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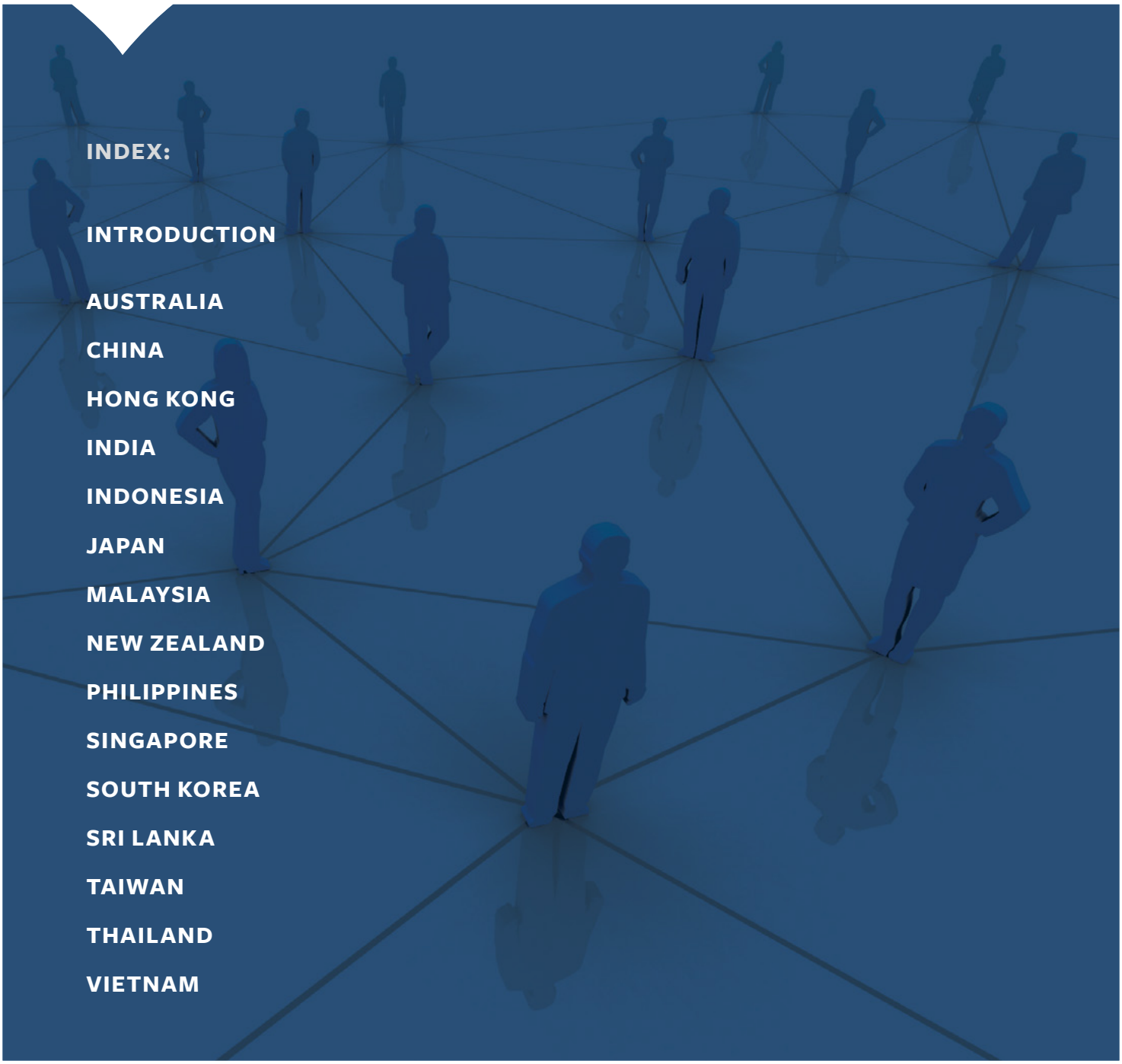
Asia Employment Law: Quarterly Review

2015-2016

ISSUE 12: SECOND QUARTER 2016



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INTRODUCTION

UPDATED AS AT JUNE 2016

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 twelfth edition, we flag and provide comment on anticipated employment law developments during the second quarter of 2016 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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Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

LOOKING BACK

AUSTRALIA

9 DEC 2015

High Court Rules Courts can Consider Agreements on Penalty in Civil Penalty Proceedings

In *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate and Others* [2015] HCA 46, the High Court of Australia unanimously held that courts are not precluded – in civil penalty proceedings – from considering and (if appropriate) imposing penalties that have been agreed between the parties.

As a result, prosecuting authorities such as work health and safety regulators, the Fair Work Ombudsman, and the Australian Competition and Consumer Commission may enter into penalty agreements with parties who have breached civil penalty provisions of applicable legislation. Those agreements can then be produced for consideration by a court when it comes to determining the appropriate penalty.

The decision resolves an area of recent uncertainty, and is likely to encourage parties who have engaged in civil penalty breaches to resolve (rather than contest) any resulting enforcement proceedings.

More...

AUSTRALIA

23 DEC 2015

Sexual Harassment Damages Exceed $330,000 in Recent VCAT Ruling

In *Collins v Smith* (Human Rights) [2015] VCAT 1992, the Victorian Civil and Administrative Tribunal (VCAT) awarded the complainant in a sexual harassment case over A$330,000 in damages. The decision continues the shift in approach to assessment of damages for sexual harassment contraventions which was affirmed in *Richardson v Oracle Corporation Australia Pty Ltd and Tucker* [2014] FCAFC 82.

This new approach reflects a recognition: 'that community attitudes regarding the impact of sexual harassment [have] changed, in particular that the adverse consequences ... can extend to loss of employment and career; severe psychological illness; and relationship breakdown.'

Applying these principles in this case, VCAT awarded general damages in the amount of A$180,000; aggravated damages of A$20,000; another A$120,000 for past and future loss of earnings and superannuation; and A$12,280 for out of pocket expenses – making a total damages amount of A$332,280. The conduct complained of involved the manager (in a small workplace with few employees) engaging in repeated attempts to kiss and embrace the complainant employee; touching her inappropriately; and sending her incessant text and phone messages containing further sexual advances.

More...

AUSTRALIA

21 DEC 2015 & 30 DEC 2015

Government Releases Reports of the Productivity Commission Workplace Relations Review and the Trade Unions Royal Commission

The Final Report of the Productivity Commission's Inquiry into the Workplace Relations Framework was released on 21 December, followed by the Royal Commission into Trade Union Governance and Corruption Final Report on 30 December.

After two years of hearings, the Final Report of the Trade Unions Royal Commission (TURC) concluded that there has been 'widespread' and 'deep-seated' misconduct on the part of Australian union officials over the last 23 years – including corruption, financial arrangements favouring the interests of unions over their members, fraudulent payments, and misappropriation of union funds.

As the federal Government has already committed to implementing the recommendations of the Trade Unions Royal Commission (TURC), while it is still weighing up its response to the Productivity Commission (PC) report. 2016 is likely to be dominated by discussion of proposals for increased regulation of trade unions. This will include lifting standards of financial probity, disclosure and accountability within unions; substantially increasing the penalties for serious breaches of these legal requirements; and establishing a specialist agency to oversee and enforce the new regulatory regime, the Registered Organisations Commission.

Con't

LOOKING BACK

AUSTRALIA

21 DEC 2015 & 30 DEC 2015

In the Final Report on its wide-ranging review of Australia's federal workplace relations system, the Productivity Commission (PC) took the overall the view that the system is not fundamentally flawed – but requires 'repairs' in several key areas. These include:

- Establishing a new body, separate from the Fair Work Commission (FWC), called the Workplace Standards Commission with the functions of reviewing and varying the minimum wage and modern awards;
- Reducing Sunday penalty rates for permanent employees in the hospitality, entertainment, retail, restaurant and cafe industries to Saturday rates;
- Introducing a new statutory instrument – 'enterprise contracts' – which would enable small-medium enterprises to implement award variations without having to engage in individual or collective negotiations with employees;
- Providing employers with several new options to finalise agreements for 'greenfields' business projects, and allowing these agreements to be struck for the duration of the relevant project.

The Government is still weighing up its response to the report, as several of the recommendations may be politically risky in the lead-up to this year's federal election. Consultation will now take place with major stakeholders before the Government announces the changes that will for part of its pre-election workplace relations policy.

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AUSTRALIA

8 FEB 2016

FWC Full Bench Sets High Bar for Industrial Action 'Cooling Off' Periods

In *MUA v Patrick Stevedores Holdings Pty Ltd* [2016] FWCFB 711, a Full Bench of the Fair Work Commission indicated that clear evidence will need to be provided in support of an employer's application for a "cooling off" period under section *425 of the Fair Work Act 2009* (Cth).

The parties have been negotiating since March 2015 over a new agreement for Patrick's port operations at Brisbane, Port Botany, Melbourne and Fremantle. Towards the end of 2015, the union instigated the process for taking protected industrial action in support of its bargaining claims. Action in the form of work bans and stoppages commenced in January 2016. The employer then sought a suspension of the union's action under section 425, to enable negotiations to re-commence through a 'cooling off' period.

The Full Bench overturned the decision at first instance granting the employer's application for a cooling off order. According to the Full Bench, the tribunal member below had reached an incorrect factual conclusion that the elevation of hostilities between the parties (including the union's resort to industrial action) had precluded discussion and negotiation.

The decision sets a high bar for the evidence that will be required to substantiate the employer's argument that a suspension of protected action will assist the parties to reach an agreement.

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AUSTRALIA

11 FEB 2016

Federal Circuit Court Imposes Penalties on Employer for Underpayment of Interns

In *Fair Work Ombudsman v Aldred* [2016] FCCA 220, the Federal Circuit Court fined a former marketing chief executive A$17,500 for engaging three interns at below award rates of pay. The conduct of the executive which was found to be unlawful included:

- Representing to the young graphic design, multi-media and marketing interns that their terms of engagement accorded with minimum statutory employment conditions – a claim which was intended to dissuade them from checking on their legal entitlements;
- Falsifying the payslip of one of the interns, by changing her employment status.

The court imposed the penalty after an investigation by the Fair Work Ombudsman which also resulted in the executive repaying the interns around A$10,000 in unpaid wages. They had been engaged for three-month internships with the prospect of ongoing positions to follow.

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AUSTRALIA

11 FEB 2016

The decision follows increased attention on the use of unpaid work experience and internships in Australia in recent years, and greater enforcement activity in this area by the Fair Work Ombudsman.

A widespread underpayment scandal has also been exposed in 7-Eleven franchises across Australia. In September 2015, the company responded to public concern about this issue by appointing an independent panel to review the wage claims of all underpaid workers, which 7-Eleven head office will repay (even though it was not the direct employer of the employees concerned).

AUSTRALIA

APR 2016

Fair Work Ombudsman Report on 7-Eleven highlights Workplace Contraventions in Franchising Chain

The Fair Work Ombudsman (FWO) released the report of its inquiry into extensive underpayments of workers in the 7-Eleven franchise chain, which has attracted significant media attention in Australia over the last six months.

The FWO found that a number of 7-Eleven franchisees had paid their employees below minimum award rates of pay, and had falsified data to conceal these breaches of the *Fair Work Act 2009* (Cth) (FW Act). The FWO has brought enforcement proceedings against several franchisees (recovering around A$600,000 in back-payments for affected workers), with several more actions on foot.

The FWO also examined the potential liability of 7-Eleven head office for the underpayments occurring within its store network. Despite finding a number of inadequacies in the franchisor's conduct, the FWO found there was insufficient evidence to establish that 7-Eleven was liable as an accessory to the breaches committed by franchisees (for example, mere suspicions of general non-compliance would not be enough to establish liability).

Although not liable for the underpayments, 7-Eleven established an independent panel in September 2015 to assess employee underpayment claims. However the company disbanded the panel in May this year in order to handle the underpayment rectification process in-house.

The 7-Eleven episode raises significant issues for franchisors in managing employment issues within the franchise chain. Generally, franchisors need to strengthen obligations on franchisees to ensure compliance with workplace laws – but without going so far as to systematically acquire knowledge of the particular labour arrangements that franchisees enter into with their employees. The latter could result in franchisors becoming accessories to relevant contraventions. However, franchisors should act on any information of franchisee wrongdoing which they receive.

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AUSTRALIA

29 APR 2016

Full Federal Court Hands Down Important Ruling on Union Right of Entry

In *Bragdon v Director of the Fair Work Building Industry Inspectorate* [2016] FCAFC 64, the Full Court of the Federal Court of Australia determined that the construction industry regulator could not establish breaches of federal right of entry laws by the Construction, Forestry, Mining and Energy Union (CFMEU).

Two CFMEU officials had entered a Sydney construction site, ostensibly to discuss safety issues with employees, but without meeting various requirements under the FW Act. They acted in a manner that the regulator argued breached other provisions of that legislation relating to the conduct of union officials exercising entry rights.

However, the Full Court held that because the union officials had not explicitly indicated that they were seeking entry under the FW Act – and could not have done so because they did not hold the necessary permit under state health and safety legislation – their entry onto the site was not subject to the conditions or requirements of the FW Act. Significant civil penalties which had been imposed on the CFMEU and its two officials were therefore overturned by the Full Court on appeal.

The decision highlights that employers must not simply allow union officials to come onto

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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AUSTRALIA **29 APR** 2016

worksites. Rather, the basis on which officials seek entry should always be established; and if it does not fit within any of the permitted grounds for entry under the FW Act, or any of the requirements for entry are not met, union officials should then be refused entry and asked to leave the site.

More...

AUSTRALIA **3 MAY** 2016

Employers continue to trip up on Bargaining Notice Requirements

In *Transit (NSW) Services Pty Ltd*, the Fair Work Commission (FWC) refused to approve an enterprise agreement because the notices of representational rights issued to employees at the commencement of bargaining were not in the form required by the FW Act. The notices erroneously directed employees to an incorrect website for obtaining further information about the bargaining process.

Although a seemingly trivial error, this was the latest example of a defect in bargaining notices causing problems for the subsequent approval of agreements. In other recent cases, notices were found to breach the FW Act where they had been issued on corporate letterhead (*DP World Melbourne Limited* [2016] FWC 385); where they included factually incorrect information relating to the proposed coverage of the agreement (*WorkPac Mining Pty Ltd* [2016] FWC 251); and where they improperly incorporated a form asking employees to nominate a bargaining representative (*Methodist Ladies' College and IEU*, 28 July 2015).

The FW Act requires strict adherence to a pro forma bargaining notice, with no changes permitted to the content of the notice. This is a critical matter for employers to get right at the outset, as many months of negotiation and bargaining with employees/unions could be unravelled if the FWC identifies concerns with bargaining notices at the final stage when approval is sought of an enterprise agreement.

More...

AUSTRALIA **8 MAY** 2016

Australian Election Campaign Gets Under Way with Workplace Legislation a Central Focus

Prime Minister Malcolm Turnbull called a federal election for 2 July 2016, commencing a 55-day campaign triggered by Parliament's refusal to pass two key pieces of workplace legislation. Both proposed laws would implement recommendations of the 2015 Final Report of the Royal Commission into Trade Union Governance and Corruption.

The *Building and Construction Industry (Improving Productivity) Bill* seeks to re-establish the Australian Building and Construction Commission as a specialist regulator for the trouble-plagued construction sector, overseeing stricter constraints on industrial action, coercion and entry onto work sites by building industry unions.

The *Registered Organisations Bill* would establish a new Registered Organisations Commission to enforce higher standards of financial governance and probity within Australian trade unions and employer associations.

If the Coalition Government is re-elected on 2 July, these bills would be brought before a special sitting of both houses of Parliament. The Labor Opposition is firmly opposed to both bills.

More...

AUSTRALIA **27 MAY** 2016

First Conviction for Breach of Consultation Duty under Model Work Health and Safety Laws

In *Boland v Trainee and Apprentice Placement Service Inc* [2016] SAIRC 14, the South Australian Industrial Court handed down the first conviction for breach of the duty to consult with other duty-holders under Australia's model work health and safety (WHS) legislation.

The model WHS laws operate in all Australian jurisdictions other than Victoria and Western Australia. In this case, a not-for-profit organisation placed a roofing worker onto a work site where he was severely injured after some guttering he was handling came into contact with live electrical wires.

The organisation was convicted for breaching the duty (under section 46 of the model

Con't

LOOKING BACK

AUSTRALIA

27 MAY 2016

WHS legislation) to consult with the primary duty-holder over safety at the work site, and had not done enough to discharge this duty by having its field officers visit the site every three weeks. A fine of A$12,000 was imposed on the non-profit entity.

The decision is significant as most observers had considered that section 46 of the model WHS legislation was not likely to lead to a prosecution; rather, it was thought that any contraventions would be pursued as a breach of the general WHS duty applicable to persons conducting a business or undertaking.

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AUSTRALIA

31 MAY 2016

Fair Work Commission Full Bench Rejects Coles Enterprise Agreement

In *Hart v Coles Supermarkets Australia Pty Ltd* and *Bi-Lo Pty* Ltd [2016] FWCFB 2887, a Full Bench of the FWC declined to approve an enterprise agreement that would have covered 77,000 supermarket employees. It was determined that the agreement would have resulted in a reduction in entitlements for some employees, and therefore did not pass the 'better off overall test' (BOOT), which benchmarks agreements against minimum award conditions – the most significant of the requirements for approval of agreements under the FW Act.

Although the proposed Coles agreement had been approved by around 90% of the employees and was supported by the main retail union, the Full Bench accepted evidence led by a part-time employee that the deal would result in a loss in monetary terms for him and seven other workers. Purported benefits under the agreement relied upon by Coles (e.g. study leave, domestic violence support, flexibility and managing carer responsibilities) could not be taken into account in applying the BOOT, as these benefits would make only a minor difference to the circumstances of the relevant employees.

The Full Bench found that the monetary loss for those who work primarily at times which attract lower penalty rates under the proposed agreement, than under the applicable award, would be quite significant. As the asserted benefits did not outweigh these potential reductions, the agreement did not pass the BOOT and could not be approved.

Coles was given the option of providing undertakings to the FWC that the relevant employees (and others in a similar position) would have their wages adjusted to ensure no disadvantage compared to the award. The provision of such undertakings would have enabled the FWC to approve the agreement despite its concerns about the BOOT. However on 9 June 2016, Coles announced that the changes suggested by the FWC were impractical and would not be adopted. This means that the new agreement will not come into operation, and the supermarket chain's large workforce will remain subject to terms and conditions of employment negotiated under a 2011 agreement.

The decision is important as it signals that a small group of well-organised employees can obstruct enterprise agreements covering large national employers, against the wishes of the vast bulk of the workforce. Employers therefore need to be careful to ensure that new agreements contain sufficient benefits for all categories of workers, so that the BOOT will be met and the agreement approved.

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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Looking Forward

CONTRIBUTED BY: CORRS CHAMBERS WESTGARTH lawyers

CHINA
1 DEC 2015

The New Labour Dispute Judgment Guidelines Issued by Shenzhen People's Intermediate Court

On 1 December 2015, the Shenzhen People's Intermediate Court issued "Judgment Guidelines for the Trial of Labour Dispute Cases" (hereinafter called "the Judgment Guidelines"), with "Explanations on the Judgment Guidelines (hereinafter called "Explanations"). The Explanations are attached to the Judgment Guidelines as elaboration. In Labour disputes occurred among the contractor, subcontractor, the affiliated party, the lessor of business license involving illegal contracting or subcontracting to employers without entity qualifications, the Explanations set out how to identify legal relations and determine the attribution of liability in such labour disputes.

More...

CHINA
27 DEC 2015

Population and Family Planning Law Revised

Recently, the Decision on Revising the Population and Family Planning Law (the "Decision") was adopted at the 18th Session of the Standing Committee of the National People's Congress for implementation as of 1 January 2016.

The Decision expressly states that the State advocates two children for every couple. If provisions on giving birth to more than one child are different in provinces, autonomous regions, and/or municipalities directly under the Central Government where a couple's registered permanent residence is located, the provisions in favour of the couple shall apply. The Decision provides that a couple having children in compliance with provisions set forth in the laws and regulations may receive extended maternity leave or other benefits. In addition, the Decision also proposes that, during the period of the State's one-child policy, couples voluntarily opted to have only one child shall be issued a Glorious One-child Parents Certificate by the State. Couples holding this Glorious One-child Parents Certificate may enjoy benefits related to one-child parents in accordance with the relevant provisions of the State, provinces, autonomous regions, and/or municipalities directly under the Central Government.

More...

CHINA
17 JAN 2016

Opinion on Comprehensive Regulation of Migrant Workers' Arrears of Wages Issued

Recently, the General Office of the State Council has issued the Opinion on the Comprehensive Regulation of Migrant Workers' Arrears of Wages (the "Opinion").

The Opinion highlights that it is imperative to clarify the responsibilities of all parties involved in wage payment. In the field of project construction, the contractors shall take overall responsibility for the payment of the migrant workers' wages in respect of their contracted engineering work. All enterprises shall be urged to, conclude employment contracts with the migrant workers in accordance with the law and strictly perform those contracts, create registers of employees and go through the record-filing procedures for employment. In the field of project construction, the administrative system for migrant workers by real names shall be implemented in all respects. Meanwhile, the Opinion proposes that in order to improve the system for the monitoring and guaranteeing wage payment, a mechanism for wage payment and a wage deposit system in enterprises be established to perfect the administration of special accounts system for migrant workers' wages (labour service fees), and put in place the responsibilities for settlement of arrears of wages. It is imperative to promote the set up of a credit system for wage payment by enterprises, set up a "blacklist" system listing enterprises with wage payment problems, by including the enterprises' illegal acts such as arrears of wages in the credit systems. For disputes involving arrears of wages, they shall be handled in a timely fashion, investigated and punished in accordance with the law.

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CHINA
19 JAN 2016

Circular on Seeking Public Comments for the Opinion on Issues Concerning the Implementation of Regulations on Work-related Injury Insurance (II) (Draft for Comments)("the Circular")

For implementing the Regulations on Work-related Injury Insurance and resolving the

Con't

CHINA
19 JAN 2016

policy difficulties in practical work, the Circular issued recently by the Ministry of Human Resources and Social Security was released to the public to solicit their opinions. The Comments specified the corresponding content in the Regulations on Work-related Injury Insurance against some unclear points regarding certification of work-related injury, e.g. the concept of "on the way between home and office" when determining work-related injuries, the case of an employee injured in a non-work related activity required by the employer, etc.

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CHINA
20 JAN 2016

State Council Cancelled 61 Ooccupational Qualification Certification and Rrecognition

On 20 January 2016, the State Council issued the Decision Guo Fa [2016] No. 5, cancelling 61 occupational qualifications certification and recognition. Meanwhile, the Decision suggested cancelling one occupational qualification certification set according to the law, which the State Council will submit to the Standing Committee of the National People's Congress (NPC) to amend the relevant regulations. According to the Decision, a total of 43 occupational qualifications and certifications for professionals are to be removed, including relating to entry requirements and 38 relating to competence evaluation; another 18 for skilled personnel qualifications and certifications are to be removed, all of these are relating to competence evaluation.

More...

CHINA
21 JAN 2016

Circular on Adjusting Premium Rate for Insurance for Work Related Injuries was Issued by Shanghai Municipality

Industrial benchmark premium rate for work related injury insurance shall be implemented in Shanghai Municipal with premium rates floated upwards or downward according to factors such as the employer's rate of contribution to work related injury insurance and the incidence of work-related accidents, from 1 October 2015. The premium rate of the work-related injury insurance will be maintained at the benchmark rate of the national work injury insurance industry corresponding to Types 1 to 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% respectively, and the rate will be adjusted according to the principal of "tax-and-spend and balance of payments".

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CHINA
18 FEB 2016

The People's Bank of China (PBOC) Improves the Deposit Rate Formation Mechanism for Employee Housing Provident Fund Accounts

With the approval of the State Council, the PBOC, the Ministry of Housing and the Urban-Rural Development (MHURD) and the Ministry of Finance recently printed and distributed the Notice on Improving the formulation of a mechanism on determination of Deposit Rate for Employee Housing Provident Fund Accounts (Yin Fa [2016] No. 43). According to the Notice, as from 21 February 2016, the Employee Housing Provident Fund Account deposit rates will be determined according to the 1-year benchmark deposit interest rate, thus replacing the previously adopted basis of on-demand and 3-month deposit benchmark interest rates as at the time of fund collection.

More...

CHINA
23 FEB 2016

New Policy on Population and Family Planning were Issued by Many Provinces

At the end of 2015, Guangdong Province first published the revised Regulations on Population and Family Planning. Subsequently, many provinces also published their local regulations on population and family planning. On 23rd Feb 2016, Shanghai Municipality issued its revised Regulations on Population and Family Planning. All of the above provinces have abolished the late marriage leave and late maternity leave, these province also formulated their local standard marriage leave and maternity leave. So far more than ten cities and provinces like Tianjin, Zhejiang and Ningxia have published their local population and family planning regulations. The longest period of maternity leave is 180 days and the shortest period of maternity leave is 128 days, the difference is almost two months. The

Con't

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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CHINA
23 FEB 2016

longest period of marriage leave is 30 days and the shortest period is only 3 days.

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CHINA
7 MAR 2016

Circular on Further Improving the Work on the Finality of Award of Labour Arbitration Cases

This Circular is made and issued by the Beijing Bureau of Human Resource and Social Security aiming mainly to address related questions on "first award being final" of labour arbitration in Beijing. It clarifies for the first time the specific scope of the final award to be applied in the Beijing area and specifically lists the items and contents of labour remunerations, work injury medical expenses, economic compensation or damages, etc.

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CHINA
10 MAR 2016

Regulations on National Social Security Fund

The Regulations on National Social Security Fund (hereinafter referred to as these "Regulations"), which were adopted at the 122nd executive meeting of the State Council on February 3, 2016, were promulgated for implementation as of May 1, 2016.

The Regulations were formulated in accordance with the Social Insurance Law of the People's Republic of China, in order to standardize the management and operation of the National Social Security Fund ("NSSF"), strengthen the supervision over the NSSF, and preserve and increase its value on the premise of ensuring security in accordance with the Social Insurance Law of the People's Republic of China. The Regulations make further provision on fund-raising , use schemes, management and operation, etc.

The Regulations clarify that no entity or individual may usurp, embezzle or illegally invest and operate the NSSF. The Regulations further provide that NSSF's property shall be independent of the own property of the executive council of the NSSF, its investment managers and custodians, and other property stewarded by such investment managers and custodians.

More...

CHINA
30 MAR 2016

Revision of the Regulations of Jiangsu Province on Population and Family Planning

Regulations of Jiangsu Province on Population and Family Planning was adopted at the 22nd Session of the Standing Committee of the Jiangsu People's Congress for implementation as of 30th April 2016.

The Regulations expressly state that a couple having children in compliance with the provision set forth in the regulation may receive marriage leave for 13 days from 1st January 2016 .Further, female employees shall be entitled to 128 days of maternity leave after delivery and male employees may receive 15 days of Paternity leave. The Regulations also propose that, such couple may have "third child" in four cases. National holidays are not included in the marriage, maternity and nursing leave.

More...

CHINA
14 APR 2016

Notice on the Reduction of Social Insurance Premium Rates by Phases

Recently, the Ministry of Human Resources and Social Security and the Ministry of Finance jointly issued the Circular on Reducing Social Insurance Premium Rates by Phases (the "Circular"), specifying the relevant requirements for reduction of social insurance premium rates by phases.

The Circular clearly states that as of May 1, 2016, in provinces (and autonomous regions or municipalities directly under the Central Government) where an enterprise's rate of contribution to basic retirement insurance for employees is higher than 20%, such rate shall be lowered to 20%; in provinces (and autonomous regions or municipalities directly under the Central Government) where an enterprise's contribution rate is 20% and the accumulated balance of basic retirement insurance funds for employees as at the end of 2015 can satisfy the payments for more than nine months, such rate may be lowered to 19%

Con't

LOOKING BACK

CHINA
14 APR 2016

by phases. This reduced rate shall be temporarily in force for a period of two years. Starting May 1, 2016, based on the one percentage point already reduced in 2015, the aggregate rate of contribution to unemployment insurance may be lowered by 1%-1.5% by phases, with the individual's contribution rate not higher than 0.5%. This reduced rate shall be temporarily in force for a period of two years. The specific schemes shall be determined by the authorities of provinces (and autonomous regions or municipalities directly under the Central Government).

The Circular stresses that it is necessary to improve the incentive and constraint mechanism for basic retirement insurance, ensure the full collection of funds receivable, realize sustainable development and long-term actuarial balance, and guarantee that the standards of social insurance benefits for the insured will not be reduced and such benefits will be paid on time and in full.

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More...

CHINA
22 JUN 2016

Circular of the Ministry of Human Resources and Social Security on Seeking Public Comments on the Interim Measures for Publicising Acts in Material Violation of Labour Protection Laws (Draft for Comments)

In order to implement the requirements of the Opinions of the Central Committee of the Communist Party of China and the State Council on Building Harmonious Labour Relations, the Opinions of the General Office of the State Council on Comprehensively Regulating Migrant Workers' Wage Arrears (Guo Ban Fa [2016] No.1), strengthen the efforts to punish acts in material violation of labour protection laws, and urge enterprises to regularise employment, the Ministry of Human Resources and Social Security ("MOHRSS") has drafted the Interim Measures for Publicising Acts in Material Violation of Labour Protection Laws (Draft for Comments) and is seeking public comments.

The Draft for Comments clarifies cases by violations of employers relating to labour security after investigations. The contents to be made available to the public include the full name of violator, its registration number and address, name of legal representative or person-in-charge, criminal facts and relevant disposal information. The administrative departments of human resources and social security shall retain the publicised acts in material violation of Labour Protection laws in the archives on the employers' legal compliance and credibility, and conduct information sharing and joint corrections in accordance with the law.

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CHINA
27 JUN 2016

Notice on the Measures for the Payment of Wages by Enterprises in Shanghai Municipality

This regulation (hereinafter referred to as "the New Regulation") is formulated and published by the Shanghai Municipal Human Resources and Social Security Bureau, and is mainly based on the PRC Employment Contract Law, its Implementation Rules and other related regulations. It updates and improves the original "Measures for the Payment of Wages by Enterprises in Shanghai Municipality" (hereinafter referred to as "the Old Regulation"). The New Regulation will serve as an important guidance on wage payment in accordance with law for enterprises currently based in Shanghai Municipality. It has set additional rules on the components of the calculation base of overtime payment and leave pay. The New Regulation clarifies by way of illustrations the items included in the concept of wages under law. The New Regulation clarifies the calculation base of overtime payment and leave pay, where if there is no agreement reached between the employer and the employee for monthly wage in employment contract and collective employment contract (the special collective agreement on wage)

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Good to know: follow developments

Note changes: no action required

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Looking Forward

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HONG KONG
29 DEC
2015

The Standard Working Hours Committee held its 18th meeting

The Standard Working Hours Committee ("SWHC") held its 18th meeting on 29 December 2015.

The SWHC recommended exploring a legislative approach to mandatorily require employers and employees in general to enter into written employment contracts, specifying clearly such terms relating to working hours, e.g. the number of working hours, overtime work arrangements and methods of overtime compensation (i.e. the "big frame").

The SWHC also explored whether there is a need for other suitable measure(s) to provide further protection for grass-roots employees with lower income, lower skills and less bargaining power (i.e. the "small frame").

The SWHC agreed to consult major trade associations and labour organisations, employers' and employees' associations of the relatively long-working-hours sectors, and other relevant organisations on its preliminary discussion outcomes and working hours policy directions under exploration (the "second-stage consultation")

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HONG KONG
1 JAN
2016

The Contracts (Rights of Third Parties) Ordinance Came intoForce

The Contracts (Rights of Third Parties) Ordinance (Cap. 623) ("the Ordinance") came into force on 1 January 2016.

The Ordinance applies to most types of contracts, with very limited exceptions. It reforms the privity of contract rule that only a party to a contract may enforce it. The Ordinance enables someone who is not a party to a contract to have rights under it, if:

- The contract gives that person an express right to do so; or
- A contract term purports to confer a benefit on that person.

If this is not your intention, then action is required. Standard employment contract templates should be reviewed to check that appropriate safeguards, such as an exclusion (where third parties are not intended to have any enforceable rights) or a restriction (where third parties are intended to have some enforceable rights) of the Ordinance are in place. New variations of existing employment contracts should also be checked.

More...

HONG KONG
7 JAN
2016

The Equal Opportunities Commission ("EOC") Announced its Findings on Age Discrimination in Employment

The EOC published its report: "Exploratory Study on Age Discrimination in Employment".

The exploratory study featured a quantitative telephone survey with 401 employed persons as well as qualitative in-depth interviews with key stakeholders, including 10 employers from small-and-medium enterprises (SME), three SME employees, and four Legislative Councillors.

The study found that there is substantial support among employees across all age groups for legislation against age discrimination. According to the quantitative survey, 35% of employed persons have experienced some form of age discrimination at work in the last five years, with mature workers being most vulnerable. The most commonly experienced forms of discrimination included receiving lower salaries, being denied job promotions and being targeted for redundancy in organisational re-structuring.

Based on the research findings, the EOC made policy recommendations to the Government and also urged the Government to publicise the "Practical Guidelines for Employers on Eliminating Age Discrimination in Employment" more widely.

Full Report
Press Release

HONG KONG
26 JAN
2016

The Equal Opportunities Commission ("EOC") Announced its Study on Discrimination on the Grounds of Sexual Orientation, Gender Identity and Intersex Status

The EOC published its report: "Study on Legislation against Discrimination on the Grounds

Con't

of Sexual Orientation, Gender Identity (SOGI) and Intersex Status". The extensive study was conducted by the Gender Research Centre of the Hong Kong Institute of Asia-Pacific Studies at The Chinese University of Hong Kong.

The study revealed that discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) people is a common occurrence in Hong Kong. The study found that public opinion has visibly shifted in favour of legislation against discrimination on the grounds of sexual orientation, gender identity, and intersex status. Over half (55.7%) of the telephone survey respondents (over 1000 respondents were interviewed) agreed with legislation – nearly double the comparable figure from a decade ago. Notably, the vast majority (91.8%) of youth considered anti-discrimination legislation necessary, while nearly half (48.9%) of those with religious views also concurred.

There is currently no comprehensive legal protection against discrimination on the grounds of sexual orientation, gender identity and intersex status in Hong Kong. The EOC hopes this report will lay the groundwork for the Government to carry out a public consultation on potential anti-discrimination legislation and move on from the question of whether or not there should be legislation on the grounds of sexual orientation, gender identity and intersex status to how such legislation should be designed.

Full Report
Press Release

HONG KONG **26 JAN** 2016

The Standard Working Hours Committee Held its 19th Meeting

The Standard Working Hours Committee ("SWHC") held its 19th meeting on 26 January 2016.

The SWHC further discussed the revised draft second-stage consultation document in the meeting. With reference to the SWHC's discussion, the secretariat would formulate the relevant documents and arrangements relating to the second-stage consultation for consideration by members of the SWHC.

The SWHC stated it would need more time to complete the remaining work (including conducting the second-stage consultation, formulating appropriate and feasible working hours policy directions, as well as preparing the SWHC's report). Given that the current term of the SWHC will end in early April 2016, the SWHC submitted to the Government a proposal to extend its term.

More...

HONG KONG **26 JAN** 2016

Privacy Commissioner Issued Statement Highlighting Record Number of Privacy Complaints in 2015

The Office of the Privacy Commissioner for Personal Data received a record number of complaints in 2015. There was a rising trend in the number of enquiries and complaints in relation to the use of information and communications technology ("ICT"). A number of data leakage incidents occurred during the year amounted to a contravention of data security principle. Such statistics indicated an increase in public awareness on personal data privacy protection. The rapid development of ICT and the use of big data and cloud computing will further change the ways that individuals' personal data is collected, retained and used.

Please see the full press release for the statistical breakdown of the complaints and inquiries received by the Privacy Commissioner in 2015.

More...

HONG KONG

12 FEB 2016

Hong Kong's Employment (Amendment) Bill 2016

Hong Kong's Employment (Amendment) Bill 2016 (the "Bill") was gazetted on 12 February 2016.

The Bill, if passed in its current form, will amend the Employment Ordinance (Cap. 57) to provide that where an employee is unreasonably and unlawfully dismissed, the Labour Tribunal may make a reinstatement or re-engagement order without the consent of the employer. Currently, the Tribunal can only make such an order if the employer consents, which would be extraordinary!

If an employer refuses to re-engage a dismissed employee, then it will need to pay the employee a maximum sum of three times the employee's average monthly wages, subject to a cap of HK$50,000. This sum is on top of the monetary remedies payable to the employee currently provided in the Employment Ordinance. An order for re-engagement can be satisfied by an associated company if the dismissed employee agrees.

More...

HONG KONG

24 FEB 2016

The Standard Working Hours Committee Held its 20th Meeting

The Standard Working Hours Committee ("SWHC") held its 20th meeting on 24 February 2016.

The SWHC continued to discuss the relevant draft documents and arrangements relating to the second-stage consultation. The second-stage consultation aims to start in April 2016 and is expected to take three months. During the consultation period, the SWHC will meet with major employers' associations and labour organisations, and organise consultation forums for, among others, the relatively long-working-hours sectors and the general public to listen to the views of the community on working hours policy directions being considered by the SWHC.

More...

HONG KONG

4 MAR 2016

District Court Dismissed a Claim of Unfair Treatment and Dismissal on Grounds of Disability, Sex and Family Status Discrimination

On 4 March 2016, the District Court in *Law Miu Kuen Sally v Sunbase International (Holdings) Limited* (DCEO 7/2012) dismissed a claim of disability, sex and family status discrimination in relation to the unfair treatment and dismissal of an employee.

Facts

The Plaintiff ("**P**") was a long-serving employee of the Defendant ("**D**") and frequently took sick leave to undergo medical treatment. In 2009, D issued a set of guidelines ("**Leave Guideline**") which required all employees to submit sick leave certificates and stipulated that paid sick leave would only be granted for sick leave periods of not less than 4 days. Prior to this, D had paid all sick leaves in full and did not require sick leave certificates. In 2010, in a meeting between P and P's supervisors, P was asked to resign and, upon return from maternity leave, P's employment was terminated.

Claim

P claims the issuance of the Leave Guideline and her dismissal were targeted against her disabilities, sex and family status, in contravention of the Disability Discrimination Ordinance, Sex Discrimination Ordinance and Family Status Discrimination Ordinance.

Test

The burden was on P to prove discrimination on the balance of probabilities and the court applied the two-part test stated in *M v Secretary for Justice* [2009] 2 *HKLRD 298*, namely (i) whether less favourable treatment to the plaintiff had occurred and (ii) whether it had been caused by one of the prohibited discriminatory grounds.

Findings

The court dismissed P's claim for the following reasons:

1. The Leave Guideline was not discriminatory because (i) it complied with the Employment Ordinance so it could not be argued that D committed discrimination by

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HONG KONG
4 MAR
2016

complying with the law, (ii) the procedural requirements under the Leave Guideline (i.e. how to report sick leave and the need to provide a sick leave certificate) were reasonable and fair, and (3) P's employment contract stated that "other matters" (including sick leave) would be governed by company guidelines and the Employment Ordinance; and

2. Evidence revealed that P had a prolonged record of poor work performance, had behavioural problems in the workplace and had breached D's company computer guidelines by possessing a large amount of personal data on her computer. The cumulative weight of evidence indicated it was more probable than not that P was dismissed for legitimate reasons rather than as a result of discrimination against P's physical condition, sex or family status.

More...

HONG KONG
29 MAR
2016

EOC Makes Recommendations to the Government on Comprehensive Reforms to the Anti-Discrimination Legislation

On 29 March 2016, the Equal Opportunities Commission ("**EOC**") issued 73 recommendations to the Government to reform Hong Kong's existing four anti-discrimination ordinances, which consist of the sex, family status, race and disability discrimination ordinances.

The EOC specifically highlighted 27 issues as higher priority areas for reform, which can be summarised into the following categories:

- Providing stronger and more comprehensive protection for various vulnerable groups, including people with disabilities, women, and ethnic minorities.
    - Recommendations included introducing express protection for people with disabilities who are accompanied by assistance animals and women who are breastfeeding, and expanding the protection against racial discrimination by association beyond close relatives to also cover friends, colleagues, and other associates.
- Encouraging institutional changes and addressing systemic inequality.
    - Recommendations included introducing a duty to provide reasonable accommodation for people with disabilities across multiple domains and the right of women to return to a work position after maternity leave.
- Facilitating more effective application of the anti-discrimination ordinances.
    - Recommendations included enhancing the clarity and consistency of the definition and protection against direct and indirect discrimination as well as harassment across various protected characteristics.
- Closing gaps in the existing protection against discrimination.
    - Recommendations included providing protection from racial discrimination in relation to the exercise of Government functions and powers, and providing express protection from discrimination in voting and standing for elections for persons with disabilities.

The EOC's 73 recommendations were a product of their Discrimination Law Review, which included a four-month public consultation. The aim was to simplify and modernise Hong Kong's anti-discrimination regime.

Full Reports:

EOC's Submissions to the Government
EOC's Report on Responses to the Public Consultation

HONG KONG
29 MAR
2016

The Standard Working Hours Committee held its 21st meeting

The Standard Working Hours Committee ("SWHC") held its 21st meeting on 29 March 2016. The SWHC endorsed the consultation document and arrangements for the second-stage consultation on Working Hours Policy Directions.

The second-stage consultation commenced on 25 April 2016 for a three-month period (see below for details – "The Standard Working Hours Committee launched Consultation on Working Hours Policy Directions").

More...

HONG KONG
22 APR 2016

Privacy Commissioner issued Revised Code of Practice on Human Resource Management and Guidelines on Monitoring at Work

Hong Kong's Privacy Commissioner has issued a revised Code of Practice on Human Resource Management ("the Code") and a revised Privacy Guidelines for Monitoring and Personal Data Privacy at Work (the "Guidelines").

Neither the new Code nor the new Guidelines include any material change from their existing versions. The only changes are the new Code updates certain references to amendments in the Personal Data (Privacy) Ordinance (PDPO) and removes one provision of the Code that has become obsolete (namely the transitional provision exemption in relation to compliance with data access requests that expired in 2002).

As a reminder, the Code is designed to give practical guidance to data users who handle personal data in performing human resource management functions and activities. Where a data user fails to comply with the Code, a court, magistrate or Administrative Appeals Board may take that fact into account in deciding whether there has been a breach of the PDPO.

The Guidelines provide guidance on the application of the PDPO to employee monitoring and set out best practices for managing personal data obtained from such activity.

Revised Codes:
Code of Practice on Human Resource Management:
Compliance Guide for Employers and Human Resource Management Practitioners

Privacy Guidelines: Monitoring and Personal Data Privacy at Work

HONG KONG
25 APR 2016

The Standard Working Hours Committee Launched Consultation on Working Hours Policy Directions

On 25 April 2016, the SWHC launched Consultation on Working Hours Policy Directions to collect views over a three-month period on working hours policy directions.

The SWHC is consulting the public on the following four working hours policy directions:

(i) only implementing the 'big frame' (i.e. a legislative approach to mandatorily require employers and employees to enter into written employment contracts, which shall include the specified working hours terms such as overtime compensation arrangement);

(ii) only implementing the 'small frame' (i.e. to implement other measures, such as setting a working hours standard and overtime compensation rate, to further protect the grassroots employees with lower income, lower skills and less bargaining power);

(iii) on the premise of implementing the 'big frame', to implement the 'small frame' as well;

(iv) not to implement the 'big frame' nor 'small frame' but recommend implementing other policies/ measures pertaining to working hours (e.g. formulating voluntary guidelines according to the needs of individual sectors).

Full report
Press release

HONG KONG
12 MAY 2016

High Court Allowed Claim of Employee to Include Payment from Third Party Other Than Employer Into the Scope of "Wages"

On 12 May 2016, the Court of First Instance in *Leung Ping Chuen v Good Friendship (Hong Kong) Limited and Anor* [2016] HKCFI 786 considered whether a tour bus driver's revenue derived from selling souvenirs to tourists (as passengers of the coach) amounted to part of his "wages".

Facts

The employee was a tour bus driver who, in addition to driving the bus, also sold souvenirs to the tourists on the bus. Regarding the sale of souvenirs by drivers, the tour company had issued various notices and policies (which were expressly referred to in the employee's contract of employment) outlining that: (i) drivers were to purchase the souvenirs using their own money and the quantity was determined by the drivers; (ii) after stocking up , the souvenirs must be stored in on the buses, (iii) restrictions that drivers could only sell

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LOOKING BACK

HONG KONG

12 MAY 2016

two specified kinds of souvenirs at prices pre-set by the employer; (iv) drivers must report to the employer the quantity of sales after each trip (v) drivers must turn over part of the revenue to the employer, and (vi) there were certain routes where the employers forbade the selling of souvenirs, and if a driver was assigned to that route, then the employer would issue a "allowance" for not being able to sell souvenirs.

Claim

The bus driver claimed that the money made from selling souvenirs formed part of his wages, such that he would be entitled to a higher amount of other employment entitlements including his wages in lieu of notice, long service payment, annual leave pay and holiday pay.

Findings

The Court emphasized the core principle that only payments made from the contract of employment could qualify as "wages".

The Court found that the notices and policies issued by the tour company were expressly implied into a driver's employment contract by express mention of incorporating terms in notices, policies and warning letters. Despite the drivers paying for the souvenirs with their own money, the fact that the drivers had to report the quantity of sales to the employer reflected that reality the souvenirs were in fact the property of the employer. Further, the issuing of the "allowance" for not being able to sell souvenirs on certain forbidden routes reflected the fact that selling souvenirs was part of the employment contract.

In light of the above factors, the Court held that the employer possessed a high degree of control over the selling of souvenirs to the extent that the selling of souvenirs was part of a driver's obligation under his contract of employment. The souvenir revenue in this case therefore constituted "wages".

More...

Click here to view **2015 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

INDIA

1 DEC 2015

Introduction of simplified forms for claims related to withdrawals and advances under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (the **EPF Act**)

For claiming withdrawal and advances of the amounts accumulated in their provident fund accounts, members earlier had to get the relevant forms attested by the employer before submitting them to the EPF authorities. The EPFO has now introduced new forms 19 UAN, 10C UAN and 31 UAN. These new forms can be utilized by members who have (i) activated their Universal Account Number (**UAN**), (ii) seeded their bank account and identification details as part of the Know your Customer (**KYC**) process, and (iii) got these details verified through the employer's digital signature. Such members can submit these new forms to the EPF authorities directly without obtaining any attestation by the employer.

More...

INDIA

30 DEC 2015

Amendment to Labour Laws in Gujarat

The Labour Laws (Gujarat Amendment) Act, 2015 came into effect from 30 December 2015, incorporating changes to various labour laws applicable in the State of Gujarat.

The salient features of the amendment include:

- The limitation period for raising an industrial dispute in relation to a dismissal, discharge etc., by an individual workman under the Industrial Disputes Act, 1947 (the **ID Act**) has been decreased from 3 years to 1 year;
- The ID Act as applicable in Gujarat had special provisions applicable to establishments set up in Special Economic Zones (**SEZ**). These establishments were exempt from providing a notification to the Government at the time of termination of workmen level employees on grounds of redundancy (which is required for all other commercial establishments). However, the SEZ units were required to pay 'retrenchment compensation' of 45 days wages for every year of service to such workmen, though other establishments are only required to pay retrenchment compensation of 30 days' wages for every year of service. After the Amendment in 2015, these special provisions now apply to workmen employed in industrial establishments located in Special Investment Regions, National Manufacturing and Investment Zones and 100% export-oriented units as well. The amount of retrenchment compensation payable by such entities has been further increased to 60 days wages for every year of service;
- Monetary penalties under various labour laws have been increased under the amendment; and
- Provisions related to compounding of offences have been included with respect to offences under various labour laws.

More...

INDIA

1 JAN 2016

Amendment to the Payment of Bonus Act, 1965 (the PB Act)

The PB Act provides for the payment of bonus to persons employed in establishments having 20 or more employees. Prior to the Payment of Bonus (Amendment) Act, 2015 (the **Amendment Act**), employees earning INR 10,000 or less per month were eligible to receive a bonus. Under the Amendment Act, the wage threshold for determining eligibility of employees has been revised from INR 10,000 to INR 21,000 per month, covering a larger pool of employees. Further, the maximum bonus payable under the PB Act was 20% of the wages of the employee, subject to a wage of ceiling of INR 3,500 per month. The minimum bonus payment was also capped at 8.33% of INR 3,500 per month (assuming the employee earns more than INR 3,500 per month) or INR 100, whichever is higher. The calculation ceiling of INR 3,500 has now been doubled to INR 7,000 per month "or the minimum wage for the scheduled employment, as fixed by the appropriate Government" (whichever is higher). Therefore, the cost associated with bonus payments could double (or be greater still, depending on applicable minimum wages).

The Amendment Act was brought into retrospective effect from 1 April 2014. This retrospective nature of the Amendment Act has met with opposition from employer groups. Writ petitions have been filed challenging the retrospective application, and the

Con't

INDIA
1 JAN 2016

High Courts in two Indian States, Karnataka and Kerala, have stayed the operation and implementation of the amendment to the extent of its retrospective applicability pending disposal of the petitions. Taking note of these developments, the labour authorities in some States (like Madhya Pradesh) have clarified that no enforcement of the Amendment Act will take place for the financial year 2014-2015 until the writ petitions mentioned above are disposed of.

More...

INDIA
8 JAN 2016

Removal of grace period for payment of monthly contributions under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("EPF Act")

Under the EPF Act, employers are expected to make monthly remittances in the form of provident fund contributions and administrative charges. These remittances take into account the contributions of both the employer and the employee to the schemes under the EPF Act. The remittances are to be made within 15 days of the close of each month. Earlier, the employer was allowed a grace period of a further 5 days to make the necessary remittances, and hence, could remit the amounts by the 20th of each subsequent month. The EPFO has now discontinued this 5 day grace period which was available to employers for making remittances under the EPF Act. For remittances for the month of January 2016 onwards (which are payable in the subsequent month), employers will have to adhere to the 15 day limit as prescribed under the law.

More...

INDIA
21 JAN 2016

Measures for Promoting Start-ups in India

The EPFO issued a circular on 21 January 2016, outlining measures to ease compliance requirements in order to facilitate the growth of start-ups. These include the exempting of start-ups from being inspected during the first year of their existence under the EPF Act. The start-ups would be required to submit an online self-declaration instead. Further, start-ups can submit self-certified returns under the EPF Act until the end of the third year of their existence with inspections to be conducted only in instances of credible and verifiable complaints of violation. For your reference, a start-up is defined by the Department of Industrial Policy and Promotion (**DIPP**) as an entity, incorporated or registered in India, within the preceding five years, with annual turnover not exceeding INR 25 crores in any preceding financial year, working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property.

More...

INDIA
27 JAN 2016

Draft of the Model Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2015

At present, the conditions of work in shops and commercial establishments are governed by the State-specific Shops and Establishments Acts (the **S&E Acts**). These legislations govern aspects such as opening and closing times, working hours, leaves and holidays, notice periods etc. The Ministry of Labour and Employment, citing a lack of uniformity in such provisions across States, has drafted a Model Shops and Establishments (Regulation of Employment and Conditions of Service) Act. The objective of this model law is that it can be adopted by States or can be used as a template by States to amend their existing laws. The draft model law is yet to be introduced in the Parliament. It would need to be passed by both Houses of Parliament and receive presidential assent before becoming law.

More...

INDIA
10 FEB 2016

Amendment of the Employees' Provident Fund Scheme, 1952 (the EPF Scheme)

The contributions made to the provident fund under the EPF Act and the circumstances in which they can be withdrawn by members are governed by the provisions of the EPF Scheme. The Ministry of Labour and Employment has amended the EPF Scheme to alter some of the positions with regard to withdrawals by members.

Con't

INDIA
10 FEB 2016

The key changes in the amendment include:

- Members under the EPF Scheme were permitted to withdraw up to 90% of the amount standing to their credit under the provident fund at any time after attaining 54 years of age or within one year before actual retirement on superannuation whichever is later. The amendment has now increased the age threshold to 57 years.
- Members under the EPF Scheme were permitted to withdraw the full amount standing to their credit under the provident fund upon retirement from service after attaining 55 years of age. This threshold has now been increased to 58 years.

More...

INDIA
16 MAR 2016

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

Indian authorities have issued a circular dated 16 March 2016 notifying that the SSA that India had signed with Australia on 18 November 2014 will be effective from 1 January 2016. While India has signed a number of such SSAs, they only come into force once notified. The SSA will help these countries in garnering more investment and work opportunities for nationals of both the countries and also enhance cooperation on social security. The SSA exempts employees from making social security contributions in the host country for a period of up to 60 months. This benefit can be availed after obtaining a Certificate of Coverage from the relevant authorities. Further, the benefits acquired under the legislation of one country can also be exported to the other country. In addition, employees would have the ability to add the periods of service in both the countries for calculating the eligibility requirements under the social security schemes.

More...

INDIA
30 MAR 2016

Proposed Amendment to the Contract Labour (Regulation and Prohibition) (Central) Rules, 1971

The Ministry of Labour and Employment has come out with draft rules to amend the Contract Labour (Regulation and Prohibition) (Central) Rules, 1971 (**CLRA Rules**). The CLRA Rules currently provide that contract workers must be paid wages at (a) not less than the rates prescribed under the Minimum Wages Act, 1948 (**MW Act**), or (b) where the rates of wages have been fixed by agreement, settlement or award, not less than such fixed rates. The draft rules seek to amend this position to state that contract workers must be paid wages at (a) rates not less than the rates prescribed under the MW Act, or (b) the rates fixed by agreement, settlement or award, or (c) INR 10,000, whichever is higher. These rules have been proposed with the objective of ensuring that contract workers receive a monthly wage of at least INR 10,000. We will keep you updated on any further developments with regard to this proposal.

More...

INDIA
19 APR 2016

Withdrawal of notification dated 10 February 2016 relating to the amendment of the Employees Provident Fund Scheme, 1952 (**EPF Scheme**)

By a notification dated 10 February 2016, the Government had notified certain amendments to the EPF Scheme. The key changes were as follows:

- Members under the EPF Scheme are currently permitted to withdraw up to 90% of the amount standing to their credit under the provident fund at any time after attaining 54 years of age or within one year before actual retirement on superannuation whichever is later. The amendment proposed to increase the age threshold to 57 years.
- Members under the EPF Scheme are currently permitted to withdraw the full amount standing to their credit under the provident fund upon retirement from service after attaining 55 years of age. This threshold was proposed to increase to 58 years.

By a notification dated 19 April 2016, the Government has withdrew the earlier amendment notification dated 10 February 2016.

Original Notification...
Withdrawal Notification...

LOOKING BACK

INDIA

25 APR 2016

Amendment to the Employees' Pension Scheme, 1995 (**EPS**)

The EPS is a statutory pension scheme under which contributions are made on behalf of the members to the pension fund until they reach the age of 58 years. Upon reaching this age, members who have rendered 10 years of eligible service become entitled to a monthly member's pension. The key changes brought about by the amendment to the EPS are as follows:

- A member who has become eligible to receive monthly member's pension is allowed to defer the age of drawing the pension by two years (i.e. until the member reaches the age of sixty years);
- Such member is permitted to continue contributions to the EPS during this intervening period.

More...

Click here to view **2015 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

LOOKING BACK

INDONESIA

31 DEC 2015

Amendment of Work Accident Security and Death Security Implementation for Daily Employees and Fixed-Term Employees in the Construction Sector

Amendment of Work Accident Security and Death Security for Daily Employees and Fixed-Term Employees in the Construction Sector as the result of a new regulation on the mandatory social security program.

Ministry of Manpower Regulation No. 44 of 2015 dated 31 December 2015 regarding the Implementation of Work Accident Security and Death Security for Daily Employees and Fixed-Term Employees in the Construction Sector ("Reg. 44").

Reg. 44 revokes and replaces Ministry of Manpower Regulation No.KEP-197/MEN/1999 dated 29 September 1999 regarding the Implementation of Mandatory Social Security for Daily Employees and Fixed-Term Employees in the Construction Sector ("Reg. 197"). Reg. 44 was issued following the introduction of a new social security law.

This new regulation does not change the contribution employers must make to the employment social security agency, or BPJS Ketenagakerjaan. The employer contribution for daily employees, contract employees and fixed-term employees is as follows:

a. Work Accident Security, amounting to 1.74% of the employee's monthly wage; and
b. Death Security, amounting of 0.30% of the employee's monthly wage.

INDONESIA

14 JAN 2016

Governor of the Jakarta Special Capital City Region Regulation No. 8 of 2016 dated January 14, 2016 regarding 2016 Minimum Wages for the Industrial Sector ("Reg No. 8")

Jakarta's monthly minimum wage for 2016 has been set at **Rp 3.1 million**, based on Governor of DKI Jakarta Regulation No. 230 of 2015 dated October 30, 2015.

However, under Reg No. 8, the 2016 monthly minimum wage for workers in several industrial sectors in Jakarta ranges from **Rp 3.2 million to Rp 4 million**.

More...

INDONESIA

14 APR 2016

Minister of Manpower Regulation No. 6 of 2016 dated April 14, 2016 regarding Religious Holiday Allowance for Employees ("MOM No. 6")

MOM No. 6 requires all employers to provide a religious holiday allowance, known in Indonesia as THR, to employees with at least one month of service, regardless of whether the worker is employed on a permanent or temporary basis. Previously, the obligation to provide THR only applied to workers with more than three months of service.

THR must be paid once a year, within a maximum of seven days of a given religious holiday, as follows:

a. Idul Fitri for Muslim employees;
b. Christmas Day for Christian employees;
c. Hindu Day of Silence for Hindu employees;
d. Buddhist Waisak Day for Buddhist employees; and
e. Chinese New Year for Confucianist employees.

THR is equal to a minimum of one month's salary (basic salary plus any fixed cash monthly allowances) for workers with a minimum 12 months of service. Employees with more than one month but less than 12 months of service will receive THR on a pro rata basis.

Employers who do not meet their THR payment obligations in due time are subject to a fine amounting to 5% of the total THR amount payable, as well as administrative sanctions in accordance with the applicable employment laws and regulations.

MOM No. 6 revokes and replaces the 1994 Regulation regarding the same.

More...

LOOKING BACK

INDONESIA

14 APR 2016

Joint Decree of Minister of Religious Affairs, Minister of Manpower, and Minister of State Apparatus Empowerment and Bureaucratic Reform No. 135 of 2015, No. SKB 109 of 2016, and No. 01/SKB/MENPANRB/04/2016 dated April 14, 2016 regarding National Public Holidays and Joint Leave Days for 2017 ("Decree on Holidays")

There are 14 public holidays in 2017, as follows:

Day	Date
New Year's Day	January 1
Chinese New Year	January 28
Hindu Day of Silence	March 28
Good Friday	April 14
Ascension Day of Prophet Muhammad	April 24
International Labor Day	May 1
Buddhist Waisak Day	May 11
Ascension Day of Jesus Christ	May 25
Idul Fitri	June 25- 26, plus 3-day bridge holiday
Indonesian Independence Day	August 17
Idul Adha	September 1
Islamic New Year	September 21
Birth of Prophet Muhammad	December 1
Christmas	December 25, plus 1-day bridge holiday

More...

INDONESIA

15 APR 2016

Law No. 8 of 2016 dated April 15, 2016 regarding Persons with Disabilities ("Law No. 8")

Law No. 8 replaces Law No. 4 of 1997 regarding the same.

Article 67 of the Indonesian Manpower Law stipulates that protections for disabled people should be regulated by law. Law No. 8, specifically Articles 45 to 60, provides protections and a guarantee of non-discrimination in the workplace for people with disabilities.

Article 53 of Law No. 8 requires private sector companies to meet a 1% (one percent) disability employment quota. Employers must provide accommodation and facilities to enable access by employees with disabilities. Employers who fail to provide proper accommodation and facilities are subject to administrative sanctions in the form of:

a. Written warning;
b. Cessation of operations;
c. Business license suspension; and
d. Revocation of business license.

More...

CONTRIBUTED BY:

SSEK
Indonesian Legal Consultants

JAPAN
1 DEC
2015

Introduction of the Stress Check System

Amendments to Japan's Industrial Safety and Health Act ("Act") regarding the stress check system came into force on 1 December 2015. The amendments require an employer having a place of business employing 50 or more regular employees (i.e., all permanent employees and certain fixed-term employees who have been, or are expected to be, employed by the employer for one year or more and whose weekly working hours are 75% or more of those of the permanent employees) to offer an annual stress check to the regular employees at the relevant place of business. The purpose of the stress check system is to give regular employees an opportunity to gain awareness of their stress levels and to prevent work-related mental illness.

Employers coming within the scope of the stress check requirements are required to implement the stress check system through the following steps:

- Announce to employees a basic policy explaining that the employer will offer stress checks in accordance with the Act and other relevant laws and regulations;
- Establish a health committee (if not already in existence at the relevant place of business) and have the committee prepared internal rules regarding the stress check system;
- Conduct a stress check by requesting the regular employees to fill out a brief survey designed to identify the stress level of employees and having the results submitted directly to a medical professional (e.g., a medical doctor, medical nurse or any other medical professional) who will review the sheets and inform each employee directly of his/her diagnosis;
- Arrange a face-to-face assessment with a medical doctor at the request of any employee who has been diagnosed to be under high stress;
- Take corrective measures based on the recommendations of the medical doctor (if any); and
- After conducting stress checks, to submit a report to the competent labour standards inspection office regarding details of the stress checks conducted by the employer.

The first round of stress checks must be completed no later than 30 November 2016.

An employer may not obtain the results of the stress check questionnaire or the medical professional's diagnosis without the employee's consent, although any specific corrective measures which are recommended by the medical doctor pursuant to follow up checks requested by the employee must be informed to the employer. Any information regarding the stress checks obtained by the employers should be kept strictly confidential and employers are advised to take measures to limit the scope of personnel or third party vendors who are authorised to have access to such information to the minimum extent necessary for the employer to comply with its stress check obligations. Additionally, employers may not treat employees adversely (e.g., terminate their employment or refuse to renew their contracts) on the basis of reasons related to an employee's stress check results.

JAPAN
1 APR
2016

Act on Promotion of Women's Participation and Advancement in the Workplace

The Act on Promotion of Women's Participation and Advancement in the Workplace (the "Act") was enacted on August 28, 2015, and the part of the Act regarding private-sector employers took effect on April 1, 2016. The Act was established for the purpose of improving the current circumstances in Japan that there are a lot of women who cannot get employment or leave their jobs because of child/family responsibilities and that the female ratio of less secure workers is high and that of managing post is low.

The Act requires private-sector employers having more than 300 regular employees to do the following actions since April 1, 2016:

1. To understand the situation surrounding their female employees' participation and advancement in their workplace and to analyse any issues associated with such situation;

Con't

LOOKING BACK

JAPAN
1 APR
2016

2. To devise an action plan taking into account and analysing such situation, to announce the plan to their employees and to the public, and to file the plan with the competent employment authorities; and
3. To announce, to the public, information regarding the situation of female employees' participation and advancement in their workplace (in order to attract talented female candidates).

In creating an action plan to take to deal with such issues, private-sector employers are required to decide:

a. The length of their plan;
b. The numeric targets; and
c. The detail of actions and implementation period.

The Act is "temporary legislation", and is only effective for a limited period of 10 years. Therefore, private-sector employers are expected to update their action plan by regularly reviewing its progress every 2 – 5 years (depending on the employer's situation).

In relation to (3) above, private-sector employers are required to update the latest statistics (of the second preceding business year at the oldest, unless there is any exceptional circumstances) at least once every year.

Moreover, if private-sector employers meet certain statutory conditions, they can be certified as an employer that is successful in encouraging female participation and advancement in their workplace.

JAPAN
1 APR
2016

Amendments to the Act on the Promotion of the Employment of Disabled Persons of Japan

The amended Act on the Promotion of the Employment of Disable Persons (the "Act") was enacted on June 13, 2013. These amendments aimed at adapting the Convention on the Rights of Persons with Disabilities to local legislation.

The following reforms took effect on April 1, 2016.

1. Prohibition on Discrimination against Disabled Persons
   All employers are required to give disabled persons equal opportunities with respect to recruiting and hiring. The Act prohibits employers from unreasonably discriminating on the basis of disability in determining wages, education and training, use of welfare facilities and other employment benefits. However, treating disabled persons advantageously as part of affirmative action and treating disabled persons differently by providing reasonable accommodations will not be considered unreasonable discrimination.
2. Requirement to Provide Reasonable Accommodations
   During the hiring process, if requested by a disabled person, the employer is required to take measures to accommodate the disabled person, taking into account that person's attributes. All employers are required to put in place necessary facilities, to arrange persons who provide support to disabled persons, and to take other measures to accommodate disabled persons, taking into account that person's attributes. However, employers do not need to provide accommodations when such accommodations would place undue burden on the employers.
3. Handling Grievances and Resolving Disputes
   All employers are required to make best efforts to resolve any grievances arising in relation to either (1) or (2) above, where such grievances are filed by disabled employees. If reconciliation is requested by either the employer or the disabled employee, the dispute may be referred for reconciliation by a committee of the competent employment authorities. In any event, employers are prohibited from treating disabled employees unfairly because of their requests for reconciliation.

LOOKING BACK

MALAYSIA
1 MAR
2016

Revision of the Contribution Rates to the Employees Provident Fund "EPF"

The monthly statutory contribution by the employee to the Employees Provident Fund has been reduced from 11% to 8% for contributors below the age of 60. Contributors who are not keen to the reduction can opt to maintain the rate at 11%.

For contributors aged 60 and above the contribution rate has been reduced from 5.5% to 4%.

The new rate of contribution is for salaries between the period March 2016 to December 2017.

More...

MALAYSIA
JUN
2016

Contribution to the Social Security Organisation (SOCSO)

Previously those earning RM 3000 and below was mandated to contribute to the Social Security Organisation. SOCSO amongst others implement and administer social security schemes such as Employment Injury Scheme and Invalidity Scheme. With the latest budget announcement, those earning up to RM 4000 will now be required to contribute to the scheme. The change will be effective in June 2016

More...

Click here to view **2015 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: Shearn Delamore &co

Employment Standards Legislation

Five Acts were amended in relation to minimum entitlements and enforcement of employment standards. The amendments all came into force on 1 April 2016. The changes were as follows:

Employment Relations Amendment Act 2016

- **"Availability provisions":** these are provisions in employment agreements under which an employee is required to be available to work, with no minimum guaranteed hours. Now, employers can only require employees to be available if they do provide some guaranteed hours, and there are genuine reasons based on reasonable grounds for having an availability provision.
- **"Secondary employment provisions":** these are provisions in employment agreements under which an employer limits or prohibits the employee from working for other employers. The employer must have genuine reasons based on reasonable grounds for including such a provision. Examples of reasons in the Act include the protection of the employer's proprietary and commercial information.
- **Shift cancellation:** employers must now give employees reasonable notice of shift cancellations or provide reasonable compensation if the notice is not given. Employment agreements must state what the reasonable notice and reasonable compensation are.
- **Penalty orders:** Labour Inspectors can apply to the Employment Court for three new orders.
  - Pecuniary penalty orders: these introduce increased pecuniary penalties against employers who seriously breach minimum entitlements ($50,000 for an individual; and for a body corporate, the greater of $100,000 or three times the financial gain).
  - Compensation orders: under these the court can award compensation to an employee that they are satisfied has or is likely to suffer loss or damage as a result of the employer's breach of employment standards.
  - Banning orders: one example of where these can be used is against employers who persistently breach employment standards. They can be banned from employing people; being an officer of an employer; or being involved in the process of hiring people.
- **Accessorial liability:** this new form of liability means that people who are knowingly involved in a breach of employment standards can be held liable (e.g. the above orders can be issued against them). This will capture officers of companies who have gone into liquidation as a way to avoid liability, for example.
- **Penalties at the Authority:** employees can now seek penalties at the Authority for all breaches of minimum entitlements (previously, some penalties could only be sought by Labour Inspectors).

Parental Leave and Employment Protection Act 2016

- **Duration of paid primary carer leave:** the length of paid "primary carer" leave was increased from 16 – 18 weeks (this change was implemented in previous legislation, but it came into force on 1 April 2016).
- **"Primary carer":** this new concept includes a female employee having a baby (and their spouse/partner); as well as a person other than the biological mother who takes permanent primary responsibility for the care, development, and upbringing of a child under the age of six years.
- **Preterm baby payments:** there are now additional preterm baby payments for up to 13 weeks where a baby is born before the end of the 36th week of gestation.
- **Threshold for paid primary carer leave:** an employee will now meet the threshold if they have been employed for at least an average of 10 hours a week for any 26 of the 52 weeks just before the due date of the baby or the date they or their partner becomes the primary carer of the child under 6 permanently.
- **Non-continuous employment:** employment for the purposes of paid primary carer leave can now be with more than one employer and does not have to be continuous.

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LOOKING BACK

NEW ZEALAND

1 APR

2016

- **Negotiated carer leave:** primary carers can now apply for negotiated carer leave so they can receive parental leave payments (if they would not satisfy the threshold criteria above). Negotiated carer leave can only be refused on grounds set out in the legislation.
- **Availability of extended unpaid leave:** extended unpaid parental leave of up to 26 weeks (inclusive of 18 weeks paid leave) is now available to employees with more than 6 months (but less than 12 months) employment.
- **"Keeping in touch" days:** employees can now do a total of 40 hours paid work through "keeping in touch" days for their employer during leave without being deemed to have returned to work. These hours cannot be within 28 days after the birth of the child.
- **Unpaid leave flexibility:** an employee may now take one or more periods of extended leave (up to their maximum entitlement) within the "applicable start date" and "applicable end date" (the applicable end date means the date on which a child attains 6 or 12 months (depending on whether the employee is entitled to 26 or 52 weeks); or 6 or 12 months after the first date the employee becomes the primary carer). Unpaid leave entitlement can be taken consecutively or concurrently with leave taken by the partner.

Wages Protection Amendment Act 2016

- Employers must now consult with employees before making any specific deductions from their wages.
- Employers cannot make any "unreasonable" deductions from employees' wages e.g. to cover customer theft.

Minimum Wage Amendment Act 2016 and Minimum Wage Order 2016

- **Record keeping:** a universal and simple record keeping regime was introduced under this Act and the Holidays Amendment Act 2016 for pay and leave purposes, whereby an employer must record the number of hours worked each day in a pay period, and the pay for those hours, for all employees. There is flexibility in how this is recorded e.g. for a salaried employee working regular hours, it will be sufficient to state the hours in the employment agreement.
- **Minimum wage:** The minimum wage for adult workers was increased to $15.25 per hour and for "starting out" (16-19 year olds under certain conditions) and trainee workers, to $12.20 an hour.

Holidays Amendment Act 2016

- As above, a universal and simple record keeping regime was introduced under this Act and the Minimum Wage Amendment Act 2016 for pay and leave purposes.

LOOKING BACK

PHILIPPINES
16 FEB
2016

DOLE DO No. 149-2016

Guidelines in Assessing and Determining Hazardous Work in the Employment of Persons Below 18 years of Age – Prohibits the employment of persons below 18 years of age in any work which, by its nature or the circumstances in which it is carried out is hazardous or likely to be harmful to the health, safety or morals of children and penalizes violation thereof with a fine of not more than P100,000 but not more P1,000,000, or imprisonment or both such fine and imprisonment at the discretion of the court.

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PHILIPPINES
26 APR
2016

DOLE LA No. 04-2016

Guidelines of Working Conditions in the Movie and Television Industry –Prescribes the maximum hours of work in a 24 hour period and other working conditions and benefits of movie and television work/talent.

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SINGAPORE
1 APR 2016

Requirement To Issue Written Key Employment Terms And Itemised Payslips Comes Into Effect

With effect from 1 April 2016, it is a statutory requirement for all employers in Singapore to issue written key employment terms and itemised payslips to their employees who fall within the ambit of Singapore's Employment Act ("**EA**"). In other words, all employees, except for professionals, managers or executives earning a basic monthly salary which exceeds S$4,500, must be provided with written key employment terms and itemised payslips. On this, the key employment terms that must be put in writing include job duties and responsibilities, leave entitlements and term of employment. The itemised payslip, on the other hand, must set out, the date of payment, basic salary amount, allowances and any applicable deductions. To help businesses comply, the Ministry of Manpower has issued an assistance package, and confirmed that it will adopt a light-touch enforcement in the first year.

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SINGAPORE
8 APR 2016

Minister For Manpower Confirms No Need For Statutory Redundancy Benefits In Singapore

On 8 April 2016, Singapore's Manpower Minister confirms the approach taken in Singapore that an employee will not be statutorily entitled to redundancy benefits in the event of a retrenchment. Currently, the position in Singapore is that while an employee falling within the ambit of the EA has a statutory right to ask for retrenchment benefits if he/she had been employed for a continuous period of at least 2 years, the amount of retrenchment benefits, if any, is still up to the company.

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SINGAPORE
12 MAY 2016

Ministry Of Manpower To Introduce Higher Penalties For Workplace Accidents

In light of the high number of workplace fatalities in the first quarter of 2016, the Ministry of Manpower ("**MOM**") announced that with effect from 12 May 2016, the minimum Stop-Work-Order ("**SWO**") period will be increased to 3 weeks. In addition to the increase in the SWO period, new conditions, such as the need to conduct refresher training, will be imposed before the SWO will be lifted. Apart from this, companies who have been issued with an SWO will be automatically placed into the Business Under Surveillance Programme, and may have their work pass privileges suspended for a period of time.

More...

SINGAPORE
20 MAY 2016

First Charge Under The Prevention Of Human Trafficking Act 2014 For Labour Trafficking

On 20 May 2016, the MOM announced that a Singaporean man and his Nepalese wife are the first people to be charged under Singapore's Prevention Of Human Trafficking Act 2014 for labour trafficking. According to the MOM, the couple had abused their powers as employers to harbour and exploit 7 Bangladeshi women. However, no further facts on this are made available at this stage on the alleged exploitation. This case, nevertheless, reiterates the MOM's commitment to combating human trafficking in Singapore.

More...

SINGAPORE
24 MAY 2016

Revised Tripartite Guidelines On Managing Excess Manpower And Responsible Retrenchment

On 24 May 2016, MOM, the Singapore National Employers Federation and the National Trades Union Congress released the revised 'Tripartite Guidelines on Managing Excess Manpower and Responsible Retrenchment' to assist companies in coping with the slowdown in growth and overall uncertainty about economic outlook. The revised guidelines emphasise that retrenchment exercises should be carried out in a fair and responsible manner. In addition, the revise guidelines make clear that discriminatory retrenchment exercises, including retrenchments that unfairly target Singaporeans, will

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LOOKING BACK

SINGAPORE
24 MAY
2016

be investigated, and infringing companies may have their work pass privileges potentially curtailed.

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SINGAPORE
1 JUN
2016

First Time Singapore Dormitory Operator Fined For Overcrowding

On 31 May 2016, a Singapore dormitory operator became the first company in Singapore to be prosecuted and convicted in court for intentionally aiding companies in breaching work pass conditions by housing foreign workers in overcrowded accommodation. A fine of S$300,000 was imposed for the offence. According to the facts released by the MOM, it was found during the joint inspection by the MOM and the Singapore Civil Defence Force that the dormitory housed 5,098 bed spaces and 5,042 foreign workers, which was well above the permitted limit of 4,500 occupants. Such overcrowded premises and the resulting poor living conditions severely undermined the health and well-being of the occupants. MOM has also indicated that it will continue to step up inspection and enforcement efforts in ensuring that dormitory operators comply with regulatory requirements.

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SOUTH KOREA
15 DEC 2015

Expansion of Permissible Grounds for Interim Severance Payment

Interim severance payments are only allowed for specific reasons stated in the Employee Retirement Benefit Securities Act ("ERBSA"). Concerns have been raised in connection with the recent introduction of the wage peak system because employees who are subject to the wage peak system would not have been allowed to withdraw interim severance payment when their wages hit their respective peaks. This would result in reduced total severance payments for these employees compared to what the employees would have been entitled to but for the adoption of the wage peak system.

The relevant provision of the Presidential Decree of the ERBSA was amended as of 15 December 2015, and took effect immediately. The amended Presidential Decree allows the interim withdrawal of a severance payment where: 1) an employer adopts a wage peak system under which an employee's wage may start to decrease at a certain age, service year or when wages hit a certain amount in exchange for extending the employee's retirement age; or 2) an employer and an employee agree to adjust the prescribed working hours by one hour per day or five hours or more per week, and the employee continues to work under the adjusted working hours for more than three months.

SOUTH KOREA
23 DEC 2015

Recent Constitutional Court Decision on the 30-day Termination Notice Requirement for Employees Who Have Been Employed for Less Than 6 Months

On 23 December 2015, the Constitutional Court issued a unanimous decision on the constitutionality of Article 35, Paragraph 3 of the Labour Standards Act ("LSA"). This provision of the LSA stipulates that the 30-day advance notice (or payment in lieu thereof) requirement for employee termination does not apply to a monthly-paid employee who has been employed for less than 6 months. The Constitutional Court ruled that Article 35, Paragraph 3 of the LSA was unconstitutional because it would infringe the relevant employee's rights and is in violation of the principle of equality. A law declared unconstitutional loses its effect immediately, as of the date of the Constitutional Court's decision. Therefore, as of 23 December 2015, Article 26 of the LSA, which requires a 30-day termination notice, will apply to monthly-paid employees who have been employed for less than 6 months.

SOUTH KOREA
1 JAN 2016

Workplace Nursery Requirement Strengthened (Articles 44-2 and 44-3 of the Infant Care Act)

Workplaces with 300 or more female workers or 500 or more total workers are required to provide nursery facilities for employees. The Infant Care Act requires such an employer to establish and operate nursery facilities or provide support for the care of workers' children by executing service agreements with local nursery facilities.

Currently, no particular penalty is imposed under the Act for failure to establish a workplace nursery, except that a list of workplaces that have not done so is publically announced by the Ministry of Health and Welfare. Starting 1 January 2016, employers in violation of the above requirements may be ordered to comply and/or subject to administrative fines of up to 100 million Korean won, which may be imposed twice a year.

SOUTH KOREA
1 JAN 2016

National Health Insurance Premium Will Increase by 0.9% (Article 44 of the Presidential Decree of the National Health Insurance Act)

According to the National Health Insurance Act, all employers with at least one (1) employee in Korea are, in principle, required to subscribe to the National Health Insurance program. The rates for the National Health Insurance are multiplied by monthly wages, adjusted every year. The rate for 2016 will be 6.12% (increased from 6.07% in 2015), divided equally between an employee and their employer at the rate of 3.06% of the employee's monthly wage each.

SOUTH KOREA
1 JAN 2016

Minimum Wage will Increase by 8.01% (Article 10(1) of the Minimum Wage Act)

Under the Minimum Wage Act, all employers are required to pay to their employees (including regular employees, contract employees, part-time employees, etc.) at least the minimum wage required by the Ministry of Employment & Labour, which it publishes each

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LOOKING BACK

SOUTH KOREA **1 JAN 2016**

year. For 2015, the current minimum wage is KRW 5,580 per hour. Effective 1 January 2016, the minimum wage will increase to KRW 6,030 per hour. The minimum wage under the Minimum Wage Act applies to any workplace with at least one (1) employee.

SOUTH KOREA **1 JAN 2016 OR 1 JAN 2017**

Minimum Mandatory Retirement Age Set at 60 (Article 19 of the Act on Age Discrimination Prohibition in Employment and Promotion of Employment of the Aged)

Responding to social and economic changes in Korea's aging population, on 22 May 2013 the National Assembly put in place a limitation on employer's ability to set a mandatory retirement age by amending the Act on Prohibition of Age Discrimination in Employment and Promotion of Employment of the Aged. Under the amendment, the earliest retirement age that a company may set is age 60.

Beginning 1 January 2016, the new mandatory retirement age limitation will apply to businesses employing 300 or more permanent employees, public institutions as defined by Article 4 of the Act on Management of Public Institutions, and local public corporations and agencies established under the Local Public Corporation Act. For businesses employing fewer than 300 permanent employees, the new mandatory age limitation will apply beginning 1 January 2017.

SOUTH KOREA **1 JAN 2016 OR 1 JAN 2017**

The Fair Hiring Procedure Act

The Fair Hiring Procedure Act ("FHPA") was promulgated on 21 January 2014. Under the FHPA, where a job applicant who has submitted documents required for hiring to a business with 30 or more permanent employees demands that the documents be returned, the business must return the said documents to the job applicant (Article 11). In addition, a business with 30 or more permanent employees must keep the documents submitted by job applicants for a certain period of time (which has not yet been specified by statute) in preparation for possible requests for return of the documents (Article 11). A business that violates these requirements may be subject to a corrective order from the Minister of Employment and Labour and/or a monetary penalty not exceeding 3 million won (Article 17 (2)).

The FHPA took effect on 1 January 2015 for businesses with 300 or more permanent employees and public organizations. It shall take effect on 1 January 2016 for businesses with 100 to 299 permanent employees and on 1 January 2017 for businesses with 30 to 99 permanent employees.

SOUTH KOREA **25 MAR 2016**

Reduced Working Hours for Pregnant Employees (Article 74 (7) of the Labour Standards Act)

A female employee who is within the first 12 weeks, or who has completed 36 weeks, of her pregnancy may request a reduction of her working hours by up 2 hours per day and her employer must accept this request. (Article 74(7) of the LSA). Furthermore, the employer cannot reduce the female employee's salary during this reduced work schedule period. (Article 74(8) of the LSA).

The above provisions have applied to businesses with 300 or more permanent employees since 25 September 2014 and will be applied to businesses with fewer than 300 permanent employees starting 25 March 2016.

No significant policy, legal or case developments are anticipated within the employment space during 2016 Q2.

TAIWAN
9 DEC 2015

The Ministry of Labour Amending Articles 20-1, 21, 23, 25 and 51 of the Enforcement Rules of the Labour Standards Act, As Well As Adding Articles 23-1 and 24-1 and Deleting of Article 14, Effective 1 January 2016

The main points of the amendments are:

1. Article 14 is deleted to realize the "same job, same pay" principle and to raise the standards of child labour so that children may also be protected by minimum wage laws.
2. The definition of overtime under Article 20-1 is amended to reflect the changes to the statutory ordinary business hours under Article 30, Paragraph 1 of the Labour Standards Act.
3. The rules and standards regarding attendance records under Article 21 are amended to reflect the changes in Article 30, Paragraphs 5 and 6 of the Labour Standards Act.
4. The list of holidays under Article 23 is amended for consistency regarding Labour Day and other national holidays.
5. Article 23-1 is amended to insert the make-up holidays rules in the event that a national holidays falls on a day-off resulting from the reduced ordinary business hours (specified in Article 30, Paragraph 1 of the Labour Standards Act) or if a national holidays falls on a weekend.
6. Article 24-1 is amended to insert additional definitions regarding holidays and to clarify the uncertainties arising from the use of the term "days of rest" under Article 39 of the Labour Standards Act.
7. Article 25 is amended to reflect the name change of the Labour Safety and Health Act to the Occupational Safety and Health Act on 3 July 2013.

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TAIWAN
9 DEC 2015

The Ministry of Labour Explains that Any Leave that a Worker Takes for Care of Family Members and the Wages Earned During Such Leave are not Figured into the Average Wage Calculation under Article 2, Paragraph 4 of the Labour Standards Act

The Lao-Dong-Tiao-2-Zi-1040132503 Circular published by the Ministry of Labour on 9 December 2015 clarifies that effective immediately, in order to avoid disputes over the calculation of average wages, it is hereby announced that the time off and the wages earned during personal leave for taking care of family members per Article 20 of the Act of Gender Equality in Employment shall not be figured into the average wage calculation.

More...

TAIWAN
16 DEC 2015

Presidential Order to amend the Labour Standards Act

The Presidential Order with Ref. No. Hua-Zhong-Yi-Yi-Zi 10400146731 dated16 December 2015 added Articles 9-1, 10-1 and 15-1 to the Labour Standards Act and amended Articles 44 and 46. The main points are as below:

1. Non-compete clauses are now limited to a maximum of two years. The employer must have a proper business interest to protect, the employee must have a chance to come into the employer's confidential information, and the restrictions on duration, region and scope of business activity must be reasonable. Furthermore, the employer must provide reasonable compensation to the employee in consideration of the non-compete obligation, or the obligation is deemed null and void; the reasonable compensation does not include the payments made by the employer to the employee while the employee was still working for the employer.
2. To prevent employer from forcing an employee to leave through transfers, in addition to not breaching any of the terms of the employment agreement, an employer may not have improper motive in making a job transfer for an employee. The employee's employment conditions, such as wages, may not be reduced as a result of the transfer. If the transfer is to an overly distant location, employer must provide necessary assistance to the employee; the employee and his/her family's daily livelihood interests should be taken into consideration in conducting the transfer.

TAIWAN
16 DEC
2015

3. Unless any one of the following circumstances is present, an employer may not stipulate a minimum years of service requirement for an employee: (1) Employer is paying for professional training to the employee; and (2) employer will provide a reasonable compensation in consideration of a minimum service requirement. Failure to meet the above will cause such stipulation to be void. If the minimum service requirement is not met because the employment agreement is terminated for reasons not attributable to the employee, the employee is not liable for breach of such requirement or return the professional training fees.
4. Workers between 15-16 years of age are to be considered as a child worker. Workers between 15-18 years of age may not be engaged in dangerous or hazardous work.
5. Employers are required to also prepare age certification documents and legal guardian's consent letters for workers between 15 to 18 years of age.

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TAIWAN
21 JAN
2016

The Ministry of Labour Published its Interpretation Defining Businesses that Operate Pursuant to the Official Government Calendar shall be the Businesses as Defined Under Article 30, Paragraph 3 Of the Labour Standards Act

The Lao-Dong-Tiao-3-Zi-1050130120 Circular published by the Ministry of Labour on 21 January 2016 states that effective immediately, businesses that operate pursuant to the official government calendar shall be the businesses as defined under Article 30, Paragraph 3 of the Labour Standards Act. As the government works on make-up days to allow days off during weekdays which would extend holidays over to the weekend, such as working on 30 January 2016 in order to take 12 February off, many private businesses also choose to follow this scheme. To prevent labour disputes, businesses that do not otherwise fall under Article 30, Paragraph 3 of the Labour Standards Act may still apply the statute if, other than Labour Day on 1 May it operates pursuant to the official government calendar and uses make-up working days to bridge to weekends on other holidays.

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TAIWAN
21 JAN
2016

Interpretation Regarding whether an Insured who is Unemployed or Currently on Unpaid Leave for Child Care but Currently Acting as a Responsible Person for Another Entity, may Apply for Unemployment Benefits or Unpaid Child Care Leave Compensation

The Lao-Dong-Bao-1-Zi-1050140035 Circular published by the Ministry of Labour on 21 January 2016 clarifies the uncertainties arising from whether an individual who is unemployed or currently on unpaid leave for child care but currently registered as a responsible person for another entity, may apply for unemployment benefits or unpaid child care leave compensation, due to the fact that such registration could disqualify the individual from the above benefits. The Ministry of Labour says that the applicant is still entitled to the above benefits if this other entity has certification showing that it is engaging in a non-profitable business, the applicant is not operating this entity, or as long as any earnings during unemployment/while receiving unemployment benefits are declared pursuant to Article 31 of the Employment Insurance Act at the time of applying for unemployment certification.

More...

TAIWAN
18 MAY
2016

Presidential Order to amend Articles 18, 23, 27 and 38 of the Act of Gender Equality in Employment

The Presidential Order with Ref. No. Hua-Zhong-Yi-Yi-Zi 10500042821 dated May 18, 2016 announced the amendment of Articles 18, 23, 27 and 38 of the Act of Gender Equality in Employment.

The main points of the amendments are as below:

1. Loosening of the rules relating to breastfeeding (expressing milk)(amending Article 18)
   i. For consistency in legal terms and preventing confusion over the wording used, "breastfeeding" is changed to "breastfeeding (expressing milk)"

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LOOKING BACK

TAIWAN
18 MAY
2016

ii. To assist employees taking care of work and parenting as well as complying with the government's continuing policy of promoting breastfeeding, breastfeeding may now include up to children of less than two years of age, and in addition to the stipulated resting times, the employer must provide the employee with a 60-minute period for breastfeeding (expressing milk) every day.

iii. Due to the differences in physiology and thus the length of breastfeeding required, the limitation on the number of breastfeeding times is hereby deleted.

iv. In consideration that longer working hours also entail breastfeeding (expressing milk) requirements, a new provision is added to require the employer to provide an additional 30 minutes of breastfeeding (expressing milk) time should an employee work for more than one hour in addition to regular working hours every day.

2. To provide more breastfeeding and child care services for employees and encourage employers to provide breastfeeding space, child care facilities or measures, the original requirement for employers with 250 employees or more to setup a breastfeeding room, child care facilities or measures is expanded to require employers with 100 employers or more to do so (amending Article 23).

3. As to the employer's duty to prevent sexual harassment and implement immediately effective correction and relief measures upon being apprised of such an incident, a new provision requires employers to provide official leaves to victims during the times he or she has been summoned by the judiciary to appear in court for the lawsuit arising from a sexual harassment incident at the workplace (amending Article 27).

More...

Click here to view **2015 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: 理慈 Lee, Tsai & Partners

No significant policy, legal or case developments are anticipated within the employment space during 2016 Q2.

LOOKING BACK

VIETNAM
14 NOV 2015

A New Decree Regulating Region-Based Minimum Wages for Employees Working for Companies, Cooperative Unions, Cooperatives, Cooperative Groups, Farms, Households, Individuals and Organizations Hiring Employees under Labour Contracts

On 14 November 2015, the Government issued Decree no. 122/2015/ND-CP regulating region-based minimum wages for employees working for companies, cooperative unions, cooperatives, cooperative groups, farms, households, individuals and organizations hiring employees under labour contracts ("**Decree 122**"). In particular, the new minimum wages will be 3.5 millions per month, 3.1 millions per month, 2.7 millions per month and 2.4 millions per month for region I, II, III and IV respectively. The list of cities in each region is provided in the Appendix of Decree 122. These are the minimum wages applied to workers doing the simplest jobs. For trained workers it is regulated that they must be paid 7% higher than the minimum wages (Article 5 of Decree 122).

Decree 122 takes effect on 1 January 2016 and replaces Decree 103/2014/ND-CP dated 11 November 2014.

VIETNAM
3 FEB 2016

A New Decree Providing Detailed Guidance on Some Articles of the 2012 Labour Code Regarding Foreign Employees Working in Vietnam

On 3 February 2016, the Government issued Decree No. 11/2016/ND-CP ("**Decree 11**") providing detailed guidance on some articles of the 2012 Labour Code regarding foreign employees working in Vietnam. In particular, for employers who want to recruit foreign employees, they must establish their need for foreign employees and apply for the approval from the Head of Provincial People's Committee. It is also provided that the recruitment of foreign employees can only be approved if there is no qualified Vietnamese employee to fill such positions. In addition, Decree 11 gives detailed guidelines on the application, re-application as well as the revocation of work permit for foreign employees working in Vietnam. A foreign employee who does not have a work permit or document proving that he does not need a work permit to work in Vietnam shall be deported under Vietnamese Law.

Decree 11 takes effect on 1 April 2016 and replaces Decree no. 102/2013/ND-CP dated 5 September 2013.

No significant policy, legal or case developments are anticipated within the employment space during 2016 Q2.

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Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

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