. Article 55, Paragraph 4 of the Employment Service Act was also amended and became effective on the same date to stipulate that the penalties for overdue payment will be imposed on employers who fail to pay "employment stabilization fees" within the statutory deadlines.

Overseas Employees: Article 52 Considerations

Following the amendment of Article 52 of the Employment Services Act on February 1, 2012, The Council of Labor Affairs issued the Lao-Zhe-Guan-1010504197 and Lao-Zhe-Guan-1010504193 Circulars of February 2, 2012 to clarify issues relating to the permitted term of employment and cumulative years in service within ROC of those foreign nationals who were employed before Article 52 was amended and who are engaged in ocean fishing work, as domestic helpers, or work designated by the central competent authority.

More...

2 FEB

Employer Penalties for Overdue Employment Stabilization Fees

Following the amendment of Article 55, Paragraph 4 of the Employment Services Act on 1 February 2012, the Council of Labour Affairs issued the Lao-Chih-Guan-1010506491 Circular of 22 March 2012 to address the calculation method of the penalties for overdue payment imposed on employers who had already failed to pay employment stabilization fees by the statutory deadlines before the amendment to the above-mentioned Act.

More...

22 MAR

Business as Usual During Labour Mediation, Arbitration or Adjudication

The Council of Labor Affairs issued the Lao-Zi-3-1010125649 Circular of 16 April 2012 to define the beginning and end of the "mediation, arbitration or adjudication period for labor disputes" under Article 8 of the Act for Settlement of Labor-Management Disputes. During the mediation, arbitration or adjudication period for labor disputes, an employer may not suspend or shut down the business, terminate the labor contract, or undertake any other activities unfavorable to employees, and employees may not resort to strikes or undertake any other dispute activities.

More...

16 APR

Labour Dispatch: Mandatory Provisions

The Council of Labor Affairs issued the Lao-Zi-2-1010125521 Circular of 26 June 2012 to announce the "Mandatory Provisions to be Included in and Prohibitory Provisions of Contract for Labor Dispatch" and "Sample Dispatch Contract for User Enterprises and Dispatch Agencies" to clarify certain legal issues regarding labor dispatch.

26 JUN

Sexual Harassment at Workplace: Regulations

If the employer is a school, the complaint concerning sexual harassment can be handled by the Gender Equity Education Committee of the school in accordance with the Regulations. Moreover, to harmonize the corresponding provisions within the Regulation, the Gender Equity Education Act and the Sexual Harassment Prevention Act, the investigation period of a complaint was modified from 3 months to 2 months and may be extended for 1 more month if necessary. The appeal period was modified from 10 days to 20 days and must be made in writing.

More...

2 AUG

Minute Unit is Appropriate Recording Employment Attendance

Article 21, Paragraph 2 of Labor Pension Act requires an employer to prepare a name list of employees including the record of attendance. The Council of Labor Affairs issued the Lao-Dong-4-1010131690 Circular of August 9, 2012 stating that a minute shall be the unit for recording attendance.

9 AUG

Incompetent Employees: The Principle of Last Resort

101-Tai-Shang-1546 Decision of September 27, 2012

Employers who terminate a labor contract on the ground that the employee is "not competent for their work" need to satisfy the principle of last resort. Also the employer must exhaust attempts to improve the employee's work performance under the provisions of the Labor Standards Act

More...

27 SEP

Personal Information Protection Act Amendments take Effect

Except for Article 6 (sensitive data) and Article 54 (notice duty for personal information which is not directly provided by the party), provisions provided in the Personal Information Protection Act as amended on 26 May 2010 took effect on 1 October 2012.

More...

1 OCT

Increase to 2013 Minimum Wage Rate Announced

On 16 October 2012, the Council of Labor Affairs announced that the statutory minimum wage rate will increase from NT$103 per hour to NT$109 per hour to be effective from 1 January 2013.

16 OCT

Mass Redundancy: Amendments Proposed to Act for Worker Protection

In addition to the situations currently set forth in the Act for Worker Protection of Mass Redundancy, a 'mass redundancy' will now also occur:

- If a site in the business entity has 500 workers or more intends to lay off over 1/5 of the total number of workers within 60 days, or more than 80 workers within 1 day; or
- A business entity intends to lay off more than 200 workers within 60 days, or more than 100 workers within 1 day.

18 OCT

Daily and Hourly Paid Workers: Entitlement to Minimum Wage and Overtime Protections

Payments for employees paid by days shall not circumvent the requirement of the statutory minimum wage. In addition, the employees paid by hours or by days are entitled to overtime wages and also the wages payable to an employee who works on a holiday, as provided in the Labor Standards Act. See Lao-Dong-2-1010132874 Circular with respect to Articles 21, 24, 39 of the Labor Standards Act.

6 NOV

Labor Safety and Health Act: Expanded Scope and Proposed Name Change

The Executive Yuan passed the proposed amendments to Labor Safety and Health Act on 15 November 2012 and submitted the proposed amendments to the Legislative Yuan on 22 November 2012. The proposed amendments expand the scope of the Act and also prevention from overwork, requirements to protect labor safety and health and introduction of provisions specifically for petrochemical industry. The new name proposed for the Act is the Occupational Safety and Health Act.

More...

15 NOV

Abuse of salary-based system

The Department of Labor, Taipei City Government published statistics showing violations of Labor Standards Act over the last 2 years. The majority of violations were due to the scheduled work hours exceeding statutory normal work hours, the denial of holidays and excessive work hours.

More...

25 NOV

Personal Data Privacy: Employment Services Act

The Employment Services Act was amended to protect the privacy rights of employees. Employers are now prohibited from asking employees to provide any privacy data unnecessary to their employments when recruiting or employing employees.

More...

28 NOV

Labor Insurance Act: Retirement Age Adjustments

Due to the change of the population structure of Taiwan, and in order to protect older employees, the Labor Insurance Act was amended to elevate the ages of statutory insured person to 65 and confirms that they will continue to be covered for insurance purposes.

More...

5 DEC

Gender Equality in Employment: Proposed Amendments

The Executive Yuan passed the proposed amendments to the Act of Gender Equality in Employment on13 December 2012 and submitted the proposed amendments to the Legislative Yuan on 19 December 2012. If adopted, the authorities will be allowed to publish the name of employers who violate the Act.

More...

13 DEC

Expatriate Workers: Permission and Administration Regulations

Several articles of Regulations on the Permission and Administration of the Employment of Foreign Workers were amended.

More...

19 DEC

Labour Insurance Act: Time for Making Claims Extended

Article 30 of the Labor Insurance Act was amended to extend the period for claiming insurance benefits from 2 years to 5 years.

More...

19 DEC

Employment Insurance Act: Time for Insurer's Payments

Article 22-1 of the Employment Insurance Act was added, which clearly provides that insurance benefits shall be paid within 15 days after the insurer makes the final confirmation. If an overdue payment is attributable to the insurer, then interest is payable.

More...

19 DEC

CONTRIBUTED BY: 理慈 Lee, Tsai & Partners

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Important: action likely required
Good to know: follow developments
Note changes: no action required

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2013: PREDICTIONS FOR THE YEAR AS AT FEBRUARY 2013

2013

Mass Redundancy: Definition to be Extended

The Government is proposing amendments to Article 2 of the Act for Worker Protection of Mass Redundancy with a view to expanding the definition of "mass redundancy of workers"

2013

Labour Safety and Health Laws: Amendments Proposed

15 November 2012

A new draft bill aims to extend the reach of a workplace safety legislation and to add a clause stipulating safety evaluation at petrochemical plants. Under the draft bill, the Occupational Labor Safety and Health Act would be renamed the Employment Safety and Health Act and its coverage will be expanded from the current 15 industries to include the self-employed and employees in all other industries.

More...

2013

Gender Equality in Employment Proposal: Violators may be publicised

On 13th December 2012, the Executive Yuan proposed amendments to the Act of Gender Equality in Employment. See "Taiwan 2012" page.

More...

2013

Amendments to Controversial Personal Information Protection Act Anticipated

The Taiwanese Executive Yuan of Taiwan announced that it has drafted provisions to amend the controversial requirements of the revised Personal Information Protection Act (PIPA) which came into force on 1 October 2012. The draft amendments include medical records as sensitive personal data and that their collection, processing and use be prohibited, except in certain exempted cases (Article 6 Amendment). The amendments also propose to remove criminal sanctions attached to violations of the Act where there is no intention to gain profit (Article 41 and 45 Amendments). The Executive Branch will now deliberate over these amendments with the Legislative Branch.

More...

2013

Minimum Wage Increases for 2013

On 1 January 2013 the statutory minimum wage rate will increase from NT$103 per hour to NT$109 per hour.

More...

2013

UPDATED AS AT END DECEMBER 2013

1 JAN

Promulgation of Guidelines for Review of Professional Labour Activities Conducted in Taiwan by Professionals from the Mainland China Area

The Council of Labour Affairs (CLA) issued the Lao-Zi-1-1010127622 Circular of December 26, 2012 to promulgate the Guidelines for the Review of the Professional Labor Activities Conducted in Taiwan by Professionals from Mainland China ("Mainland-China Professionals"), which consists of 11 paragraphs and came into effect on January 1, 2013. The Guidelines prescribe the definitions of the "inviting organizations", the "Mainland-China Professionals who may be invited" and the "professional activities which may be attended by Mainland-China Professionals in Taiwan". It also provides the numbers of batches of professionals who may be invited to Taiwan by an inviting organization each year, the reporting obligation of the inviting organization and the CLA's authority to observe or audit the activities, send representatives to accompany the delegations, and to report any violation to the National Immigration Agency.

More...

22 JAN

Labour Health Protection: Regulation Amendments

The CLA issued the Lao-An-3-1020145036 Circular of January 22, 2013 to promulgate the amendments to the Regulations of the Labour Health Protection. Except for amendments to Appendix 1 of Article 2, Articles 5 and 13, which will become effective on January 1, 2014, the other amendments came into effect. The amendments extend the occupational health care coverage to occupational hazards associated with exposure to nickel (and its compounds) and mercury (and its compounds) so that workers who may come in contact with the above chemicals will be deemed as engaged in operations particularly hazardous to health and therefore be subject to protection measures. Moreover, the qualifications and trainings required for nursing professionals offering occupational health services are also amended to ensure the quality of labour health nursing services.

More...

21 FEB

Proposed Amendments to the Regulations for Implementing Labour-Management Meeting

The CLA issued the Lao-Tzu-2-1020125121 Circular of February 21, 2013 to propose certain amendments to the Regulations for Implementing Labour-Management Meeting. The proposed amendments explicitly provide the timeline and procedures for initiating a labour-management meeting, the matters to be discussed in the meeting, the role of the labour union during the meeting, prohibition on retaliatory treatments to the labor representatives attending the meeting and the obligation to provide necessary information, etc. It is expected that the amendments will bring about efficiency for the operation of labour-management meetings.

More...

1 MAR

Jeopardizing Nationals' Opportunity in Employment defined

Article 42 of the Employment Services Act provides that, for the purpose of protecting nationals' right to work, no employment of foreign workers may jeopardize nationals' opportunity in employment, their employment terms, economic development or social stability. The CLA issued the Lao-Chih-Guan-1020503351 Circular of March 1, 2013 to expound the circumstances that are considered to "jeopardize nationals' opportunity in employment."

More...

11 MAR

Amendments to Reviewing Standards and Employment Qualifications for Foreigners Engaging in Certain Fields

The CLA issued the Lao-Chih-Guan-1020503428 Circular of March 11, 2013 to amend the Reviewing Standards and Employment Qualifications for Foreigners Engaging in the Jobs Specified in Items 8 to 11, Paragraph 1 of Article 46 of the Employment Service Act. According to the amendments, the numbers of the foreign workers for manufacturing industries that involve certain production procedures are increased subject to several industry and proportion requirements. The mechanism of outreach family care service is also introduced.

More...

1 APR

Minimum Wage increased to NT$19,047 per Month on April 1, 2013.

The CLA issued the Lao-Tong-2-1020130620 Circular of April 2, 2013 to adjust the minimum wage from NT$18,780 per month to NT$19,047 per month. The adjustment took effect on April 1, 2013.

More...

25 APR

Labour Insurance Act Amendments Proposed

The Executive Yuan passed the proposed amendments to the Labour Insurance Act on April 25, 2013. The proposed amendments focus on the adjustment of the labour insurance mechanisms, including its premium rate, insurance period and the payment standards. The amendments are aimed to ensure that such mechanisms operate permanently without shortage of funds due to the changing population structure of Taiwan.

More...

25 APR

Proposed Amendments to the Labour Standards Act

The Executive Yuan passed the proposed amendments to the Labour Standards Act on April 25, 2013. According to Article 45 of Labour Standards Act, no employer may employ a worker below fifteen years of age, unless the worker has graduated from junior high school or the competent authority has determined that the nature and circumstances of the work are such that no harm will result to the worker's physical and mental health. If the proposed amendments are passed by the legislature, the government authority will be authorized to promulgate the regulation to provide the detailed requirements. The amendments also explicitly provide that any violation of the above will be subject to the penalty provisions in the Act.

More...

2 MAY

Salary Standards introduced for Employers Recruiting Taiwan Nationals in Taiwan under the ESA

The Council of Labor Affairs ("CLA") promulgated the new base salary standards as part of the "reasonable employment conditions" for employers recruiting Taiwan nationals in Taiwan for engaging in occupations under Article 46, Paragraph 1, Subparagraphs 8-11 of the Employment Standards Act (ESA) in the Lao-Chih-Guan-1020503813 Circular.

Following the increase of the basic wage to NT$19,047, among others, the base salary for marine fishing/netting workers was increased from NT$18,780 to NT$19,047 per month.

The new regulations took retroactive effect from April 1, 2013.

More...

8 MAY

Amendment Employment Security Fees to be Paid by Employers Hiring Foreigners in Certain Occupations

Following the amendment of the "Reviewing Standards and Employment Qualifications for Foreigners Engaging in the Jobs Specified in Subparagraphs 8 to 11, Paragraph 1 to Article 46 of the Employment Service Act" that allows manufacturing enterprises to hire more foreign workers upon payment of an extra employment security fee as well as the introduction of outreach family care service, the CLA amended the "Table of Employment Security Fees to be Paid by Employers in Hiring Foreigners to Engage in Occupations Under Article 46, Paragraph 1, Subparagraphs 8-10 of the ESA" in the Lao-Chih-Guan-1020506843 Circular.

Additional job categories and their corresponding employment security fees were added to the Table in light of the aforementioned amendment.

The new regulations took retroactive effect from March 13, 2013.

More...

9 MAY

Amendments to Labor Insurance Contribution Table Tiers

Following the basic wage increase to NT$19,047, the CLA promulgated the amendment to the "Table of Labor Insurance Contribution Tiers Based on Salary" in Lao-Bao-2-020140307 Circular.

The first tier was increased from NT$18,780 to NT$19,047 per month.

The amendment became effective on July 1, 2013.

More...

13 MAY

Amendments to Labor Pension Contribution Table Tiers

The CLA promulgated the amendment to the "Table of Labor Pension Contribution Tiers Based on Salary" in Lao-Dong-4-1020131009 Circular.

The amendment entered into effect on July 1, 2013. The newly amended grading table added the new basic wage level of NT$19,047 in place of the old NT$18,780 amount. All other tiers for monthly contribution wages are left unchanged at the original 62 separate pay grades.

More...

15 MAY

Countries Requiring Foreign, Employment-Related Documentation to be Notarized by R.O.C.

The CLA announced in the Lao-Zi-Guan-1020504898 Circular the list of countries where the foreign workers' employment-related documentation requires notarization by the Consulate/Representative Office of the R.O.C. in that country. The Circular applies to hiring foreigners to engage in occupations under Article 46, Paragraph 1, Subparagraphs 1-6 of the ESA. However, if the foreigner was working for a transnational entity and was merely transferred to its Taiwan subsidiary/branch office, the work experience documentation provided by his/her company does not require notarisation. Further, foreigners recruited to conduct academic research who had their degrees vetted by the central competent authority also do not require notarization of their academic credentials. This regulation was effective May 15, 2013.

More...

16 MAY

Labor-Management Dispute Settlement Act: Decision Application Deadline Determined

In the Supreme Administrative Court 102-Pan-294 Decision, the Court held that the date of commencement for an application by an employee for a decision against the employer's violation of Article 35 of the Labor Union Act (i.e. unfair treatment or refusal to hire based on the employee's participation in a labor union) may be either:

1) The day the employee became aware of the violation; or
2) The day after the actual violation occurred.

More...

17 MAY

Amendment to Eligibility of Foreigners to Work and Conduct Business in Taiwan

In the Lao-Zi-Guan-1020500903 Circular the CLA announced certain amendments to the "Work Eligibility Review Standards for Foreigners Engaging in the Occupations Under Article 46, Paragraph 1, Subparagraphs 1-6 of the ESA". The impact was to make changes to the eligibility and conditions of foreigners arriving in Taiwan to engage in professional or technical occupations, and to conduct business regarding management, education, sports and arts and culture as specified under Article 46, Paragraph 1, Subparagraphs 1-6 of the ESA .

After the amendment, employers seeking to hire the above-mentioned foreign white-collar workers will need to observe the revised standards and requirements provided for each job categories, such as obtaining a certification from the competent authority authorizing the employer to engage in its particular field of industry/business for certain occupations.

More...

17 MAY

Foreigners with a Bachelor's Degree or Higher Engaging in Professional and Technical Occupations are no longer required to have Prior Work Experience

The CLA explained in the Lao-Zi-Guan-1020506913 Circular that the industries in the science parks or otherwise authorized by the Ministry of Economic Affairs to hire foreigners with a bachelor's degree or higher to engage in professional and technical occupations no longer require such foreign individuals to have prior work experience. This regulation applies to foreign and Taiwanese expat students as well.

More...

5 JUN

Lay Off Notification Procedures Introduced

The CLA explained in the Lao-Zi-Ye-1020501283 Circular that according to Article 33, Paragraph 1 of the ESA, employers seeking to lay off employees are required to notify the local competent authority and the public employment service institution of the lay off in writing or through the layoff reporting system specified by the competent authority. This change was effective immediately.

More...

7 JUN

Employee Personal Data: Amendment to the Enforcement Rules of the ESA

From November 28, 2012 under Article 5, Paragraph 2, Subparagraph 2 of the ESA, an employer may not require an employee to provide private personal data superfluous to employment purposes. In response to the request for a black-letter provision that the employer or the local authority may rely on, the CLA announced in the Lao-Zi-Ye-1020501288 Circular an amendment to Article 1-1 of the Enforcement Rules of the ESA to further define the term "private personal information" as covering the categories of physical information (genetic testing, fingerprints, drug testing, etc.), psychological information (psychological testing, lie detector test, etc.), and personal records (credit report, criminal record, etc.)

The amendment further states that in requesting private information from a prospective or current employee, the request must be respectful of the rights of the individual in question and may not exceed the scope of the particular purpose that it was collected in the first place, such as for economic reasons or public interest. There must also be a reasonable relationship between the request for private personal information and the purpose being satisfied.

More...

26 JUN

Termination on Transfer/Reorganisation deemed 'Involuntary Resignation' for Recovering Occupational Hazard Employees

According to Article 11, Paragraph 1, Subparagraphs 1-3 of the Employment Insurance Act, after involuntarily leaving a position, and subject to meeting certain conditions, the insured may apply for unemployment benefits and receive early the employment/occupational training subsidies. The CLA promulgated the Lao-Bao-Yi-1020140378 Circular to explain that, if the employment agreements of employees who suffered from occupational hazards are terminated due to reorganizations/transfers, or failure of the employer to arrange (or come to consensus with the employee) for a new position in the company after medical treatment to injuries caused by the occupational hazard, such terminations should be considered as "involuntary resignations".

More...

3 JUL

Amendment to the Occupational Safety and Health Act

The former "Labor Safety and Health Act" was renamed to the "Occupational Safety and Health Act" and the full text of the law was amended. The areas of the law revised in this amendment includes expansion of the scope of the Act (from specified industries only to virtually all employers), establishment of an upstream/source safety control system on machinery, equipment and tools and chemicals, prevention of occupational hazards and illnesses, protection to female workers, strengthening the monitoring on high-risk occupations, greater penalties for violations, and increase in award and guidance measures. The Executive Yuan has yet to set an effective date for these significant amendments. The CLA is also working on consequential amendments to connected legislation within one year.

More...

14 AUG

Clarification regarding labour insurance for individuals over 65 who have not yet received labour insurance senior benefits and are engaged in vocational training

The Council of Labour Affairs ("CLA") announced in the Lao-Bao-2-1020074353 Circular that, for persons above the age of 65 that have not yet received the labour insurance senior benefits, he or she may enrol in labour insurance during vocational training programs for unemployed persons entrusted or subsidized by Bureau of Employment and Vocational Training. Article 58, Paragraph 6 of the Labour Insurance Act prevents an individual who is already receiving senior benefits from enrolling in labour insurance.

More...

5 SEP

Regarding the employment status of foreign teachers teaching at specific locations designated by employers

Article 57, Subparagraph 2 of the Employment Services Act provides that an employer shall not hire a foreign worker under its name while causing the worker to work in fact for a third party. The CLA explained in its Lao-Zi-Guan-1020509450 Circular that, when public or registered private colleges/universities or other institutions ("the employers") dispatch its foreign teachers to specific locations to provide teaching services, as long that the foreign teachers are still working for their employers, the employers would not violate Article 57, Subparagraph 2 of the Employment Services Act.

More...

24 SEP

Clarification regarding the penalties provision under Article 32, Paragraph 2 of the Labour Standards Act ("LSA")

Article 32, Paragraph 2 of the LSA provides that the total number of overtime hours shall not exceed 46 hours "a month". The CLA further made clarifications in the Lao-Dong-2-1020131923 Circular concerning the above provisions. If the employer violates the above overtime rule for a consecutive two months, since the durations in which the employer breached its duties under law are different, the actions shall be deemed separate violations and may be penalized individually for each violation.

More...

3 OCT

Agreements on employee working hours under Article 84-1 of the LSA are legally binding even prior to its approval by authorities

Article 84-1 of the LSA provides that some specific types of employees may arrange their own working hours, through contract. While these agreements should be submitted to the local labour authorities for approval and record, the Court held in the Supreme Court 102-Tai-Shan-1866 Decision that the Article is merely concerned with administrative management rather than government authorization. Therefore, whether the agreements have been submitted to the authorities for approval and record is irrelevant to the legal force of the agreement with respect to work hours.

More...

3 OCT

Adjustment of the minimum wage

The CLA issued the Lao-Tong-2-1020132068 Circular of October 3, 2013 to adjust the minimum hourly wage from NT$109 to NT$115, effective on January 1, 2014, as well as the monthly minimum wage from NT$19,047 per month to NT$19,273 per month, effective on July 1, 2014.

More...

14 OCT

The LSA is now applicable to lawyers who are employed by law firms

From April 1, 2014, the LSA will be applicable to lawyers who are employed by firms providing legal services , as announced by the CLA in its Lao-Dong-1-1020132124 Circular.

More...

16 OCT

The LSA is now applicable to farmer organizations

From January 1, 2015, the LSA will be applicable to farmer organizations, as announced by the CLA in its Lao-Dong-1-1020132159 Circular.

More...

16 OCT

Clarification regarding occupational hazard insurance for individuals over 65 who have already received the senior benefits and are engaged in vocational training

The CLA announced in the Lao-Bao-3-1020140540 Circular that for employees who are above the age of 65 and have already received senior benefits before re-employment or training at vocational training institutions, the insuring entity may enroll the individual in occupational accident insurance. This change is effective immediately.

More...

17 OCT

Proposed amendments to the Regulations on the Authorization and Administration of Employers Hiring Foreign Workers

Certain amendments were proposed to the "Regulations on the Authorization and Administration of Employers Seeking to Hire Foreign Workers". The proposed amendments explicitly require the employer to examine the residence permit and household registration information of foreign spouses if it wishes to hire them as employees (Art. 6), the removal of limitation on foreign professionals working in the Free Economic Pilot Zone (Art. 11-3), the utilization of the national employment service information website established by the CLA (Art. 12), the reduction of application period for the employer to submit the application for certificate of employment (Art. 14), the eligibility for foreign students to obtain work permits and the required application documents (Art. 31,33), and the revision of relevant wordings (Art. 46-2).

More...

18 OCT

Amendments to the Enforcement Rules of Protection for Workers Incurring Occupational Accidents Act

Article 6 of the Enforcement Rules of Protection for Workers Incurring Occupational Accidents Act regulates the required documents to apply for compensation for occupational accident death. The CLA announced in the Lao-Fu-3-102136382 the amendment of subparagraph 4 of the above Article, replacing the household certificate transcripts with household recording book transcripts as one of the required documents. This amendment will take effect on March 1, 2014.

More...

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TAIWAN

MORE

19 DEC 2012

Expatriate Workers: Permission and Administration Regulations

Article 11-3 was added to prescribe the matters relating to the foreign nationals employed in Taiwan to engage in specialized or technical work or to act as directors/managers/executives of a business invested in or set up by oversees Chinese or foreigner(s) with the authorization of ROC's government.

The application for foreign nationals who engage in the work of domestic helpers as set forth in Article 12-1, Paragraph 1 were also amended.

Moreover, to clarify the responsibilities of employers, Article 28-1 was added to regulate the Employment Permit(s) given to the foreign nationals who engage in the ocean fishing work, work of domestic helpers, work designated by the central competent authority, or other specialized workers ad hoc approved by the Central Competent Authority.

Finally, the requirement of Extended Employment Permit(s) in Article 29 was also amended.

Back...

2013

Labour Safety and Health Laws: Amendments Proposed

The bill regulates that employers should monitor and conduct inspections of workplaces and that companies with a certain staff size should hire or commission medical professionals to educate their employees about health management and prevention of vocational diseases.

In addition, for pregnant female employees and those who have given birth within 12 months, the employers must adopt protective procedures such as evaluating the current work environment and adjusting or changing the work environment, the bill said.

The bill also added a clause that is known as "the sixth naphtha cracker article," which stipulates operators of petrochemical plants must conduct safety evaluations regularly and report the results to supervisory organizations.

More...

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UPDATED AS AT FEBRUARY 2013

THAILAND

2012

KEY

- **Important:** action likely required
- **Good to know:** follow developments
- **Note changes:** no action required

Minimum Daily Wages Increased for 2012

Seven Provinces increased their daily minimum wages to THB300 (approximately US$10), effective. This is a substantial increase.

More...
More...

1 APR

2012

Social Security Contributions: Reductions Proposed

As a recovery measure following the large scale flooding in 2011, the government proposes to reduce the level of social security contributions payable by employers and employees. Legislative approval is pending.

More...

Domestic Workers Given Increased Legal Protection

The Minister of Labour issued a new Regulation under the Labour Protection Act, which extends certain protections to domestic workers or "housemaids". The regulation provides for housemaids to have weekly holidays, traditional holidays, annual holidays, and sick leave, and sets out provisions with respect to Holiday Work and Holiday Work Pay, as well as termination benefits.

More...
More...

9 NOV

CONTRIBUTED BY: Tilleke & Gibbins

THAILAND

2013

Important: action likely required
Good to know: follow developments
Note changes: no action required

2013 Q1

Click here to view Q1 edition

UPDATED AS AT END JUNE 2013

KEY

Minimum Daily Wages Increased for 2013

The national minimum daily wage has been increased to of THB300 (approximately US$10).

More...

1 JAN

Social Security Contributions: Reductions Confirmed

On 27 February the relevant notification was issued and then announced in the Government Gazette on March 1, 2013. The notification is retroactive to 1 January 2013 and due to expire 31 December 2013.

27 FEB

2013: LOOKING FORWARD

The Cabinet approved to reduce Personal Income Tax in 2013 tax (calendar) year on 18th December 2012

The Cabinet has resolved that personal income tax rates are to be reduced, effective this tax (calendar) year. Effecting this change requires a Royal Decree, which has not yet been issued, though it is expected to be issued, shortly. The Act to Amend the Revenue Code will have to be passed by Parliament within March 2014 so that the new rates can take effect for the 2013 tax return to be filed in 2014.

2013/ 2014

Protection of migrant workers in Thailand and Thai workers working overseas

Following a number of stories in the media about abuse of migrant workers in Thailand, and abuse of Thai workers sent overseas, the Department of Labour Protection and Welfare and the Department of Employment - both organs of the Ministry of Labour - have met to discuss policies to address the problem of human trafficking into Thailand, and the need for greater protections for Thai persons recruited to work overseas. Though it is still early days, this has the potential to result in greater controls on the employment of migrant workers and/or greater protections for migrant workers. It also has the potential to result in changes for employment agencies which recruit Thai personnel to work overseas

2014

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THAILAND

MORE

2012

Social Security Contributions: Reductions Proposed

Contributions were reduced from the normal 5% per month (maximum THB750 from employer and THB750 from employee), to 3% per month (maximum THB450 from each), for a period of six months. Following the end of the six month period, the contribution rate increased to 4% (maximum THB600 from each), where it was to remain for six months, before returning to the original 5%. However, given concerns about the impact of the increase in the minimum wage nationwide, there have been reports which indicate that the Government will extend that the 4% contribution rate for additional time, as a measure to ease the burden on employers. On 27 February the relevant notification was issued and announced in the government gazette on 1 March, 2013. It is retroactive to 1 January 2013 and due to expire 31 December 2013.

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VIETNAM

2012

UPDATED AS AT FEBRUARY 2013

- **Important:** action likely required
- **Good to know:** follow developments
- **Note changes:** no action required

KEY

1 JAN

Statutory Insurance Contributions Revised

The statutory insurance contributions were revised to 17% and 7% from employers and employees respectively. They were previously 16% and 6%.

More...

Trades Unions: New law takes effect

This new Trade Union Law will take effect on 1st January 2013. It stipulates the rights of laborers to establish and participate in Trade Unions.

More...

20 JUN

Expatriate Workers: Recruitment and Management

By Official Letter No. 2761/LDTBXH-VL, the Government reinforced the law regarding the recruitment and management of foreigners working in Vietnam.

9 AUG

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VIETNAM 2013

Important: action likely required
Good to know: follow developments
Note changes: no action required

KEY

2013 Q1

Click here to view Q1 edition

2013: PREDICTIONS FOR THE YEAR AS AT FEBRUARY 2013

Minimum Wages Revised for 2013

The Government has issued Decree 103/2012/ND-CP stipulating the region-based minimum wage levels for labourers.

More...

2013

UPDATED AS AT END DECEMBER 2013

Strikes Prohibited in Certain Utilities Industries

Under Decree No. 41/2013/ND-CP, employees at businesses operating in power production and transmission, exploitation and exploration of oil and gas, water supply and drainage, provision of telecommunications infrastructure services, etc. are not permitted to strike.

More...

8 MAY

Labour Mediator Appointment Processes Announced

MOLISA issued Circular No. 08/2013/TT-BLDTBXH ("**Circular 08**") guiding Decree No. 46/2013/ND-CP on labour disputes in which new processes are set out for the selection, appointment and nomination of labour mediators who are by law empowered to settle labour disputes.

More...

10 JUN

Certain Labour Data to be made Publicly Available

Under Decree No. 60/2013/ND-CP on implementation of the regulations on democracy at working places, employers are required to make public important internal regulations concerning the employees' salaries, labour norms, labour safety and hygiene, etc.

More...

19 JUN

New, Significant National Labour Code

The new Labour Code No. 10/2012/QH13 will replace the existing 1994 Code and its amending laws (specifically the 2002 and 2006 amendments). The Code will set out and govern labor standards including the rights, obligations and responsibilities of employees, employers, labour representative organizations, employer representative organizations and other employment-related relations.

More...

20 JUN

Penalties applicable to administrative breaches in the fields of employment and social insurances

Under Decree No. 95/2013/ND-CP dated August 22nd 2013, more severe administrative penalties will be applied to breaches of the laws on employment and social insurances.

More...(Available in Vietnamese only)

22 AUG

New Decree on Work Permits which restricts the employment of expatriate employees in Vietnam

A new requirement on recruitment of expatriate employees is imposed under Decree No. 102/ND-CP dated September 5th 2013, according to which an employer (except a contractor) must obtain a written approval from the chairman of the provincial people's committee for the recruitment of expatriate employees. The term of a work permit is reduced to 2 years as apposed to 3 years under the preceding legislation. Those expatriate employees who are exempt from work permit requirements are also specified by Decree 102.

More...(Available in Vietnamese only)

5 SEP

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