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Asia Employment Law: Quarterly Review

2014-2015

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INDEX:

INTRODUCTION

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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.

In this ninth edition, we flag and provide comment on anticipated employment law developments during the first to third quarters of 2015 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

19 DEC 2014 & **11 FEB** 2015

FWC Full Bench Hands Down Key Ruling on Anti-Bullying Provisions

Under Part 6-4B of the *Fair Work Act 2009* (Cth) (FW Act), workers may bring applications for anti-bullying orders before the Fair Work Commission (FWC). The tribunal has power to make orders that bullying conduct cease or not occur in future, where a worker can show that he/she has been subjected to repeated unreasonable behaviour by another individual or group (although reasonable management action does not constitute bullying).

In *Bowker and Others v DP World Melbourne Ltd; Maritime Union of Australia and Others* [2014] FWCFB 9227, a five-member Full Bench of the FWC made several important findings in a test case on the anti-bullying provisions. The case relates particularly to whether comments made by workers on social media can constitute bullying of another employee while he/she is 'at work' within Part 6-4B. The Full Bench held that the notion of being at work: ' is not limited to the confines of a physical workplace. A worker will be 'at work' at any time the worker performs work, regardless of his or her location or the time of day.' The Full Bench went on to find that comments posted on social media, even outside work hours, could fall within the concept of bullying of an employee 'at work' – as long as the employee to whom the comments were directed was at work when he/she read them.

The test case is continuing, and will also consider the extent to which conduct by trade union officials who enter workplaces can be the subject of anti-bullying orders.

In a more recent decision, *Re P.K.* [2015] FWC 562, the FWC followed previous authority in dismissing the bullying claim of a worker no longer employed in the relevant workplace, on the basis that a former employee could not be at risk of further bullying (one of the requirements for the issuing of an anti-bullying order). In doing so, however, the tribunal member left open the possibility of a sacked worker being able to pursue a bullying claim where they were actively taking steps to dispute their dismissal (e.g., through an unfair dismissal or general protections claim).

AUSTRALIA

19 DEC 2014 & **24 JAN** 2015

Productivity Commission Review of the Fair Work Act Begins

The Coalition Government released the Terms of Reference for a wide-ranging review of the FW Act and related legislation, just before Christmas. The Productivity Commission, which will conduct the review, then released a series of issues papers early in the new year. The issues papers indicate that several long-standing features of Australia's labour relations framework will come under scrutiny in the review process, including:

- Minimum wage levels and the FWC process for setting the minimum wage;
- The regulation of employment conditions through statutory minimum standards and comprehensive industry awards;
- Penalty rates for overtime and weekend work, including whether these should be left to the market to determine.

These and other issues to be addressed in the review have been the subject of consistent employer concerns, so the inquiry holds some promise for recommendations aimed at enhancing workplace flexibility and competitiveness. After receiving submissions from stakeholders, the Productivity Commission will issue a draft report mid-year and a final report in November. A major question remains as to how far the Government will be prepared to proceed with substantial deregulation of workplace relations (heading into an election year in 2016), as this remains a politically contentious issue.

More...

AUSTRALIA

22 DEC 2015

Full Federal Court Confirms Contractual Enforceability of Workplace Policies

In *Romero v Farstad Shipping (Indian Pacific) Pty Ltd* [2014] FCAFC 177, a Full Court of the Federal Court upheld an employee's breach of contract claim based on her employer's failure to deal with a bullying complaint in accordance with its Workplace Harassment and Discrimination Policy.

Upon return from a voyage at sea, the employee, a second officer, made the complaint against the ship's master alleging he had subjected her to relentless and targeted bullying.

Con't

LOOKING BACK

AUSTRALIA 22 DEC 2015

In the course of investigating the complaint, the employer questioned the employee about the captain's allegations as to her competence, capacity and temperament. The employee argued that in doing so, the employer had not investigated her complaint properly under the terms of the Policy; and that as her employment contract stated that all Farstad Shipping policies were to be observed at all time, the employer had breached the contract.

The Full Federal Court, overturning the decision at first instance, held that the Policy formed part of the employment contract because the language used made it clear that there was an expectation of mutual obligations on the part of employer and employee. Further, Farstad breached the Policy by purporting to carry out an investigation into the employee's complaint when its main investigation was into the captain's concerns about her conduct. The matter was remitted to a judge for final determination.

This decision is consistent with previous case law, holding that workplace policies can have contractual effect where they are incorporated into an employment contract through sufficiently clear and certain language. Employers therefore need to be careful to avoid incorporation of policies, such as those relating to grievance resolution, that may give rise to an action for breach of contract if they are not closely followed in practice.

More...

AUSTRALIA 8 JAN 2015

Full Federal Court Ruling Removes Restrictions on State Public Sector Enterprise Agreements

In *United Firefighters' Union of Australia v Country Fire Authority* [2015] FCAFC 1, the Full Federal Court overturned an earlier decision which had found that several clauses in the CFA's enterprise agreement were unconstitutional and therefore invalid. The relevant clauses specified minimum recruitment numbers for career firefighters over a six-year period. Although it had agreed to the inclusion of those provisions in the agreement (made under the FW Act), the CFA later argued that they invalidly intruded on the capacity of the State of Victoria to function as a government (in breach of long-established constitutional principles).

However, the Full Court held that these principles were not infringed in this case, because the Victorian Government had voluntarily agreed to the restrictions imposed by the relevant clauses. There was therefore no impairment of the State's capacity to function. The decision clarifies that enterprise agreements, albeit a form of Commonwealth regulation, can validly cover areas that are otherwise reserved for the States under the applicable constitutional principles.

AUSTRALIA 2 FEB 2015

Government Abandons Expanded Paid Parental Leave Scheme

Prime Minister Tony Abbott announced, in a speech to the National Press Club, that the Government would no longer be pursuing one of its key 2013 election commitments: an expansion of the Paid Parental Leave (PPL) Scheme, from the current provision for 18 weeks' paid leave at the national minimum wage, to 26 weeks' paid leave at an employee's actual wage.

The PPL commitment was jettisoned in an attempt by the Prime Minister to recalibrate the Government's policy agenda, following an unpopular federal budget in 2014 and continuing obstruction of legislation by Labor, Greens and cross-bench Senators in federal Parliament. The proposed expansion of taxpayer-funded PPL was also unpopular in a climate of cuts to government services and expenditure in other areas.

The announcement provides clarity for employers, many of which have adopted their own PPL schemes supplementing the entitlements for employees under the existing government scheme.

AUSTRALIA 10 FEB 2015

Full Bench of the FWC Clarifies Availability of Protected Industrial Action

In *Esso Australia Pty Ltd v AMWU, CEPU and AWU* [2015] FWCFB 210, a Full Bench of the FWC determined that a union may seek a ballot on proposed industrial action, even if some of the claims it is making for a new agreement would not be 'permitted matters' under the FW Act. The unions in this case were attempting to have certain restrictions on the engagement of contractors included in new enterprise agreements (in previous decisions, it has been held that such restrictions are not permitted matters).

Con't

LOOKING BACK

AUSTRALIA

10 FEB 2015

The question then arose whether in seeking the inclusion of the proscribed clauses, the unions were precluded from taking protected industrial action on the basis that they did not meet the requirement in section 443(1)(b) of the FW Act that they must be 'genuinely trying to reach agreement'.

The Full Bench held that the pursuit of non-permitted claims is relevant to the test set out in section 443(1)(b), but is not determinative of the issue. Other factors are also relevant, including whether there is legal clarity as to whether a particular clause relates to a permitted matter or not. In this case, the unions had not pushed hard on the proposed contractor restrictions and in fact had formulated an alternative claim which was capable of including only permitted content. The process for obtaining employee approval of proposed industrial action through a secret ballot should therefore be available.

The decision is also important in the context of the *Fair Work Amendment (Bargaining Processes) Bill* currently before federal Parliament (this Bill was passed by the House of Representatives on 10 February 2015). The Bill proposes to impose new restrictions on protected industrial action, including that bargaining claims not be excessive or adversely affect productivity. Following the *Esso Australia* decision, a leading employer organisation (Australian Industry Group) is lobbying the Government to have a new provision inserted in the Bill precluding the taking of protected industrial action in support of claims for non-permitted matters in an agreement.

AUSTRALIA

22 APR 2015

Termination of Aurizon Enterprise Agreements Signals Change of Approach by Fair Work Commission

In *Aurizon Operations Ltd; Aurizon Network Pty Ltd; Australian Eastern Railroad Pty Ltd* [2015] FWCFB 540, a Full Bench of the Fair Work Commission (FWC) terminated 12 expired enterprise agreements during stalled negotiation for replacement agreements. The employer applied for termination of the current agreements against the objection of unions covering the rail operator's workforce. In previous similar cases, the FWC had been reluctant to terminate applicable agreements based on the concern that this would give employers a significant advantage in bargaining for new agreements.

However in *Aurizon*, the FWC Full Bench rejected the notion that it is inappropriate to terminate an enterprise agreement during bargaining. The Full Bench had particular regard to the employer's argument that many of the terms and conditions in the agreements were inefficient and inflexible, the legacy of the former Queensland Government rail operations in place when Aurizon took over the business through a privatisation process.

The significance of the decision is the opening it creates for employers to seek termination of expired enterprise agreements, so that the base for bargaining becomes the lower wages and conditions in the underlying award. However, the decision was appealed to the Full Federal Court of Australia; the appeal has been heard with the Full Court's decision reserved at the time of writing.

More...

AUSTRALIA

1 MAY 2015

New Judicial Approach to Determination of Penalties for Workplace Law Breaches

In *Director, Fair Work Building Industry Inspectorate v CFMEU* [2015] FCAFC 59, the Full Federal Court departed from over 20 years of authority relating to the ability of enforcement bodies such as Fair Work Building and Construction (FWBC) to make joint submissions (with a party subject to a civil prosecution) about the appropriate pecuniary penalty to be imposed for legislative breaches.

The Full Court determined that penalties agreed upon between FWBC and the CFMEU, for the union's unlawful industrial action, were inadmissible. The Full Federal Court held that the fixation of a penalty is the court's role; and that even where an offender nominates the penalty it is prepared to submit to, the court must still fix the appropriate penalty without regard to any agreed amount.

The decision means that FWBC, the Fair Work Ombudsman and other federal regulators can no longer enter into agreements regarding penalties as a basis for settling enforcement proceedings. This is likely to result in many more such proceedings being contested in future. However, the decision has been appealed to the High Court of Australia.

More...

LOOKING BACK

AUSTRALIA 12 MAY 2015

Federal Government Proposes Restrictions on Access to Paid Parental Leave Scheme

In its 2015 Federal Budget, the Government announced that it would restrict access to the publicly-funded Paid Parental Leave (PPL) Scheme for employees who receive equal or greater benefits under employer-provided PPL schemes.

The maximum PPL entitlement under the Government Scheme is 18 weeks' paid leave, following the birth or adoption of a child, at the level of the national minimum wage. However many employees 'top up' the duration and or the quantum of these benefits through employer PPL schemes.

The proposed limits on access to the Government PPL Scheme are set out in the *Fairer Paid Parental Leave Bill 2015*, currently before Federal Parliament. Although the changes are intended to commence on 1 July 2016, there is considerable doubt whether the Government will be able to secure the support of cross-bench Senators for the amending bill.

More...
More...

AUSTRALIA 3 AUG 2015

Court Ruling Clarifies Who is an "Officer" under the Model Work Health and Safety Act

The decision of the Industrial Court of the ACT in *B McKie v Munir Al-Hasani v Kenoss Contractors Pty Ltd (In Liq)* [2015] ACTIC 1 (3 August 2015) provides several key points of clarification on aspects of the *Model Work Health and Safety Act* (WHS Act):

1. A person will not be an officer if he only has operational responsibilities and does not have any 'corporate obligations' such as the capacity to engage contractors or commit corporate funds.
2. A prosecutor must prove beyond reasonable doubt that a person falls within the definition of 'officer' under the WHS Act before there can be any consideration as to whether the person breached the officer's WHS duty.
3. If a person is charged with breaching one WHS duty only, namely the officer's duty, but the court finds the defendant is not an officer, that person cannot be convicted of breaching the worker's duty even if the evidence establishes that the person breached the worker's duty.

A prosecution against a Project Manager, Mr al-Hasani (for WHS breaches arising from the death of a worker) was dismissed because the Chief Magistrate of the ACT was not satisfied beyond reasonable doubt that Mr al-Hasani was an 'officer' under the WHS Act; and he therefore did not owe the officer's WHS duty.

More...

AUSTRALIA 4 AUG 2015

Productivity Commission Draft Report Recommends Major Changes to Australia's Workplace Relations Laws

The Productivity Commission released its *Workplace Relations Framework: Draft Report*, the first significant indication of the likely direction of its inquiry into Australia's *Fair Work Act 2009* (Cth)) and related legislation. The inquiry was established by the Federal Government late last year, and is due to provide a final report by November 2015.

Perhaps surprisingly, the Draft Report gave Australia's workplace relations system an overall endorsement, stating that it is: *'not systemically dysfunctional. Many features work well – or at least well enough ... The key message of this inquiry is that repair, not replacement should be the policy imperative.'*

The key areas in which the Productivity Commission recommended significant changes are award penalty rates for Sunday work in the café/restaurant, hospitality and retail sectors; enterprise bargaining particularly for major projects; the role and processes of the FWC; and unfair dismissal and general protections claims. Importantly, the Draft Report also proposes the creation of a new avenue for varying award conditions at enterprise level: the 'enterprise contract'.

More...

LOOKING BACK

AUSTRALIA

13 AUG 2015

Federal Court Orders Stevedore to Put Hold on Redundancy "Sackings by Text"

In *Maritime Union of Australia v Sydney International Container Terminals Pty Ltd* (Case No QUD/215), the Federal Court of Australia issued an injunction restraining the employer from proceeding with the redundancies of 97 port workers, pending a full hearing and determination of the union's claim of breach of the redundancy consultation requirements in the applicable enterprise agreement (breach of the agreement would amount to a breach of section 50 of the FW Act). The employees had been dismissed by email/text message.

The case highlights the obligations of employers to effect dismissals in accordance with statutory notice and procedural fairness requirements, and to observe applicable statutory/agreement requirements regarding consultation over redundancies.

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY:

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Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

LOOKING BACK

CHINA **16 DEC** 2014

Notice on the Schedule of the Public Holidays for 2015

The State Council approved the schedule of the public holidays for 2015, and the Notice on the Schedule of the Public Holidays for 2015 was issued on 16 December 2014.

More...

CHINA **25 DEC** 2014

Opinion on Fostering Human Resource Outsourcing Services by MHRSS, NDRC and MOF

Wording: The Opinion on Fostering Human Resource Outsourcing Services was jointly issued by the Ministry of Human Resources and Social Security, National Development and Reform Commission, and the Ministry of Finance on 25 December 2014, the Opinion offers incentives for companies to use professional outsourcing services in non-core businesses.

More...

CHINA **31 DEC** 2014

The Ministry of Human Resources and Social Security (MOHRSS) issued on 31 December 2014 a draft regulation on enterprise mass layoff, viz. the Provisions on Enterprise Mass Layoff (Draft for Comments) (the "Draft Provisions"). Public comments are invited to be submitted by 31 January 2015. The Draft Provisions provide the detailed procedures and requirements to implement a layoff plan as well as the employer's obligations if the number of the employees who are terminated by mutual consent exceeds 20.

More...

CHINA **1 JAN** 2015

Notice on Tentative Rules for the Social Insurance Contribution of the Labour Dispatch Employees

Tianjin Labour Bureau and Tian Jin Finance Bureau jointly issued a Notice on Tentative Rules for the Social Insurance Contribution of the Labour Dispatch Employees. According to the Notice, host companies now required to directly pay social insurance contributions for labor dispatch workers instead of through dispatch agencies.

More...

CHINA **1 JAN** 2015

Tentative Procedural Rules For Foreign Nationals Working in China for A Short Period was issued by the Ministry of Human Resources and Social Security and other departments jointly effective from 1 January 2015. According to the Rules, foreign nationals working in China less than 90 days on projects at affiliated branches, subsidiaries, and representative offices may enter China on business visas, and foreign nationals working at non-affiliates must obtain work visas.

More...

CHINA **8 JAN** 2015

Draft Amendment on Shanghai Collective Contract Regulations Sought Public Comments

Shanghai Municipal People's Congress solicits comments on amendments to Collective Contract Regulations in Shanghai and the draft amendments target disputes and negotiation and termination of collective contracts. Public comments are invited to be submitted by 23 January 2015.

More...

CHINA **28 JAN** 2015

Shenzhen Raises Minimum Wage Rate to RMB2030 Effective From 1 March 2015

The Shenzhen Municipality Standing Congress approved a proposal that the monthly minimum wage in Shenzhen is increased to CNY2,030, and for a part-time employee, the standard of hourly minimum wage is increased to CNY18.5, effective from 1 March 2015.

More...

CHINA
1 FEB 2015

Regulation on Employment Service and Employment Management

The Regulation on Employment Service and Employment Management was revised by the Ministry of Human Resources and Social Security effective from 1 February 2015. The threshold requirement for unemployment registration has been reduced, and the unemployed individual with urban *hukou* may register their unemployment status at the service agent located in the district where their residing place locates.

More...

CHINA
27 FEB 2015

Rates of Unemployment Insurance, Work-Related Injury Insurance and Maternity Insurance Reduced

The Ministry of Human Resources and Social Security and the Ministry of Finance jointly released several Circulars to reduce the rates of unemployment insurance, work-related injury insurance and maternity insurance respectively to alleviate the burden on enterprises. From 1 March 2015, the unemployment insurance rate will be reduced from 3% to 2%. From 1 October 2015, the rate of the work-related injury insurance will be maintained at the benchmark rate of the national work injury insurance industry corresponding to Type 1 through Type 8 work injury risks of the industries at approximately 0.2%, 0.4%, 0.7%, 0.9%, 1.1%, 1.3%, 1.6% and 1.9%. From 1 October 2015, the rate of the maternity insurance should be adjusted to within 0.5% in the cities where the maternity insurance fund accumulates surplus for over nine months.

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

CHINA
24 MAR 2015

SAWS Issues Provisions on Employers' Occupational Hazard Prevention and Control

The State Administration of Work Safety (SAWS) issued the Eight Provisions on Occupational Hazard Prevention and Control by Employers (hereinafter referred to as the Provisions). The Provisions specifies requirements in the following eight aspects: accountability, workplace, protective facilities, protective devices, warning notices, regular tests, training and health supervision. The Provisions stresses that employers must provide their employees protective equipment that meet the relevant requirements. They must also conduct occupational health training for their employees; employees are prohibited from working if they are not trained or are deemed unqualified after the training. Employers must also organise occupational health inspections for their employees and establish health surveillance records; they are strictly prohibited from failing to organise health inspections or establish health records.

More...

CHINA
13 MAY 2015

The Notice on Designating An Statutory Holiday for Commemorating the 70th Anniversary of the victory in the Chinese People's War of Resistance Against Japanese Aggression issued

The State Council has designated 3 September as an additional statutory holiday in 2015. This date commemorates the 70th anniversary of the victory in the Chinese people's war of resistance against Japanese aggression. This holiday is applicable to all employees and only being legislated for 2015.

More...

CHINA
JUN 2015

Proposed Changes on Salary Payment Regulations of Guangdong Province Seeking Public Comments

Guangdong Provincial Department of Human Resources & Social Security issued the Decision on Revising Salary Payment Regulations of Guangdong Province (Request for Proposal) (Hereinafter the "Draft") to seek opinions on the Draft by 30 July 2015. The Draft clarifies that all employees should pay salary to employees on the agreed date. If it is agreed that the salary be paid on a monthly basis, the salary payment date shall not be later than the 10th day of the following month.

More...

LOOKING BACK

CHINA
18 JUN
2015

The *Revised Regulation on Collective Agreement of Shanghai* Adopted

The meeting of the Standing Committee of Shanghai People's Congress adopted the revised the Regulations on Collective Agreement of Shanghai (hereinafter the Regulations) by vote, which shall become effective as of 1 October 2015. The Regulations clarifies that pay increase and benefits for overtime work fall within the scope of collective bargain over pay and that in the event that an employer rejects or delays collective bargain without just reasons, the trade union of the city, district and county may issue a correction notice requiring the employer to take corrective actions.

More...

CHINA
1 JUL
2015

Measures Governing Chinese Citizens Travelling to and From the Region of Taiwan Revised

The State Council revised the Administrative Measures governing Chinese Citizens Travelling to and From the Region of Taiwan effective from 1 July 2015, and the entry permit requirements for Taiwan residents are removed.

More...

Click here to view **2014 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
OCT
2014

Responding to Employees' Misappropriation of Confidential Information

Valuable confidential information, like customer and price lists, technical and financial information, is a common target for misappropriation by employees. We have previously suggested measures and controls that employers can implement in order to minimise such risk. Nevertheless, the risk of theft can never be fully eliminated and it is important for employers to understand know how to react and respond to misuse or theft of confidential information when it happens.

The cases of *Dextra China Limited and Another v Lam Wing Kit [2014] HCA 38/2010* and *Australia and New Zealand Banking Group Ltd v. Chen, Kuei Mei* [2014] HKCFI 1774; HCA 1674/2014 involved departing senior employees who made use of the employers' trade secrets to set up rival businesses; and interim injunctions were subsequently made against the defendant employees for misusing and disclosing their former employers' confidential information.

Through these two cases. we can see how an employer may be able to gain the upper hand in a dispute over breach of an employee's confidentiality obligation by presenting convincing evidence that would persuade the Court to grant injunctions.

More...
More...

HONG KONG
24 DEC
2014

Labour Tribunal Given Expanded Power to Order Security for Payment

On 24 December 2014, the Labour Tribunal Ordinance ("**LTO**") was amended to give the Labour Tribunal general power to order a party to give security for payment of an award or order.

The amended sections 30 and 31 of the LTO have expanded the Labour Tribunal's power to order a party to provide security for the payment of an award or order, either on its own motion or upon the application of a party. If a security order is made against an employer, timely compliance withthe order is crucial. An employer involved in Tribunal litigation should also review on an ongoing basis whether an application for a security order is necessary and whether strategic advantages would be conferred on him by reason of such application.

In this legal update, we look at the possible circumstances for ordering security from a party and the consequences of any non-compliance.

More...

HONG KONG
29 DEC
2014

Published Guidance on Personal Data Protection in Cross-border Data Transfer

On 29 December 2014, the Office of the Privacy Commissioner for Personal Data (the "**PCO**") published Guidance on Personal Data Protection in Cross-border Data Transfer (the "**Guidance**") in preparation for the commencement of section 33 of the Personal Data (Privacy) Ordinance ("**PDPO**").

When section 33 comes into operation, it will prohibit the transfer of personal data from Hong Kong to another jurisdiction, unless the transfer falls within 1 or more of 6 exceptions. These exceptions include, for instance, a transfer (a) to a jurisdiction listed on the "White List" (i.e. jurisdictions that the PCO considers to have personal data protection laws similar to the PDPO) or (b) with the relevant data subject's (e.g. employee's) consent.

In preparation for the commencement of section 33 and to comply with the Guidance, employers should look at where their personal data is being transferred to and consider which available exceptions might apply or can be invoked. Where possible, an employer may consider to rely on more than 1 exception. The White List has not yet been published.

More...

HONG KONG
16 JAN
2015

Increased Minimum Wage Rate to Take Effect from 1 May 2015 in Hong Kong

On 16 January 2015, notice was gazetted to adjust the Statutory Minimum Wage ("**SMW**") rate to HK$32.5 per hour (up from the previous HK$30 per hour). The new rate has come into effect as of 1 May 2015.

Con't

HONG KONG **16 JAN** 2015

To reflect the change to the SMW rate, the previous HK$12,300 monthly cap (above which is not necessary to keep a written record of hours worked) will be increased to HK$13,300 per month.

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

More...

HONG KONG **23 JAN** 2015

Standard Working Hours Committee Holds 10th 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 10th meeting on 23 January 2015. The SWHC continued the discussion on the results of the public engagement and consultation on working hours and the dedicated working hours survey conducted by the consulting companies, as well as the analysis of a range of factors for a working hours policy provided by the SWHC secretariat as reported to the two working groups (WGs) on Working Hours Consultation and Working Hours Study last December.

Through the public consultation and dedicated working hours survey, the SWHC collected a wealth of useful information about the latest working hours situation of the workforce and extensive views of the community on working hours policy issues. Having regard to the outcomes of the two WGs, members have agreed to set up a task force to discuss the further work of the SWHC.

More...

HONG KONG **30 JAN** 2015

New MPF Provisions in Hong Kong

On 30 January 2015, the Legislative Council passed certain changes to the Mandatory Provident Fund Schemes Ordinance ("**MPFSO**").

Such changes, when they come into force, will enable the withdrawal of benefits upon the terminal illness of an employee, and also enable a phased withdrawal of accrued benefits at up to 12 withdrawals each year.

In addition, the MPFSO has been amended to permit the disclosure of certain information under certain conditions, covering FATCA compliance (which requires trustees in Hong Kong to make certain disclosures to the US Internal Revenue Service in certain circumstances). This provision is now in force.

More...

HONG KONG **27 FEB** 2015

Statutory Paternity Leave Introduced in Hong Kong

The statutory paternity leave provisions, which were incorporated into the Employment Ordinance ("**EO**") on 24 December 2014, came into operation on 27 February 2015. This introduces three days' paid paternity leave for working fathers (and fathers-to-be).

A male employee will be entitled to paternity leave in respect of the birth of a child if (a) he is the child's father, (b) he has been employed under a "continuous contract" (i.e., satisfying the "418" rule) immediately before taking the leave, and (c) he has complied with the specified "notification requirements".

This legal update takes a look at, amongst other issues, when an employee would be entitled to paternity leave and paternity leave pay, and what steps employers should take.

More...

HONG KONG **11 MAR** 2015

Employer Vicariously Liable for Assault by an Employee on Another

In *Yeung Mei Hoi v Tam Cheuk Shing and Another* [2015] HKCA 109, the Court of Appeal reversed the decision from the Court of First Instance and held that the employer was vicariously liable for an assault committed by its employee to another employee.

In *Yeung Mei Hoi*, a security guard of a residential estate assaulted his supervisor when his supervisor inquired about his failure to report promptly the location of a taxi that had improperly entered into the estate and properly wear his uniform. The security guard was on duty when he lost his temper and assaulted his supervisor. At that moment of time, to the security guard's scope of employment required him to be subject to the supervision and discipline of the supervisor. The Court of Appeal held that the security guard's unauthorised act of assault during this moment was closely connected with his employment.

Con't

HONG KONG **11 MAR** 2015

It further held that the system of supervision and discipline of security guards by a supervising officer put in place by the employer carried with it a risk that the subordinate may react in an unauthorised way in the course of being subject to supervision and discipline. This legal update acts as a reminder to employers that they can still be vicariously liable for unauthorised acts of an employee.

More...

HONG KONG **18 MAR** 2015

Standard Hours Working Committee Holds 11th Meeting

The Standard Working Hours Committee ("**SWHC**") held its 11th meeting on 18 March 2015.

The SWHC considered the findings of the dedicated working hours survey and the public engagement and consultation on working hours reported by two consulting firms. The SWHC agreed in principle to recommend a legislative approach to implement a policy to regulate working hours of employees. The contract between the employer and the employee should state clearly how many hours they need to work for, what will happen if they work overtime, and their meal time and rest time. However, the SWHC is of the view that an "across-the-board" legislative approach would be inappropriate.

More...

HONG KONG **30 MAR** 2015

Competition Commission Clarifies Position on Collective Bargaining and Trade Associations

The Hong Kong Competition Commission (the "**Commission**") published a set of revised draft guidelines ("**Guidelines**") to the Competition Ordinance (Cap. 619) (the "**CO**") on 30 March 2015. The revised Guidelines are a good indication of how the Commission intends to interpret the CO, but they are not legally binding and may be subject to further revisions.

Collective Bargaining

The Commission takes the view in the revised Guidelines that collective bargaining between a group of employees and their employer in relation to employment matters such as salaries and conditions of work will not be considered as a contravention of the CO, as employees are an integral part of the employer. In particular, the Guidelines state that the CO will not apply to collective negotiations between an employer and a trade union where it acts as an agent representing a number of employees.

Employers should take note that the situation would differ if a trade union represents employees of more than one employer in collective negotiations with two or more employers who are competitors in the industry. In such industry-wide collective negotiations, the employees and employers involved would not form part of an integral unit, as such their collective conduct would fall within the scope of the CO.

Trade Associations

The revised Guidelines clarify that any decision or recommendation made by or through a trade association comprising of competitors can potentially be anti-competitive, even if not binding on its members. Employers need to be aware that recommended fee scales and "reference" wages or commission rates suggested by trade associations would likely contravene the CO.

More...

HONG KONG **31 MAR** 2015

New Guidance Note on CCTV Surveillance and the Use of Drones

On 31 March 2015, the Office of the Privacy Commissioner for Personal Data ("**PCO**") published a guidance note entitled *"Guidance on CCTV Surveillance and Use of Drones"* (the "Guidance"), which replaced *"Guidance on CCTV Surveillance Practices"*. It introduces amendments that take into account of new provisions in the Personal Data (Privacy) (Amendment) Ordinance 2012 and incorporates new guidance on responsible use of drones.

The PCO is of the view that drones fitted with cameras could add a new dimension to these privacy concerns by virtue of their unique attributes. These include their mobility, as well as ability to stay in the air for a considerable period of time, and the gathering of information from different vantage points over a broad area.

More...

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

LOOKING BACK

HONG KONG
15 MAY 2015

New MPF Provisions to Take Effect from 1 August 2015 in Hong Kong

On 15 May 2015, a notice was gazetted to appoint 1 August 2015 as the effective date of certain amendments to the Mandatory Provident Fund Schemes Ordinance

Starting from 1 August 2015, terminal illness will be an additional ground for the early withdrawal of MPF benefits.

As for the phased withdrawal of MPF benefits, the commencement date is yet to be proposed.

More...

HONG KONG
26 MAY 2015

Standard Working Hours Committee holds 12th meeting

The Standard Working Hours Committee ("**SWHC**") held its 12th meeting on 26 May 2015.

The SWHC agreed in principle to recommend a legislative approach to implement a policy relating to working hours of employees. This will include a mandatory requirement for all employers and employees in general to enter into written employment contracts specifying clearly such terms relating to working hours (the "big frame"). The SWHC will also explore whether there is a need for other suitable measure(s) to protect grassroots employees with less bargaining power (the "small frame").

More...

HONG KONG
9 JUN 2015

Hong Kong's Contracts (Rights of Third Parties) Ordinance to commence on 1 January 2016

The Government has gazetted 1 January 2016 as the commencement date of the Contracts (Rights of Third Parties) Ordinance (the "**Ordinance**").

The Ordinance radically reforms Hong Kong's long established privity of contract rule. Once it is in force, a third party may, in certain circumstances, be able to enforce a contract to which it is not a party.

More...

HONG KONG
10 JUL 2015

3 September 2015 Appointed One-Off Holiday in Hong Kong

The Legislative Council has passed a Bill designating 3 September 2015 (Thursday) a one-off additional General Holiday and statutory holiday.

An employer of an employee covered by the Employment Ordinance must grant to that employee a statutory holiday on 3 September 2015 or an alternative or substituted holiday in accordance with the requirements of the Employment Ordinance. If the employee has been employed under a continuous contract for 3 months or more before the statutory holiday, then the employer must also pay statutory holiday pay to the employee.

More...

HONG KONG
17 JUL 2015

Competition Ordinance Comes Into Full Effect on 14 December 2015

The Commencement Notice for the Competition Ordinance (Cap. 619) (the "**Ordinance**") was gazetted on 17 July 2015, appointing 14 December 2015 as the date for full enforcement of the Ordinance.

According to a press release issued by the Competition Commission (the "Commission"), the Commission is "ready to be an effective enforcer of the competition law which will support Hong Kong's open economy by ensuring fair and free markets for all".

The Commission has completed its drafting and consultation of the implementation guidelines, which will be published shortly.

Also in the pipeline are a leniency policy for cartel conduct and a statement of the Commission's enforcement priorities. The Commission's statement of enforcement priorities is an important document which will, short of identifying specific sectors or businesses, give businesses an idea of where the Commission intends to focus its enforcement activity and what considerations may drive the Commission's decision to commence an investigation or market study.

Businesses should ensure their staff understand the competition rules introduced by the Ordinance, how the rules affect commercial strategy and daily operations, and start to take steps to reach a compliant position before the critical date of 14 December 2015.

More...

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

LOOKING BACK

HONG KONG

20 JUL 2015

New Guidance for the Responsible Collection and Use of Biometric Data

The Office of the Privacy Commissioner for Personal Data published the "Guidance on Collection and Use of Biometric Data" to provide data users who intend to collect biometric data with practical guidance on complying with the requirements under the Personal Data (Privacy) Ordinance. It replaces the previous "Guidance Note on the Collection of Fingerprint Data" issued in May 2012.

Biometric data could be sensitive data as it may be unique and immutable, or it may contain an individual's intimate information relating to health, mental condition or racial origin. Employers using biometric technology should understand the privacy risks associated with the uniqueness, immutability and the inference ability of biometric data. They should only use biometric data where justified and put in place appropriate procedural and technological safeguards to prevent unauthorised access to and wrongful use of biometric data which could lead to identity theft, impersonation or discrimination.

More...

HONG KONG

21 JUL 2015

42 Employers Sanctioned for Placing Blind Recruitment Advertisements

42 employers were sanctioned for placing 46 job advertisements to solicit job applicants' personal data without disclosing their identities. These blind recruitment advertisements ("**Blind Ads**") breached the fairness principle for personal data collection, i.e. the Data Protection Principle 1(2) of the Personal Data (Privacy) Ordinance (the "**PDPO**").

The Privacy Commissioner investigated into and served enforcement notices on the 42 employers concerned directing them to delete the personal data collected and to formulate a company policy of placing recruitment advertisement which complies with the PDPO.

More...

HONG KONG

22 JUL 2015

Standard Working Hours Committee holds 13th meeting

The Standard Working Hours Committee ("**SWHC**") held its 13th meeting on 22 July 2015.

The SWHC continued its discussion on a legislative approach to implement a policy relating to working hours of employees. The SWHC has decided on the parameters used solely for reference in conducting data analyses and impact assessment under the "small frame", which is to protect grassroots employees with lower income, lower skills and less bargaining power.

More...

HONG KONG

30 JUL 2015

Privacy Commissioner Advises Cloud Users on Privacy Concerns

The Office of the Privacy Commissioner for Personal Data ("**PCO**") published a revised information leaflet on "Cloud Computing" to advise cloud users on personal data privacy concerns and the importance of fully assessing the benefits and risks of cloud services.

Employers who are considering cloud computing as a form of outsourcing arrangements should assess the risks associated with entrusting their data to data processors which operate under an environment of pooled computing resources. The outsourcing of any processing or storage of personal data to third-parties does not relieve the organisations' legal responsibility for the protection of the personal data that employers collect and hold. Employers should ensure that the data protection requirements under the Personal Data (Privacy) Ordinance are still effectively complied with by their contractors and sub-contractors.

More...

HONG KONG

PENDING 2015

Legislative Proposal on Compulsory Reinstatement and Re-Engagement

At the Legislative Council Panel on Manpower (the "**Panel**") meeting on 19 November 2013, members provided an update on the legislative process in empowering the Labour Tribunal to make a compulsory order for reinstatement or re-engagement of an employee who had been dismissed unreasonably and unlawfully. Currently, the Labour Tribunal can only make an order for re-instatement or re-engagement with the consent of the employer.

Con't

FORWARD

HONG KONG

PENDING

2015

The Labour Commissioner responded to the Panel on 28 November 2014 stating that they are working towards a finalised bill for 2015.

In a recent Panel meeting on 14 May 2015, the Panel was advised that the Labour Department and the Department of Justice were conducting discussions on the contents of the bill and ways to resolv the technical issues concerned, and that they were striving to finalise the bill.

More...

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

INDIA
12 DEC 2014

Launch of Web Portal for Online Registration of Employers by the Employees State Insurance Corporation (**ESIC**)

The ESIC has launched web services for online registration of employers under the Employees' State Insurance Act, 1948 through the e-Biz portal. The e-Biz platform is operated by the Department of Industrial Policy and Promotion and aims to create a business and investor friendly eco system in India by making all business and investment related regulatory services across Central, State and local governments available on a single portal. From this single website, entrepreneurs will be able to apply and manage various registrations, licenses and clearance etc., thereby obviating the need for an investor or a business to visit multiple offices or a plethora of websites.

More...

INDIA
17 DEC 2014

Proposed Amendment to Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**PF Act**)

The Central Government issued a memorandum on 17 December 2014, calling for comments on the draft amendments to the PF Act. The salient amendments proposed are as follows:

- The PF Act is currently applicable to cover establishments that employ 20 or more persons. The proposed amendment seeks to reduce this threshold and make the PF Act applicable to all establishments employing ten or more persons.
- At present, the provident fund contribution payable under the PF Act is calculated based on the 'basic wages' of the employee. Components such as house rent allowance, bonus, overtime allowance, dearness allowance and other similar allowances are excluded from the existing definition of 'basic wages'. The proposed amendment seeks to make the PF contribution payable on the 'wages' of the employee (which has been given a wider meaning), rather than the 'basic wages'. The term 'wages' has been defined to include all remuneration payable to an employee under the terms of employment (if paid in intervals of 2 months or less). The only components that would be excluded after the amendment are (i) contributions made to the Employees' State Insurance Scheme, (ii) gratuity payments (iii) travelling allowance or concession, and (iv) any sum paid to the employee to defray special expenses incurred by him/her.
- The definition of 'employee' will be changed to exclude apprentices.
- There is currently no limitation period for conduct of quasi-judicial proceedings by the Provident Fund authorities under the PF Act. The proposed amendment seeks to introduce a limitation period whereby the Provident Fund authorities cannot pass any order in respect of period beyond 5 years from the date on which the provident fund contribution became payable.

The proposed amendments are still at a preliminary stage, and a bill would need to be introduced and passed by both Houses of the Parliament, and also receive presidential assent before it becomes law.

More...

INDIA
22 DEC 2014

Apprentices (Amendment) Act, 2014 in effect from 22 December 2014.

The Apprentices Act, 1961 regulates the training of apprentices in industry. Some of the major changes introduced by the Apprentices (Amendment) Act, 2014 are as follows:

- For organizations operating in more than four states, the implementation of the Apprenticeship Training Scheme will rest with the Central Government, and not the respective State Apprenticeship Advisors.
- The definition of "worker" under the Apprentices Act has been 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 have been decriminalized, and imprisonment will no longer be a penalty for non-compliance with the Apprentices Act.

Con't

INDIA
22 DEC 2014

- Establishments are now required to enter details of their trade-wise requirement in respect of apprenticeship training on the web-portal for apprenticeship training.
- Employers are now given the option to inform the apprenticeship adviser by post or email or web-portal about the registration of apprenticeship contracts.
- Apprentices will be given preference for employment over direct recruits.

More...
More...

INDIA
1 JAN 2015

Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Amendment Act, 2014 (Amendment Act) in effect from 1 January 2015

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 earlier exempted employers in relation to establishments employing less than 20 employees from furnishing returns and maintaining registers under 9 labour laws, including the Payment of Wages Act, 1936, the Contract Labour (Regulation and Abolition) Act, 1970 and the Minimum Wages Act, 1948. The key amendments introduced by the Amendment Act are:

- Expanding the coverage of the Act to establishments having up to 40 workers from the existing 19 workers.
- Increasing the number of labour laws in relation to which the exemption has been granted from 9 to 16.
- Simplifying the annual returns and reducing the registers required to be maintained.
- Permitting maintenance of records in electronic form and submission of returns electronically.

More...
More...

INDIA
3 FEB 2015

Notification of Social Security Agreement (SSA) with Norway with effect from 1 January 2015.

Indian authorities have issued circulars notifying that the SSA that India had signed with the Kingdom of Norway will be effective from 1 January 2015.

- India and Norway had signed the SSA on 29 October 2010.
- While India has signed a number of such SSAs, they only come into force once notified. The SSA will help India and Norway in garnering more investment and work opportunities for nationals of both countries and also enhance cooperation on social security between the India and Norway.
- The SSA also provides various benefits to Indian nationals working in Norway. 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, 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...

INDIA

21 MAR

2015

Proposed Labour Code on Wages Bill, 2015 (the **Draft Wages Code**)

The law relating to payment of wages in India is currently dealt with by 4 different central statutes, namely the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Payment of Bonus Act, 1965 and the Equal Remuneration Act, 1976. The Draft Wages Code seeks to repeal these 4 laws, and replace them with a single comprehensive code that would deal with all aspects related to wages. Some of the key provisions in the Draft Wages Code include:

- A uniform definition of wages: Currently, each of the 4 statutes has a distinct definition of wages. The Draft Wages Code seeks to provide a uniform definition of wages, which would reduce confusion during implementation of the law.
- Minimum wages: The Draft Wages Code requires the state governments to fix the minimum wages applicable to different employments, and review them periodically. It provides for the constitution of a Minimum Wages Advisory Board in every state for advising state governments on the fixing and revision of minimum wages.
- Payment of wages: The Draft Wages Code provides that wages shall be paid to all employees by depositing them in bank accounts. Wages below a limit fixed by central or state government may be payable in cash. It also contains provisions on permissible deductions from wages.
- Payment of bonus: The Draft Wages Code includes specific criteria on the minimum bonus to be provided by the employer, the eligibility criteria for receipt of bonus, method of calculation of bonus etc.
- Gender Equality: The Draft Wages Code prohibits discrimination on grounds of gender in relation to wages.

The Draft Wages Code is yet to be introduced in Parliament. It would need to be passed by both Houses of Parliament and receive presidential assent before it becomes law.

More...

INDIA

24 APR

2015

Launch of Online Filing of Single Annual Return on the *Shram Suvidha* Portal

The Government had set up a single unified web portal (the "*Shram Suvidha*" Portal) for online registration of units, reporting of inspections, and submission of annual returns and redressal of grievances, in October 2014. The portal operates through a common unique Labour Identification Number ("**LIN**") which will be allotted to all employers. On 24 April 2015, the facility to file a single annual online common return on the portal in place of filing separate returns under eight labour laws was launched. The eight labour laws covered in the common return are:

- The Payment of Wages Act, 1936;
- The Minimum Wages Act, 1948;
- The Contract Labour (Regulation & Abolition) Act, 1970;
- The Inter-State Migrant Workmen (RE&CS) Act, 1979;
- The Maternity Benefit Act, 1961;
- The Industrial Disputes Act 1947;
- The Payment of Bonus Act, 1965;
- The Building and Other Construction workers (Regulation of Employment & Conditions of Service) Act, 1996.

Now, instead of multiple returns under the above Acts (and sometimes more than one return in a year), companies only need to e-file a Single Unified Annual return.

More...

INDIA
27 APR 2015

Proposed Labour Code on Industrial Relations Bill, 2015 (**Draft IR Code**)

This Draft IR Code seeks to repeal four important central legislations, viz. the Trade Unions Act, 1926, the Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947, and replace them with a comprehensive code dealing with industrial relations. The key amendments sought to be introduced in the Draft IR Code include:

- Under the current law, Chapter V-B of the Industrial Disputes Act (which contains stringent requirements to be followed by the employers prior to retrenchment and closure, including obtaining prior Government approval) is only applicable to factories, mines and plantations which have employed 100 or more workmen on an average per working day in the preceding 12 months. The Draft IR Code currently proposes to revise this threshold, and make the provisions of Chapter V-B applicable to all establishments in which 300 or more workmen were employed on an average per working day in the preceding 12 months.
- The Draft IR Code makes it more difficult for trade unions to be registered, since at least 10% of the workers establishment, or 100 workers, whichever is less, would need to make the application for registration. Earlier, it was sufficient if seven workers made this application.
- Currently, the provisions of the Industrial Employment (Standing Orders) Act, 1946 is in the first instance only applicable to "industrial establishments" employing more than 100 workmen (lesser in certain States), though its applicability has been extended to commercial establishments by certain State Governments. The Draft IR Code aims to also make the provisions relating to the Standing Orders applicable to all commercial establishments that hire 100 or more workers.

The Draft IR Code is yet to be introduced in Parliament. It would need to be passed by both Houses of Parliament and receive presidential assent before it becomes law.

More...

INDIA
5 MAY 2015

Mandatory Deposit of Contributions Through Internet Banking Under The Employees' Provident Funds Scheme, 1952 (**EPF Scheme**)

Under the EPF (Second Amendment) Scheme, 2015 dated 5 May 2015, employers are mandated to make statutory contributions under the EPF Scheme electronically through internet banking only. Prior to this amendment, employers could remit EPF contributions only by way of bank drafts or cheques. By notification dated 24 June 2015, the Employees Provident Fund Organization has deferred the application of the EPF (Second Amendment) Scheme, 2015 till September 2015 for employers making monthly contributions of less than one lakh rupees. Such employers have been given the option of making payments through bank drafts or banker's cheques or cheques drawn on the local banks as was done earlier. This order was passed to facilitate the transition period for those employers with lower contributions who may not have immediate access to internet banking.

More...

INDIA
20 MAY 2015

Further Amendments Proposed to the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**PF Act**)

The Central Government had issued a memorandum on 17 December 2014, calling for comments to certain proposed amendments to the PF Act. By memorandum dated 20 May 2015, the Central Government made some further changes to the proposed amendments. These key changes are:

- At present, the provident fund contribution (**PF contribution**) payable under the PF Act is calculated based on the "basic wages" of the employee. Components such as house rent allowance, bonus, overtime allowance, dearness allowance and other similar allowances are excluded from the existing definition of "basic wages". The proposed amendment seeks to make the PF contribution payable on the "contributing wages" of the employee (which has been given a wider meaning), rather than on their "basic wages". The term "contributing wages" has been defined to include all remuneration payable to an employee under the terms of employment (if paid at intervals of 2 months

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LOOKING BACK

INDIA
20 MAY 2015

or less). The only components proposed to be excluded are: (i) contributions made to the Employees' State Insurance Scheme; (ii) gratuity payments; (iii) travelling allowances or concessions; (iv) any sum paid to the employee to cover special expenses incurred by him/her; and (v) house rent allowance provided that the same shall not be more than 20% of contributing wages.

- The new amendments also seek to introduce new definitions of wage ceiling, voluntary contribution, small establishment, unorganised sector and unorganised worker.
- The new amendments also propose to bring into effect the option to be provided to the employees to choose between making PF contributions and NPS contributions. As per the proposed amendments, an employee will have a onetime option of joining the NPS. On the exercise of such option, the employee will be deemed to have exited from the Employees' Provident Fund Scheme, Employees' Pension Scheme, Employees' Deposit Linked Insurance Scheme or any other scheme notified under the EPF Act. An employee who is a member of the NPS will have a onetime option of returning to the various Schemes notified under the EPF Act. Any transfer of an employee that occurs as a result of the exercise of the options listed above will be accompanied by the transfer of the accumulated amounts under the EPF Act.

The proposed amendments are still at a preliminary stage, and a bill would need to be introduced and passed by both Houses of Parliament, and also receive presidential assent, before it becomes law.

More...

INDIA
5 JUN 2015

Notification of Social Security Agreement (**SSA**) with Austria

Indian authorities have issued circulars notifying that the SSA that India had signed with Austria will be effective from 1 July 2015.

- India and Austria had signed the SSA on 4 February 2013.
- While India has signed a number of such SSAs, they only come into force once notified. The SSA will help India and Austria in garnering more investment and work opportunities for nationals of both countries and also enhance cooperation on social security between the India and Austria.
- The SSA also provides various benefits to Indian nationals working in Austria. The SSA provides for the following social security benefits to Indian nationals working in Austria:
  - » For short-term contracts up to 60 months, 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...

INDIA
7 JUL 2015

Enhancement of National Floor Level Minimum Wage (**NFLMW**)

The NFLMW is a non-statutory measure aimed at achieving a uniform wage structure and reduce disparities in minimum wages across the country. Individual State/ Union Territory governments are expected to ensure that the minimum wages in scheduled employments is not below the NFLMW. However, this NFLMW is not binding in nature. The Central Government has revised the NFLMW from the existing INR 137/- to INR 160/- per day, effective from 1 July 2015.

More...

LOOKING BACK

INDONESIA
19 JAN 2015

Ministry of Manpower Regulation No. 2 of 2015 dated January 19, 2015 regarding Protection of Domestic Workers ("MOM No. 2")

MOM No. 2 regulates domestic workers (*pekerja rumah tangga*) and domestic worker placement institutions (*lembaga penyalur*).

Protection of domestic workers: MOM No. 2 stipulates requirements for domestic workers and employers, including qualifications and work agreements.

Domestic workers must be at least 18 years old, have a valid ID card and, if they are married, they must secure permission from their spouse. Employers must be mentally and physically healthy and have a sustainable income and a proper residence.

MOM No. 2 requires domestic workers and employers to enter into a verbal or written work agreement. Such agreement may be valid for up to two years and may be extended or terminated by agreement between the parties. The agreement must be reported to the head of the neighborhood community (*rukun tetangga* or RT). It is important to note that employers must register domestic workers with mandatory social security programs as stipulated by MOM No. 2.

Placement Institutions: Domestic worker placement institutions must secure a business license from the respective governor or other appointed officer by submitting a written application along with the required supporting documents. The business license is valid for five years and may be extended for the same period.

Under MOM No. 2, placement institutions must submit monthly reports on the number of domestic workers they placed and other relevant data.

INDONESIA
29 JUN 2015

Ministry of Manpower Regulation No. 16 regarding Procedures to Utilize Foreign Manpower ("MOM No. 16")

MOM No. 16 2015 dated June 29, 2015 has replaced Minister of Manpower Regulation No. 12 of 2013 regarding the same ("Old Regulation").

The controversial Indonesian language proficiency requirement contemplated by the Old Regulation has been dropped by MOM No. 16. Foreigners are not required to demonstrate Indonesian language proficiency to obtain a work permit.

However, two new and equally controversial requirements were introduced under MOM No. 16. These requirements are that (i) non-resident members of the Board of Directors ("BOD") and Board of Commissioners ("BOC") of Indonesian companies, and the Board of Patrons, Board of Management and Board of Supervisors of Indonesian foundations, are required to obtain a work permit in Indonesia, and (ii) a company must employ 10 Indonesians for each expatriate employee.

As expected, these two new requirements have created considerable confusion in the business community. According to MOM No. 16, these requirements are effective as of June 29, 2015. There is no transitional period provided in MOM No. 16 and no clarification whether the regulation applies to arrangements which existed prior to the issuance of MOM No. 16. The MOM has said it will provide clarification on any issues arising out of the issuance of MOM No. 16 in the near future.

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY:

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JAPAN

28 NOV 2014

Act of Special Measures for Fixed-Term Employees with Special Professional Knowledge (the "Act")

The Special Measures for Fixed-Term Employees with Special Professional Knowledge was promulgated on 28 November, 2014. The Act will take effect from 1 April 2015. The Act provides for exceptions to the basic rule under Article 18 of the Employment Contract Act, which generally provides that employees with fixed-term contracts have the right to convert their employment contract to an employment contract without a definite period when employees are employed for more than 5 years under two or more fixed-term employment contracts (the "Conversion Right"). The Act includes the following key points:

i. Under the Act, despite Article 18 of the Employment Contract Act, employees with fixed-term contracts within 10 years do not have the Conversion Right if:

   a. The fixed-term contract employees are engaged in operations scheduled to be completed after a fixed period of time (provided that this period exceeds 5 years), and the employees have high income, advanced technical knowledge, skills and experience; and

   b. The employer receives certification from the Ministry of Health, Labour and Welfare, of a plan of appropriate employment management for the relevant fixed-term employees.

   Employees who fall under this category do not have the Conversion Right during the period of the operations for which they are employed.

ii. Under the Act, despite Article 18 of the Employment Contract Act, fixed-term contract employees do not have the Conversion Right if:

   a. After resignations due to mandatory retirement age, employees are reemployed as fixed-term contract employees by their prior employer or a "special relationship employer" (being an employer who can control the prior employer, per Article 9, Paragraph 2 of the Act Concerning Stabilization of Employment of Older Persons); and

   b. The employer receives certification from the Ministry of Health, Labour and Welfare, of a plan of appropriate employment management for the relevant fixed-term employees.

   Employees who fall under this category do not have the Conversion Right during the period in which they are reemployed after their resignations due to the mandatory retirement age.

JAPAN

29 JUL 2015

Introduction of the Individual Identification Numbers System ("My Numbers System")

The My Numbers System, which will be used to increase administrative efficiency in tax, social security and disaster control matters, will come into effect in January 2016. As part of the implementation of the My Numbers System, every Japanese citizen, medium to long-term resident, and special permanent resident will be assigned an individual identification number ("Individual Number").

Although the issuing of Individual Numbers centres on individuals, private business operators in Japan will also be required to obtain their employees' Individual Numbers for certain administrative purposes, such as withholding income tax from salary payments and applying for health insurance.

In light of the impending use of Individual Numbers in public administration in January 2016, every local government in Japan will commence issuance of Individual Numbers to their constituents from 5 October 2015. As such, business operators will be required to obtain such Individual Numbers from their employees on or after 5 October 2015, and develop a system by which to manage the Individual Numbers so obtained by no later than the end of 2015.

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LOOKING BACK

JAPAN

29 JUL 2015

The following are the four main measures that business operators in Japan should take in order to effectively manage the implementation of the My Number System, especially if they will be handling the Individual Numbers of their employees:

i. Identification of affairs requiring the use of Individual Numbers and establishment and confirmation of the relevant workflow;

ii. Development of a system by which to appropriately verify the identity of individuals when obtaining their Individual Numbers (such as a system that uses the individuals' Individual Number cards, driver's licences, passports or other identification documents for verification);

iii. Establishment of security control measures to ensure the confidentiality of Individual Numbers obtained; and

iv. Implementation of measures to ensure compliance with the Personal Information Protection Act (such as by clearly specifying the purposes for which Individual Numbers may be used).

More...

MALAYSIA

24 NOV 2014

Federal Court Case of Kuantan Beach Hotel Sdn Bhd & Alam Venture Sdn Bhd v Abdul Aziz & 142 Ors [01(f)-45-10/2013(C)

This case relates to an employment dispute that arose from the sale of a hotel's assets (building and land) that housed the operations of the business. The hotel employees were terminated after the previous owner of the hotel's assets went into receivership due to business losses. The purchaser of the assets did not make offers of employment to majority of the employees of the hotel. The Industrial Court and High Court ruled in favour of the hotel and the purchaser and ruled that the employees were not unfairly dismissed.

The Court of Appeal held that on the facts, the transaction was a sale of the hotel's business and this attracted the application of an article of the collective agreement (between the Union representing the employees and the previous owner of the hotel's assets) which provided that "in the event the hotel changing its name of ownership or merging with other companies, the validity of the agreement shall continue to apply and that all the employee shall continue to remain in service to enjoy the same entitlements as contracted for." The Court of Appeal ruled that due to this clause and a provision of the Industrial Relations Act 1967 that provided that a collective agreement binds parties to the agreement as well as its successors, assignees or transferees, the purchaser of the hotel's assets was obliged to make offers of employment to the employees and the failure to do so makes the business purchase liable for unfair dismissal (even though the business purchaser never employed the employees in the first place).

The Federal Court heard the appeal and had on 24 November 2014 upheld the decision of the Court of Appeal. This decision is controversial as it will impact all transactions involving change in business ownership.

MALAYSIA

APR 2015

Can an Employer Unilaterally Vary the Service Charge Imposed?

The issue of service charge imposed by hotels and restaurants was considered by the Industrial Court in the recent case of *National Union of Hotel, Bar & Restaurant Workers, Peninsular Malaysia v Ayer Keroh Resort Sdn. Bhd. (Mahkota Hotel Melaka)*. In this case, the Industrial Court considered the issue of whether Mahkota Hotel Melaka ("Hotel") was able to reduce the service charge imposed on customers from 10% to 5%. A Collective Agreement was entered into between the Hotel and the Union and Service Charge is provided for in the said agreement.

The Industrial Courts have held previously that a party can only vary the terms of a collective agreement under very special circumstances. The Industrial Court has always taken the view that financial distress would not amount to a special circumstance. In the case of *Prestige Ceramics Sdn Bhd v Kesatuan Pekerja Pembuatan Barangan Bukan Logam & Anor,* the High Court held that the Industrial Court cannot automatically assume that financial distress would not amount to special circumstances without first evaluating the underlying factors which had resulted in the financial position in the first place. In the Prestige Ceramics case, the Asian Financial Crisis of 1997 resulted in severe reduction in the demand for ceramic tiles during the said period and the High Court was of the view that the financial crisis could not have been foreseen by the company. Subsequently in the case of *Metal Industry Employees Union v Yodoshi Malleable (M) Sdb Bhd* the occurrence of a fire had exacerbated the company's financial woes and for this reason the Industrial Court was of the view that it amounted to a special circumstance.

In the present Hotel's case, the Hotel had been imposing a service charge of 10 % on its customers for room, food and beverages. However, the Hotel argued that it was left with no alternative but to reduce the service charge imposed on its customers from 10% to 5 % for the following reasons:

a. It has suffered financial losses and reduced revenues for the year 2013 and 2014

b. In order to comply with the Minimum Wages (Amendment) Order 2012, the Hotel had to increase the salaries and wages for its employees with effect from 1st October 2013 and this resulted in significant increase in the overall wage bill. Not only were employees' salary increased to meet the minimum wage of RM 900, longer serving employees were given a proportionate increase based on the length of service.

Con't

LOOKING BACK

MALAYSIA

APR

2015

c. There was increased competition by other hotels in the area and occupancy rates have been on a decline.

After the reduction of the service charge imposed, the Union filed a complaint of non-compliance of the Collective Agreement to the Industrial Court. The Industrial Court in its Award held by a majority that the above amounted to special circumstances for the following reasons:

a. The Collective Agreement between the Union and the Hotel was signed in the year 2010 and the Minimum Wages (Amendment Order) 2012 was not within the contemplation of parties when the said Collective Agreement was entered into.

b. After the implementation of the Minimum Wage, the Hotel had experienced a significant increase in the wage bill despite a reduction in the number of employees.

c. Furthermore, the Hotel has experienced reduction in revenue and losses.

From the decision of the Industrial Court, it is now clear that legislation passed by Parliament can amount to special circumstances if it directly results in the company's financial distress. In addition, an employer must also show that to successfully vary the collective agreement, the events which led to the financial distress must not be in contemplation of parties when the collective agreement was entered into and was beyond the control of either party. The decision of the Industrial Court affirms the position that financial distress can amount to special circumstances and must not be dismissed outright by the Court.

NEW ZEALAND
6 NOV 2014

The Employment Relations Amendment Act 2014 (Act)

The Act will come into force on 6 March 2015, 4 months after the date on which it received Royal assent.

More...

NEW ZEALAND
1 DEC 2014

New Privacy Commission Policy

In order to signal a willingness to treat breaches of the Privacy Act 1993 more seriously, the Privacy Commissioner has introduced a new policy to 'name and shame' any agency found to have committed privacy breaches.

More...

NEW ZEALAND
6 DEC 2014

Sentencing Amendment Act 2014

Amendments to the Sentencing Act 2002 give Courts the power to award people injured in the conduct of a crime, reparation for the short-fall between New Zealand's statutory 'no fault' accident compensation scheme (ACC), and their actual loss. The implication of this is that companies may potentially be liable for higher reparation awards in relation to health and safety prosecutions. Statutory liability insurance policies may need to be checked in order to ensure that levels of cover are adequate.

More...

NEW ZEALAND
26 MAR 2015

Strengthened Enforcement of Employment Standards

The package of measures to strengthen the enforcement of employment standards announced by the Government in March 2015 will be included in the Employment Standards Bill, to be introduced later in 2015. The measures will include tougher sanctions on employers who breach minimum standards (such as the minimum wage), including the public naming of employers and a potential ban from being an employer for serious and persistent breaches. There will also be clearer record keeping requirements for wages, time, leave and holidays; labour inspectors will have increased information-sharing and information-requesting powers; and a change in approach by the Employment Relations Authority will mean that more cases involving serious and systemic standards breaches will be resolved by the Authority or the Employment Court, rather than being directed to mediation.

More...

NEW ZEALAND
1 APR 2015

Changes to Minimum Wage and Paid Parental Leave

On 1 April 2015, the adult minimum wage increased to $14.75 (gross) an hour; the Starting-out wage (for 16-19 year olds under certain conditions) increased to $11.80 an hour; and the maximum amount of parental leave payable increased from 14 to 16 weeks.

More...

NEW ZEALAND
2 JUL 2015

Harmful Digital Communications Act 2015

The new Act covers cyber bullying, and includes new civil penalties for "harmful digital communications" and a criminal offence that carries a penalty of up to two years in prison and a fine of $50,000 for an individual. New Communication Principles provide that digital communications should not, among other things, disclose sensitive personal information; be threatening, intimidating or menacing; be used to harass an individual; or make a false allegation.

More...

NEW ZEALAND
13 JUL 2015

Proposed Prohibition of "Zero Hour" Agreements

Zero hour employment agreements require an employee to remain available for work but do not guarantee any minimum hours of work. The Government's proposed changes would prohibit these arrangements and require a set minimum number of hours to be specified in the employment agreement. The changes would also require an employer to provide "reasonable compensation" for requiring an employee be on call, but no practical details on this are available yet. Other changes include prohibitions on unreasonable restrictions on the secondary employment of employees; making unreasonable deductions from

Con't

LOOKING BACK

NEW ZEALAND
13 JUL 2015

employees' wages; and cancelling shifts without providing reasonable notice or compensation to the employees. These changes will be included in the Employment Standards Bill, to be introduced later in 2015.

More...

NEW ZEALAND
24 JUL 2015

Health and Safety Reform Bill

Select Committee amendments to the Bill were reported back on 30 July 2015 and include a change in the definition of "officer", so that the officer duty will only apply to those with very senior governance roles (such as directors and chief executives); a distinction made between casual volunteers and volunteer workers, meaning coverage of volunteers remains as it is under current law; increased flexibility for small, low-risk businesses to meet worker engagement and participation requirements; and clarification that PCBUs must discharge any overlapping duties to the extent that they have the ability to influence or control the matter.

More...

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: Simpson Grierson

LOOKING BACK

PHILIPPINES
20 MAY 2015

Department of Labor and Employment ("DOLE") issues Department Order No. 143, Guidelines Governing Exemption of Establishments from Setting up Workplace Lactation Stations

The Implementing Rules and Regulations of Republic Act 10028 (*The Expanded Breastfeeding Act of 2009*) permits an employer to apply for exemption from setting up the mandatory lactation station. The DOLE Regional Director may grant the exemption for a renewable period of two years, upon determination that the establishment or the facility is not feasible or necessary.

DO No. 143 establishes the guidelines for applying and granting such exemption, under either of the following conditions and provided further that no female clients visit/transact with the establishment:

a. The establishment has no nursing or lactating employee; or

b. The establishment has no pregnant employee.

Republic Act 10028 provides for administrative sanctions and penalties for failure to set up such lactation stations and/or observe mandated lactation periods for nursing employees.

More...

PHILIPPINES
22 JUL 2015

Department Advisory No. 01

With the enactment of R.A. 10151 (*An Act Allowing the Employment of Night Workers*), several new provisions have been added to the Labor Code of the Philippines. This has caused the renumbering of subsequent articles starting from Book Four, Title I, Chapter I.

The DOLE thus issued the correctly renumbered Labor Code.

More...

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

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SINGAPORE
1 APR 2015

Construction Firm Managing Director Jailed and Fined for Collecting Kickbacks

On 1 April 2015, the Industrial Relations (Amendment) Act 2015 came into operation. On this, with effect from 1 April 2015, recognised rank and file trade unions can represent managerial or executive employees both collectively and on an individual basis, subject to certain limitations. In terms of scope, the rank and file union can only represent managerial or executive employees in relation to breaches of employment contracts, retirement benefits, unfair dismissal, victimisation and re-employment disputes. In addition to the limitation on scope, managerial or executive employees who, inter alia, hold senior management positions, exercise decision-making powers on industrial matters, or who represent their employers in negotiation of industrial matters, are excluded from being represented by trade unions.

More...

SINGAPORE
7 APR 2015

Construction Firm Managing Director Jailed and Fined for Collecting Kickbacks

On 7 April 2015, the MOM Ministry of Manpower ("**MOM**") announced that the managing director of a construction firm had been sentenced by the State Courts to 3 weeks' imprisonment and fined S$169,000 for receiving kickbacks from 24 foreign workers. In addition to the receipt of kickbacks, the managing director was also charged and convicted of obstruction of justice. According to the MOM, the MOM had infringed the provisions of the Employment of Foreign Manpower Act as he had required the foreign workers to pay to him S$7,200 as a condition of employment. On this, the MOM emphasised that most monies collected from foreign workers will be deemed as prohibited employment kickbacks, unless such monies can be properly accounted for.

More...

SINGAPORE
15 MAY 2015

First Individual Convicted for Conducting Employment Agency Activities Without a Licence

On 30 April 2015, a construction worker, Ahmead Rubel ("**Rubel**") from the People's Republic of Bangladesh was convicted in the State Courts for one count of conducting employment agency activities without a valid licence issued under the Employment Agencies Act ("**EAA**"). According to the press release issued by the MOM, in exchange of a fee of S$3,000, Rubel had sent the passport details and other supporting documents of a fellow Bangladeshi worker to the site manger of a construction site, who then proceeded to hire the said worker. For conducting such activities following within the ambit of the EAA without a valid licence, Rubel was fined S$40,000 in default of four months' imprisonment.

More...

SINGAPORE
25 JUN 2015

Ministry of Manpower Cancels Status of Five Accredited Training Provider

Under the Ministry of Manpower's ("**MOM**") workplace safety and healthy framework, only training providers who have been accredited by the MOM are allowed to conduct workplace safety and health courses on behalf of the MOM. According to the MOM, it has received information from the public that five of such Accredited Training Providers ("**ATP**") had allegedly violated the ATP Terms and Conditions. Acting on such information, the MOM commenced its own investigations and found that the five ATPs had, inter alia, failed to ensure language proficiency of trainees and/or failed to uphold the integrity of applicable examinations. Consequently, the MOM made a decision to cancel the ATP status of these five training provides for an indefinite period of time. The MOM further stated that it will continue to investigate all its ATPs, and take all actions as may be necessary.

More...

SINGAPORE
8 JUL 2015

Additional Measures Under the Fair Consideration Framework ("**FCF**")

With effect from 1 October 2015, in addition to advertising the job vacancy on the national Jobs Bank prior to applying for an Employment Pass ("**EP**"), companies operating in Singapore must also state the salary range applicable to such vacancies. In addition, companies in Singapore which have a weaker core of Singaporean citizens at the professional, managerial or executive level may be requested by the Ministry of

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LOOKING BACK

SINGAPORE **8 JUL** 2015

Manpower to provide additional information when applying for an EP. Apart from the above enhancements to the FCF, the MOM also announced that a new Employment Claims Tribunal will be set up in the first quarter of 2016 to assist employees who fall outside the ambit of the EA with the resolution of statutory and contractual salary-related disputes.

More...
More...

SINGAPORE **13 JUL** 2015

Employment (Amendment) Bill (Bill No 23/2015)

The Bill proposes various amendments to Singapore's Employment Act ("**EA**") which imposes a statutory obligation on employers to provide to employees falling within the ambit of the EA written key employment terms and itemised payslips. The Bill also imposes a statutory obligation on employers to maintain accurate records of their current and ex employees for a period of time. While the Bill imposes the above statutory obligations on employers, the Bill does not provide further details on the mechanics of such obligations, including what constitutes key employment terms, the key items to be provided in the payslips, and the details of the mandatory employee records.

More...
More...

SINGAPORE **22 JUL** 2015

Tripartite Alliance for Fair Employment Practices ("**TAFEP**") Clarifies Guidelines For Job Advertisements

The TAFEP re-affirmed its position that employers are required to recruit and select employees on merit, taking into account the prospective candidate's ability to meet the objective requirements of a position. The position was that employers are not supposed to recruit based solely on nationality requirements was also re-iterated. Notwithstanding this, TAFEP confirmed that it is acceptable for employers to state 'Singaporeans only' in their respective job advertisements.

More...

SINGAPORE **29 JUL** 2015

Higher Cap Under Work Injury Compensation Act

On 29 July 2015, the Minister for Manpower announced that from next year, the compensation limit for death and permanent incapacity under the Work Injury Compensation Act will be raised to S$36,000 from S$30,000. According to the Minister, this increase in the compensation limit was required to take into account general increase in wage levels and increases in medical costs. In addition, the Minister announced that measures will be put in place to help employees return to work in a shorter time, such as allowing employers to claim for expenses that facilitate an early return to work.

More...

LOOKING BACK

SOUTH KOREA
1 JAN 2015

Requirement to Establish a Workplace Nursery

Previously, employers with 300 or more female employees or with 500 or more employees (regardless of gender) were not required to establish workplace nurseries if they provided a childcare allowance. From January 1, 2015, the relevant law abolished the option of providing childcare allowance, and relevant employers are now required to establish workplace nursery or otherwise provide childcare support by using the services provided by local private nursery facilities.

Employers in violation of the above requirements may be ordered to comply and/or may be subject to fines two times per year, up to 100 million Korean Won in each instance.

SOUTH KOREA
1 JAN 2015

Act on Fair Recruiting Procedures Takes Effect

Pursuant to the rules under the Act on Fair Recruiting Procedures that will start to phase in from January 1, 2015, employers are now required to return hiring documents upon request by an unsuccessful job candidate. Further, employers are required to retain hiring documents for a certain period of time as candidates might ask that they are returned. Violation of the aforementioned requirement may subject the employer to a corrective order by the Ministry of Employment and Labor and an administrative fine up to 3 million Korean Won.

The above rule will start to apply from January 1, 2015 to employers with 300 or more employees or public employers. Employers with 100 to 300 employees must comply with the rules from January 1, 2016, and smaller companies with 30 to 100 employees must start complying from January 1, 2017.

More...

SOUTH KOREA
1 JAN 2015

Increase in National Health Insurance Premium for 2015

The National Health Insurance premium for 2015 has been increased to 6.07% in 2015 from 5.99% in 2014.

More...

SOUTH KOREA
1 JAN 2015

Minimum Wage for 2015

The minimum wage for 2015 is 5,580 Korean Won per hour. This is a 7.1% (or 370 Korean Won) increase from 5,210 Korean Won per hour in 2014. Please note that the 10% reduction in minimum wage that was applicable to surveillance/intermittent workers is no longer applicable as of December 31, 2014. Therefore, surveillance/intermittent workers must be paid at or above the minimum wage.

More...

SOUTH KOREA
7 JAN 2015

Updates to Reduction of Working Hours for Childcare Period

Currently, employees are entitled to take a leave of absence for childcare leave or reduce their working hours for up to 1 year (or a combination thereof, up to a maximum of 1 year). According to an amendment to the law effective as of July 1, 2015, while the leave of absence will remain up to 1 year, any period of reduced working hours can be extended by up to 2 times the previous standard. In other words, if an employee takes a leave of absence for 6 months, up to 12 months can be subject to reduced working hours (i.e., the remaining 6 months x 2).

Further, before the amendment, employees were allowed to use the reduction of working hours for a period of childcare in two splits, however, the new rule will permit employees to split the period of reduced working hours up to three times.

SOUTH KOREA
1 JAN 2016

Minimum Wage for 2016

Wording: The minimum wage for 2016 will be fixed at 6,030 Korean Won per hour. This is an 8.1% (or 450 Korean Won) increase from 5,580 Korean Won per hour in 2015.

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: KIM & CHANG

LOOKING BACK

SRI LANKA

9 JUN 2015

Peoples' Bank (**Appellant**) Vs. Lanka Banku Sevaka Sangamaya(On behalf of EAA Dayananda) (**Respondent**), Supreme Court case no. 106/2012

In this case the Labour Tribunal, on an application made by a workman who was employed by the Peoples' Bank as a clerk challenging his termination, had held that the termination of services of the workman was justified but ordered compensation amounting to Rs. 584,425.25.

The High Court, by its judgment dated 23 March 2011, affirmed the order of the Labour Tribunal.

Being aggrieved by the order of the High Court, the Peoples' Bank had appealed to Supreme Court.

On 9 June 2015 Supreme Court set aside both judgments of the Labour Tribunal and the High Court and allowed the Bank's Appeal. The Supreme Court held that workman was dishonest when he committed the acts of misconduct and that banks expect high standard of honesty from its employees. It was also held that if the employees of banks do not maintain such standards of honesty, the confidence that the members of public have kept in bank system would erode. Therefore, the workman (the respondent) is not entitled to compensation.

The case is significant since there had been previous case law authority in which the grant of compensation to an employee whose employment was terminated for misconduct had been upheld previously. The deciding factor here was the element of dishonesty in the context of the employer being a bank which disentitled the applicant to compensation.

More...

LOOKING BACK

TAIWAN
21 NOV 2014

Judicial Yuan Grand Justices Interpretation No.726

Question presented due to conflicts in Supreme Court rulings: "If the employer and employee reached a separate agreement on working hours that was not later approved by the local competent authority, is such agreement still bound by the rules of the Labor Standards Act and other laws and regulations?" The Grand Justices believe so. The requirement under Article 84-1 of the Labor Standards Act for the employer to report to the local competent authority any separate agreements reached regarding working hours, vacation days and late night working hours for female employees is compulsory; failure to make such a report does not put those separate agreements outside the corresponding default rules in the Labor Standards Act, namely Articles 30, 32, 36, 37 and 49. Except for where the employer would be negatively affected under public law, a court resolving a civil dispute arising out of such separate and unapproved agreements may apply the Labor Standards Act in revising the terms of such agreements in accordance with the legislative intent to protect the rights of the employee.

More...

TAIWAN
11 DEC 2014

Executive Order Amending the "Act of Gender Equality in Employment"

The Hua-Zhong-Yi-Yi-Zi-10300189191 Executive Order promulgated on December 11, 2014 amends Articles 4, 12, 14-16, 23 and 38-1 of the Act.

The main points covered in the amendments are:

1. The central competent authority shall be the Ministry of Labor, and the guidelines for determining what is considered sexual harassment in the workplace are now clearly stated.
2. Amending the current rules on wages during menstruation leave to half-pay, whether menstruation leave be included as part of sick leave or not.
3. Extend paid pregnancy check leave to five days.
4. Extend paid paternity leave to five days.
5. Childcare unpaid leave may be applied for as soon as the employee has worked for six months for an employer.
6. Childcare unpaid leave may also be available for employees who have adopted children and are living together.
7. Employers with 250 employees or more must provide breastfeeding facilities.
8. Increase penalties to between NT$300,000 and NT$1,500,000 for an employer found in violation of the prohibition on sexual discrimination.

More...

TAIWAN
16 DEC 2014

Starting From 1 January 2015, the Rate for General Accident Labor Insurance is Increased by 0.5%. The Insurance Rate is Now 10% of the Insured's Wages

Pursuant to the Ministry of Labor's letter with Ref. No. Lao-Dong-Bao-Yi-Zi-1030023733 on 15 September 2014 and Article 13, Paragraph 2 of the Labor Insurance Act, the general accident labor insurance rate is now 10% starting from 1 January 2015. The actual effective rate is 9%, as Article 41, Paragraph 2 of the Employment Insurance Act specifically displaces Article 13, Paragraph 2 of the Labor Insurance Act.

More...

TAIWAN
22 DEC 2014

Further Clarification Regarding the Paternity Leave Provisions in Article 15 of the "Act Of Gender Equality in Employment"

The Ministry of Labor's letter with Ref. No. Lao-Dong-Tiao-Shi-Zi-1030132632 on 22 December 2014 makes an additional clarification regarding the extended paternity leave: If the employee's spouse gives birth prior to when the amended Act of Gender Equality in Employment enters into effect, and if the employee wishes to take paternity leave within 15 days before or after the date the spouse gives birth, as the legislative intent for the paternity leave is to provide assistance and care to the female spouse during birth, the employee may request to take a paternity leave of up to 5 days during the aforementioned period.

More...

TAIWAN
6 JAN 2015

The Ministry of Labor Is Strenuously Seeking to Reduce the Ordinary Working Hours to 40 Hours Per Week, and It Is Strengthening Inspections of Labor Conditions

In response to labor organization's move for "40 hour weeks and 2 days off per week", the Ministry of Labor has presented a draft of amendments to the Labor Standards Act for the Executive Yuan's review; the amendments would reduce ordinary working hours to 40 hours per week, and additional measures are proposed to protect the laborer's rights.

More...

TAIWAN
13 JAN 2015

If an Employee is On Medical Leave for Injuries Incurred Due to Occupational Accidents, the Employer Must Still Follow Article 23, Paragraph 2 of the Act for Protecting Worker of Occupational Accidents in Terminating the Employment Agreement

Pursuant to the Ministry of Labor's letter with Ref. No. Lao-Dong-Fu-San-Zi-1030136648 dated 13 January 2015, even in the case where the employee has been rendered physically disabled or mentally incompetent as a result of occupational accidents, the employer must still proceed in accordance with Article 23, Paragraph 2 of the Act for Protecting Worker of Occupational Accidents and wait for the completion of the medical treatment and an official declaration by a government-recognized medical institution that the employee is physically or mentally unable to return to work before terminating the employment agreement. The employer may not unilaterally seek to force the early retirement of such an employee according to Article 54, Paragraph 1 of the Labor Standards Act.

More...

TAIWAN
27 APR 2015

Interpretation of Article 16 of the Act for Gender Equality in Employment

Unpaid parental leave under Article 16 was drafted in consideration that many parents need to personally raise their own children while working. In an effort to encourage employers to create a work environment that is friendly to employees with families and allow employees to enjoy a balance between work and family life, the Ministry of Labor explained in the Lao-Dong-Tiao-4-Zi-1040130693 Circular that if the employer goes beyond the minimum legal requirements and allows those who have worked for less than six months to apply for unpaid parental leave, the rules under Paragraph 2 with respect to such employee's social insurance and employer-paid premiums shall apply. This Interpretation entered into effect on the promulgation date.

More...

TAIWAN
4 MAY 2015

Circular Explaining Questions Over Employees' Use of Communications Software to Apply for Leaves

The Ministry of Labor issued the Lao-Dong-Tiao-3-Zi No.1040130742 Circular to clarify applying for leaves through communications software. Article 10 of the Regulations of Leave-Taking of Workers require employees to verbally or in writing describe the reason for the leave and the number of days requested in advance unless in case of emergencies, where the employee may entrust another to handle the leave-taking procedure. If the employee has a valid reason for taking leave, the employer shall grant it, but if the employee uses messaging software to apply for the leave, he or she must still go through the procedure detailed in the work rules/employment agreement after returning to work.

More...

TAIWAN
6 MAY 2015

The Ministry of Labor issued the "Guidelines on Employee's Use of Time Outside the Workplace"

The Ministry of Labor issued the Lao-Dong-Tiao-3-Zi No.1040130706 Circular to provide guidance on the recognition of hours of work outside the work place and attendance records for certain occupations such as news media reporters, telecommuters, sales personnel and drivers, etc. The Guidelines entered into effect on the date of promulgation.

Due to employers often communicating duties to off-site workers through messaging software or telephone calls, there is a concern of overly long hours for such employees, as well as difficulties regarding the recognition of hours worked and attendance records –

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TAIWAN
6 MAY
2015

there is a large gap between the perceptions of the employer and that of the employee in what should count as hours worked and what should count as being present for work. The Guidelines are a result of several meetings from December 2014 to March 2015 with input from reporters, sales personnel, drivers, relevant government agencies, etc.

The main points of the Guidelines are as below:

1. Common rules are added with respect to the recognition of hours worked and attendance record issues for offsite employees, and specific rules are set for news reporters, telecommuters, sales personnel and drivers.
2. The employer and the employee should set out the work hours, rest periods and overtime rules in a written employment agreement, as well as incorporate them in the work rules, to clearly define each party's rights.
3. Even though it may be difficult in practice to clearly delineate "work" and "rest" hours for employees working off-site, the employer is expressly required to give such employees rest hours pursuant to law.
4. Regarding overtime hours:
    1. If the employer causes the employee to work overtime, the time such assignment is issued shall be recorded, while the employee can record the start and finish times for the assignment and send them with the records of communication for the employer's records.
    2. If the employee decides that he or she must continue beyond normal business hours to finish the work assigned, he or she shall report the completion of work to the employer in accordance with the agreed method. The employer and the employee may also stipulate beforehand that employer consent and overtime reporting are not required if the overtime period is within a certain length.
5. The method for recording the offsite employee's work hours are stipulated – it does not have to be limited to time cards or attendance sheets. For example, dashboard cameras, GPS records, messaging, customer signature records, report submission records, driving vouchers (vehicle dispatch receipts) and others may all serve as evidence of work done. In accepting a labor inspection, the employer should present written records.

The Ministry of Labor has emphasized that although the employer and the employee should follow the Guidelines in reaching an optimal method for the determination of work hours for both sides, such method should still be compliant with the mandatory provisions of the Labor Standards Act.

More...

TAIWAN
29 MAY
2015

Interpretation of the Maternity Leave Rules under Article 15, Paragraph 4 of the Act for Gender Equality in Employment

The Ministry of Labor issued the Lao-Dong-Tiao-4-Zi No.1040130594 Circular to explain that in consideration of the number and amount of time required for prenatal checks, the employer is not allowed to refuse an employee's request for maternity leave in "half-day" units when the employee needs to undergo such medical procedures. Further, due to variances in the doctor's scheduling, the wait required and even traffic, the employee may also choose to take maternity leave by "hours"; the term "five days" in the statute, if calculated by hours, would refer to an eight-hour work day multiplied by five, or a total of forty hours. Once the employee chooses to take maternity leave by "half-days" or by "hours", the choice cannot be subsequently changed.

More...

TAIWAN
3 JUN
2015

Presidential Order for Amendment of the Labor Standards Act

The main points of the amended Articles 4, 30, 79 and 86 per the Hua-Zhong-1-Yi-Zi No.10400064421 Presidential Order are as below:

1. For consistency with the reorganization within the government, the name of the central competent authority (for labor) is amended to be the "Ministry of Labor". (Article 4)

Con't

LOOKING BACK

TAIWAN
3 JUN
2015

2. Following international trends, the statutory ordinary working hours per week is reduced to 40 hours maximum. Further, in consideration of the statute of limitations on requesting wage payments and other practical concerns, as well as the requirement for employers to keep the employee's name card and data for at least five years, the employer is now required to maintain the employee's attendance records, which shall record to the minute the employee's arrival and departure, for five years. The employer also may not refuse an employee's request for a copy of such attendance records. In addition, in reference to international treaties and foreign laws, the employer may no longer adjust regular working hours as a way to reduce payment of wages to employees. (Article 30, Paragraphs 1, 5, 6 and 7)
3. In consideration of creating an employee-friendly workplace and assisting employees' efforts to juggle work and child rearing, as well as increase the rate of employment for women, the employer may now flexibly adjust the start and end times of ordinary working hours per the employee's family caretaking requirements. (Article 30, Paragraph 8)
4. Increase the penalty amount imposed on employers for failure to maintain attendance records or failure to maintain such records for five years, and new penalties under Article 30, Paragraphs 6 and 7 are added. (Article 79)
5. This amendment will enter into effect on 1 January 2016. (Article 86)

More...

TAIWAN
1 JUL
2015

Presidential Order for Amendment of the Labor Standards Act

The main points of the amended Article 58 per the Hua-Zhong-1-Yi-Zi No.10400077211 Presidential Order are as below:

1. An employee's right to a pension under the Old Pension System may not be assigned, offset, seized or provided as a bond. (Paragraph 2)
2. After receiving the pension under the Old Pension System, the employee may provide the relevant supporting documents/certificates and deposit the amount in a dedicated account opened at a financial institution. For the protection of the employee's retirement rights, all amounts deposited in such an account may not be used to offset debts, be seized, provided as a bond or be subject to compulsory enforcement. (Paragraphs 3 and 4)

More...

TAIWAN
1 JUL
2015

Presidential Order for Amendment of the Labor Insurance Act

The main points of the amended Articles 4 and 17-1 per the Hua-Zhong-1-Yi-Zi No.10400077061 Presidential Order are as below:

1. For consistency with the reorganization of the Executive Yuan, the "Executive Yuan Council of Labor Affairs" is amended to state "Ministry of Labor". (Article 4)
2. New rule for labor insurance premiums and penalties now enjoying higher priority than ordinary debts for repayment. (Article 17-1)

More...

LOOKING BACK

THAILAND
12 DEC 2014

Ministerial Regulations Concerning Labour Protection in Agriculture B.E. 2557

The Ministry of Labour issued a new regulation on 12 December, regarding annual leave, overtime pay, and sick leave for agricultural workers.

THAILAND
22 DEC 2014

Ministerial Regulations Concerning Labour Protection in Sea Fisheries B.E. 2557

The Ministry of Labour issued a new regulation on 22 December, which is relevant to operators of sea fishery businesses. Among other things, it expands the definition of fishery work, raises the minimum age for being employed to perform fishery work, and sets out requirements pertaining to rest periods, written employment contracts, reporting to labour officials, work rules, minimum wage, facilities/amenities, and training .

THAILAND
13 FEB 2015

New Penal Code Provisions on Sexual Harassment

The penal code provision on annoyance or bullying of another, or causing another to be ashamed or troubled, has been expanded to also cover sexual harassment, and sexual harassment committed by one's supervisor or a person in a position of authority, in the context of employment. The new provision was gazetted on 13 February 2015 and became effective the following day.

THAILAND
22 JUN 2015

Amendments to Social Security Act

The Social Security Act underwent its fourth amendment, which made several changes to the law. The amendments were gazetted on 22nd June and will become effective in late October. While some proportion of the changes concern internal administrative matters of the Social Security Fund and associated governmental operations, there were some key changes of relevance to employers. Among these, the law now provides framework for reduction of social security contributions in the event of a disaster. Additionally, paternity benefits are now provided. Also, the fund no longer provides compensation for those who resign from employment. A range of other technical changes were also made to benefits eligibility.

Click here to view **2014 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: Tilleke & Gibbins

LOOKING BACK

VIETNAM
12 JAN 2015

A new Decree Guiding Implementation of the Labour Code

On 12 January 2015, the government issued Decree No. 05/2015/ND-CP ("Decree 05") guiding implementation of some of articles of the Labour Code No. 10/2010/QH13 dated 18 June 2012 of the National Assembly. Decree 05 provides for specific issues of labour contract, salaries, collective discussion and negotiation, labour discipline, and settlement of labour disputes.

Decree 05 takes effect from 1 March 2015 and replaces:

- Decree No. 196/CP dated 31 December 1994 (as amended by Decree No. 93/2002/ND-CP dated 11 November 2002) on collective labour agreement;
- Decree No. 41/CP dated 6 July 1995 (as amended by Decree No. 33/2003/ND-CP dated 02.4.2003) on labour discipline; and
- Decree No. 11/2008/ND-CP dated 30 January 2008 on damages payment in case of illegal strike.

Labour contracts, collective labour agreements, labour rules and regulations signed or issued prior to the effective date of Decree 05 are required to be reviewed, amended, and supplemented by the parties to comply with Decree 05.

VIETNAM
22 APR 2015

A New Circular Providing Guidance on Recruitment and Management of Vietnamese Employees Working for Foreign Individuals and Organizations in Vietnam

On 22 April 2015, the Ministry of Labor, War Invalids and Social Affairs issued Circular No. 16/2015/TT-BLDTBXH ("Circular 16") on guiding implementation of Decree No. 75/2014/ND-CP dated 28 July 2014 on recruitment and management of Vietnamese employees working for foreign individuals and organizations in Vietnam. The assignment/authorization of the recruitment and management of Vietnamese employees working for foreign employers, application form for recruitment, and periodic reports on the recruitment, assignment and management of Vietnamese employees working for foreign organizations are matters specifically provided for by Circular 16.

Circular 16 takes effect from 6 June 2015 and replaces Circular No. 09/1999/TT-BLĐTBXH dated 15 March 1999.

More...

VIETNAM
23 JUN 2015

A New Circular Providing Guidance On Wages

On 23 June 2015, the Ministry of Labor, War Invalids and Social Affairs issued Circular No. 23/2015/TT-BLĐTBXH ("Circular 23") on guiding implementation of some articles on wages of Decree No. 05/2015/NĐ-CP dated 12 January 2015 ("Decree 05"), including wage level, method of wage payment, monthly wage payment term and formula for calculation of overtime wage, wage for working at night, wage for overtime working at night.

Pursuant to Circular 23, monthly salary shall be paid to the employee on monthly or semi-monthly basis within such working month.

Circular 23 takes effect from 8 August 2015 and the regulations of this Circular are applied from the effective date of Decree 05 (i.e. 1 March 2015).

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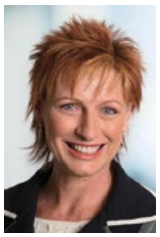
Simpson Grierson



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