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中国动态： 双语版亚洲雇佣法：季评

2015-2016

第十二期：2016年第二季度

Asia Employment Law: Quarterly Review

2015-2016

ISSUE 12: SECOND QUARTER 2016

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引言 INTRODUCTION

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

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

在第十二期中，我们将回顾并评点2016年第二季雇佣法发展情况，同时列出一些2016年立法、咨询、政策及判例法方面的预期重大变革。

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

我们衷心希望本刊对阁下有所助益。

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

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

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.

顺颂商祺

With best regards,



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深圳市中级人民法院关于审理劳动争议案件的裁判指引

2015年12月1日, 深圳市中级人民法院发布了《深圳市中级人民法院关于审理劳动争议案件的裁判指引》(以下简称《裁判指引》), 并附文《关于〈审理劳动争议案件的裁判指引〉的说明》(以下简称《说明》)。《说明》对违法转分包或发包给不具备用工主体资格的承包人、挂靠人或营业执照借用人的情况下, 具备用工主体资格的发包人、被挂靠人或营业执照被借用人与劳动者之间发生劳动争议, 如何认定其法律关系且由谁来承担责任等问题作出了解答。

[更多...](#)

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...](#)

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修改人口与计生法 明确一孩二孩均可延长生育假

近日, 全国人大常委会第十八次会议表决通过《关于修改人口与计划生育法的决定》(简称《决定》), 自2016年1月1日起施行。

《决定》明确, 国家提倡一对夫妻生育两个子女。夫妻双方户籍所在地的省、自治区、直辖市之间关于再生育子女的规定不一致的, 按照有利于当事人的原则适用。《决定》规定, 符合法律、法规生育子女的夫妻, 可以获得延长生育假的奖励或者其他福利待遇。此外, 《决定》还提出, 在国家提倡一对夫妻生育一个子女期间, 自愿终身只生育一个子女的夫妻, 国家发给《独生子女父母光荣证》。获得《独生子女父母光荣证》的夫妻, 按照国家和省、自治区、直辖市有关规定享受独生子女父母奖励。

[更多...](#)

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.

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国办发文全面治理拖欠农民工工资问题

日前,国务院办公厅印发《关于全面治理拖欠农民工工资问题的意见》(简称《意见》)。

《意见》强调,要明确工资支付各方主体责任。在工程建设领域,施工总承包企业对所承包工程项目的农民工工资支付负总责。督促各类企业依法与招用的农民工签订劳动合同并严格履行,建立职工名册并办理劳动用工备案。在工程建设领域,全面实行农民工实名制管理制度。同时,《意见》指出,要健全工资支付监控和保障制度,完善企业工资支付监控机制,完善工资保证金制度,建立健全农民工工资(劳务费)专用账户管理制度,落实清偿欠薪责任。要推进企业工资支付诚信体系建设,建立拖欠工资企业“黑名单”制度,将企业拖欠工资等违法信息纳入有关部门征信系统。要依法处置拖欠工资案件,严厉查处拖欠工资行为,及时处理欠薪争议案件。

[更多...](#)

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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人力资源和社会保障部发布关于《关于执行〈工伤保险条例〉若干问题的意见(二)(征求意见稿)》公开征求意见的通知

为更好地贯彻执行《工伤保险条例》,妥善解决实际工作中的有关政策难点问题,人力资源社会保障部近日拟定了《关于执行〈工伤保险条例〉若干问题的意见(二)(征求意见稿)》,向社会公开征求意见。《意见(二)》针对工伤认定中出现的一些边界条件模糊不清的情况,对《工伤保险条例》的相关内容进行了细化,例如“上下班途中”工伤认定问题,参加用人单位组织但与工作无关的活动中的工伤认定问题等。

[更多...](#)

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 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

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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.

[More...](#)

国务院取消61项职业资格许可和认定事项

2016年1月20日，国务院发布国发[2016]5号决定，取消61项职业资格许可和认定事项。同时，建议取消1项依据有关法律设立的职业资格许可和认定事项，国务院将依照法定程序提请全国人民代表大会常务委员会修订相关法律规定。根据该决定，取消的专业技术人员职业资格许可和认定事项共计43项，其中准入类5项，水平评价类38项；取消的技能人员职业资格许可和认定事项共计18项，均为水平评价类。

[更多...](#)

State Council Cancelled 61 Occupational Qualification Certification and Recognition

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.

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上海市工伤保险浮动费率管理办法发布

自2015年10月1日起，上海市工伤保险实行行业基准费率，并根据用人单位工伤保险支缴率和工伤事故发生率等因素实行浮动费率。一类至八类行业用人单位基准费率按照全国工伤保险行业基准费率规定执行，即分别为该行业用人单位工伤保险缴费基数0.2%、0.4%、0.7%、0.9%、1.1%、1.3%、1.6%、1.9%，并按照“以支定收、收支平衡”的原则适时调整。

[更多...](#)

[更多...](#)

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”.

[More...](#)

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中国
2月18日
2016

央行等部门完善职工住房公积金账户存款利率形成机制

经国务院同意，近日，中国人民银行、住房城乡建设部、财政部印发《关于完善职工住房公积金账户存款利率形成机制的通知》（银发[2016]43号），决定自2月21日起，将职工住房公积金账户存款利率，由之前按照归集时间执行活期和三个月存款基准利率，调整为统一按一年期定期存款基准利率执行。

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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...](#)

中国

2月23日

2016

多省计生新政出台

2015年底, 广东省率先颁布《广东省人口与计划生育条例》, 随后多省市陆续出台人口与计划生育条例, 《上海市人口与计划生育条例》修正案也于2016年2月23日通过。上述省市均明确废除了晚婚晚育假, 并分别规定了地方婚假产假的标准。至此, 天津、浙江、宁夏等十余个省份的新计生条例已经出台, 不同省份产假从最长的180天到最短的128天, 可相差近两个月之多。婚假最长30天, 最短只有3天。

[更多...](#)

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[更多...](#)

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

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中国

3月7日

2016

关于进一步做好劳动仲裁案件终局裁决工作的通知

本规定由北京市人力资源和社会保障局制定并发布, 主要针对北京市劳动仲裁“一裁终局”相关问题做出了明确规定, 本规定首次明确了北京地区终局裁决的具体适用范围, 具体罗列了劳动报酬、工伤医疗费、经济补偿以及赔偿金所包含的项目和内容等。

[更多...](#)

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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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《全国社会保障基金条例》已经2016年2月3日国务院第122次常务会议通过, 自2016年5月1日起施行。

为了规范全国社会保障基金的管理运营, 加强对全国社会保障基金的监督, 在保证安全的前提下实现保值增值, 根据《中华人民共和国社会保险法》, 制定本条例。《条例》根据社会保险法的规定, 对基金的筹集、使用、管理运营、监督等环节作出进一步规范。

《条例》明确, 任何单位和个人不得侵占、挪用或者违规投资运营全国社会保障基金。同时, 《条例》还规定, 全国社会保障基金财产应当独立于全国社会保障基金理事会、投资管理人、托管人的固有财产, 独立于投资管理人投资和托管人保管的其他财产。

[更多...](#)

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.

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《江苏省人口与计划生育条例》修改

2016年3月30日, 江苏省十二届人大常委会第二十二次会议表决通过了关于修改《江苏省人口与计划生育条例》的决定。

《条例》中明确, 自2016年1月1日起, 符合本条例规定生育子女的夫妻, 女方产假128天, 男方护理假15天, 而婚假统一为13天。此外, 还明确了四种情形可以生育“三孩”, 国家法定节假日不计入婚假、产假和护理假。

[更多...](#)

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.

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近日, 人社部、财政部联合发布《关于阶段性降低社会保险费率的通知》(《通知》), 提出阶段性降低社会保险费率的相关要求。

《通知》明确, 从2016年5月1日起, 企业职工基本养老保险单位缴费比例超过20%的省(区、市), 将单位缴费比例降至20%; 单位缴费比例为20%且2015年底企业职工基本养老保险基金累计结余可支付月数高于9个月的省(区、市), 可以阶段性将单位缴费比例降低至19%, 降低费率的期限暂按两年执行。从2016年5月1日起, 失业保险总费率在2015年已降低1个百分点基础上可以阶段性降至1%-1.5%, 其中个人费率不超过0.5%, 降低费率的期限暂按两年执行。具体方案由各省(区、市)确定。

《通知》强调, 要健全基本养老保险激励约束机制, 确保基金应收尽收, 实现可持续发展和长期精算平衡, 并确保参保人员各项社会保险待遇标准不降低和待遇按时足额支付。

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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% 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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人力资源社会保障部关于《重大劳动保障违法行为社会公布暂行办法(征求意见稿)》公开征求意见的通知

为了贯彻落实《中共中央国务院关于构建和谐劳动关系的意见》、《国务院办公厅关于全面治理拖欠农民工工资问题的意见》(国办发[2016]1号)要求, 加大对重大劳动保障违法行为惩戒力度, 督促企业规范用工, 人力资源和社会保障部起草了《重大劳动保障违法行为社会公布暂行办法(征求意见稿)》。《征求意见稿》明确了已查处结案的用人单位劳动保障违法行为, 社会公布的内容包括违法主体全称、登记注册号码及地址、法定代表人或负责人姓名、违法事实及相关处理情况, 人力资源社会保障行政部门应当将重大劳动保障违法行为社会公布情况记入用人单位劳动保障守法诚信档案, 并依法开展信息共享和联合惩戒。

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重要:
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采取行动

Important:
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required

不可不知:
关注发展动态

Good to know:
follow
developments

注意变更:
无需采取行动

Note changes:
no action
required

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Forward

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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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关于印发《上海市企业工资支付办法》的通知

本规定（以下称“新规”）由上海市人力资源和社会保障局制定并发布，主要根据《劳动合同法》及其《实施条例》等有关规定，对原《上海市企业工资支付办法》（以下称“旧规”）进行了更新与完善，对于现阶段上海地区用人单位依法支付劳动报酬事宜具有重要的指导意义。新规增加了对于加班工资和假期工资计算基数组成部分的规定，通过列举的形式明确了本办法中工资所涵盖的内容，新规进一步明确了在劳动合同、集体合同（工资专项集体合同）对劳动者月工资均无约定的前提下，加班工资和假期工资的计算基数如何确定等等问题。

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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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撰稿 CONTRIBUTED BY: **MAYER • BROWN
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