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中国动态： 双语版亚洲雇佣法：季评

2013-2014

第八期：2014年第四季度

Asia Employment Law: Quarterly Review

2013-2014

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引言 INTRODUCTION

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亚洲法律顾问与人力资源顾问的工作往往涉及多个司法辖区。准确把握雇佣相关法律发展情况既是重中之重又充满挑战。

为协助阁下获取最新法律动态，孖士打律师行发布电子期刊亚洲雇佣法：季评，内容涵盖亚洲15个司法辖区，并将每季更新。

在第八期中，我们将回顾并评点2014年第四季雇佣法发展情况，同时列出一些2015年立法、咨询、政策及判例法方面的预期重大变革。

孖士打与亚洲地区15家律师行长期开展跨境合作，与对方律师建立了密切的工作关系，本刊正是这一努力的结果。欲获悉撰稿律师及律师行名单，请浏览连络人页面。

我们衷心希望本刊对阁下有所助益。

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 eighth edition, we flag and provide comment on anticipated employment law developments during the last quarter of 2014 and highlight some of the major legislative, consultative, policy and case law changes to look out for in 2015.

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.

顺颂商祺

With best regards,



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LOOKING BACK**《劳务派遣暂行规定》开始生效**

人力资源和社会保障部于2014年1月24日正式公布了《劳务派遣暂行规定》（“《暂行规定》”），该规定将于2014年3月1日起正式实施。作为《劳动合同法（修正案）》的重要配套法规之一，《暂行规定》进一步角色化劳务派遣作为一种辅助性用工方式对主流用工模式的补充，强调了劳务派遣用工比例的上限，明细了将劳务派遣工退回劳务派遣单位的法定情形和限制条件，并确认了劳务派遣用工比例法定限制的过渡期限。

[更多...](#)**Interim Provisions on Labour Dispatch take effect**

Wording: 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...](#)中国
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北京出台关于劳动争议案件法律适用问题研讨会会议纪要（二）

北京市高级人民法院和北京市劳动争议仲裁委员联合发布《关于劳动争议案件法律适用问题研讨会会议纪要（二）》（“会议纪要”）。尽管会议纪要并非具有法律约束力的官方文件，但北京地区的法院和劳动争议仲裁委员会在司法实践中将遵照执行。会议纪要进一步明确了雇主们面临的一些具有争议性的雇佣法律实践问题，例如无固定期限劳动合同的签订和未及时签订书面劳动合同导致的双倍工资罚则等。

[更多...](#)**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...](#)中国
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上海出台劳务派遣用工单位调整用工方案备案办法

上海市人力资源和社会保障局于2014年7月7日公布了《上海市劳务派遣用工单位调整用工方案备案办法》，明确要求上海市范围内的在2014年3月1日前使用被派遣劳动者数量超过本单位用工总量10%的用工单位，必须于2014年10月31日前向其所在地的区（县）人力资源和社会保障局办理备案手续，具体说明2年内调整降低比例的时间进度安排。

[更多...](#)**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.

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沈阳市集体合同条例

沈阳市人民代表大会常务委员会于2014年10月22日公布了《沈阳市集体合同条例》，该条例自2014年11月15日起施行。该条例规定可通过集体协商的事项包括保险福利、奖惩、裁员等事项，并规定集体合同草案经职工代表或全体职工半数以上同意，即获得通过，经双方首席代表签署的集体合同须经人力资源和社会保障部门审查，无异议的方可生效。

[更多...](#)

Shenyang Regulation on Collective Contract

The Shenyang Regulation on Collective Contract was issued by the Standing Committee of Shenyang People's Congress on 22 October 2014, and came into force as of 15 November 2014. The Regulations provides that the social insurance and benefits, reward and disciplinary actions, and mass layoff can be negotiated by collective bargaining. Before execution, the draft of a collective contract requires consents of at least half of the employees or the employee representatives. The executed collective contract becomes binding upon approval of the local labour bureau.

[More...](#)

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江苏省人力资源和社会保障厅关于调整全省最低工资标准的通知

江苏省人力资源和社会保障厅于2014年10月23日发布《关于调整全省最低工资标准的通知》，从2014年11月1日起调整江苏全省月最低工资标准调整为：一类地区1630元；二类地区1460元；三类地区1270元。非全日制用工小时最低工资标准调整为：一类地区14.5元；二类地区12.5元；三类地区11元。企业支付给顶岗实习学生的实习报酬和勤工助学学生的劳动报酬按照小时计酬，并不得低于当地非全日制用工小时最低工资标准。

[更多...](#)

Notice on Minimum Wage in Jiangsu

The Notice on Minimum Wage in Jiangsu was issued by the Human Resource and Social Security Bureau of Jiangsu Province on 23 October 2014. As of 1 November 2014, the monthly minimum wage is increased to RMB1630 in developed area, and the hourly minimum wage applicable to non-full-time employee in developed area is increased to RMB14.5.

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广东省职工生育保险规定

广东省人民政府于2014年11月6日正式出台《广东省职工生育保险规定》，并自2015年1月1日起施行。根据规定，生育保险费由用人单位按月缴纳。职工个人不缴纳。用人单位按照不超过本单位上月职工工资总额1%的比例缴纳生育保险费。用人单位上月职工工资总额超过所在地级以上市上年度在岗职工月平均工资的3倍乘以本单位职工人数之积的，按照所在地级以上市上年度在岗职工月平均工资的3倍乘以本单位职工人数之积计算。用人单位已经按时足额缴纳生育保险费的，其职工享受生育保险待遇；职工未就业配偶享受生育医疗费用待遇。

[更多...](#)

Regulation on Maternity Insurance in Guangdong

The new Regulation on Maternity Insurance in Guangdong was issued by the People's Government of Guangdong Province on 6 November 2014, and will come into force as of 1 January 2015. Employers in Guangdong will be required to pay difference when employee contracted salary exceeds salary received from insurance fund during maternity leave.

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