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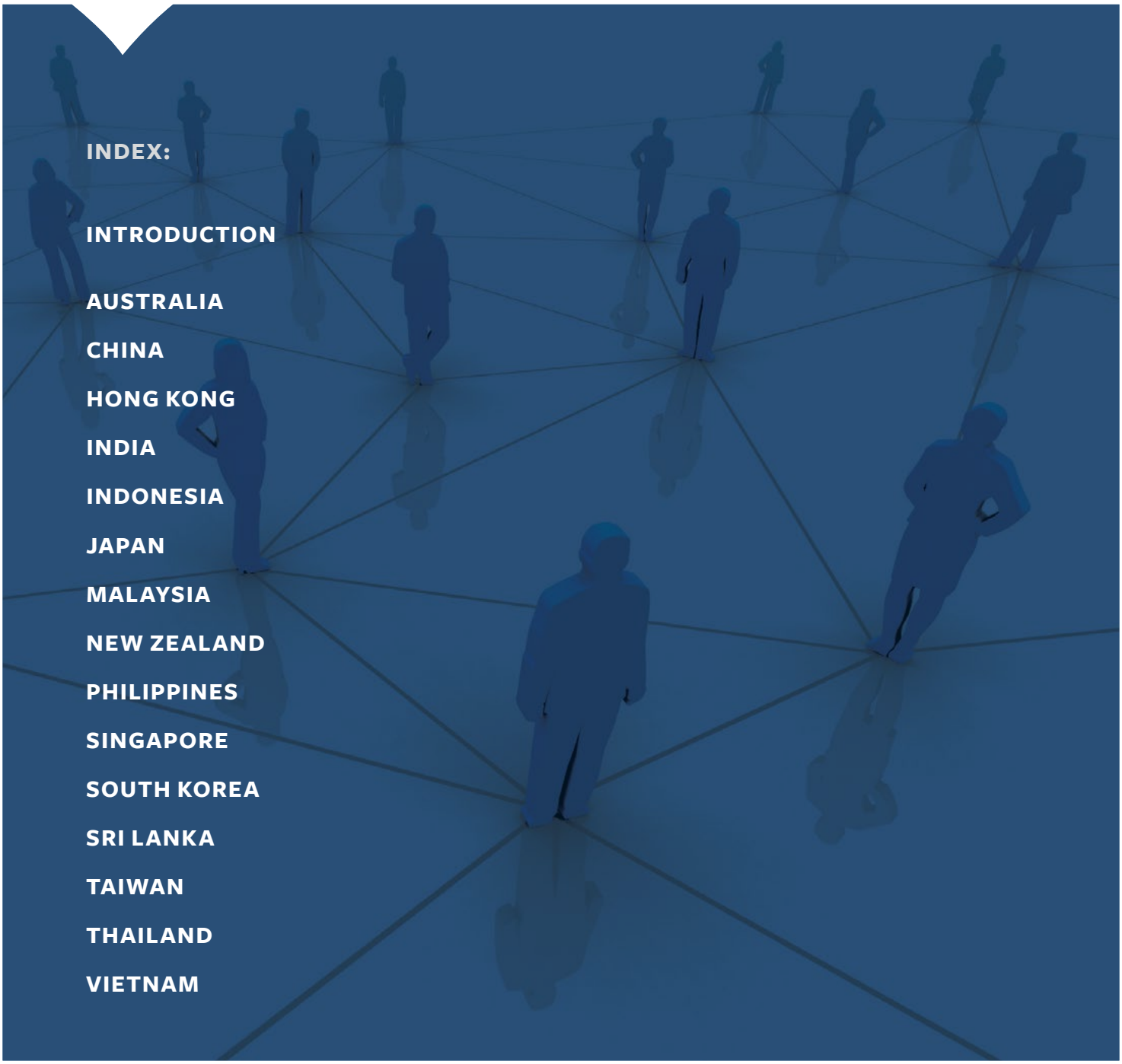

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INTRODUCTION

UPDATED AS AT END SEPTEMBER 2014

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 seventh edition, we flag and provide comment on anticipated employment law developments during the third quarter of 2014 and highlight some of the major legislative, consultative, policy and case law changes expected during the rest of the year.

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
14 NOV 2013

Building and Construction Industry (Improving Productivity) Bill introduced into Federal Parliament

The Coalition Government elected to office on 7 September 2013 introduced the *Building and Construction Industry (Improving Productivity) Bill 2013* into Federal Parliament. One of the first bills to emanate from the new Government, this proposed legislation reflects the Coalition's desire to tackle unlawful conduct by trade unions in the construction industry as a major priority.

The Bill proposes to expand the scope of regulation of the building industry by including the transportation or supply of goods to building sites and offshore resources platforms; re-establish the Australian Building and Construction Commission with strong investigatory powers; and impose new limits on unlawful industrial action and picketing with higher penalties for non-compliance.

A Senate Committee considering the Bill is due to report at the end of March. The Government is unlikely to obtain Parliamentary support for passage of the Bill until after the composition of the Senate changes on 1 July 2014. However, there will be increased pressure on the Labor Opposition and Greens to pass the Bill before 1 July in light of recent corruption allegations against the Construction, Forestry, Mining and Energy Union which have been widely reported in the Australian media.

More...

AUSTRALIA
14 NOV 2013

Fair Work (Registered Organisations) Amendment Bill introduced into Federal Parliament

Also high among the Coalition Government's legislative priorities is a new scheme of regulation for Australian trade unions and employer organisations (although the Bill implementing this scheme is mostly directed at unions, in response to corruption scandals in the Health Services Union and now the CFMEU).

The *Fair Work (Registered Organisations) Amendment Bill 2013* proposes to increase the financial, disclosure and transparency obligations of officials within registered unions and employer bodies; significantly increase the penalties for serious breaches of officers' duties; and create a new regulatory agency, the Registered Organisations Commission, to oversee the new laws. These changes are largely modelled on the system of regulation for companies and corporate directors under the *Corporations Act 2001* (Cth). The Bill was passed by the House of Representatives on 12 December 2013, and is now being considered by A Senate Committee.

On 10 February 2014, the Government announced the establishment of a Royal Commission to inquire into union governance and corruption. Former High Court of Australia Judge, The Honourable John Dyson Heydon QC AC, will lead the inquiry and will be asked to report to the Government by the end of 2014.

More...

AUSTRALIA
12 DEC 2013

Federal Court prevents Toyota from holding workforce ballot on enterprise agreement changes

In *Marmara v Toyota Motor Corporation Australia Limited* [2013] FCA 1351, Justice Bromberg of the Federal Court of Australia found that the company had breached the 'no extra claims' clause in its enterprise agreement by seeking changes to the agreement which it considered necessary to remain competitive.

The decision, handed down the day after Holden announced it would close its Australian manufacturing operations in 2017, appears to have deprived Toyota of access to the agreement variation provisions under the *Fair Work Act 2009* (Cth). These provisions enable parties to vary enterprise agreements during their term, using a consensual process including an opportunity for employees to vote on any proposed changes.

Justice Bromberg subsequently issued an injunction preventing a ballot on the proposed agreement variations from taking place. However, Toyota has appealed against the judge's decision and the Federal Government has indicated it will intervene in support of the appeal. (*con't*)

AUSTRALIA
12 DEC 2013

The Holden closure and Toyota decision triggered a debate, which continued into the new year, over appropriate levels of government assistance for Australian manufacturing industry. In late January, the Government announced it would not provide further funding to ensure the continued survival of struggling fruit processor SPC Ardmona (owned by Coca-Cola Amatil). The Prime Minister and Employment Minister have indicated that companies in this situation must reduce employment entitlements under their enterprise agreements, before seeking further public funding.

On 10 February 2014, Toyota announced that like Holden, it will cease producing cars in Australia in 2017.

AUSTRALIA
13 DEC 2013

Full Federal Court upholds unfair dismissal ruling in favour of novice Facebook poster

In *Linfox Australia Pty Ltd v Fair Work Commission* [2013] FCAFC 157, the Full Federal Court upheld a Fair Work Commission (FWC) Full Bench decision that an employee was unfairly dismissed despite his posting of highly offensive comments about his managers on Facebook.

The Court held that the FWC had not made any jurisdictional error in its ruling that the employee should be reinstated (*Linfox Australia Pty Ltd v Stutsel* [2012] FWAFB 7097). The Full Bench had taken into account the employee's age; his 22 years of service with the employer and good employment record; and his inexperience in using Facebook and lack of understanding of its privacy settings.

In other decisions involving social media misuse by employees, the FWC has taken a harder line – finding that employees were lawfully dismissed for serious misconduct where their Facebook posts or Twitter comments (even outside the workplace) have damaged the employer's reputation or other business interests.

More...

AUSTRALIA
17 DEC 2013

Who employs labour hire workers? Fair Work Commission rejects the concept of 'joint employment'

In *FP Group Pty Ltd v Tooheys Pty Ltd* [2013] FWCFB 9605, a Full Bench of the FWC held that FP Group was the true employer of workers it supplied to Tooheys under a labour hire arrangement.

In reaching this conclusion, the Full Bench rejected FP Group's argument that Tooheys was a joint employer of the workers, and held that the concept of joint employment has not been endorsed by Australian authorities. The Full Bench also held that the role of the FWC does not extend to developing the common law.

More...

AUSTRALIA
19 DEC 2013

Full Federal Court finds Victorian Government's implementation of Construction Code lawful

In *State of Victoria v Construction, Forestry, Mining and Energy Union* [2013] FCAFC 160, the Full Federal Court overturned a number of earlier decisions of Justice Bromberg (including the imposition of A$53,000 in civil penalties) to find that the State of Victoria did not breach the *Fair Work Act 2009* (Cth) through its implementation of the Victorian Government's Construction Code and Implementation Guidelines.

The Full Court decision legitimises the State Government's use of procurement policy to pursue industrial relations objectives, by requiring tenderers for government-funded building projects to comply with certain obligations (including not having "union-friendly" clauses in their enterprise agreements).

The CFMEU has lodged an application in the High Court of Australia for special leave to appeal against the Full Federal Court's decision.

AUSTRALIA
1 JAN 2014

New anti-bullying laws take effect

The former Labor Government's amendments to the ***Fair Work Act 2009*** (Cth) commenced operation, enabling workers to seek orders from the FWC to stop workplace bullying. (*con't*)

AUSTRALIA

1 JAN 2014

Although large numbers of bullying claims were anticipated, as at the end of January only 44 claims had been lodged with 6 of these withdrawn during the Commission's preliminary assessment process. However, many Australian workers were on annual leave during this period; and the level of claims is still expected to climb as people become more familiar with the FWC's new anti-bullying jurisdiction.

More...

AUSTRALIA

22 JAN 2014

Some details emerge of Federal Government's proposed Paid Parental Leave scheme

One of the Coalition's key election policies was the introduction of a new Paid Parental Leave (PPL) scheme, providing mothers with 26 week's pay at their actual pay (capped at A$150,000 per annum) following the birth of a child. This would replace the current PPL scheme, under which mothers receive 18 weeks' pay at the national minimum wage, from 1 July 2015.

Legislation implementing the new PPL scheme has not yet been introduced into Parliament. However, following speculation that the Government may attempt to override employers' existing PPL arrangements, the Social Services Minister indicated that employers will continue to be able to operate their own PPL policies to attract staff (with the new scheme applying as a minimum standard).

The revamped PPL scheme will be funded by a 1.5% levy on Australia's 3,000 largest companies, and for this reason has been unpopular with some business leaders.

More...

AUSTRALIA

2 DEC 2013 & 19 MAR 2014

Federal Government enables more employers to self-insure for workers' compensation under Comcare scheme

Late last year, Employment Minister Senator Eric Abetz announced that the Government had lifted a moratorium on private corporations becoming workers 'compensation self-insurers under the federal Comcare scheme. This was followed in March this year by the introduction into Parliament of the *Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014*, which would enable employers who operate in two or more Australian states/territories to apply for a self-insurance licence under Comcare.

Employers who obtain such a licence would then also be covered by the *Work Health and Safety Act 2011* (Cth). The intention of these reforms is to enable private sector employers to operate under a single, integrated workers' compensation and work health and safety framework. This would overcome the difficulties that many larger employers face at present, in having their employees covered by different safety/workers' compensation laws and insurance arrangements across multiple states and territories.

The *Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014* is presently the subject of a Senate Committee inquiry, which is due to report on 8 July 2014.

More...

AUSTRALIA

10 FEB 2014

Federal Government establishes Royal Commission into Trade Union Governance and Corruption

Following court proceedings over several years relating to corruption within the Health Services Union, and alleged financial irregularities within the Australian Workers Union, Prime Minister Tony Abbott announced the establishment of a Royal Commission into Trade Union Governance and Corruption.

The terms of reference for the Royal Commission require former High Court Judge, The Hon John Dyson Heydon QC AC, to inquire into and report upon matters including:

- The payment of bribes, secret commissions or other unlawful payments or benefits arising from contracts between unions and other parties; and
- Unions' establishment of separate entities (purportedly for industrial purposes or to benefit union members), the corporate governance and financial management of such entities, and their fund-raising activities.

(*con't*)

AUSTRALIA

10 FEB 2014

While five unions are specifically named in the terms of reference (HSU; AWU; Transport Workers Union; Construction, Forestry, Mining and Energy Union; Communications, Electrical and Plumbing Union), the Royal Commission may inquire into the activities of any union. Employers, particularly in the construction industry, are also being drawn into the Royal Commission's inquiries.

The Royal Commission's hearings commenced on 9 April 2014, and are continuing throughout the year with a report and recommendations due to be provided to the Government by 31 December 2014.

Meanwhile, the *Fair Work (Registered Organisations) Amendment Bill 2013* – which would impose greater financial, disclosure and transparency obligations on officials of registered unions and employer organisations – is still before federal Parliament.

More...
More...

AUSTRALIA

27 FEB 2014

Government introduces Fair Work Reform Bill

The federal Government introduced the *Fair Work Amendment Bill 2014* into Parliament, the first stage in its implementation of the 2013 election commitments set out in "The Coalition's Policy to Improve the Fair Work Laws". The Bill includes the following proposed amendments to the *Fair Work Act 2009* (Cth):

- Simpler processes for the making of "greenfields" agreements for genuine new businesses, projects or undertakings. Commonly used on large resources and construction projects, the amendments seek to address employer concerns that unions exercise veto powers over these agreements, adding to project costs and causing delays. Greenfields agreements would be made subject to the good faith bargaining rules, and employers could seek Fair Work Commission (**FWC**) approval of a proposed agreement if no deal is reached after three months of negotiations.
- Providing employers with easier access to individual flexibility arrangements (**IFAs**) which can be used to vary (on an individual basis) award or agreement conditions relating to hours of work, overtime, penalty rates, allowances and leave loading.
- New restrictions on union "rights of entry" onto employers' premises, including a requirement that entry for purposes of holding meetings with members or prospective members would be dependent on a union being covered by an enterprise agreement applicable to work performed at the workplace; or the union being invited into the workplace by a member or prospective member.
- Preventing unions from taking protected industrial action in support of claims for a new enterprise agreement before bargaining has actually commenced.

The Bill is currently before the Senate, where Labor and The Greens are opposed to its passage. However, the Government's prospects of passing the Bill may improve from 1 July 2014, when the composition of the Senate changes and it will need to negotiate with several independent and minor party senators to secure the passage of legislation.

More...

AUSTRALIA

6 MAR, 24 MAR, 3 APR, 12 MAY, 28 MAY, 6 JUN 2014

Fewer claims than expected, but key rulings made in Fair Work Commission's new anti-bullying jurisdiction

In its first three months of operation (to end of March 2014), only 151 claims were lodged under Part 6-4B of the *Fair Work Act 2009* (Cth) which enables workers to seek orders from the FWC to stop workplace bullying. The Commission had been expecting almost 900 claims per quarter. Only one anti-bullying order has been issued to date (FWC Order PR548852).

The FWC has made a number of significant decisions in the first six months of Part 6-4B's operation, including on jurisdictional matters:

(*con't*)

AUSTRALIA

6 MAR, 24 MAR, 3 APR, 12 MAY, 28 MAY, 6 JUN

2014

- *Application by McInnes* [2014] FWCFB 144 and [2014] FWC 1395: alleged bullying conduct which occurred prior to Part 6-4B coming into effect (i.e., prior to 1 January 2014) can be taken into account by the FWC when considering an application for an anti-bullying order. However, the applicant's claim was dismissed, as she did not work in a "constitutionally-covered business" (she worked for a not-for-profit provider of psychiatric support services) and the FWC therefore did not have jurisdiction in the matter.
- *Balthazar v McGuire; Department of Human Services (Commonwealth)* [2014] FWC 2076: the applicant (a recipient of carer's payments from a government department who alleged bullying in his treatment by department staff) was not a worker covered by Part 6-4B, therefore his claim was dismissed.
- *Application by Ms SB* [2014] FWC 2104: an employer's investigation into alleged bullying by a manager did not, itself, constitute bullying against the manager as the employer had a duty to investigate such complaints. Reasonable management action does not constitute bullying, and for these purposes, management action need not be perfect or ideal. Applying this broad approach to what constitutes reasonable management action, the applicant's claim was rejected.
- *Shaw v ANZ Banking Group Limited; Haines* [2014] FWC 3408: claim could not be pursued where the applicant was dismissed from his employment subsequent to lodging the application for anti-bullying orders. Orders under Part 6-4B are directed at preventing further bullying from taking place; the FWC could not make such orders where the applicant was no longer employed in the relevant workplace.
- *Application by Ms SW* [2014] FWC 3288: claim dismissed because applicant (a teacher in a Western Australian state school, employed by the WA Department of Education) did not work in a "constitutionally-covered business". Part 6-4B does not apply to employees of state public sector employers (except in the state of Victoria).

More...
More...

AUSTRALIA

7 MAR

2014

Draft terms of reference emerge for Productivity Commission Review of the *Fair Work Act*

The Government's proposed terms of reference for an imminent review of the *Fair Work Act 2009* (Cth) by the Productivity Commission were leaked to the media. The draft terms of reference indicate that the Commission will be required to inquire into and make recommendations on:

- The effects of the *Fair Work Act* (and associated legislation) on the wellbeing, productivity and competitiveness of Australia and its people;
- The impact of the current workplace relations framework on matters including employment levels, the ability of business and the labour marker to respond appropriately to changing economic conditions, and the ability of employers to flexibly manage and engage with their employees;
- How Australia's workplace laws could be improved to maximise outcomes for all stakeholders, ensuring appropriate protections for workers, the need for businesses to be able to grow and prosper, and the need to reduce unnecessary regulation.

While issues of major concern to employers like award penalty rates (see below), individual agreements and unfair dismissal protections were not specifically mentioned, the draft terms of reference are sufficiently broad to enable those kinds of issues to be considered.

At present, the terms of reference have not been finalised, so the Productivity Commission review has not yet commenced. The Government has previously indicated that it wanted the review completed in time for it to take any recommendations for legislative change to the next federal election in 2016.

LOOKING BACK

AUSTRALIA

27 MAR 2014

Federal Court finds agreement scope clauses can have broad application

In *John Holland Pty Ltd v Construction, Forestry, Mining and Energy Union v Fair Work Commission* [2014] FCA 286, the Federal Court of Australia confirmed that an employer may make an enterprise agreement under the *Fair Work Act 2009* (Cth) with a limited number of employees – but with the capacity for the agreement to apply to a larger number of employees over time.

In this case, an agreement was entered into between the employer and three of its employees on a particular construction site. However, the scope clause in the agreement provided that it would apply to all employees engaged on the company's civil construction projects in Western Australia (unless a site-specific agreement applied to one of those other projects).

Justice Siopis of the Federal Court held that these arrangements did not offend the legislative requirement that the group of employees to be covered by an agreement must be "fairly chosen"; and did not unlawfully undermine collective bargaining.

More...

AUSTRALIA

17 APR 2014

Federal Government releases proposed new Code of Practice for the Construction Industry

Employment Minister Senator Eric Abetz issued an advance release of the Government's proposed new *Building and Construction Industry (Fair and Lawful Building Sites) Code*. The proposed Code represents a return to a stricter framework for construction industry procurement than that which applied under the former Labor Government, with the overriding objective of "restoring the rule of law" in the industry.

Key provisions of the proposed Code, which must be met by organisations tendering for Commonwealth-funded building work, include:

- A wide range of prohibitions on certain clauses in enterprise agreements, e.g., clauses which restrict the engagement of sub-contractors, restrict employment flexibility, or provide various forms of support to unions in the workplace (these prohibitions apply with effect from 24 April 2014, i.e., agreements entered into from that date which include any prohibited clauses will place a tenderer in breach of the Code);
- Reporting obligations in relation to the occurrence of unprotected industrial action on building sites;
- Obligations to preserve freedom of association and to prevent unlawful union entry onto building sites;
- Obligations to ensure that the Code is observed by any sub-contractors of a principal contractor.

The commencement and operation of the proposed Code is at present uncertain, as this requires both that the enabling legislation (*Building and Construction Industry (Improving Productivity) Bill 2013*) be passed by Parliament and that the Code itself is not disallowed by Parliament. However, employers in the building and construction sector are best advised to factor in the proposed Code's rules on prohibited agreement content (effective from 24 April 2014) into their tendering and management practices.

More...

AUSTRALIA

9 MAY 2014

Federal Court rejects adverse action claim, but adopts wide interpretation of concept of "complaint in relation to employment"

In *Walsh v Greater Metropolitan Cemeteries Trust (No 2)* [2014] FCA 456, Justice Bromberg of the Federal Court of Australia found that an employee had not been dismissed in breach of Part 3-1 of the *Fair Work Act 2009* (Cth) which prohibits termination or other adverse treatment in employment on the basis of an employee's exercise of various "workplace rights".

In this instance, the employee had made complaints regarding probity issues in the employer's awarding of certain contracts to third parties. The Court found that this was not the reason for the employer's decision to dismiss the employee, which was based on legitimate concerns relating to her performance.

(*con't*)

AUSTRALIA

9 MAY 2014

However, in the course of making this finding, Justice Bromberg held that the employee's raising of the probity issues could constitute a "complaint or inquiry in relation to the employment", which could found the basis of an adverse action claim (if the employer had dismissed the employee because she had made the complaint rather than for genuine performance reasons). The decision therefore opens up the potential for a wide range of adverse action claims, where employees are treated adversely following the making of a complaint that is possibly only indirectly related to their employment.

More...

AUSTRALIA

14 MAY 2014

FWC Full Bench hands down key decision on weekend penalty rates

In *Appeal by Restaurant and Catering Association of Victoria* [2014] FWCFB 1996, a majority of the Full Bench of the FWC decided to reduce the Sunday penalty rate for casual employees in cafes and restaurants from 75% of the base hourly rate of pay to 50%. The decision arose in the context of the FWC's interim review of modern awards after their first two years of operation. The restaurant industry employer association sought various reductions in penalty rates applicable under the *Restaurant Industry Award 2010*.

The FWC Full Bench majority found that, although long-standing arguments around the need to reward workers for the disabilities of Sunday work remained valid, some workers were being overcompensated for working on Sundays. This justified the reduction in the Sunday penalty rate for casuals from 75% to 50%, but not the further penalty rate decreases sought by the employer body. The minority members of the Full Bench determined that Sunday penalty rates were discouraging employment in the restaurant industry, and should be reduced by a greater amount than was provided for in the majority decision.

Penalty rates are a "hot button" issue in Australian employment law, with employers in sectors such as restaurants, hospitality and retail lobbying the Coalition Government for legislative changes to reduce the burden of additional payments required under modern awards for overtime and weekend work. Such changes are not likely to be proposed until the Productivity Commission review of the *Fair Work Act 2009* (Cth) has concluded (see above). In the meantime, employers will seek reductions in penalty rates through the FWC's four-yearly review of modern awards which is to commence soon.

AUSTRALIA

29 MAY 2014

FWC Full Bench clarifies annual leave requirements in enterprise agreements

In *Application by Canavan Building Pty Ltd* [2014] FWCFB 3202, a specially-convened five-member Full Bench of the FWC held that approval will not be given for enterprise agreements which enable employers to pay annual leave entitlements in advance as part of a loaded hourly rate of pay.

The Full Bench took the view that agreement provisions for rolled-up or loaded annual leave payments contravene the requirements for provision to employees of at least four weeks' "paid annual leave", under the National Employment Standards (**NES**) in Part 2-2 of the *Fair Work Act 2009* (Cth). Finding that "payment for the leave is inextricably linked to the leave itself", the Full Bench determined that arrangements for pre-paid annual leave (which could resulting in the "cashing out" of annual leave other than in accordance with the legislation) did not comply with the NES requirements.

The decision is important as it resolves inconsistencies between previous FWC and Federal Court decisions on the lawfulness of loaded annual leave payments.

AUSTRALIA

16, 17, 24 JUN & 25 JUL 2014

Further decisions clarifying Fair Work Commission's anti-bullying jurisdiction

In the seven months to the end of July 2014, 411 claims were lodged under Part 6-4B of the *Fair Work Act 2009* (Cth) (FW Act) which enables workers to seek orders from the Fair Work Commission (FWC) to stop workplace bullying. The number of anti-bullying applications is therefore likely to be well short of the anticipated 3,600 claims per year.

(con't)

LOOKING BACK

AUSTRALIA

16, 17, 24 JUN & 25 JUL 2014

Recent FWC decisions in relation to anti-bullying claims have included the following:

- *Mr Tao Sun* [2014] FWC 3839: the applicant's claim was dismissed. It was based on alleged bullying by his manager in the form of (i) denial of a performance bonus; and (ii) allocation of a particular work project. The FWC found that non-payment of a discretionary bonus (unless punitive) would not generally constitute bullying; and the allocation of work in accordance with an employee's position description was not unreasonable management action.
- *The Applicant v General Manager and Company C* [2014] FWC 3940: alleged bullying conduct by a supervisor (e.g., becoming angry in a meeting with the applicant) was considered to be reasonable in all the circumstances. One allegation of bullying was made out. However, no anti-bullying order was issued in the absence of "repeated incidents of unreasonable behaviour".
- *Applicant v Respondents* [2014] FWC 4198: the respondents were granted the right to legal representation in jurisdictional proceedings arising from the applicant's claim for anti-bullying orders (even though the applicant was unrepresented).
- *Hill v L E Stewart Investments Pty Ltd and Others* [2014] FWC 4666: the applicant's claim was dismissed on the grounds that he failed to attend a scheduled hearing or take other steps to pursue the claim; and that the claim had no reasonable prospects of success (given that the employee no longer worked for the employer).

More...

AUSTRALIA

30 JUN 2014

NSW Supreme Court finds senior employee entitled to 10 months' "reasonable notice" of termination

Under Australian law, in the absence of an express contractual provision for termination on the giving of a specified period of notice, a reasonable period of notice is implied. In *Ma v Expeditors International Pty Ltd* [2014] NSWSC 859 (30 June 2014), the New South Wales Supreme Court found that the reasonable notice period to terminate the employment of a long serving senior employee was 10 months. The employee was therefore entitled to just over A$750,000 reflecting payment in lieu of the 10-month notice period.

The Court also found that payment of the employee's accrued long service leave under NSW legislation should have been based on salary that included incentive payments which formed part of the employee's remuneration package. This entitled her to an additional amount of around A$265,000.

More...

AUSTRALIA

1 JUL 2014

FWC Full Bench upholds decision clarifying nature of enterprises for greenfields project agreements

In *Tutt Bryant Group Limited T/A Tutt Bryant Heavy Lift and Shift* [2014] FWCFB 4342, a Full Bench of the FWC refused leave to appeal against a single member's decision that an employer's proposed greenfields agreement did not meet the requirements of the FW Act. The earlier decision clarified that a greenfields agreement could not be made where the employer had already employed some employees necessary for the normal conduct of the project (as such agreements must relate to a genuine new business, project or undertaking of the employer).

AUSTRALIA

15 JUL 2014

Full Federal Court awards significantly higher damages in sexual harassment appeal

In *Richardson v Oracle Corporation Australia Pty Ltd and Tucker* [2014] FCAFC 82, a Full Court of the Federal Court awarded a former consulting manager employed by Oracle Australia Pty Ltd total damages of A$130,000 for sexual harassment carried out by a male sales representative. The decision marks an important shift in approach by Australian courts to the assessment of damages in harassment cases.

(*con't*)

LOOKING BACK

AUSTRALIA
15 JUL 2014

In making the damages award (comprising A$100,000 in general damages and A$30,000 for economic loss), the Full Court took into account changes in the value placed by society on compensation for loss of enjoyment of life arising from sexual harassment; and held that the award of A$18,000 damages at first instance did not reflect "prevailing community standards". Moreover, the Full Court found that the causal link between the sexual harassment and Ms Richardson's resignation from her position at Oracle warranted an award of damages for economic loss.

More...

AUSTRALIA
15 JUL 2014

Federal Circuit Court rules against legal professional privilege over workplace investigation report

In *Bartolo v Doutta Galla Aged Services Ltd* [2014] FCCA 1517, the Federal Circuit Court of Australia required an employer to disclose a confidential report containing factual findings and advice provided following an investigation into allegations against an employee. The investigation report had been taken into account by the employer's Board in recommending that its CEO dismiss the employee.

The Court found that the employer had waived legal professional privilege over the investigation report, by seeking to rely upon it in the proceedings (and therefore acting inconsistently with the retention of privilege). The decision highlights the need for employers to carefully consider what documents are to be relied upon in litigation, in order to avoid privilege being lost over those communications.

More...

AUSTRALIA
18 JUL 2014

Full Federal Court confirms "no further claims" clauses do not prevent agreement variations

In *Toyota Motor Corporation Australia Ltd v Marmara* [2014] FCAFC 84, a Full Court of the Federal Court of Australia held that efforts by Toyota to vary the enterprise agreement at its Melbourne manufacturing plant were not unlawful. Toyota had sought to reduce labour costs by changing key provisions of the agreement in accordance with the FW Act's requirements for agreement variations, including approval of the proposed changes by a majority of affected employees.

However, before Toyota could put the changes to a vote, unions succeeded in an action before a single Federal Court judge who accepted the argument that the proposed variations were in breach of a no further claims provision in the agreement (see discussion of this decision in our Q1, 2014 of Asia Employment Law Quarterly Review). This decision was overturned by the Full Court on appeal. Although the outcome was to a large extent overtaken by Toyota's decision earlier this year to end its Australian manufacturing operations in 2017, the Full Court decision will provide other employers with the ability to seek agreement variations in response to changing economic circumstances.

More...

AUSTRALIA
24 JUL 2014

Federal Court finds Asia-based cabin crew not covered by *Fair Work Act*

In enforcement proceedings brought by the Fair Work Ombudsman, the Federal Court found that employees of two companies (one based in Singapore, the other in Thailand) were not entitled to employment conditions applicable under Australian law where the companies provided services to the Australian airline, Jetstar: *Fair Work Ombudsman v Valuair Limited* (No 2) [2014] FCA 759.

The employees worked as cabin crew on flights within Australia. However, the Court held that the employees were not covered by the Australian *Aircraft Cabin Crew Award 2010* because the two overseas companies were not "national system employers" under the FW Act. This finding was based on the conclusion that the necessary connection between the employing entities and Australia had not been established. Rather, the Court found that the relevant contracts of employment were made outside Australia and regulated by the laws of Singapore and Thailand, with time on duty in Australia representing only a small proportion of the employees' overall working time.

LOOKING BACK

AUSTRALIA

25 AUG 2014

Full Federal Court rejects union appeal against weekend penalty rates decision

The Full Federal Court refused an application by United Voice for leave to appeal against a ruling by a FWC Full Bench majority, reducing the Sunday penalty rate for casual employees in cafes and restaurants from 75% of the base hourly rate of pay to 50% (see the discussion of *Appeal by Restaurant and Catering Association of Victoria* [2014] FWCFB 1996 in our Q2, 2014 of the Asia Employment Law Quarterly Review).

Overtime and weekend penalty rates remain a contentious issue in Australia, with leading employer organisations lobbying the federal Government for legislative changes to reduce the burden of these additional payments. While a number of Government MPs have also called for relief from penalty rates for cafes and retail employers, the Minister for Employment has indicated that the FWC will continue to be responsible for determining penalty rates under modern awards.

AUSTRALIA

27 AUG 2014

Fair Work Reform Bill passes lower house of federal Parliament

The *Fair Work Amendment Bill 2014* moved a step closer to becoming law when it was passed by the House of Representatives, six months after its introduction into the lower house. The changes to the FW Act proposed under this Bill are explained in our Q2, 2014 of the Asia Employment Law Quarterly Review. In summary the Bill seeks to make the processes for entering into greenfields project agreements, and individual flexibility arrangements, more workable for employers. It will also limit union rights of entry to workplaces for discussion and recruitment purposes.

The slow progress of the Bill is reflective of the Government's difficulties in obtaining support for its legislative program in the Senate (upper house). However, the 8 independent and minor party senators who now hold the balance of power are more likely to support the Government's workplace reforms. This should lead to passage, before the end of 2014, not only of the Fair Work Amendment Bill but also the *Building & Construction Industry (Improving Productivity) Bill*; and the *Fair Work (Registered Organisations) Amendment Bill* (both discussed in our Q1, 2014 of the Asia Employment Law Quarterly Review).

A far-reaching review of the FW Act and related legislation by the Productivity Commission will commence within the next few months.

More...
More...

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Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

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LOOKING BACK

CHINA
1 MAR 2014

Interim Provisions on Labour Dispatch take effect

PRC Ministry of Human Resources and Social Security (MOHRSS) issued on 24 January 2014 the Interim Provisions on Labour Dispatch ("Interim Provisions"), which will become effective as of 1 March 2014. As one of the supporting regulations to the Amendments to the PRC Labour Contract Law, it further characterises the labour dispatch arrangement as an auxiliary mode to mainstream employment arrangements, specifies the utilisation limit of labour dispatch arrangements, elaborates on the statutory circumstances and restrictions for returning a labour dispatch staff back to the labour dispatch company, and fixes the duration of the transitional period for compliance with the statutory utilisation limit of labour dispatch arrangements.

More...

CHINA
7 MAY 2014

Beijing High People's Court issues new guiding opinion on employment disputes

In May 2014 the Beijing High People's Court and the Beijing Municipal Employment Dispute Arbitration Committee jointly issued the Meeting Minutes (II) on the Application of Law in Employment Disputes. Although the meeting minutes are not officially binding, it is likely that the lower courts and arbitration panels in Beijing will follow the conclusions of the meeting minutes. The meeting minutes clarify some controversial employment issues often faced by employers, such as open-term employment contracts and double wage penalties.

More...

CHINA
7 JUL 2014

Labour dispatch implementing rules issued in Shanghai

Shanghai-based companies needing to reduce their reliance on dispatched workers have until 31 October 2014 to formulate and submit reduction plans. Guiding principles have also been issued to distinguish between human resourcing outsourcing and labour dispatch. These new provisions were issued by the Shanghai labour authority on 7 July 2014.

More...

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: MAYER·BROWN JSM

HONG KONG
JAN-DEC
2013

9 convictions for under-payment of statutory minimum wage

As at the end of 2013, there have been 35 convicted summonses of 9 cases against employers for under-payment of statutory minimum wage since the Minimum Wage Ordinance came into force on 1 May 2011. One employer was fined HK$25,000. These cases involved employers from various sectors such as elderly care, security, trading and personal services. The prosecutions were brought by the Labour Department.

HONG KONG
24 JAN
2014

Standard Working Hours Committee holds fifth 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 fifth meeting and is considering the progress reports of its two working groups (WGs) on "Working Hours Consultation" and "Working Hours Study".

The Committee supported the Consultation Group's proposal on the commencement of public engagement and consultation on working hours. For details, please refer to "Standard Working Hours Committee commences public engagement and consultation" below.

On working hours study, the Committee has been briefed on the relationship between working hours and the macroeconomic environment and the analysis of the socio-economic characteristics of employees with longer working hours. Surveys on working hours will be conducted in the second quarter of 2014 to collect working hours statistics and views on working hours issues from workers, including those in sectors with relatively longer working hours or distinctive working hours patterns.

HONG KONG
27 JAN
2014

Chief Executive's 2014 Policy Address: Policy initiatives of the Labour and Welfare Bureau

The Labour and Welfare Bureau will launch two pilot projects with the Vocational Training Council in the first quarter of 2014. These two projects will provide about 480 on-the-job training places in 2014. Further, the government will provide additional 1000 places for another on-going training scheme for young people.

The Labour Department will continue to support the employment of young people, middle-aged and persons with disability by providing allowance to employers under the Youth Employment and Training Programme, the Employment Programme for the Middle-aged and the Working Orientation and Placement Scheme.

More...

HONG KONG
28 JAN
2014

Standard Working Hours Committee commences public engagement and consultation

The Committee on Standard Working Hours launched its public engagement and consultation exercise on working hours. The Committee has held its first meeting with two employers' associations and a labour organisation to listen to their views on working hours issues. The Committee is expected to meet other major employers' associations and labour organisations on 13 and 14 February 2014.

The Committee will organise symposia and forums to conduct consultation in four directions, namely (i) the sectors with relatively longer working hours mentioned in the Report of the Policy Study on Standard Working Hours, (ii) specific occupations/professions, (iii) the general public in districts and (iv) other major industries and organisations. Over 30 consultation sessions are expected to be convened in the first half of 2014.

More...

HONG KONG

25 MAR 2014

Standard Working Hours Committee holds fifth meeting

The Labour and Welfare Bureau set up a Special Committee on Standard Working Hours in the first quarter of 2013. The Standard Working Hours Committee (**"SWHC"**) held its sixth meeting on 25 March 2014. The Committee was briefed by the Census and Statistics Department on the major findings of the 2013 Annual Earnings and Hours Survey and considered the progress reports of its two working groups (WGs) on Working Hours Consultation and Working Hours Study.

In relation to the Working Hours Consultation and Working Hours Study, it was last reported that the two WGs are currently engaging consultants to assist with the public consultation campaign and dedicated working hours surveys. SWHC has since March 20 been holding a series of symposia for organisations of various occupations/professions, etc, to be followed by large-scale open consultation forums for the general public to widely listen to the views of the community on working hours.

On working hours study, the dedicated working hours surveys will commence in the second quarter of this year. The surveys will collect comprehensive working hours statistics from employed persons, including those engaged in occupations/ professions with relatively longer working hours or distinctive working hours patterns.

More...

HONG KONG

26 MAR 2014

Contracts (Rights of Third Parties) Bill

The Government introduced the Contracts (Rights of Third Parties) Bill into the Legislative Council on 26 March 2014 to implement in full the recommendations of the Law Reform Commission of Hong Kong to reform the doctrine of privity of contract and to enhance the contractual law regime in Hong Kong.

The Bill proposes a variation to the common law rule of privity and sets out the limits within which a third party can enforce a contract. It provides that a third party will have the right to enforce the term of a contract if:

- The contract expressly provides as such; or
- There is a term which purports to confer a benefit on him, unless the contracting parties did not intend that the term be enforceable by a third party.

It should be noted that parties to a contract can expressly exclude the application of this new statutory scheme in their contract. If the employer does not wish to confer a right of enforcement on a third party under the Bill, an express opt-out provision should be incorporated into the employment contract to that effect.

The Bill also provides that a third party must be expressly identified by name, as a member of a class or as answering a particular description. Rights may be conferred on a third party who is not in existence when the contract is entered into.

The Bill also introduces arbitration clauses which provide that if a third party's right to enforce a term of a contract is subject to an arbitration agreement, the third party is treated as a party to the arbitration agreement for the purposes of enforcement of the term, unless on a proper construction of the contract, the third party is not intended to be so treated.

Examples where third parties may be mentioned in employer contracts:

- Terms that entitle the employee and his or her family members to certain benefits, such as medical insurance coverage, club membership or relocation expenses; and
- Terms that refer to a proposed secondment arrangement with a third party host company, which that host company may seek to enforce if, for example, the secondment does not proceed or some aspect of it goes wrong.

More...

HONG KONG

30 APR 2014

Statute Law (Miscellaneous Provisions) Bill 2014 introduced in LegCo

The Government introduced the Statute Law (Miscellaneous Provisions) Bill 2014 in the Legislative Council on 30 April to propose a number of technical and non-controversial amendments to various ordinances for the purpose of updating and improving those ordinances.

(con't)

HONG KONG

30 APR

2014

Below are major proposed amendments in relation to the area of employment law covered by the Bill:

- To amend the Sex Discrimination Ordinance (Cap 480) (SDO), Disability Discrimination Ordinance (Cap 487) (DDO), Family Status Discrimination Ordinance (Cap 527) (FSDO) and Race Discrimination Ordinance (Cap 602) (RDO) so as to repeal certain items in Part 2 of Schedule 5 to the SDO which are exempted from the operation of the relevant parts of the SDO; to enable enforcement notices to be served on persons by the Equal Opportunities Commission (EOC) for discriminatory practices under the DDO; to provide protection to the members and staff of the EOC against liability when they act in good faith in the performance or purported performance of any of the EOC's functions, etc, under the DDO and FSDO; and to refine the Chinese text of some provisions of the DDO, SDO, FSDO and RDO.
- To amend the EO to the effect that a notarial instrument may be received in evidence in civil proceedings in the courts of Hong Kong, without further proof, as duly authenticated unless the contrary is proved.
- To amend the EO and the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525) to render foreign public, banking, routine business and computer records obtained pursuant to mutual legal assistance requests admissible in criminal proceedings in Hong Kong as prima facie evidence of any fact stated therein if they are annexed to a deposition, affidavit, affirmation or declaration made according to the law of the foreign jurisdiction concerned.

More...

HONG KONG

27 MAY

2014

Impact of FATCA on ORSO Schemes in Hong Kong

The Foreign Account Tax Compliance Act (FATCA) is an invasive piece of US legislation designed to identify tax avoidance being undertaken by US entities. It does this by imposing a 30 percent withholding tax on any US investments unless certain information is disclosed to the US tax authorities.

The Occupational Retirement Schemes Ordinance ("ORSO") came into force on 15 October 1993, and is the governing legislation for the regulation of voluntary occupational retirement schemes operating in or from Hong Kong.

Why does this impact ORSO schemes?

The primary responsibility for compliance with FATCA is placed on foreign financial institutions (FFIs). ORSO retirement schemes will, typically, be FFIs.

As such Hong Kong ORSO schemes which have investments in the US may find themselves hit with the withholding tax unless they comply fully with FATCA (which means providing considerable data to the US Internal Revenue Service) or they are able to fall into one of the categories of "exempt beneficial owner" in the agreement which is being discussed between the Hong Kong Administration and the United States Government. Such agreement is called an Inter-Governmental Agreement (IGA).

What schemes will be considered "exempt beneficial owners" under the Hong Kong IGA?

The IGA contains two categories of "exempt beneficial owner" that could apply for ORSO schemes. These are Broad Participation Retirement Funds and Narrow Participation Retirement Funds.

Different conditions apply for satisfying the two different categories. However, there are also four conditions that are common to both Broad and Narrow Participation Funds. These common requirements are as follows:

- The ORSO scheme must be "established or located" in the HKSAR;
- To provide "retirement, disability or death benefits";
- To current or former employees of one or more "HKSAR employers"; and
- The ORSO scheme must be "approved and registered by the Mandatory Provident Fund Schemes Authority.

(*con't*)

HONG KONG
27 MAY 2014

Employers and trustees need to consider whether their ORSO schemes can satisfy one of the requirements as an exempt beneficial owner. If this is not possible then the scheme may need to comply fully with the FATCA disclosure requirements or accept a 30 percent withholding tax on investment income from the US.

More...

HONG KONG
1 JUN 2014

Increase in the Maximum Level of Relevant Income for MPF

The maximum level of monthly relevant income for Mandatory Provident Fund (MPF) will be increased from the original level of HK$25,000 to HK$30,000. The maximum level of daily relevant income will be increased from HK$830 to HK$1,000.

The amendment will take effect from 1 June 2014.

This follows an earlier amendment which saw the increase of minimum level of relevant income from HK$6,500 to HK$7,100, and is the second time the income ceiling has been amended since the MPF commenced in December 2000 (when it was originally HK$20,000).

Employees whose monthly relevant income exceeds HK$25,000 and their employers will need to pay more contributions to their MPF schemes after the amendment, with the maximum contribution effectively capped at HK$1,500 per month, i.e., HK$250 higher than present.

Employers should take steps to update their payroll systems to reflect this change.

More...

HONG KONG
5 JUN 2014

Changes to the Labour Tribunal Ordinance

Draft legislation has been proposed to introduce changes to the Labour Tribunal Ordinance to give the Labour Tribunal the general power to order a party to give security for payment of an award.

Current Position

Under section 30 of the Labour Tribunal Ordinance, the power of the Labour Tribunal to order a party to provide security for payment of an award is very restricted. Security may only be ordered against a defendant if there is an adjournment of a hearing and the adjournment may result in prejudice to the claimant because of the disposal of assets by the defendant.

Proposed Changes

Under the draft legislation, the Labour Tribunal will be given the general power to order a party to give security for payment of an award.

Possible circumstances for ordering security from a party may include the following:

- Where there is a real risk that payment of the award will be obstructed or delayed because of dissipation of assets;
- Where a party unreasonably delays or abuses the Tribunal process;
- Where a party fails to comply with any award, order or direction without reasonable excuse;
- Where an application for a review of the Tribunal award is devoid of merit.

More...

HONG KONG
20 JUN 2014

Protection against sexual harassment by customers

The Hong Kong government gazetted on 20 June 2014 a bill to amend the Sex Discrimination Ordinance (Cap 480) to protect service providers from sexual harassment by their customers.

Current Position

Under the current legislation, it is unlawful for a service provider to sexually harass a customer in the course of offering or providing goods, facilities or services. However, the legislation does not outlaw sexual harassment of a service provider by a customer.

(con't)

HONG KONG
20 JUN
2014

Proposed Changes

Under the Bill, the proposal is to amend the Sex Discrimination Ordinance to outlaw sexual harassment of service providers by customers. This would protect women (and men) in all the service sectors in Hong Kong, including those who work as nurses, cabin attendants, waitresses and waiters, salespersons and beer promoters.

In addition, the Bill will also seek to outlaw sexual harassment on board Hong Kong registered ships and aircraft while outside Hong Kong.

More...

HONG KONG
27 JUN
2014

Mandatory Provident Fund Schemes (Amendment) Bill 2014

If passed, the Mandatory Provident Fund Schemes (Amendment) Bill, gazetted on 27 June 2014, will introduce some fundamental new concepts into Hong Kong's Mandatory Provident Fund system. The proposed amendments are as follows:

Withdrawal of Accrued Benefits

- Allow phased withdrawal of accrued benefits instead of a lump sum;
- Members can make up to 12 withdrawals each year with no additional fees and no tax charge;
- Add "terminal illness" as a ground for the application of making early withdrawal;
- Clarify the terms for the purpose of making early withdrawal;

Driving down MPF fees

- Provide a legal basis for the Mandatory Provident Fund Schemes Authority (MPFSA) to refuse an application for introducing MPFs if the fund is not in the interest of members;
- Reduce the compliance requirements on trustees and members;

Others

- Comply with the disclosure and reporting requirements in respect of Foreign Accounts Tax Compliance Act (FATCA); and
- Extend the prosecution time bar for offences.

The second meeting of the Bills Committee will be held on 30 September 2014.

More...

HONG KONG
8 JUL
2014

Paternity Leave in the Employment (Amendment) Bill 2014

Although the primary terms (three days' leave and 80 percent pay) of the benefit had been approved at the Labour Advisory Board (the LAB is the body comprising employee and employer representatives at which "deals" are struck concerning workplace regulation), the deal which was reached between the unions and the employers at the LAB has failed. Instead certain populist legislators have proposed amendments to the legislation at the Bills Committee stage which will increase the period of paternity leave from three days to seven days.

These "committee stage amendments" have been passed by the Bills Committee and, therefore, it will be in the revised legislation, granting seven days' paternity leave, which will be put before the Legislative Council for consideration. Whether the revised legislation will now achieve the necessary number of votes in LegCo must be in considerable doubt.

If it is passed in the proposed form then this will be embarrassing for the government and the cost to employers will be materially increased. In any case this ambush is likely to impact the ability of the LAB to agree to future legislative changes, even those which may appear uncontroversial, as the employer representatives will not be able to trust the employee representatives to control the politicians.

More...
More...

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

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Looking Forward

LOOKING BACK

HONG KONG
23 JUL 2014

Sex Discrimination (Amendment) Bill 2014

The Sex Discrimination (Amendment) Bill ("Bill"), gazetted on 20 June 2014, proposes amendments to shield goods and service providers from acts of sexual harassment by customers. This will also extend the application of the Sex Discrimination Ordinance (Cap. 480) to sexual harassment that occurs on board Hong Kong-registered ships and aircraft whilst outside Hong Kong.

If passed the Bill will affect wait staff, flight attendants and sales people. It will also have an impact on all goods and service providers, particularly customer-facing employees, such as sales agents, bankers, doctors, nurses, lawyers, accountants, social workers, and employees in the hospitality and leisure industry.

The first meeting of the Bills Committee was held on 23 July 2014 and the second meeting to be held on 6 October 2014.

More...

HONG KONG
30 JUL 2014

Standard Working Hours Committee Holds Eighth Meeting

The Standard Working Hours Committee (SWHC) held its eighth meeting on July 30. SWHC was briefed on the key findings of the Manpower Projection to 2022 and considered the progress reports of its two working groups (WGs) on Working Hours Consultation and Working Hours Study.

SWHC has organised and taken part in some 40 consultation activities, including consultation forums, symposiums, meetings with individual organisations as well as community and workplace visits.

On the working hours study, SWHC is conducting a large-scale household survey to collect working hours statistics from at least 10 000 employed persons through face-to-face interviews, and collecting self-administered questionnaires from employees of occupations or professions with relatively long working hours or distinctive working hours patterns to enhance the coverage of the survey.

More...

HONG KONG
14 AUG 2014

Legal Update on Contracts (Rights of Third Parties) Bill

The Contracts (Rights of Third Parties) Bill (the "Bill") has been introduced to the Legislative Council. If passed, Hong Kong will join a number of common law jurisdictions in reforming the age-old common law doctrine of "privity of contract".

Key change to note is that the Bill will **not** give a third party the right to enforce a term of an employment contract *against an employee*, but will give a third party the right to enforce (a) a term of the contract of employment against *an employer* and (b) a term of an employment-related contract against a party to that contract (if (a) the contract must expressly provide for the right, or (b) the contract term must seek to confer a benefit on the third party). This means in some cases, the third party will have the right to enforce an employment-related contract by bringing legal proceedings against the *employer* and the *employee*.

The legal update considers the risks from an employment perspective under the this Bill.

The Legislative Council is debating the Bill and we do not expect much movement until after October 2014.

More...

LOOKING FORWARD

HONG KONG
PENDING 2014

Blind Recruitment Ads Fall Foul of Data Privacy Laws

The number of "blind" recruitment ads (ads that do not identify the employer or their recruitment agent) circulating in Hong Kong has led to a growing concern about the possible unscrupulous collection and use of personal data of job applicants. In response:

- The Privacy Commissioner initiated a number of investigations in relation to the use of blind recruitment ads.
- Blind recruitment ads are deemed to be in breach of the Hong Kong Personal (Data) Privacy Ordinance ("PDPO") because they are an unfair means of collecting personal data.

(*con't*)

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

LOOKING FORWARD

HONG KONG

PENDING

2014

- The Privacy Commissioner has issued a report on the results of its investigations regarding the use of blind recruitment ads, and also a new information leaflet to provide further guidance on the use of recruitment ads.

Companies are advised to review their recruitment practices to ensure that they do not breach the PDPO, and that they have proper privacy management procedures in place. A useful starting place is to consider the issues highlighted in the Privacy Commissioner's report and the guidance provided by the information leaflet, as discussed in the legal update.

More...

HONG KONG

PENDING

2014

Paternity Leave Legislation Update

Draft legislation has now been proposed which will introduce paternity leave and paternity leave pay for many of Hong Kong's employees. This legal update sets out the key elements of the proposed new benefit.

Who is entitled to Paternity Leave?

1. Every employee who is employed under a "continuous contract" (i.e., satisfies the "418" rule) is entitled to three days' Paternity Leave in respect of the birth1 of each child2 of which he is the "father".
2. The term "father" is not defined in the new legislation. It is, however, defined in section 5 of the Parent and Child Ordinance (Cap.429)3 which provides that a man is presumed to be the father of a child if:-
   - » the father was married to the mother at the time of conception or birth, or
   - » he is registered as the father on the register of births.

When can Paternity Leave be taken?

3. The three days of Paternity Leave can be taken consecutively or separately. Such days can be taken at any time in the period commencing four weeks prior to the expected date of birth and ending 10 weeks after the actual date of birth.

Note: A father can take Paternity Leave before, as well as after, the birth.

More...

HONG KONG

PENDING

2014

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...

HONG KONG

PENDING

2014

New minimum wage level to be proposed in 2014

The Minimum Wage Commission will review the Statutory Minimum Wage rate. It is expected that the Commission will submit a proposal on minimum wage level adjustment to the Chief Executive by the end of 2014.

HONG KONG

PENDING

2014

Consultation on increase in minimum wage

The Minimum Wage Commission (**"MWC"**) has launched a public consultation on the review of the Statutory Minimum Wage ("**SMW**") rate.

The Minimum Wage Ordinance (**"MWO"**) came into effect in Hong Kong on 1 May 2011. Employees to whom the MWO applies are entitled to be paid wages of at least the SMW rate, which was then set at HK$28 per hour.

With effect from 1 May 2013, the SMW rate was revised from $28 per hour to $30 per hour. The monetary cap on the requirement of employers keeping records of the total number of hours worked by employees was also revised from $11,500 per month to $12,300 per month with effect from 1 May 2013.

(con't)

	HONG KONG **PENDING** 2014	In making its recommendation on the SMW rate, MWC will primarily consider the balance between the objectives of forestalling excessively low wages and minimising the loss of low-paid jobs and the need to sustain Hong Kong's economic growth and competitiveness. The MWO applies to most full-time, part-time and casual employees, with the following main exceptions: • Student interns; • Work experience students during a period of exempt student employment with their employers; and • Domestic workers who live free of charge in the household in which they work. It expected a new level to be set by the end of Oct and effective in May 2015. *More...*

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: MAYER·BROWN JSM

INDIA
18 NOV 2013

Amendment to Rules under the Employees State Insurance Act, 1948 ("ESI Act")

Rule 56-A of the Employees' State Insurance ("**ESI**") (Central) Rules, 1950 titled Confinement Expenses provides that a woman entitled to the benefits under the ESI Act shall be paid a sum of INR 2,500 as a 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 had proposed to increase the amount of medical bonus payable to eligible women from INR 2,500 to INR 5,000.

By a circular dated 18 November 2013, the ESI Corporation has confirmed the proposed amendment and the amount payable as medical bonus on account of confinement expenses has been increased from INR 2,500 to INR 5,000.

More...

INDIA
9 DEC 2013

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 – Now in Force

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (the "**Act**") received the assent of the President on 22 April 2013. However the Act did not come into force as the Rules under the Act were yet to be formulated. Some of the significant obligations of an employer under this Act are:

- Provide a safe working environment for women.
- Constitute an internal complaints committee and display the order constituting the committee so that it can be easily seen.
- Undertake workshops and training programmes at regular intervals for the purpose of raising employee awareness about sexual harassment.
- Provide assistance during an inquiry.
- Promptly initiate action in accordance with the recommendations provided by the committee on the basis of the inquiry.
- Treat sexual harassment as a misconduct, take appropriate action in response to such misconduct, and keep members of the internal complaints committee informed

On 9 December 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (the "Rules") were notified and the Act came into force with effect from the same date. The Rules facilitate the implementation of various provisions in the Act, for example, by setting out the procedure and timelines for conducting an enquiry under the Act.

All employers are now required to set up an internal complaints committee at each of their offices and must also have a policy on sexual harassment. Non-compliance with the provisions of the Act is punishable with a fine which may extend to INR 50,000 in the first instance. Repeated violations are likely to result in higher penalties which could include cancellation of the employer's licence or registration to do business.

More...

INDIA
11 MAR 2014

Letter regarding implementation of certain functions under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**Letter**).

The Letter was intended to present a roadmap and timelines for the implementation of various important functions of the Employees' Provident Fund Organisation (**EPFO**). The Letter gave information regarding the roadmap and timelines of, *inter alia*, the following initiatives:

- Electronic Challan cum Return (**ECR**) version II: ECR version I had been launched in April 2012. Since some problems were reported with this version, and in order to include certain additional features, the EPFO plans to develop and launch an ECR version II by November 2014.

(con't)

INDIA
11 MAR 2014

- Re-engineering of the pension settlement process: In order to manage the large number of pensioners, the EPFO is planning to develop and launch a centralized data system by December 2014.
- Online transfer portal: The EPFO has already launched an online portal for transfer amongst non-exempted establishments. The EPFO plans to provide a similar facility for transfers to and from exempted establishments as well by July 2014.
- Online provident fund code allocation: The EPFO is developing a facility for online allotment for provident fund code which will be made available in the next four months.
- Monitoring of exempted establishments: In January 2014, the EPFO had launched a software to monitor exempted establishments and this software is expected to become fully operational by July 2014.
- Certificate of coverage (**COC**): A COC is required by international workers who are going abroad. By mid-April 2014, the EPFO plans to enable applicants to fill the data themselves to minimize mistakes and facilitate allotment of COC. This software has since been updated by the EPFO, as notified by their circular dated 11 April 2014.
- Reconciliation of international workers' data with Foreigner Regional Registration Office (**FRRO**): The EPFO wants to reconcile the international workers' data with the FRRO to verify compliance in respect of international workers.
- Payment through e-mode by employers from any bank: At present, only employers who have an account with the State Bank of India have the ability to pay the provident fund dues online. The EPFO plans to develop a facility to enable employers to make provident fund payments online even through other banks. The projected timeline for this is about six months.

More...
More...

INDIA
14 MAR 2014

Revised application form for obtaining a Certificate of Coverage (**COC**) under Social Security Agreements with various countries for international workers issued by the Employees' Provident Fund Organisation (**EPFO**).

By a circular dated 14 March 2014, the EPFO has issued a revised application form to be submitted by international workers for obtaining a COC under the Social Security Agreements with various countries. Further, the EPFO has issued certain clarifications and amendments to the revised application form by circulars dated 25 March 2014 and 11 April 2014.

More...
More..
More...

INDIA
20 MAR 2014

Mandatory registration of Digital Signature Certificate (**DSC**) of authorized signatories of establishments having more than 100 Electronic cum Challan Receipt (**ECR**) members with the Employees' Provident Fund Organisation (**EPFO**).

By an order dated 20 March 2014, the Central Provident Fund Commissioner made the registration of DSC of authorized signatories of establishments with more than 100 ECR members mandatory. Establishments with 101 to 500 ECR members are required to comply with this requirement by 30 June 2014, and establishments with more than 500 ECR members are required to comply with this requirement by 30 June 2014.

More...

INDIA
1 APR 2014

Circular issued by the Employees' Provident Fund Organisation (**EPFO**) regarding reconciliation of international workers' data (**Circular**).

By a letter dated 11 March 2014 addressed to the Secretary (Labour and Employment), the EPFO set out a roadmap and timelines for the implementation of various initiatives under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**PF Act**).
(con't)

INDIA
1 APR 2014

In furtherance of one of the initiatives set out in this letter, the Circular makes it mandatory for provident fund authorities to reconcile international workers' data with the relevant Foreigner Regional Registration Office (**FRRO**).

When foreign nationals come to India on certain visas, including employment visas, they are required to get themselves registered with the relevant FRRO. Thus, the FRROs have detailed information about the foreign nationals in their jurisdiction. There are certain requirements under the PF Act which are specific to international workers. So, it is important for the provident fund authorities to have information regarding the international workers in their jurisdiction.

The Circular directs provident fund authorities to co-ordinate with the respective FRROs and obtain a list of foreign nationals employed in establishments covered in their jurisdiction. This would enable the provident fund authorities to reconcile the FRRO data with the statement IW-1 return being filed by the employers under the PF Act, and to ensure compliance in case of evasion in respect of international workers.

Thus, there is likely to be stricter implementation of the obligations under the PF Act in relation to international workers and more frequent inspections by the PF authorities. The PF authorities have been directed to forward a progress report to be placed before the Central PF Commissioner in the first week of July 2014 for the period from April 2014 to June 2014 and on a quarterly basis thereafter.

More...

INDIA
17 APR 2014

Mandatory online filing of returns by exempted and relaxed establishments under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**PF Act**).

By an order dated 17 April 2014, the Central Provident Fund Commissioner has directed that all establishments which have been granted exemption or relaxation under the PF Act are required to file their monthly and annual returns online in the proforma provided, with effect from April 2014. In addition to the online submission of returns, these establishments are also required to submit authenticated copy of the returns in hard copy until the facility for affixing digital signature on the online returns is provided. The format and details of this online return have been provided in an earlier circular dated 27 March 2014.

More...
More...

INDIA
5 JUN 2014

Proposed amendments to the Factories Act, 1948 (**Factories Act**)

The Ministry of Labour and Employment published proposed amendments to the Factories Act on their website on 5 June 2014, and invited comments and suggestions from the public within a period of 30 days. The proposed amendments focus on issues such as safety of workers, gender equality and improvement of working conditions. Harsher penalties have been introduced for non-compliance with the statutory provisions. The proposed changes are broadly as follows:

- Women, except pregnant women, shall be allowed to work in certain areas such as areas near machinery in motion, area near a cotton opener machine, factories where the manufacturing activity requires a 'dangerous process', etc. which were prohibited earlier.
- Guidelines for obtaining permission from the government to allow women to work at night have been relaxed.
- A reduction in the thresholds for a number of worker-friendly provisions has also been proposed, for instance:
  - » Setting up of canteens in factories employing 200 or more workers (reduced from 250 workers)
  - » Setting up separate shelters and restrooms for men and women in factories employing 75 or more workers (reduced from 150)
  - » Allowing benefits such as leave without wages after a worker has worked for a minimum of 90 days (reduced from 240 days)

(con't)

LOOKING BACK

INDIA
5 JUN 2014

» Additionally, the limit of permissible overtime work per quarter has been increased from 75 hours to 100 hours.

The amendments would have to be passed by both houses of the Parliament and receive presidential assent in order to become law.

More...

INDIA
5 JUN 2014

Amendments proposed to the Apprentices Act, 1961 (**"Apprentices Act"**)

The Ministry of Labour and Employment had published proposed amendments to the Apprentices Act on their website, and invited comments and suggestions from the public by 15 July 2014. Some of the proposed amendments are as follows:

- For organizations operating in more than four states, the implementation of the Apprenticeship Training Scheme would rest with the Central Government, and not the respective State Apprenticeship Advisors.
- The definition of 'worker' under the Apprentices Act would be broadened to include contractual workers, daily workers, agency workers, casual workers, seasonal workers, etc. This is to mitigate the effect of employers hiring contractual workers instead of regular workers in order to reduce the number of apprentices.
- Violations under the Apprentices Act would be decriminalized, and imprisonment would no longer be a penalty for non-compliance with the Apprentices Act.
- Establishments would be required to enter details of their trade-wise requirement in respect of apprenticeship training on the web-portal of apprenticeship training.
- Employers would be given the option to inform the apprenticeship adviser through post or email or web-portal with regard to the registration of apprenticeship contracts.
- The requirement of providing basic training to apprentices at the premises of the establishment itself would be done away with, and such basic training would be allowed to be provided at training centres where the required training facilities exist.
- Apprentices would be given preference for employment over direct recruits.

The amendments would have to be passed by both houses of the Parliament and receive presidential assent in order to become law.

More...

INDIA
25, 26 JUN 2014

Scheme of Inspection notified by Employees State Insurance Corporation (**ESIC**) and Employees Provident Fund Organisation (**EPFO**)

The ESIC and the EPFO have notified new schemes of inspection by circulars dated 25 June 2014 and 26 June 2014 respectively, with an aim to simplify business regulations and bring in transparency and accountability. The highlights of the inspection schemes are as follows:

- The ESIC and the EPFO will set up a Central Analysis and Intelligence Unit (CAIU) for collecting and analyzing field level data.
- The ESIC and the EPFO are required to formulate an objective methodology for cases to be selected by the CAIU which would be used to determine the units to be inspected.
- The inspection schemes require the employers to feed master data and periodical returns and the inspectors to feed the detailed inspection report within 3 days of carrying out the inspection. Based on the analysis of this data, there would be a computer generation of inspection programme and the same would be communicated to the inspecting staff keeping in view the confidentiality aspects.

ESIC Inspection Scheme

Inspections would be mandatory for:

- All new covered/registered units
- Units which have been defaulters for 6 months

(*con't*)

INDIA

25, 26 JUN 2014

- Units for which closure request has been received
- Units where no inspection was carried out in the last 3 years

Optional inspections would be generated through computer using pre-decided number tables, and considering factors such as drop in contribution, drop in number of covered employees, security/manpower agencies employing more than two hundred and fifty employees, etc.

EPFO Inspection Scheme

Inspections would be mandatory for:

- All new coverages
- All establishments registered on the Electronic Challan cum Return portal which are not marked as closed, and which are not complying
- Establishments reported for closure

Optional inspections would be generated through computer using pre-decided number tables taking into account the drop in remittance, drop in membership, etc.

More...
More...

INDIA

8 JUL 2014

Online allotment of code numbers to establishments under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (**EPF Act**)

The Employees Provident Fund Organisation (**EPFO**) has issued a circular dated 8 July 2014 with information on the introduction of online allotment of EPF code numbers.

- The facility for online allotment of code numbers was officially launched on 30 June 2014 on the EPFO website. Establishments which have not yet been registered under the EPF Act, as well as establishments which have existing provident fund codes but wish to get a separate code number for a branch office, can apply for online allotment of the code number.
- The online application for code numbers will only be successful after the Permanent Account Number is successfully verified with the name of the establishment. The employer will also be required to submit a physical copy of the application submitted online (with the system generated application number) and copies of all the documents declared in the application.

More...

INDIA

14 JUL 2014

Preparatory activities by the Employees Provident Fund Organisation (**EPFO**) for enhancement of wage ceiling from INR 6,500 to INR 15,000

The wage ceiling under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the Employees Provident Fund and Miscellaneous Provisions Scheme, 1952 is proposed to be increased from INR 6,500 to INR 15,000. The EPFO has issued a notification dated 14 July 2014 which lists out preparatory activities to be performed by Enforcement Officers (**EO**s) prior to the proposed change. The notification directs the EOs to perform, inter alia, the following activities:

- The EOs shall visit the establishments in his/her area to check the total number of employees drawing salary beyond INR 6,500 and up to INR 15,000 who are not enrolled as members with EPFO.
- The EOs visiting establishments shall also meet with representatives of workers' unions to apprise them of the likely notification.
- Meetings are to be arranged to apprise the establishments about the intent of the notification and assist them in implementing the same once it is issued.

More...

INDIA

31 JUL 2014

Proposed amendments in Rajasthan to the Industrial Disputes Act, 1947 (**ID Act**)

The Rajasthan Legislative Assembly, on 31 July 2014, passed the Industrial Disputes (Rajasthan Amendment) Bill, 2014 (**ID Bill**).The major changes contemplated by the ID Bill are as follows:

- The ID Act as applicable in Rajasthan contains a chapter dealing with registration of trade unions. The number of workmen required to make an application for registration of any trade union is proposed to be increased from 15% to 30% of the total number of workmen employed.
- Chapter VB of the ID Act to be made applicable to industrial establishments employing 300 or more workmen on an average per working day, instead of the existing threshold of 100 or more workmen.
- Section 25N, which deals with retrenchment of workmen employed in an establishment to which provisions of Chapter VB of the ID Act are applicable, to be amended to provide compulsory 3 months' notice of retrenchment and remove the option of paying in lieu of notice. In addition to retrenchment compensation, the workmen to be paid an amount equivalent to three months' average pay. Similarly, even in section 25O, which deals with closure of an establishment to which provisions of Chapter VB of the ID Act are applicable, additional amount of three months' average pay to be paid in addition to the retrenchment compensation.
- Definition of the term 'go slow' to be included in the Fifth Schedule.

The ID Bill would have to receive presidential assent in order to become a law.

More...

INDIA

31 JUL 2014

Proposed amendments in Rajasthan to the Contract Labour (Regulation and Abolition) Act, 1970 (**CLRA**)

The Rajasthan Legislative Assembly, on 31 July 2014, passed the Contract Labour (Regulation and Abolition) (Rajasthan Amendment) Bill, 2014 (**CLRA Bill**).

- The CLRA is presently applicable to every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour, and to every contractor who employs or employed 20 or more workmen on any day of the preceding 12 months.
- Under the CLRA Bill, the Rajasthan government has proposed that this threshold be increased from 20 to 50. The CLRA Bill would have to receive presidential assent in order to become a law.

More...

INDIA

31 JUL 2014

Proposed Amendments in Rajasthan to the Factories Act, 1948 (**Factories Act**)

The Rajasthan Legislative Assembly, on 31 July 2014, passed the Factories (Rajasthan Amendment) Bill, 2014 (**Factories Bill**).The major changes contemplated by the Factories Bill are as follows:

- Increase the existing thresholds in the definition of 'factory' from 10 workers to 20 workers in the case of manufacturing carried on with the aid of power, and from 20 workers to 40 workers in the case of manufacturing carried on without the aid of power.
- A complaint by an inspector with the prior written sanction of the Rajasthan Government would be required in order for a court to take cognizance of an offence.
- Include a provision for compounding of certain offences, in order to reduce litigation.

The Factories Bill would have to receive presidential assent in order to become a law.

More...

INDIA
31 JUL 2014

Proposed Amendments in Rajasthan to the Apprentices Act, 1961 (**Apprentices Act**)

The Rajasthan Legislative Assembly, on 31 July 2014, passed the Apprentices (Rajasthan Amendment) Bill, 2014 (**Apprentices Bill**).The Apprentices Bill contemplates added powers and responsibilities being given to the State Apprenticeship Council, instead of the Central Apprenticeship Council, such as:

- Prescribing the period of apprenticeship training
- Dealing with cases of termination of apprenticeship contract
- Prescribing the ratio to determine the number of apprentices to be trained by an industry.

Some other changes contemplated by the Apprentices Bill are as follows:

- Third party professional trainers would be allowed to conduct practical training of apprentices.
- Recurring costs (including the cost of stipends) incurred by the employer in connection with basic training imparted to trade apprentices, with some exceptions, to be lowered by increasing the Government's liability to share such costs.

The Apprentices Bill would have to receive presidential assent in order to become a law.

More...

INDIA
1 AUG 2014

Notification of Social Security Agreements (**SSA**s) with Finland and Sweden.

Indian authorities have issued circulars notifying that the SSAs that India had signed with Finland and Sweden will be effective from 1 August 2014.

- India and Finland had signed the SSA on 12 June 2012 and India and Sweden had signed the SSA on 26 November 2012.
- While India has signed a number of such SSAs, they only come into force once notified. The SSAs will help India, Finland and Sweden in garnering more investment and work opportunities for nationals of all three countries and also enhance cooperation on social security between the India and Finland, and India and Sweden.
- The SSAs also provide various benefits to Indian nationals working in Finland and in Sweden. 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 a specified period (5 years for Finland, 2 years for Sweden), 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.
  - » These 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.
  - » 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 when determining eligibility for social security benefits.

More...
More...

INDIA
6 AUG 2014

Guidelines for quasi-judicial proceedings under section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (**EPF Act**)

By a circular dated 6 August 2014, the Employees' Provident Fund Organisation (**EPFO**) has issued guidelines for conducting quasi-judicial proceedings under section 7A of the EPF Act.

(con't)

LOOKING BACK

INDIA
6 AUG 2014

The following requirements are set out for initiating an inquiry under section 7A of the EPF Act:

- Inquiries are to be initiated only after actionable and verifiable information is placed for consideration of the compliance officers. The sources of such information could be system generated reports of defaults, drop in remittance, drop in membership, verifiable complaints or information received from general public, or reports submitted by the Enforcement Officers (**EO**s).
- On receipt of the information regarding non-compliance, a notice would be issued to the establishment enclosing the information on the basis of which the notice has been issued.
- If the establishment accepts the contents of the notice, the matter would be verified for further action. If no response to the notice is received, the EO would investigate the matter and file an investigation report.
- No inquiry would be initiated unless a prima-facie case exists on the basis of the investigation report submitted by the Enforcement Officer.

The following procedure is set out for conducting an inquiry under section 7A of the EPF Act:

- The authorised officer conducting the inquiry is required to examine the compliance history of the establishment.
- The notice under Section 7-A of the Act would have to be accompanied by the documents on the basis of which the inquiry is proposed to be conducted.
- If a further default is noticed during the pendency of an inquiry, either another summons would be issued to the establishment for extending the period of the current inquiry or a fresh inquiry would be initiated.
- The legal requirement of a departmental representative leading the case of the department during the enquiry is to be compulsorily ensured.
- The circular also provides a copy of the draft notice and an indicative structure of the assessment order in the form of annexures.

More...

INDIA
6 AUG 2014

Inspection of establishments which are splitting wages in order to reduce their liability under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (**EPF Act**)

On 6 August 2014, the EPFO issued a circular regarding inspection of establishments which are splitting wages to reduce liability under the EPF Act. This circular was issued in light of the practice of splitting wages into several allowances in a manner that such allowances get covered under the category of exclusions in the definition of 'basic wage' under section 2(b) of the EPF Act, and thereby reducing liability under the EPF Act. This circular states that all establishments where employers have made EPF contributions on 50% or less of the total wages paid to their employees, would be inspected before 31 August 2014. The purpose of these inspections is to collect data in order to assess the gravity of the issue.

More...

INDONESIA
11 SEP 2013

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.

INDONESIA
19 SEP 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.

INDONESIA
19 NOV 2013

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.

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. 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"

INDONESIA
30 DEC 2013

New Rules on Hiring Expatriates

Minister of Manpower and Transmigration ("MOMT") issued MOMT Regulation No. 12 of 2013 regarding Procedures for Employing Foreign Manpower ("MOMT Reg 12") which contemplates several changes to the previous 2008 regulation and introduces a new mechanism on the temporary hiring of foreign employees.

Requirements to hire a foreign worker

A foreign candidate must meet provide: (i) suitable educational qualifications, (ii) suitable work experience of at least five years, (iii) an undertaking to transfer knowledge to Indonesians, and (iv) be able to communicate in the Indonesian language. The 2008 regulation merely required either point (i) or (ii), whereas the new regulation requires that both requirements be met. The language requirement is not new and there is no indication that there will be any change of policy in that regard. (*con't*)

INDONESIA

30 DEC

2013

Foreign Worker Utilization Plan

The supporting documents now include a written Indonesian Counterpart Mentoring Program Plan (*Rencana Program Pendampingan*) in addition to the appointment letter of the Indonesian counterpart trainee.

Hiring Foreign Worker for Temporary Work

The MOMT Reg 12 provides a new mechanism to obtain a six month work permit for temporary work which is described as (i) work on a project basis, (ii) work that is related to machinery installation, electricity, after-sales service, or products in its business trial stage.

INDONESIA

24 OCT

IMPLEMENT-ATION ONGOING

2013

New Regulation Regarding Provisions And Procedures For The Utilization Of Foreign Workers And The Development Of Indonesian Workers In Oil And Natural Gas Business Activities

The Minister of Energy and Mineral Resources ("MEMR") has issued MEMR Regulation No. 31 of 2013 regarding Provisions and Procedures for the Utilization of Foreign Workers and the Development of Indonesian Workers in Oil and Natural Gas Business Activity, which was enacted on 24 October 2013 ("MEMR Reg 31").

MEMR Reg 31 requires that contractors, downstream business entities and service companies prioritize the use of Indonesian workers (*Tenaga Kerja Indonesia* or "TKI"). MEMR Reg 31 provides that in carrying out upstream oil and natural gas business activities, contractors, downstream business entities and service companies can only utilize foreign workers (*Tenaga Kerja Asing* or "TKA") in certain circumstances and positions, namely: (i) to support investment in oil and natural gas business activities, for a position on the Board of Directors and/or Commissioners; (ii) to implement the transfer of technology related to the introduction of new technology for oil and natural gas business activities, for professional positions requiring the mastery of technology and certain skills in the oil and natural gas sector; and/or (iii) to fill certain positions that cannot yet be filled by Indonesian workers due to competency or availability factors.

Positions that may not be occupied by foreign workers are as follows:

a. Human resources;
b. Legal;
c. Health, Safety and Environment (HSE);
d. Supply chain management, which includes procurement and logistics;
e. Quality control, including Inspections;
f. Structural positions in exploration and exploitation activities below the superintendent level or the equivalent structural position.

Contractors, downstream business entities and service companies are prohibited to:

(i) Employ one TKA for more than one position.
(ii) Employ a TKA who is employed by another company, except for a TKA who has been appointed to the Board of Directors or Board of Commissioners of other company.

To employ foreign workers, contractors, downstream business entities and service companies must obtain approval from the Director General of Energy and Mineral Resources ("DGEMR") in the form of a recommendation of Foreign Worker Utilization Plan (*Rencana Penggunaan Tenaga Kerja Asing* or "RPTKA") and Foreign Worker Employment Permit (*Izin Mempekerjakan Tenaga Kerja Asing* or "IMTA") that is addressed to the Minister of Manpower and Transmigration.

MEMR Reg 31 also stipulates age limits for foreign workers employed in the oil and natural gas sector, which is a minimum of 30 years old and a maximum of 55 years old. This provision shall not apply to TKA holding the position of President Director, General Manager or Commissioner of a PSC contractor, downstream business entity or service company, as well as TKA in an international employee exchange program.

(*con't*)

INDONESIA

24 OCT

IMPLEMENT-ATION ONGOING

2013

Based on MEMR Reg 31, the DGEMR will evaluate the application for a RPTKA or IMTA recommendation, taking into account the principles of efficiency, effectiveness and benefit. If necessary, the DGEMR may ask the contractor, downstream business entity or service company to clarify certain points. After the evaluation, the DGEMR will issue its decision either approving or rejecting the RPTKA or IMTA recommendation. The RPTKA or IMTA recommendation shall be the basis of the application to the MOMT.

MEMR Reg 31 further provides that contractors, downstream business entities and service companies must appoint at least one Partner TKI for each employed TKA. This provision does not apply for TKA who are members of the Board of Directors and/or Board of Commissioners.

Contractors, downstream business entities and service companies must conduct transfer of technology and knowledge from TKA to TKI and develop their TKI according to the plan approved by the DGEMR during the granting of the RPTKA recommendation. Contractors, downstream business entities and service companies are required to submit an annual report to the DGEMR regarding the implementation of such transfer of technology and knowledge from TKA to TKI and the development program for the TKI. Contractors, downstream business entities and service companies that fail to with these provisions shall be subject to administrative sanctions in the form of written warnings and/or the revocation of RPTKA and/or IMTA.

The provisions of MEMR 31 also apply to the Representative Offices of foreign companies engaged in oil and natural gas business activities in Indonesia.

Lastly, the utilization of TKA for upstream oil and natural gas business activities without an approved RPTKA or IMTA recommendation from the DGEMR shall result in companies being unable to recover operating costs for such TKA.

INDONESIA

1 JAN-

SPECIFIED DATES

2014

New Social Security System In Indonesia (Social Security Organizing Agency-*Badan Penyelenggara Jaminan Sosial* ("BPJS")

Under Law No. 24 of 2011 regarding Social Security Organizing Body-*Badan Penyelenggara Jaminan Sosial* ("BPJS Law"), effective 1 January 2014, the legal entities that manage social security will be divided into two categories as follows:

a. BPJS for Health

BPJS for Health must organize health security for the entire population of Indonesia. PT Askes, a state-owned health insurance firm, was dissolved on January 1, 2014, and all the assets, liabilities and legal rights and obligations of PT Askes were taken over by BPJS for Health.

The schedule for different segments of society to join BPJS for Health is as follows:

- 1 January 2014: those classified as poor, civil servants, Jamsostek healthcare participants;
- 1 January 2015: employees of state-owned enterprises and private companies;
- 1 January 2016: employees of micro-enterprises; and
- 1 January 2019: non-salaried workers (e.g., consultants or other workers who do not receive a monthly salary) and the self-employed.

Foreign nationals who have resided in Indonesia for a minimum of six months are required to participate in BPJS for Health.

b. BPJS for Manpower

On 1 January 2014, PT Jamsostek became BPJS for Manpower, which shall offer the following programs:

a. Work Accident Security;
b. Old Age Security;
c. Pension Security; and
d. Death Security.

(*con't*)

INDONESIA

1 JAN- SPECIFIED DATES 2014

BPJS for Manpower will begin full operation on 1 July 2015. Law No. 3 of 1992 regarding Employment Social Security (Jamsostek) will be revoked once BPJS is fully operational.

It is important to note that PT Asabri, a company providing lump sum retirement benefits and pensions as well as death and occupational injury insurance for the armed forces and police, and PT Taspen, a company that manages lump sum retirement benefits and pension programmes for civil servants, will be merged into BPJS for Manpower no later than 2029.

Administrative sanctions for not participating in BPJS for Manpower are as follows:

- For Employers: Loss of eligibility to renew licenses (e.g., business permits, expatriate employment permits and building permits);
- For Individuals: Barred from obtaining driver's licenses, land certificate, vehicle ownership certificate, passport or building permit.

INDONESIA

10 MAR 2014

Working Period and Rest Period in Upstream Oil and Gas Business Activities

The Ministry of Manpower and Transmigration ("MOMT") has issued Regulation No. 4 of 2014, which provides specific provisions on overtime, rest and break periods for employees of upstream oil and gas companies and oil and gas auxiliary service companies.

Overtime means working hours exceeding:

i. Seven hours in one day and 40 hours in one week for six working days; or

ii. Eight hours in one day and 40 hours in one week for five working days.

Employers in the upstream oil and gas industry may choose one of the following work schedules based on their operational needs:

NO.	WORK PERIOD	REST AND BREAK PERIOD	WORK DURATION
1.	6 days/week	1 day/week	7 hours/day and 40 hours/week
2.	5 days/week	2 days/week	8 hours/day and 40 hours/week
3.	28 consecutive days	Ratio between work and rest period is 2:1	Work hours must not exceed 11 hours/day (excluding a one-hour break)

However, employees who are responsible for planning, executing and/or controlling a company's business activities and whose work hours cannot be limited according to the work hours stipulated in the company regulations or collective labor agreement shall not be entitled to overtime pay.

In the event of a dispute over the calculation of overtime pay, the party authorized to decide the matter is the Regency/City manpower supervisor.

Indonesian-language copy of the regulation on the website of the Ministry of Manpower and Transmigration.

INDONESIA

1 APR 2014

List Of Associations That Have Issued And Submitted Flowcharts For Services Subcontracting To Ministry Of Manpower And Transmigration ("**MOMT**")

Under MOMT Regulation No. 19 of 2012 on the requirements for outsourcing a supply of labour and subcontracting of services (the "Outsourcing Regulation"), industry associations must register "flowcharts" with the MOMT indicating core activities in their business sectors that must be handled "in-house" and non-core activities that may be subcontracted to service providers. The following is a list of major associations that have registered their flowchart with the MOMT:

NO.	NAME OF ASSOCIATION
1.	National Banking Association (PERBANAS)
2.	Indonesian Cement Association

(*con't*)

INDONESIA
1 APR
2014

3. Food and Beverage Entrepreneur Association (GAPMMI)
4. Indonesian Wheat Flour Producer Association
5. Indonesian National Air Carriers Association (INACA)
6. Indonesian Highway Association (ATI)
7. Indonesian White Cigarette Producer Association (GAPRINDO)
8. Indonesian Wood Producers Association (GPMT)
9. Indonesian Tobacco Community Association (AMTI)
10. Chick Breeding Company Association
11. Indonesian Cosmetics Company Association (PERKOSMI)
12. Car and Motorcycle Equipment Association
13. Train Association
14. Indonesian Mining Association (IMA)
15. Indonesian Coal Mining Association
16. Crop Life Indonesia
17. Indonesian Olefin and Plastic Association (INAplas)
18. PT Kimia Farma
19. PT PLN (Persero)
20. Indonesian Mining Service Association (ASPINDO)
21. Indonesian Life Insurance Association (AAJI)
22. Indonesian Textile Association (API)

There are no sanctions for associations that do not comply with the Outsourcing Regulation and many associations have not yet issued a flowchart. Many associations have also been unwilling to say whether they have issued a work flowchart in accordance with the Outsourcing Regulation.

More...

INDONESIA
7 MAY
2014

National Holidays and Collective Leave in 2015

The Minister of Religious Affairs, Minister of Manpower and Transmigration, and Minister of State Apparatus Empowerment and Bureaucratic Reform issued a joint decision on National Holidays and Collective Leave in 2015.

Joint Decision of the Minister of Religious Affairs No. 5 of 2014, Minister of Manpower and Transmigration No. 03/SKB/MEN/V/2014 and Minister of State Apparatus Empowerment and Bureaucratic Reform No. 02/SKB/M.PAN/V/2014 ("Joint Decision") stipulates that there are 14 public holidays in 2015, as follows:

DAY	DATE
New Year's Day	1 January
Birthday of Prophet Muhammad	3 January
Chinese New Year	19 February
Hindu Day of Silence	21 March
Good Friday	3 April
International Labor Day	1 May
Ascension Day of Jesus Christ	14 May
Ascension Day of Prophet Muhammad	16 May
Buddhist Waisak Day	2 June
Idul Fitri	17 and 18 July
Independence Day	17 August
Idul Adha	24 September
Islamic New Year	14 October
Christmas	25 December

The observation of holidays that fall on weekends is not moved to the nearest workday. However, the government may declare certain "bridge holidays" (referred to as "collective leave") to extend holidays that fall on the weekend.

There are two collective leaves in 2015, as follows:

DAY	DATE
Idul Fitri	16, 20 and 21 July
Christmas	24 December

(con't)

LOOKING BACK

INDONESIA
7 MAY 2014

Please note that collective leave is not mandatory. While government offices treat collective leave as mandatory and consequently reduce the annual leave entitlement of their employees, most offices in the private sector do not do the same. Indonesian manpower laws do not impose or recognize collective leave (i.e., forced leave) in the private sector but we are aware of some companies that encourage their employees to take collective leave days. Local management can encourage employees to take their annual leave days between a statutory holiday and a weekend but taking such leave days must be voluntary.

Indonesian-language copy of the regulation on the website of the Ministry of Manpower and Transmigration.

INDONESIA
11 JUL 2014

Recruitment of Foreign Employees and Implementation of Education and Training for Companion Employees

Presidential Regulation No. 72 of 2014 ("Regulation No. 72") revokes Presidential Regulation No. 75 of 1995 regarding the Employment of Expatriates.

In principle, employers are allowed to employ foreign nationals with due consideration that there are no Indonesians with the necessary skills and/or knowledge for the position offered.

Companies employing foreign workers must appoint Indonesian nationals as understudy workers or trainees to work with the foreign employees for the purpose of training the Indonesians and transferring skills and knowledge. The education and training process for the Indonesian workers can take place in Indonesia or overseas and must be confirmed by a competency/training certificate.

Companies employing foreign workers must submit semester reports to the Ministry of Manpower and Transmigration outlining the following: a) information on currently employed foreign workers; and b) implementation of the mandatory education and training program for Indonesian trainees.

More...
(For more information on the procedures for employing foreign workers.)

LOOKING FORWARD

INDONESIA
PENDING 2014

Minimum Wage Increases

Many employers have successfully applied to regional authorities for exemption from the minimum wage increases 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.

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.

LOOKING BACK

JAPAN
24 DEC
2013

Amendments to the Ordinance for Enforcement of the Equal Employment Opportunity Act

Amendments have been enacted to tighten prohibitions on sexual discrimination and sexual harassment in the workplace. The amendments will come into force on 1 July 2014. Among other things, employers will be prohibited from unreasonably requiring job applicants or employees to accept potential internal transfers involving relocation as a condition for employment, promotion or change of job type. These conditions were occasionally used to discriminate against or harass female workers who are generally considered to have less flexibility in relocating than male workers.

More...

JAPAN
3 MAR
2014

Positive move toward certain amendments to the Act for Securing the Proper Operation of Worker Dispatching Undertakings and Protection of Dispatched Workers (the "Worker Dispatch Act")

The Ministry of Health, Labour and Welfare ("the Ministry") announced that it received a positive report from the Labour Policy Council on the outline of a bill amending the Worker Dispatch Act. The Ministry stated that it was going to draft a bill based on the outline and submit it to the Diet. The outline provides that, in principle, the amended Act will be enacted on 1 April 2015. The outline contains various amendments including changes to: (i) the license type of worker dispatch undertakings; (ii) the period for which dispatching is possible; and (iii) the measures that worker dispatch undertakings and clients should take to protect dispatched workers.

More...

JAPAN
23 APR
2014

Promulgation of amendments to the Act on Improvement, etc. of Employment Management for Part-Time Workers (the "Part-Time Employment Act")

On 23 April 2014, an amendment to the Part-Time Employment Act was promulgated. The amendment will take effect within 1 year from 23 April 2014. The amendment includes: (i) the application of the prohibition of discriminatory treatment between regular workers and part-time workers to a broadened range of part-time workers; (ii) the establishment of "the principle of treatment of part-time workers"; (iii) an obligation on employers to explain to newly hired part-time workers the contents of measures for improved employment management; and (iv) an obligation on employers to establish a system for dealing with consultation from part-time workers.

More...

JAPAN
25 JUN
2014

Promulgation of amendments to the Industrial Safety and Health Act (the "Act")

On 25 June, 2014, an amendment to the Act was promulgated. The amendments will take effect at different times from 25 June 2014. The amendments and their expected effective timeframes are set out below:

i. An obligation on employers to assess the risk of certain chemical substances which are not subject to special regulations (within two years);
ii. An obligation on employers (except for workplaces with less than 50 workers) to have workers take examinations conducted by a medical doctor or health nurse to understand the degree of their mental stress (within 18 months);
iii. The promotion of countermeasures against passive smoking of employees (within 1 year);
iv. The establishment of a new system to handle companies which repeatedly caused serious industrial accidents (within 1 year);
v. The establishment of new registration system for inspection organizations located overseas (within 1 year); and
vi. A review of other regulations (within 6 months).

More...

No significant policy, legal or case developments are anticipated within the employment space during 2014 Q3.

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: Shearn Delamore &co.

LOOKING BACK

NEW ZEALAND
9 OCT 2013

Facebook post was used by Court to determine whether there was constructive dismissal

Hook v Stream Group (NZ) Pty Limited [2013] NZEmpC 188:

The Employment Court held that comments that an employee had posted on his public Facebook profile relating to his decision to resign from his employment were admissible for the purpose of determining whether he had been constructively dismissed. The Court rejected the employee's claim, and used his Facebook posts to support its findings that he had resigned of his own volition.

More...

NEW ZEALAND
14 JAN 2014

Making an employee redundant while on maternity leave was ruled unjustified

Ledger v Delmaine Fine Foods Limited [2014] NZERA Auckland 10:

The Employment Relations Authority held that a redundancy that took place during an employee's maternity leave was unjustified. Despite the employer's claims that the redundancy was motivated by genuine economic reasons, the Authority found that the employer had failed to provide any financial records or projected cost savings to support its position. This case further demonstrates the recent trend of the Authority and Court to more closely scrutinise an employer's business case for a redundancy, placing a higher onus on an employer to justify any such decision.

NEW ZEALAND
17 FEB 2014

Salaried staff entitled to minimum wages for sleepovers

Victoria Law and Others v The Board of Trustees of Woodford House and the Trustees of Iona College [2014] NZEmpC 25

The Employment Court held that employees of a boarding house who were required to sleep overnight at their workplace must be considered in law to have been "working" during those sleepovers and were entitled to be paid for them. All of the employees lived or stayed at the boarding house premises at night and were responsible for the safety, security and wellbeing of the students staying and sleeping there. The Court held that the employees' salary could not be averaged out so that payment at less than the minimum rate for part of a period of work was effectively balanced by payment at a higher rate for another part. Payment had to be made for, and identified with, each period of work. The decision is currently being appealed to the Court of Appeal.

More...

NEW ZEALAND
20 FEB 2014

Introduction of Best Practice Guidelines on preventing and responding to workplace bullying

In February 2014, New Zealand's health and safety regulator WorkSafe NZ and the Ministry of Business, Innovation and Employment released Best Practice Guidelines on Preventing and Responding to Workplace Bullying ("**The Guidelines**"). These are the first comprehensive NZ guidelines for preventing and responding to workplace bullying. The Guidelines define workplace bullying and provide practical information for both employees and employers.

More...

NEW ZEALAND
14 MAR 2014

The Health and Safety Reform Bill ("The Bill")

This Bill reforms New Zealand's workplace health and safety system. Its main purpose is to provide for a balanced framework to secure the health and safety of workers and workplaces. The new health and safety at work regime in the Bill will replace the Health and Safety in Employment Act 1992 and the Machinery Act 1950. The new regime is based on the Australian Model Work Health and Safety Act, with modifications to take account of differences in the New Zealand context. Submissions have now closed on the Bill and the Select Committee is expected to report back in September 2014. The changes are expected to come into force in April 2015.

More...

LOOKING BACK

NEW ZEALAND
26 APR 2014

The Employment Relations Amendment Bill 2013 ("the Bill")

This Bill amends the Employment Relations Act 2000 in relation to collective bargaining, flexible working arrangements, good faith bargaining, rest break and meal break provisions, and the Employment Relations Authority (the Authority). The Bill also introduces an exemption from certain requirements of Part 6A of the Act (relating to continuity of employment) for small to medium enterprises. The Select Committee has reported back on this Bill and has not recommended any substantial changes to the Bill. The Bill has now passed its second reading.

More...

NEW ZEALAND
6 JUN 2014

Private Facebook Messages Admissible as Evidence in Employment Dispute

Product Placement 2011 Limited v Cockburn [2014] NZERA Auckland 169

During a disciplinary investigation into Ms Cockburn's actions, Product Placement 2011 Limited ("the company") discovered a series of private Facebook messages with a former employee on her work laptop. The content of the Facebook messages included derogatory remarks about company management and misuse of the company's confidential information for the purpose of setting up a competing business.

The Employment Relations Authority found that the Facebook messages fell within the scope of the *"conduct of proceedings"* exception provided under the Privacy Act 1993 as grounds for non-compliance with the Act's principles, meaning that the company could use the information contained in the messages without breaching that Act. The Authority also considered that it was within its discretionary powers *"to take into account such evidence and information as an equity and good conscience it thinks fit, whether strictly legal evidence or not"*. The Authority held (after viewing the Facebook messages) that Ms Cockburn had breached her good faith obligations and ordered she pay a penalty of $3,000 and special damages total $6,215.08 to the company.

More...

NEW ZEALAND
9 JUN 2014

The Employment Relations Amendment Bill 2013 (**Bill**)

The Bill has passed its second reading in Parliament but has been placed on hold pending the general election on 20 September 2014.

More...

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

PHILIPPINES
1 JAN 2014

Metro Manila workers' basic pay now P15 higher with Cost Of Living Allowance ("COLA") integration

Starting 1 January 2014, all minimum wage earners in the National Capital Region will enjoy an increase in their basic pay, following the integration of the P15 of the existing P30 COLA into their basic salary. Wage Order NCR-No.18 orders the integration to the basic pay of the P15 of the existing P30 COLA provided under Wage Order NCR-No. 17.

With the integration, the minimum wage rate for private sector workers in the NCR now stands at P466, composed of the P451 basic pay and the other half of the existing COLA, or P15.

More...

PHILIPPINES
1 JAN 2014

Philippine Health Insurance Corporation ("PhilHealth") Increases Contribution Rates

Effective 1 January 2014, PhilHealth has increased the mandatory contributions for the individual paying, overseas workers, and the employed sector.

Excerpts from MC 027-2013

1. The premium rate shall be at 2.5%
2. Salary bracket shall still be used
3. Salary bracket floor shall start at Php 8,000.00, with combined employer and employee contribution at PhP200.00
4. Salary Bracket ceiling shall be pegged at Php 35,000.00, with combined employer and employee contribution at PhP875.00

More...

PHILIPPINES
1 JAN 2014

New Social Security Systems (SSS) Contribution Table, Effective 1 January 2014.

The SSS has implemented a 0.6 percent increase in member contributions, divided equally between employees and their employers. Self-employed and voluntary members, however, would shoulder the entire 0.6 percent hike in monthly contributions, approved by President Aquino last year.

This means employees' monthly contributions will rise to 11 percent of a member's monthly salary from 10.4 percent. 70 percent of the monthly contributions will continue to be paid for by the employer, while the SSS member will shell out the remaining 30 percent.

Also to be raised beginning January is the ceiling for the monthly salary credit from P15,000 to P16,000.

The increase is equivalent to an additional monthly contribution of P6 for every P1,000 increment in the monthly salary credit.

An employee who earns P10,000 a month will now have to remit P1,100, with P746.70 to be shouldered by the employer.

More...

PHILIPPINES
29 JAN 2014

Foreign workers with pending Alien Employment Permit (AEP) application must secure Provisional Working Permit.

Foreign workers who have commenced employment in a local establishment even while their applications for the AEP or employment are still being processed are required to secure a Provisional Working Permit (PWP) from the Bureau of Immigration (BI).

BI Officer-in-Charge Siegfred B. Mison issued Operation Order SBM-No. 2013-019, or the Rules on Provisional Working Permit, reiterated the need for foreign workers to secure a PWP and prescribes the documentary requirements for the PWP.

The PWP shall be valid for three (3) months or until a working (commercial) visa has been issued in favour of the applicant, whichever comes first.

More...

PHILIPPINES
14 APR 2014

DOLE activates inter-agency monitoring committee to address peace and order in areas with labor disputes

The DOLE Regional Office No. 7 activated the Regional and Industry Inter-Agency Coordination and Monitoring Committee (RICMC) to address peace and order in areas with ongoing labor disputes.

The DOLE Regional Office No. 7 had constituted the RICMC as a sub-committee of the Regional Tripartite Industrial Council to take the lead in preserving jobs and exploring all remedies/avenues necessary and feasible to peacefully settle potential or actual strikes, pickets, lock-outs, or any labor disputes.

According to DOLE Regional Office No. 7 Director Chona Mantilla, the RICMC in Region 7 will conduct massive information dissemination of the guidelines in different Tripartite Industrial Peace Councils (TIPCs), Industry Tripartite Councils (ITCs), and local government units (LGUs) in the region.

More...

PHILIPPINES
25 APR 2014

Region 4-A wage board approves wage hike and productivity-based pay guidelines for CALABARZON (provinces of Cavite, Laguna, Rizal, Batangas and Quezon) workers.

The Region 4-A wage board has approved a new wage order providing for a P12.00 per day basic pay increase for workers receiving less than P267.00 per day and a P13.00 per day socioeconomic allowance (SEA) for workers receiving more than P267.00 up to P349.50 per day.

The new wage order shall apply to all minimum wage workers and employees in private establishments regardless of their position, designation, or status of employment and method of payment of their wages.

The advisory recommends the creation of a productivity improvement and incentive committee (PIIC), with equal representation from workers and management, that will design and implement productivity improvement programs and mechanisms for the grant of productivity-based pay.

The DOLE Regional Office 4-A will provide the necessary technical assistance to companies in the development of productivity improvement programs for purposes of implementing the advisory guidelines on productivity-based pay.

More...

PHILIPPINES
2 MAY 2014

WAGE UPDATE - Two regional boards have issued wage orders in 2014 - Baldoz

According to Labour and Employment Secretary Rosalinda Dimapilis-Baldoz, two Regional Tripartite Wage and Productivity Boards, the RTWPBs of Calabarzon and Central Visayas, have issued new wage orders this year.

As early as 21 March, workers in Region 7 (Central Visayas) received a P13 increase in cost-of-living allowance (COLA) when the RTWPB-Region 7 (Central Visayas) issued a wage order which raised minimum wages of private sector workers in the region to a range of P275 to P340 per day.

More...

PHILIPPINES

9 MAY 2014

DOLE's NWPC amends rules on wage hike exemption for calamity-affected establishments

The National Wages and Productivity Commission (NWPC) amended the rules on wage hike exemption for calamity-affected establishments to make it more liberal and easy to comply with. This was done through Resolution No. 1, Series of 2014, amending NWPC Guidelines No. 2, Series of 2007 which spells out the rules on exemption from RTWPBs-issued wage orders.

Establishments adversely affected by natural and human-induced disasters that have sustained property damage of at least 50 percent and whose recovery will exceed one year may now claim for exemption for a longer period from compliance with prescribed wage increases/cost-of-living allowances granted by Regional Tripartite Wage and Productivity Boards, or RTWPBs.

The NWPC Board expanded the concept of "calamity", "hazard", and "disaster" to include both natural–such as typhoons, floods, earthquakes, tsunami, volcanic eruption, drought, pest infestation, etc., and human-induced–such as economic sabotage, financial crisis, rebellion, war, etc.–for purposes of the exemption.

To simplify the documentary requirements, the resolution provides that a certification by the barangay and photos of the damaged property or properties may be submitted in lieu of audited financial statements.

More...

PHILIPPINES

17 JUL 2014

DOLE Advisory on payment of wages for private sector employees during inclement weather or natural calamities.

According to the advisory:

- There is no requirement to pay salaries during natural calamities if the employees do not report to work on such days, following the no work, no pay standard, unless there is a favorable company policy, practice, or collective bargaining agreement granting payment of wages on the said day.
- If the employee has accrued leave credits, a worker or employee may be allowed to utilize such leave so that the worker or employee will have compensation on said day.
- Workers or employees who report for work on such days shall receive no additional pay, but only their salary on that day.

The DOLE secretary said employers shall ensure the safety of their workers or employees by providing FREE transportation, food, personal protective equipment and first-aid medicines, as may be necessary.

More...

PHILIPPINES

18 AUG 2014

DOLE issued new guidelines to regional directors re: labour laws compliance system implementation.

The DOLE Secretary signed an Administrative Order directing all DOLE regional directors and programme managers to, among others, determine their assessment priorities, complete their respective assessment targets for 2014 by adjusting their work standards, or the ratio of regional labour law compliance officers ("LLCOs") vis-à-vis the number of establishments that need to be covered, and augment their personnel.

The order also prescribed five Compliance Assessment Modalities that regional offices can resort to ensure that all the target establishments for the year have been visited and extended assistance towards compliance with all labour laws: (a) zonal assessment; (b) in-house Occupational Safety and Health ("OSH") assessment; (3) assessment by Industry; (4) Ecozone-wide assessment; and (5) assessment of establishments with Labour-Management Councils and convergence programmes.

(con't)

LOOKING BACK

PHILIPPINES

18 AUG

2014

The order prescribes an Equivalency of Incentivising Compliance Programme's Certificate and Collective Bargaining Agreements ("CBAs"). The Tripartite Certificate for Compliance with Labour Standards ("TCCLS") issued by the DOLE shall be deemed equivalent to a Certificate of Compliance (CoC). Thus, establishments issued TCCLS shall no longer be subjected to assessments and shall be considered as compliant with labour laws and OSH standards. For organized establishments with subsisting and duly-registered CBAs, the DOLE regional director may issue the CoC on GLS and Labour Relations upon evaluation of the terms of the CBA, which should be compliant with minimum labour standards and labour rights. However, as part of DOLE technical assistance, compliance with OSH standards must be verified together with the OSH Committee at the workplace prior to issuance of OSH COC.

In determining the regime managers may consider from the list of establishments provided by the Bureau of Working Conditions (BWC).

These are establishments considered to be: (1) engaged in hazardous work; (2) employing child employees; (3) engaged in contracting and subcontracting arrangements (Principals and contractors); (4) Philippine-registered ships or vessels engaged in domestic shipping; (5) employing 10 or more employees; and (6) other priority establishments covered by issuances.

More...

SINGAPORE
11 NOV
2013

Representations to employee by employer on additional payments may be enforceable as a free- standing contract (Daniel John Brader v Commerzbank AG [2013] SGHC 284)

This case involves the then Chief Executive Officer of the bank announcing a retention plan to bank employees at a town hall meeting on 18 August 2008. As part of the retention plan, a discretionary bonus would be provisionally awarded to employees for 2008. However, on 18 February 2009, the management of the bank sent an email to all employees, noting the difficulties faced by the bank over the past year and announced that no bonuses would be paid for 2008 and all provisional bonus awards previously announced would be reduced by 90% pro rata. The employees then commenced an action to claim for either the balance 90% of their provisional bonus awards or alternatively, damages.

The High Court held that the 18 August 2008 announcement satisfied all the elements with regard to the formation of a valid contract: offer, acceptance, consideration and intention to create legal obligations. Therefore, the 18 August 2008 announcement constituted a free- standing contract, separate from the employees' employment contracts, despite the fact that the existing employment contracts stated that the bank retains the discretion to pay variable bonuses to the employees.

More...

SINGAPORE
12 NOV
2013

Parliament Passes Employment, Parental Leave and Other Measures Bill 2013

The Ministry of Manpower ('MOM') has made changes to the Employment Act ('EA') to extend better protection for more workers and improve employment standards, while allowing flexibility for employers where there are practical business concerns. As part of Phase One of the Employment Act Review, feedback was obtained through several platforms including an eight- week public consultation exercise from 19 November 2012 to 11 January 2013. In particular, under the enhanced EA, protection against unfair dismissal and sick leave benefits are extended to professionals, managers and executives ('PMEs') earning up to S$4, 500 a month. Also, non- workmen such as clerical staff and front- line service staff, earning up to S$2, 500 are now protected in terms of working hours, rest days and overtime payments. Previously, PMEs are excluded from the general protection accorded by the EA and the salary threshold for non- workmen covered by the EA was S$2,000. The new EA will also shield workers from excessive pay cuts by employers, with a 25 per cent sub- cap on deductions for accommodation, amenities and services. According to Acting Manpower Minister Tan Chuan- Jin, these changes will benefit some 450, 000 workers. Most of the changes will take effect on 1 April 2014.

More...

SINGAPORE
28 NOV
2013

MOM Takes Action Against 15 More Companies for Discriminatory Job Advertisements

The Ministry of Manpower ('MOM') has taken action against 15 more companies after investigations found the job advertisements of these companies were discriminatory and unaligned with the Tripartite Guidelines on Fair Employment Practices ('TAFEP'). This investigation was similar to an earlier investigation by the MOM in September 2013 regarding discriminatory job advertisements posted by 10 companies. As was required of the 10 companies, these employers will also have to put up online public apologies for 30 days and are barred from hiring new foreign workers during this 30- day period and 6 months following the publication of their apologies. This brings the total number of companies MOM has taken action against for discriminatory hiring practices since March 2013 to 27. MOM expects all employers doing business in Singapore to comply with the TAFEP and put in place fair employment practices. Non compliance will be viewed seriously and all companies and employment agencies ought to familiarize themselves with the TAFEP.

More...

SINGAPORE
18 DEC 2013

Implications on Overtime Work (Monteverde Darvin Cynthia v VGO Corp Ltd [2013] SGHC 280)

This case involves the employee claiming against the employer for overtime pay for hours worked in excess of the statutory limit of 44 normal working hours a week. The main issue was whether the employee's basic monthly wages of S$1, 900 covered the additional 16 hours of work per week done by the employee. The Labour Commissioner had previously held that as the employee had agreed in her employment contract to work for a maximum of 60 hours a week, the employer will only have to pay the 0.5 hourly basic rate premium on overtime hours worked, instead of the full overtime rate of 1.5 times hourly basic rate per overtime hour worked in addition to her basic monthly wages.

The High Court overruled the Commissioner's decision and held that the contractual obligation obliging the employee to work a maximum of 60 hours for a monthly salary of S$1, 900 should not be taken to mean that any possible overtime payment for work done beyond the statutory limit of 44 normal working hours is included in the monthly salary. The employer was therefore ordered to pay the employee 1.5 times the hourly basic rate per overtime hour worked in addition to her basic monthly wages.

The High Court also remarked that even if the 60 hours was phrased as a 'minimum' and not a 'maximum' figure, conditions in the contract of service will only be read to the extent that they are consistent with the provisions of the Employment Act ('EA').

Therefore, this case makes clear that employers cannot artificially raise the amount of working hours covered by the monthly basic pay and only pay the employee 0.5 times the hourly basic rate of pay for every overtime hour worked. This case also clarified that any condition of service less favourable to an employee than those prescribed in the EA, for example, requiring workers to work for a minimum amount of time above the statutory limit of 44 hours a week, will be treated as illegal, null and void, to the extent that it is no less favourable. This would mean that employers will not be allowed to contract beyond the limits set in the EA.

More...

SINGAPORE
6 JAN 2014

Changes to Workplace Safety and Health Incident Reporting Requirements

Pursuant to amendments to the Workplace Safety and Health (Incident Reporting) Regulations, employers will have to report to the Ministry of Manpower ('MOM') all accidents which render their employees unfit for work for more than three days cumulatively. Previously, only accidents which render employees unfit for work for more than three consecutive days need to be reported. These changes came in light of industry feedback received regarding employers' practice of breaking up medical leave of injured employees to circumvent the reporting requirement. MOM hopes that these changes would discourage such practices and also ensure that employees' recovery process is unaffected.

The Work Injury Compensation Regulations was also amended to require employers to report to the Commissioner for Workforce Safety and Health any traffic- related incidents that happen to any employees in his/her course of work. This means that employers will have to update their reporting standards to better track work- related traffic accidents. This amendment was made to emphasize the employer's duty to manage employee traffic safety in the course of work.

Both amendments came into effect on 6 January 2014.

More...

SINGAPORE
13 JAN 2014

Tripartite Guidelines on Issuance of Itemised Payslips

To prepare businesses for mandatory itemised payslips, MOM, along with the National Trades Union Congress ('NTUC') and Singapore National Employers Federation ('SNEF') have developed a set of Tripartite Guidelines on the issuance of itemised payslips. The Guidelines set out how companies can put in place the system of administering payslips, and provide payslip templates that companies may use and customise based on their own needs. As an overview, the payslip should include items such as basic salary, total allowances

(*con't*)

LOOKING BACK

SINGAPORE **13 JAN** 2014

and total deductions for each salary period. MOM further highlighted that providing itemised payslips is a good employment practice as it raises employees'awareness of their salary components and facilitates the resolution of salary disputes. For information, mandatory payslips were initially intended to be included as part of the changes to the Employment Act last November but this was not so due to complaints from small and medium enterprises ('SMEs') that such a move would raise administrative costs. Notwithstanding this, it is likely that itemized payslips will become mandatory in the future, and the Guidelines serve as a first step towards it.

More...

SINGAPORE **18 JAN** 2014

The Ministry of Manpower ('MOM') Acts Against Unsafe Practices Involving Formwork Structures

On 18 January 2014, the MOM issued an advisory to Professional Engineers to remind them of their obligations in the design, construction and inspection of formwork structures. This advisory is in light of two accidents that had occurred over the past week involving formwork structures at separate construction worksites. While it was fortunate that there were no serious injuries arising from these accidents, the MOM noted that such dangerous occurrences can have catastrophic consequences and result in significant loss of lives. MOM has also decided to step up worksite inspections to check on unsafe practices involving formwork structures from 20 January 2014. Such inspections will target formwork practices at construction worksites such as unsafe design of formwork structures, improper erection of formwork structures, incompatible formwork components, and improper supervision and inspection of formwork structures. These inspections will be in addition to MOM's regular checks on formwork structures as part of its construction safety inspections.

More...

SINGAPORE **24 JAN** 2014

Progressive Wage Model for Cleaners

On 20 January 2014, Parliament introduced the Environment Public Health (Amendment) Bill which seeks to amend the Environmental Public Health Act. Under the provisions of the Bill, cleaning businesses in Singapore will have to be licensed within 5 months of the provisions coming into force. Significantly, one of the requirements of the cleaning business licence is that the licensee must submit a progressive wage plan for employees. This wage plan must relate to employees who are Singapore Citizens or Permanent Residents, specify the basic wage payable to employees, be on an increasing scale depending on seniority, responsibilities, work experience and training received and specify the amount of basic wage which should be no lower than the basic wage amount prescribed by the Commissioner of Labour in subsidiary legislation. The amendments are expected to come into force in April 2014 if passed by Parliament.

More...

SINGAPORE **27 JAN** 2014

Call for Standard Employment Contracts for all Migrant Workers

The Migrant Workers' Centre ('MWC') is seeking to impose standard employment contracts that outline specific service agreements and employment terms so as to discourage malpractices by errant employment agents. The advocacy group is also calling for the granting of Change of Employer status for deserving migrant workers who have been unfairly treated in their jobs so that these workers can continue working while their disputes are being resolved. MWC also wants a greater say, as equal with the authorities, during the resolution process starting from the point of investigation till closure. Chairman Yeo Guat Kwang pointed that model employment contracts are already available for foreign domestic workers and extending this to all migrant workers would offer better protection and fairer terms of employment.

More...

SINGAPORE
1 APR 2014

Amendments to the Employment Act Take Effect

The changes to the Employment Act ('EA') which were approved by Parliament in November 2013 have come into effect as of 1 April 2014. The changes seek to extend better protection to more workers and to improve employment standards. The key changes include (i) extending the applicability of general protection under the EA including protection against unfair dismissal and sick leave benefits to professionals, managers and executives earning a basic monthly salary of up to S$4,500 and (ii) extending the application of protection relating to working hours and rest days to non-workmen earning a basic monthly salary of up to S$2,500. These changes will have a significant impact on organisations who employ a sizeable number of employees in the above two categories and these organisations will have to amend their employment policies and practices to comply with the changes. The MOM and its tripartite partners have also prepared various forms of assistance to help raise public awareness about the EA changes and to help employers to comply with them.

More...

SINGAPORE
3 APR 2014

Implications on Employees' Duty of Fidelity to the Employer (Trident Pharm Pte Ltd v Yong Pei Pei Tracy [2014] SGHC 59)

This case involves an employer bringing an action against a former employee alleging a breach of her duty of fidelity as an employee. The employer had a lease to operate a retail pharmacy in the building of the National Dental Centre of Singapore ('NDC'). The lease was due to expire and NDC invited tenders for a fresh lease. The employee participated in the tender with her husband and NDC awarded the new lease to the employee and her husband. The employee subsequently resigned from the employer.

The High Court held that the employee was not in breach of her duty of fidelity. The fact that she had joined a rival bid and failed to disclose that act to the employer was not sufficient to constitute a breach of her duty of fidelity. The High Court further held that an employee's duty of fidelity to her employer does not preclude the employee from taking preparatory steps to compete with a former employer and to subjugate their own interest to those of their employers.

It was also noted on the facts that the employment contract between the employee and employer did not contain any non-competition clause and she was therefore free to compete so long as she was not employed by the employer. This case therefore illustrates the importance to employers to incorporate any non-competition obligations into their employment contracts in order to safeguard their interests.

More...

SINGAPORE
10 APR 2014

8 Employers and 2 Employment Agents Charged for Falsely Declaring Foreign Employees' Salaries

On 10 April 2014, the MOM charged 8 employers, who are franchisee of local convenience chain stores, and 2 employment agents for making false salary declarations to the Controller of Work Passes in relation to the application of 41 work passes. 7 out of 8 employers pleaded guilty and the highest fine imposed amounted to S$56,000 or in default, 42 weeks' imprisonment. Out of the 41 employees, 37 were fined between S$5,000 and S$7,000. This case follows a series of similar false declarations in the first quarter of 2014 and demonstrates the robust enforcement efforts of MOM against false declarations in work pass applications. These enforcement efforts came in light of the increase in penalties for false declarations under the Employment of Foreign Manpower Act (Cap.91A) in November 2012. It also emphasizes the importance to both employer and employees to make accurate, complete and truthful declarations when applying for work permits.

More...

SINGAPORE
24 APR 2014

MOM Proposes Small Claims Tribunal to Hear Salary Disputes

On 24 April 2014, it was announced that the MOM is looking to establish a small claims tribunal ('Tribunal') to resolve salary and other employment-related disputes. The Tribunal will provide a dispute resolution forum to all employees, whether or not they are covered by the Employment Act.

(con't)

LOOKING BACK

SINGAPORE
24 APR
2014

This means that employees who can avail themselves of the Tribunal's processes will include professionals, managers and executives earning more than S$4,500 a month who currently can only pursue breaches of employment through protracted and expensive civil suits. The types of disputes which could be heard include, subject to certain claim limits, statutory issues under the Employment Act and other salary-related matters such as commissions, bonuses or annual wage supplement payments. The MOM is currently engaging and consulting stakeholders on the Tribunal and more details will be released at a later date.

More...

SINGAPORE
25 APR
2014

Commissioner for Labour Adopts the Progressive wage Model Recommendations by the Tripartite Cluster for Cleaners

The Environmental Public Health Amendment Bill has come into force on 1 April 2014 and all cleaning businesses are strongly encouraged to submit their applications for cleaning business licences so as to obtain their licences by the required date of 1 September 2014. One of the key requirements of the licensing regime is the need for licensees to have a progressive wage plan. With regard to this wage plan, the Commissioner for Labour has fully adopted the Progressive Wage Model ('PWN') recommendations by the Tripartite Cluster for Cleaners' ('TCC'). The TCC is a tripartite body appointed by the MOM and comprises of the employer, union, government, cleaning industry representatives and cleaning service buyers. As of 25 April 2014, all cleaning companies seeking to be licensed will need to ensure that their submitted progressive wage plans for their resident cleaners follow the TCC's PWM. From 1 September 2014, licensed cleaning businesses must provide their resident cleaners payslips and employment contracts that state wages in accordance with their progressive wage plans and the Commissioner of Labour will enforce the PWM requirements for all new contracts.

More...

SINGAPORE
7 MAY
2014

Launch of the Total Workplace Safety and Health Initiative

The Total Workplace Safety and Health initiative ('TWSH') was launched on 7 May 2014 at the National Workplace Safety and Health Campaign 2014. TWSH is an initiative that encourages business to take a "holistic and integrated approach" in dealing with occupational safety and health and aims to involve key business stakeholders in not just the mitigation of safety hazards at the workplace but also the physical, mental and emotional health and wellbeing of individual employees according to their specific needs and conditions. In conjunction with the TWSH, the Workplace Safety and Health Council published the Guide to Total Workplace Safety and Health that provides details on how businesses can implement the TWSH. Some of the key stipulations in the Guide include the requirement to conduct regular risk assessments, gap analysis and design intervention programmes to mitigate or eliminate these risks.

In addition, the MOM is currently reviewing the regulatory penalties and legislative framework for workplace safety and health infringements with the aim of "sending out a stronger deterrent message". These measures taken together demonstrate the Singapore Government's focus on ensuring the safety and health of employees at work.

More...
More...

SINGAPORE
8 MAY
2014

Changes to the CPF Minimum Sum, Medisave Minimum Sum and Medisave Contribution Ceiling from 1 July 2014

In line with the increase in CPF Minimum Sum yearly to account for inflation, the Minimum Sum that will apply to CPF members turning 55 between 1 July 2014 and 30 June 2015 is increased to S$155,000. This will be set aside in their Retirement Account using savings from their Special and then Ordinary Accounts. This is to ensure that CPF members will have a higher payout when they retire. Meanwhile, the Minimum Sum for CPF members who turn 55 before 1 July 2014 remains unchanged.

(con't)

SINGAPORE
8 MAY 2014

In light of the longer life expectancy and better quality of medical treatment, the Medisave Minimum Sum and Contribution Ceiling are also adjusted so as to help Singaporeans pay for their healthcare expenses and to better prepare for their long-term healthcare needs. From 1 July 2014, the Medisave Minimum Sum will be raised to S$43,500 from S$40,500 and the Medisave Contribution Ceiling will be increased correspondingly to S$48,500 from S$45,500.

More...
More...

SINGAPORE
23 MAY 2014

Workplace Safety and Health (Asbestos) Regulations to come into force on 30 May 2014

From 30 May 2014, the Workplace Safety and Health (Asbestos) Regulations will replace the Factories (Asbestos) Regulations. These regulations have been revised to accord better protection to workers against exposure to asbestos. Under the new regulations, an asbestos survey must be carried out before any work involving asbestos-containing materials or before building works such as demolition or alteration. This survey must be done by a person who has sufficient experience and training to perform the work and who has passed the Survey Asbestos and Other Fibres Risks at the Workplace Course under the Singapore Workforce Skills Qualifications framework. Any asbestos and asbestos-containing material must be removed by an Approved Asbestos-Removal Contractor prior to any demolition. During the course of work, employers and contractors must also take measures to minimise asbestos release and prevent the spread of asbestos beyond the work area. This includes wetting the asbestos-containing material and providing exhaust ventilation. Workers must also be adequately trained and be provided with appropriate personal protective equipment.

More...

SINGAPORE
27 MAY 2014

The Ministry of Manpower ("MOM") to raise Re-employment Age from 65 to 67

The MOM is working to finalise policy details that would raise the re-employment age to 67. Currently, firms are obliged to offer re-employment to workers who turn 62, up to the age of 65. Plans for the execution are currently being worked out by the Tripartite Committee on the Employability of Older Workers ('Tricom'). These include reviewing the Retirement and Re-Employment Act as well as guidelines on wage adjustments. Dr Amy Khor, Senior Minister of State for Health and Manpower, clarified that raising the re-employment age does not mean Singaporeans cannot retire before 67. Instead, the change aims to help those who wish to continue working. Dr Khor also encouraged employers to re-employ those who have reached 65 years old so long as they are able and ready to work as it could help in mitigating the tight labour market in Singapore.

More...

SINGAPORE
19 JUN 2014

Director Charged for False Declaration of Salaries

The Ministry of Manpower ('MOM') charged a director of a Singaporean company for making false declarations of salaries to the Controller of Work Passes in relation to 17 applications forms and 3 renewal applications forms for Employment Passes from 2012 to 2013. On this, one of the requirements which the MOM considers prior to approving an employment pass application is whether or not the minimum salary threshold is met. In this case, the director had allegedly declared that he was paying the foreign employee S$4,500, when the monthly basic salary of the foreign employee was in fact lower. According to the MOM, this is the third major case involving employers making false declarations for which the MOM has commenced prosecution. In 2 earlier cases, the employers concerned were fined between S$8,000 to S$56,000.

More...

LOOKING BACK

SINGAPORE
1 AUG 2014

Fair Consideration Framework – Advertising on the National Jobs Bank

From 1 August 2014, prior to making an application for an employment pass for a foreign employee, companies must first advertise the position on a new national jobs bank that is administered by the Workforce Development Agency ('Jobs Bank'). The advertisement requirement is a component of the Fair Consideration Framework ('FCF'), which is part of the Singapore Government's effort to ensure that Singaporeans are considered fairly for job vacancies, and to ensure that employers put in place fair employment, hiring and staff development practices that are open, merit-based and non-discriminatory. In relation to the advertisement requirement, the Jobs Bank advertisement must be open to Singaporeans for at least 14 days before an employment pass application can be made by the company. The company must also ensure that the advertisement complies with the Tripartite Guidelines on Fair Employment Practices.

More...

SINGAPORE
6 AUG 2014

Ministry of Manpower Takes Action Against 174 Companies for Workplace Safety Violations

On 6 August 2014, the Ministry of Manpower ('MOM') announced that it has taken enforcement action against 174 companies for 353 workplace safety violations, which were uncovered during a month-long enforcement blitz earlier this year. The companies were issued with fines ranging S$1,000 to S$13,000, Stop-Work Orders were issued to the occupiers of 4 worksites for severe lapses of Workplace Safety and Health. According to the MOM, this enforcement blitz focussed on compliance with the Workplace Safety and Health (Work at Height) Regulations 2013.

More...

SINGAPORE
7 AUG 2014

Singapore Court of Appeal Rules on Damages Payable in cases of Constructive Dismissal

In the case of *Wee Kim San Bernard v Robinsons & Co (Singapore) Pte Ltd* [2014] SGCA 43, the Singapore Court of Appeal held that in the absence of an independent breach of the implied term of mutual trust and confidence in employment relationships, an employee who had been unfairly dismissed is only due damages equivalent to the amount he would have been paid had the employer validly terminated his employment pursuant to the terms of the employment agreement. This ruling by the Court of Appeal seems to suggest that an employer's maximum exposure in cases of unfair dismissal, including constructive dismissal, is limited only to the sums that the employee would have been due under the terms of his employment agreement. Nevertheless, it should be noted that this was an appeal against the decision by the High Court to strike out a claim of constructive dismissal on the ground that it was legally unsustainable, and the issues surrounding the claim of constructive dismissal was not explored in detail.

More...

SOUTH KOREA
1 JAN 2014

A higher rate of minimum wage

Under Article 10 (1) of the Minimum Wage Act and Public Notice of the Ministry of Employment and Labor No. 2013-35, an hourly rate of minimum wage for the year 2014 is set at 5,210 won, which is an increase of 350 won (7.2%) from the hourly rate (4,860 won) of 2013. The increased rate shall enter into force on 1 January, 2014.

More...

SOUTH KOREA
1 JAN 2014 *(Lunar Calendar)*

A new system of substitute holidays

Under Article 3 of the Regulations on the Holidays of Government and Public Offices, in case any day of the Lunar New Year's Holidays or Chuseok Holidays falls on another public holiday, or the Children's Day falls on a Saturday or another public holiday, the first following non-holiday will be a substitute holiday.

More...

SOUTH KOREA
14 JAN 2014

Employers' obligation to get training/education to prevent sexual harassment at workplace

Under Article 13 (2) of the Equal Employment Act, employers are also required to go through the training/education to prevent sexual harassment at workplace, in the same way that employees are required to do so (starting from 14 January, 2014).

SOUTH KOREA
14 JAN 2014

Extended scope of childcare leave beneficiaries

Under Article 19 (1) of the Equal Employment Act, coverage of childcare leave eligibility has been expanded as the age of child eligible for childcare leave has been raised from the previous 'pre-schoolers aged 6 or below' to '8 years in age or younger, or a second grade or lower at elementary school' (effective to the employees who apply for childcare leave on 14 January, 2014 or after).

More...

SOUTH KOREA
1 JUL 2014

Longer pre- and post-natal leave (maternity leave) in the event of multiple births

In case a female employee gives birth to two or more children at a time (multiple births) as of 1 July, 2014 or afterwards, her pre- and post-natal leave (maternity leave) shall be extended as follows:

Before revision	**After revision (in the case of multiple births)**
90 days' total leave in pre- and post-natal periods	120 days' leave total in pre- and post-natal periods
45 days' leave minimum in the post-natal period	60 days' leave minimum in the post-natal period
60 days with pay	75 days with pay

SOUTH KOREA
19 SEP 2014

Act on the Protection, Etc. of Dispatched Workers

Effective from September 19, 2014:

- If it is found that an employer has intentionally and repeatedly discriminated against dispatched workers, the Labour Relations Commission may impose punitive sanctions in the amount of up to 3 times the damages incurred by the relevant dispatched workers.
- The amended law expands the scope of correction orders. If one (1) dispatched worker is found to have been subject to discriminatory treatment by an employer, the Labour Relations Commission's correction orders can be issued to not only the relevant one (1) dispatched worker, but also other similarly situated dispatched workers.

LOOKING BACK

SOUTH KOREA
19 SEP 2014

Act on the Protection, Etc. of Fixed-Term and Part-Time Workers

Effective from September 19, 2014, the following changes will take effect:

- Employers are obliged to pay a premium wage (equivalent to 50% of the employee's ordinary wage) to part-time employees for overtime work even if the number of his/her total work hours (including the overtime work) is no more than 8 hours per day or 40 hours per week.
- If it is found that an employer has intentionally and repeatedly discriminated against fixed-term and part-time employees, the Labour Relations Commission may impose punitive sanctions in the amount of up to 3 times the damages incurred by the relevant fixed-term and/or part-time employees.
- The amended law also expands the scope of correction orders. If one (1) fixed-term or part-time employee is found to have been subject to discriminatory treatment by an employer, correction orders can be issued to not only the relevant one (1) fixed-term or part-time employee, but also to other similarly situated fixed-term or part-time employees.

SOUTH KOREA
25 SEP 2014

Labour Standards Act

In case a female employee who is less than 12 weeks or more than 36 weeks pregnant requests two hours per day of reduced working hours, the employer must approve such request, provided that if such female worker's daily work hour is less than 8 hours, then the daily working hour can be reduced to 6 hours. The employer is not allowed to reduce wages for the reason of such reduced working hours. The foregoing shall apply to workplaces with 300 or more employees from September 25, 2014 and to workplaces with less than 300 employees from March 25, 2016.

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: KIM & CHANG

SRI LANKA
1 JUN 2013

2013 Minimum Wage Increase announced

Effective 1st June 2013 the minimum wages decided by the Wages Board for the Janitorial Service Trade have been increased.

SRI LANKA
1 NOV 2013

2013 Minimum Wage Increase announced

Effective 1st November 2013 the minimum wages decided by the Wages Board for Engineering Trade have been increased.

SRI LANKA
1 NOV 2013

2013 Minimum Wage Increase announced

Effective 1st November 2013 the minimum wages decided by the Wages Board for Paddy Hulling Trade have been increased.

SRI LANKA
1 AUG 2014

Decisions made by the Wages Boards referred to below pursuant to section 30 of the Wages Boards Ordinance No. 27 of 1941 have come in to effect from 1st day of August 2014 :

Wages Boards	**Variation of the Decision Under Section 30 of the Wages Boards Ordinance No. 27 of 1941.**
Wages Board for the Tea Growing and Manufacturing Trade	Part II The minimum rate of daily wage for time work Worker - Rs. 405.00
Wages Board for the Cinnamon Trade	Part II The minimum rate of wages applicable to a worker engaged in pruning, draining and terracing weeding, removing iluk, grass and cleaning boundaries (per day) is Rs. 420.00 The minimum rate of wages applicable to a worker engaged in Cinnamon peeled (per day) is Rs. 450.00 The minimum rate of wages applicable to a worker engaged in the following piece- rate work are as follows: Pruning per hectare – Rs. 9500.00 Draining a linear 10m of drain 18 x18 – Rs. 180.00 Annual weeding per hectare – Rs. 8500.00
Wages Boards for the Janitorial Service Trade	Part (B) Overtime rate: In respect of each hour of work in excess of the normal working day, the minimum over time rate shall be one and half times the amount which ascertained by the daily wage dividing by 8.

Click here to view **2013 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: John Wilson Partners

LOOKING BACK

TAIWAN
10 DEC 2013

Amendments to the "Regulations on the Authorization and Administration of Employers Hiring Foreign Workers"

The Council of Labour Affairs ("CLA") announced in the Lao-Zi-Guan-1020507263 Circular amendments to simplifying the application procedure for foreign workers working in Taiwan, imposing obligations on employers who hire foreign spouses (denizen spouses) to verify their residency documents, allowing more opportunities for foreign independent professionals to work in the Free Economic Pilot Zones of Taiwan, shortening the waiting period and simplifying the process for employers who wish to hire foreign workers, etc. Other than the aforementioned process simplification for employers, which [entered] into effect on 1 January 2014, all other stated amendments entered into effect immediately upon promulgation.

More...

TAIWAN
11 DEC 2013

Amendments to the Labour Standards Act regarding child workers

Several articles in the Labour Standards Act ("LSA") were revised to provide better protection on child workers. The amendments explicitly require employers who wish to hire workers below the age of 15 to obtain prior approval from the competent authorities, and that child workers shall not work over 40 hours a week. Moreover, the amended provisions now authorize the central authority to stipulate the working standards for child workers, and the LSA now covers workers who are less than 15 years old but do not have a formal employment relationship with their employers. Penalties relevant to the above requirements were also provided in the LSA.

More...

TAIWAN
11 DEC 2013

Amendments to the Act of Gender Equality in Employment regarding menstruation leaves

Prior to the amendment, the number of menstruation leaves is counted together with the number of standard sick leaves, resulting in a *de facto* reduction of the number of the annual standard sick leaves for female workers. In light of this, Article 14 of the Act of Gender Equality in Employment was revised to separately count the two kinds of leaves. Thereafter, menstruation leaves may not be counted against the standard sick leave allowance as long as such leaves do not exceed three days per year. Subsequent menstruation leave taken beyond this limit will count as standard sick leave days.

More...

TAIWAN
25 DEC 2013

Amendments to the Employment Services Act

Certain provisions of the Employment Services Act were amended, including imposing more management responsibilities on private employment service institutions, specifying nursing work as one of the types of employment open to foreign workers in Taiwan, simplifying the notification process whenever there is foreign worker missing and untraceable, providing the requirements and circumstances where employers may apply for replacement of their nursing workers, as well as requiring agents of employers, foreigners and other relevant personnel not to evade, impede, or refuse inspections by government authorities, etc.

More...

TAIWAN
1 JAN 2014

Increase of the minimum wage

On 1 January 2014 the hourly statutory minimum wage increases from NT$ 109 per hour to NT$ 115 per hour.

More...

TAIWAN
1 JAN 2014

Nursing staffs who work in operating rooms, emergency rooms, ICUs, delivery rooms, special treatment rooms or on organ transplant teams are now no longer part of the "make-your-own-hour" system

According to the Lao-Dong-2-10101130829 Circular issued by CLA on 30 March 2012, nursing staffs who work in the operating rooms, emergency rooms, ICUs, special treatment rooms, or on organ transplant teams are now excluded from the "make-your-own-hour" system under Article 84-1, Paragraph 1, Sub-paragraph 1 of the LSA, which means (*con't*)

TAIWAN 1 JAN 2014

while they are no longer being able to set their own working hours, regular days off, [days off for] national holidays and female workers' night work through an agreement with their employers, they now fall under the default requirements provided by the LSA. On a side note, certain health workers, such as clean-up for surgery theatres and blood bank workers have already been excluded from the "make-your-own-hour" system since 30 March 2012.

More...

TAIWAN 8 JAN 2014

Amendment to Article 29 of Labour Insurance Act

Prior to the amendment, Article 29 of the Labour Insurance Act only provides that "title to any kind of insurance benefit" may not be assigned, offset, attached or mortgaged; so in practice, insurance benefits deposited with the bank or postal account of the beneficiary, such as pensions, may still be subject to offset, attachment or mortgage to the detriment of the retiree or his/her surviving relatives. In light of this, such article was amended to allow a special account specifically for the deposit of pension payments to be set up, which may not be later offset, attached, mortgaged or compulsorily enforced.

More...

TAIWAN 13 JAN 2014

The LSA will cover workers hired by building management committees

As announced by the CLA in its Lao-Dong-1-10301300004 Circular, from 1 July 2014 onwards, the LSA will be applicable to workers hired by a building management committee that has been established or registered according to the Condominium Administration Act. For workers hired by the building management committee that has not been established or registered according to Condominium Administration Act, the LSA will apply from 1 January 2015.

More...

TAIWAN 15 JAN 2014

Amendments to the Labour Pension Act

Several articles under the Labour Pension Act were amended, including extending the labour pension system to self-employed workers and foreign spouses (denizen spouses) who reside and work in Taiwan, authorizing the Bureau of Labour Insurance to unilaterally and retroactively correct or adjust the monthly contribution if it finds that the employee's salary that the employer reported is incorrect, requiring employers to keep relevant documents for a certain period of time, allowing re-employed workers to enrol in the labour pension system again even though he/she has received pension payments before, establishing the early retirement mechanism for disabled workers, loosening the criteria for the establishment of an annuity insurance scheme and allowing workers to elect between individual pension system and annuity insurance scheme, etc. The amendments entered into effect immediately.

More...

TAIWAN 17 JAN 2014

Clarification regarding Article 43 of the Labour Union Act

Article 43 of the Labour Union Act provides that in case where a labour union has violated a statute, regulation or "union charter", the competent authority may issue a warning or order it to improve within a given period. The competent authority may also order the labour union to suspend a part or all of its business while making the relevant improvements within the stipulated period if the authority deems it to be necessary. The CLA further announced in the Lao-Zi-1-1020127909 Circular that the "union charter" only refers to the contents of charter, not the low-level regulations so drafted pursuant to the authority bestowed by the charter (e.g. guidelines, notes). This clarification is effective immediately.

More...

TAIWAN 17 JAN 2014

The LSA will apply to workers at private schools who are not part of the official staff list provided to the competent authority for approval or recordation (teachers are not included)

The CLA announced in its Lao-Dong-1-10301300055 Circular that from 1 August 2014 onwards, the LSA will be applied to workers at private schools who are not part of the official staff list reported to the competent authority for approval or recordation. Teachers whose roles are focused on teaching jobs do not fall under this new rule.

More...

LOOKING BACK

TAIWAN
12 MAR 2014

Workers' dormitories are considered as the workers' private domain

The Taiwan Supreme Court held in the 103-Tai-Shang-Zi-415 Civil Judgment that workers' dormitories or common living areas are not considered as part of the work site. Even though the work rules may prescribe automatic termination for battery (other than in self-defense) once such charge is proven, such rules are only intended for physical violence in the workplace and not the employee's behavior outside of work. As such, such rule does not apply to a fight in the workers' dormitory.

More...

TAIWAN
20 MAR 2014

Employers that conduct domestic recruitments according to the Employment Services Act and the Regulations on the Permission and Administration of the Employment of Foreign Workers shall be registered, and their advertisements shall be printed in clear and readable font

The Ministry of Labour's letter with Ref. No. Lao-Dong-Fa-Guan-Zi-1031811592 dated 20 March 2014 states that starting from that date, all employers conducting recruiting in Taiwan pursuant to Article 47 of the Employment Services Act and Article 12 of the Regulations on the Permission and Administration of the Employment of Foreign Workers will be required to register at the local public employment services bureau where its place of work is located before publishing ads on employment information websites established by the central competent authority pursuant to the Employment Services Act. The ads must be in clear and readable font and also published for three days on the local pages of any national newspaper.

More...

TAIWAN
25 MAR 2014

Approval for recognition of lawyers employed in the legal services industry as workers defined under Article 84-1 of the Labour Standards Act

In the Lao-Dong-Tiao-San-Zi-1030130641 Letter dated 25 March 2014, the Ministry of Labour approved of the proposal to recognize lawyers employed in the legal services industry as workers defined under Article 84-1 of the Labour Standards Act, effective 1 April 2014.

More...

TAIWAN
28 MAR 2014

Revisions to certain provisions of the Regulations on the Permission and Administration of the Employment of Foreign Workers

In its Circular with Ref. No. Lao-Dong-Fa-Guan-Zi-1031811753 dated 28 March 2014, the Ministry of Labour ordered the amendment of certain provisions of the Regulations on the Permission and Administration of the Employment of Foreign Workers to clarify certain aspects of the rules regarding the hiring and management practice of foreigners:

- The eligibility, required documents and time required in regards to the employer's application to the competent authority for replacement in the event a foreign worker goes missing.
- Employers may hire foreigners for fishing work, but will have to make living arrangement services once back onshore.
- Additional service personnel shall be present if an employer hires 10 or more foreigners in nursing or domestic caretaker work.
- In addition to the local competent authority, the employer shall also contact the National Immigration Agency within three days of a foreign worker missing work for three continuous days without contact or upon the termination of the employment.

More...

TAIWAN
3 APR
2014

The term "[e]mployers concurrently engaged in labour services" under the Labour Insurances Act refers to those who are either registered as the responsible persons on the company registration or represent the company to the public while also providing labour – it does not include all other "responsible persons" under the law

In its Letter with Ref. No. Lao-Dong-Bao-Er-Zi-1030140112 dated 3 April 2014, the Ministry of Labour clarified that the term "[e]mployers concurrently engaged in labour services" under Article 8, Paragraph 1, Subparagraph 3 of the Labour Insurances Act who may participate in the labour insurance scheme only refers to an employer who actually contributes labour while representing the company to the public or is listed as a responsible person on the company registration; it does not include the other "responsible persons" defined in other laws (which include all directors, registered partners or designated managers who do not represent the company to the public).

More...

TAIWAN
14 APR
2014

Amendments to the "Regulations for Implementing Labour-Management Meetings"

The Ministry of Labour in its Circular with Ref. No. Lao-Dong- Guan-Er-Zi-1030125573 dated 14 April 2014 and the Ministry of Economic Affairs in its Circular with Ref. No. Jing-Gong-Zi-10304601750 ordered amendments to all 25 provisions of the "Regulations for Implementing Labour-Management Meetings", effective on the same day of promulgation. The key points in the amendments include prescribing a certain period of time for the employer to choose a representative for the Labour-Management Meetings (Articles 4, 5); discussions to any adjustments to the work rules may be done through the Labour-Management Meetings (Article 13); the representative for the workers' side shall be granted official leave for attending the Labour-Management Meeting (Article 12), as well as a prohibition on any discriminatory treatment against the representative for the workers' side (Article 12).

More...

TAIWAN
25 APR
2014

Amendments to the "Enforcement Rules of Employment Service Act"

The Ministry of Labour in its Circular with Ref. No. Lao-Dong- Fa-Guan-Zi-1031812542 dated 25 April 2014 ordered amendments to Articles 9-1, 11 and 12 of the Enforcement Rules of Employment Service Act. The main changes include clarifications to the definition of "has been permitted to stay therein" under Article 48 of the Employment Services Act, and the definition of "one permitted to live with his/her [direct] lineal relative who has a registered domestic residence in the Republic of China" under Article 51. Besides, Article 62, Paragraph 1 of the Employment Service Act provides that "[t]he competent authorities, the entry and exit administrative authority, the police, coastal patrol or the judicial police officers may appoint personnel to carry certificates and conduct inspections in places where foreign worker(s) engage(s) in work or places suspected of having foreign worker(s) illegally engaged in work therein." The amended Enforcement Rules of Employment Service Act clarifies the "certificates" listed under Article 62, Paragraph 1 of the Employment Service Act.

More...

TAIWAN
30 APR
2014

The employment contract under the Labour Standards Act does not completely preclude the applicability of the freedom of contract principle. The employer and the employee may both apply private law to meet their mutual interests

The Taiwan Supreme Court held in the 103-Tai-Shang-Zi-838 Civil Judgment that even in cases where the employer contracts with employee to have the employee engage in activities outside of business hours that are different from the employee's normal work and qualify under Article 84 of the Labour Standards Act as supervisory, intermittent, or of a similar type that are not found under the same Article, if the employee's agreed compensation has been fairly negotiated and realized,

(*con't*)

TAIWAN
30 APR
2014

took in consideration of the balance of the employer's interests with that of the employee's so that one side's interests are not gained at the expense of the other's, took into account all subjective and objective circumstances, as well as having considered whether such compensation is reasonable in the market and current public understanding, the law would not prohibit such an arrangement.

More...

TAIWAN
21 MAY
2014

If public holidays specified under the Labour Standards Act fall on a regular day off or a day of rest, such off days shall be made up during other working days.

The Ministry of Labour Circular with Ref. No. 103-Lao-Dong-Tiao-San-Zi-1030130894 stated that if the public holidays as stated in the Labour Standards Act fall on a regular day off or a day of rest on which the employee is not required to work, such off days shall be made up during other working days . This shall enter into effect on 1 January 2015.

More...

TAIWAN
28 MAY
2014

Presidential executive order amending the "Labour Insurance Act"

The main points of the amendment to Article 32 of the Labour Insurance Act as promulgated on 28 May 2014 are:

1. Maternity benefits increased from 30 days' average monthly insurance salary to 60 days' average monthly insurance salary.
2. Maternity benefits for multiple births or multiple premature births shall also be paid out proportionally.
3. If the insured meets the eligibility requirements for certain social insurance maternity benefits or is a member of the military, the government or public school teacher eligible for national maternity benefits, only one benefit source may be chosen. However, if the insured is enrolled with farmers' health insurance, the above does not apply.

More...

TAIWAN
4 JUN
2014

Presidential executive order amending the "Act for Worker Protection Against Mass Redundancy".

The Presidential Order Ref. No. Hua-Zhong-Yi-Yi-Zi-10300085331 promulgated the amended Article 2 of the Act for Worker Protection of Mass Redundancy: In Paragraph 1, Subparagraph 4, "same factory" and "single-day layoff cap" conditions are inserted; due to the large growth and the decentralized organizational structure of business entities, if the same business entity lays off a certain number of employees within 60 days, the Act shall also apply.

More...

TAIWAN
4 JUN
2014

Presidential executive order amending the "Employment Insurance Act"

The Presidential Order Ref. No. Hua-Zhong-Yi-Yi-Zi-10300085181 released the amended Article 22 of the Employment Insurance Act and this shall enter into effect on 1 July 2014: The original provision states that insurance benefits may not be seized, transferred, rescinded or pledged. However, insured individuals who have had competent authorities remit insurance benefits into accounts at financial institutions have later encountered creditors who petition to seize those benefits, thereby causing the insured individual to face greater economic troubles. To close this loophole, the law requires that the insurance benefits that have been paid to the insured may not be seized, transferred, rescinded or pledged. Besides, the insured may setup a special account (with supporting documents issued by the government) that will be specifically used to deposit insurance benefits.

More...

LOOKING BACK

TAIWAN
4 JUN 2014

Presidential executive order amending the "Collective Agreement Act".

The Presidential Order Ref. No. Hua-Zhong-Yi-Yi-Zi-10300085171 released the amended Article 6 of the Collective Agreement Act and this shall enter into effect on 1 July 2014: Taiwan had no express measures to resolve dilatory bargaining deadlocks. As a result, Paragraph 5 is inserted to expressly state that "if collective bargaining between the employer and the employee lasted for more than six months, and it is found that there were violations of [Article 6] Paragraph 1 and Paragraph 2 , Subparagraph 1 or 2 with respect to unreasonable refusal of negotiation, the city or county competent authority may submit the matter to arbitration unless the parties have had a separate agreement in place.

More...

TAIWAN
4 JUN 2014

If the employee is found to be incompetent for the position, while the employer may notify the employee of the termination of the employment, the termination must be a last resort measure before the termination may be carried out.

The Taiwan Supreme Court held in the 103-Tai-Shang-Zi-1116 Civil Judgment that termination of an employee for incompetence under Article 11, Paragraph 5 of the Labour Standards Act requires an employer to have exhausted all possible measures under the Labour Standards Act in hopes of an improvement but to no avail before the employment agreement may be terminated "as a matter of last resort".

More...

TAIWAN
18 JUN 2014

Presidential executive order amending the "Act of Gender Equality in Employment".

The Presidential Order Ref. No. Hua-Zhong-Yi-Yi-Zi-10300092631 promulgated the amended Articles 2, 3, 38, 38-1 and 40 of the Act of Gender Equality in Employment, which go into effect on the same day:

1. Apprentices, candidate apprentices and interns are now be protected under the Act (Article 2).
2. Entities making use of dispatched employees are considered employers or employees protected under Articles 8 (educational training), 9 (welfare measures), 12 (sexual harassment), 13 (prevention of sexual harassment), 18 (breast feeding times), 19 (work hour adjustment) and 36 (unfavourable administrative decisions)
3. Increase in penalties for employers violating rules promoting gender equality in employment and prohibition of retaliatory measures against complainants - from between NT$10,000 and NT$100,000 to between NT$20,000 and NT$300,000 (Article 38). The competent authority will now announce the name of the company and the name of the statutory representative for employers found in violation of the above and order the employer to improve within a certain period of time; continuous penalties may be imposed for employer's failure to improve (Article 38-1).

More...

TAIWAN
2 JUL 2014

The voluntary retirement rules under Article 53 of the Labour Standards Act are minimum standards; if the company provides better terms and those terms do not conflict with the law, then those terms shall prevail.

The Taiwan Supreme Court held in the 103-Tai-Shang-Zi-1310 Civil Judgment that the voluntary retirement rules under Article 53 of the Labour Standards Act are minimum standards; if the company provides better terms and those terms do not conflict with the law, then those terms shall prevail. As such, although an employer's retirement rules did not distinguish between beneficiary retirement and ordinary statutory retirement, since the beneficiary retirement parts do not conflict with the law, those terms are still effective.

More...

LOOKING BACK

TAIWAN
10 JUL
2014

The Executive Yuan passed draft amendments to several provisions of the "Employment Services Act"

In consideration of actual practices, the spread of employment services work and the management of hiring foreign individuals, the main points of the draft amendments are as follows:

1. Prohibited matters for employers or private employment service entities in recruiting, hiring or engaging in employment service business (Articles 5, 40 and 57).
2. Foreign manpower agency companies acting as an agent to facilitate foreigners working in a certain positions to work in Taiwan shall require a permit from the central competent authority (Article 41-1).
3. Religious activities are excluded from the employment restrictions in the Act (Article 46).
4. Foreigners who are approved by the Ministry of Education to be hired for teaching and/or conduct academic research at Taiwan universities no longer need permits. (Articles 48, 51 and 53).
5. Foreign students, expatriate students, other students of Chinese descent, refugees who have been granted residency, and foreigners who are living together [with a Taiwanese person] based on a direct familial relationship may apply for work permits with the central competent authority (Articles 50 and 51).
6. For foreigners who are unable or cannot fully pay the repatriation/deportation fee, the money shall be paid out from the Employment Security Fund (Article 60).
7. For effective deterrence and proportional punishment, in addition to fines based on the number of individuals employed or harboured by the employer, additional fines and criminal liabilities shall be imposed on acting as illegal intermediaries for foreigners (Articles 63 and 64).
8. To cause private employment services entities to return any excess fees or unjust benefits that they have received, failure to return such unjust enrichment within a specified deadline may result in an order to suspend business (Article 69).

More...

TAIWAN
30 JUL
2014

Employers may not arbitrarily terminate employment agreements while the employee is under medical care for injuries incurred from occupational hazards

The Ministry of Labour stated that Article 13 of the Labour Standards Act prohibits the termination of employees in medical care as a result of occupational hazards unless the employer is otherwise allowed to do so under other laws. As employees so wrongly terminated is still entitled to statutory benefits for injuries caused by occupational hazards, to secure their wages, retirement pensions and severance payments, a proposal is made to amend Article 28 to put pension and severance payments on the same level as first pledged goods in terms of creditor priority. The Ministry of Labour also opined on the difficulties in distinguishing work hours and resting hours for foreigners providing domestic help, which renders such employment outside the scope of the Labour Standards Act and completely on the terms of the employment contract. As a result, the Ministry of Labour has proposed a draft "Domestic Labour Protection Act" to the Executive Yuan for review; measures to provide the rights of domestic labourers will be discussed before the proposed Act is passed.

More...

LOOKING BACK

THAILAND

APR

2014

Labour Protection Act 2008

In 2008, the Labour Protection Act was amended to provide that where a business operator authorizes a person to provide personnel to work (i.e., not a job placement business), and such work is part of the production process or business under the responsibility of the business operator, and whether or not such person will supervise the performance of such work or be responsible for payment of wages to those who do such work, the business operator shall be deemed the employer of those engaged to do such work (§11/1). The law goes on to provide that such business operator must arrange for an employee hired for wages who works in the same manner as an employee under a direct employment contract to, without discrimination, receive fair benefits and welfare. Since the amendment became effective, business operators have felt some uncertainty in how to comply with the requirement to provide fair benefits and welfare, particularly those business operators who make extensive use of outsourcing companies to provide workers. The uncertainty primarily arose from interpretation of the word ***fair***—what would constitute fair benefits and welfare? Must they be equal in every way? What about merely similar? Could higher wages offset lower benefits?

In April 2014, the Supreme Court of Thailand, in ruling on a case appealed from the Labour Court, held that a business operator (who is regarded as the employer under section 11/1) must arrange for outsourced workers to receive benefits and welfare that are ***the same*** as those received by the employer's regular employees. This ruling is significant, as it will likely serve to eliminate the cost savings previously realizable through worker outsourcing arrangements, thus reducing the prevalence of such arrangements in the Thai employment landscape.

LOOKING BACK

VIETNAM
1 JAN 2014

New Minimum Salaries Applicable to Foreign Invested Enterprises

On 14 November 2013 the government issued Decree No. 182/2013/ND-CP which provides for new regional minimum salaries of employees, including employees of foreign invested enterprises. Decree 182 replaces Decree No. 103/2012/ND-CP (of 4 December 2012).

Decree 182 provides for four regional minimum salaries: VND 2,700,000, VND 2,400,000, VND 2,100,000 and VND 1,900,000, depending on which region the relevant enterprise is located in.

The new regional minimum salaries provided for in Decree 182 apply from 1 January 2014, and are paid to untrained employees performing the simplest of jobs. As from 1 January 2014, employers are required to adjust the minimum salaries to be paid to their employees if those stated in the relevant contracts are lower than the new minimum salaries. Employers are encouraged to pay their employees higher salaries than the regional minimum salaries.

More...

VIETNAM
10 JAN 2014

Official Guiddlines on Payment of Trade Union Fee

To provide guidelines of the provisions of the Law on Trade Union regarding the fee payable to the trade union, on 21 November 2013 the Government issued Decree No. 191/2013/ND-CP ("Decree 191") providing detailed regulations on trade union financial matters. To be effective from 10 January 2014, Decree 191 has clarified the status of businesses where the trade union has not been set up regarding the obligation to pay the trade union fee.

Under Decree 191 it is now clear that all businesses, including foreign-invested enterprises, must pay the fee even there is no trade union operating at the businesses. It is expected that further guidelines from the Vietnam Trade Union will guide how the fee will be paid in case there is no trade union. We note that by law, the setting up of a trade union is rested on the employees. The employer only has an obligation to facilitate the setting up process.

More...

VIETNAM
16 JAN 2014

New Decree No. 03/2014/ND-CP of the Government dated 16 January 2014 provides guidelines on the provisions of the Labour Code on the employment and recruitment processes ("Decree 03") which came into force on 15 March 2014

Under new Labour Code and Decree 03, a foreign-invested enterpreise ("FIE") may recruit its employees directly or through a labour supply company or through a labour outsourcing company. In practice, most FIEs prefer to recruit their employees directly. Decree 03 sets out a recruitment proccess and requires reporting regimes in relation to use of employees by an employer.

More...

VIETNAM
6 MAR 2014

To provide guidelines on the provisions on labour safety of the Labour Code, the Ministry of Labour, Invalids and Social Affairs issued Circular No. 05/2014/TT-BLĐTBXH dated on 6 March 2014 ("Circular 05") promulgating the list of machinery, equipment and materials which are subject to strict requirements on labour safety

Circular 05 lists out 25 items of machinery, equipment and materials that are subject to strict requirements on labour safety. The list includes (among other things) boilers of all types, lifts, bridge cranes, etc. Circular 05 took effect from 1 May 2014, replacing Circular No. 32/2011/TT-BLDTBXH on the same subject.

More...

VIETNAM

28 JUL

2014

Decree 75/2014/ND-CP dated 28 July 2014 issued by the Government of Vietnam guiding the implementation of the Labour Code on recruitment and management of Vietnamese individuals working for foreign individuals and foreign owned entities and orgnisations in Vietnam

The new regulations set out the rules and procedures for recruitment of Vietnamese employees working for certain non-profit foreign organizations including, among others, diplomatic agencies, offices in Vietnam of foreign news bureau and broadcasting companies, international organizations and representative offices

More...

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