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Asia Employment Law: Quarterly Review

2015-2016

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INTRODUCTION

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

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

In this fourteenth edition, we flag and provide comment on anticipated employment law developments during the last quarter of 2016 and highlight some of the major legislative, consultative, policy and case law changes to look out for in 2017.

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.

Con't

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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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

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.

AUSTRALIA

10 JULY 2016

Coalition Government Re-Elected, but may Face Difficulties Implementing Workplace Reform Agenda

The Coalition Government of Prime Minister Malcolm Turnbull was re-elected by a very slim majority, with the final results not declared until eight days after the 2 July poll.

The Government has already introduced the following legislation to implement key elements of its workplace reform agenda:

- *Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016*: this bill is intended to preclude the making of an enterprise agreement applying to the Victorian Country Fire Authority (CFA), and other state emergency service bodies, with terms that would restrict the relevant organisation's ability to engage, deploy, support or manage its volunteers. The federal Government is intervening in a long-running bargaining dispute between the CFA and the Victorian Labor Government, which became a central issue in the federal election campaign.

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10 JULY

2016

- *Building and Construction Industry (Improving Productivity) Bill 2013 and Fair Work (Registered Organisations) Amendment Bill 2014 (No.4)*: the Coalition has been trying to have these bills passed by Parliament since 2013. They would restore a stronger regulator of workplace relations in the construction industry, with higher penalties for unlawful industrial action and other union breaches; and introduce a new regulator for trade unions and employer associations (in response to findings of widespread corruption by the Trade Unions Royal Commission).

The Government will seek to implement other Royal Commission recommendations through separate legislation, e.g. to outlaw 'corrupting benefits' (unlawful payments between employers and unions) and requiring disclosure to employees of any legitimate financial payments flowing between employers and unions.

Legislation is also expected to be introduced soon implementing the Coalition's policy to increase protections for vulnerable workers, including higher penalties for employers that engage in serious/systemic underpayments and other forms of exploitation; stronger investigatory powers for the Fair Work Ombudsman; and potential liability for franchisors and parent companies where exploitation occurs in their supply chains.

However, the Government may not be able to secure support for the passage of all of its legislation by the upper chamber of federal Parliament, where a group of minor party and independent Senators hold the balance of power. The Government will require the support of 9 of these 11 Senators, in situations where Labor and the Greens oppose proposed legislation. That is likely in respect of the construction industry and registered organisations bills discussed above, but there will probably be cross-party support for the proposed protections of vulnerable workers.

AUSTRALIA

8 AUG

2016

Discrimination Claim by Matildas Footballer Rejected by NSW Anti-Discrimination Tribunal

In *Garriock v Football Federation Australia* [2016] NSWCATAD 63, a professional footballer with the Australian women's national team lost a complaint of indirect discrimination on the ground of her status as a carer of a young child.

The footballer sought reimbursement of the costs associated with having her mother accompany her on the team's tour of the United States in 2013. She required her mother to travel with her in order to care for her 11-month old daughter. When the Football Federation refused to reimburse these costs, the footballer brought a claim alleging that she had been discriminated against on the basis of her 'responsibilities as a carer' under section 49V of the *Anti-Discrimination Act 1977 (NSW)*.

However the NSW Civil and Administrative Tribunal determined that indirect discrimination could not have occurred, because there was no requirement or condition (to meet the costs of alternative carer arrangements while on tour) which not only the complainant had to comply with but also that other employees had to comply with.

Indirect discrimination under the NSW legislation requires the tribunal to decide whether a substantially higher proportion of persons without the relevant characteristic (here, caring responsibilities) comply or are able to comply with the relevant requirement, as compared to the person with that characteristic. In this case, that kind of comparison could not be conducted because the complainant was the only player on the US tour who was subject to the relevant requirement (i.e. no other player had to deal with the issue of caring responsibilities while on tour).

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AUSTRALIA

11 AUG

2016

Full Federal Court Upholds Large Compensation Order for Offensive 'Scab' Poster

In *Maritime Union of Australia v Fair Work Ombudsman* [2016] FCAFC 102, a Full Court of the Federal Court upheld (by a 2:1 majority) an earlier decision ordering the union to pay A$120,000 in compensation to five workers who were the subject of a derogatory workplace poster describing them as 'scabs'.

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11 AUG 2016

The union had disseminated the poster in the context of enterprise agreement negotiations with the Fremantle Port Authority, and the taking of industrial action in support of the union's bargaining claims. Several employees voted against the proposed industrial action, and a number of them resigned from the union then continued to work when the industrial action took place. As a result, the strike did not shut down the port's operation as the union intended.

The union subsequently posted material, at several locations around the port, naming the individuals who had worked through the strike and describing them as 'scabs' using highly critical language. This conduct on the union's part was found, at first instance, to constitute unlawful adverse action against the relevant workers in breach of section 346(c) of the FW Act, on the prohibited ground of their exercise of the right not to engage in industrial activity.

On appeal, the Full Court majority agreed that the conduct prejudiced the non-striking workers in their employment (adopting a broad rather than narrow view of what constitutes 'employment'). The posting of the material severely diminished the standing of the targets with their fellow employees, as well as engendering fear for their own personal safety and that of their families/property. Further, the compensation amounts awarded were not manifestly excessive.

AUSTRALIA

15 AUG 2016

Fair Work Commission Finds Casual Employment Counts Towards Calculation of Severance Payments

In *Australian Manufacturing Workers' Union v Donau Pty Ltd* [2016] FWCFB 3075, a Full Bench of the Fair Work Commission (FWC) held (by a 2:1 majority) that employers need to include any regular and systematic service as a casual employee when calculating the 'period of continuous service' for purposes of determining an employee's entitlement to redundancy pay.

Employers covered by the *Fair Work Act 2009* (Cth) (FW Act) must pay employees certain amounts of severance pay, when their position is made redundant, based on their length of continuous service with the employer. However, the legislation also precludes casual employees from accruing redundancy pay entitlements.

In this case, the employer had in place an enterprise agreement which required the making of redundancy payments as per the FW Act. Several employees had worked for the employer as casuals before obtaining ongoing positions. Their union then sought recognition of the casual periods of service in the calculation of entitlements upon redundancy.

The Full Bench majority determined that the relevant statutory provisions do not provide any support for the view that a period of regular and systematic casual employment, contiguous with the commencement of permanent employment, is excluded from the calculation of an employee's service for redundancy pay purposes. To be included in that calculation, there must have been no break between an employee's casual employment and their transition to permanent employment.

The decision is significant as it means that many employees formerly engaged as regular and systematic casuals will be able to establish the right to recognition of the casual period in calculating redundancy payments, and possibly other entitlements which are linked to periods of continuous service with an employer (e.g. notice of termination, parental leave, unfair dismissal protection). This is despite the fact that casuals receive a loading of 20-25% on their hourly pay rates, which is meant to compensate for not receiving the leave and redundancy entitlements attached to permanent employment.

AUSTRALIA

18 AUG 2016

Federal Public Sector Bargaining Continues Following Government Victory in First Good Faith Bargaining Case

The re-elected Government (see above) is continuing with its tough stance of the past three years in negotiations for new enterprise agreements to apply across the public sector.

In this bargaining round, which has yielded only 54 agreements among the many hundreds of federal agencies and departments, the Government is adhering to a 1.5% per annum

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LOOKING BACK

AUSTRALIA

18 AUG 2016

wages cap and other limits under its Public Sector Bargaining Policy. As a result, there has been fairly widespread industrial action by staff including those engaged by the Department of Immigration and Border Protection at international airports and in the Department of Defence and Australian Taxation Office.

In a FWC hearing on 18 August, the Community and Public Sector Union sought bargaining orders under the good faith bargaining provisions of the FW Act, which would compel the Employment Minister to attend meetings and be directly involved in the agreement negotiations.

This proceeding followed an earlier attempt by the union to obtain orders having a similar effect, which was rejected by the FWC in *CPSU v The Commonwealth of Australia* [2016] FWC 2615. In that decision, the tribunal found that the employer's bargaining representative (under section 176(1) of the FW Act) is, in the public sector context, each of the relevant employing authorities. While there should be no more reason to expect an employing authority to be directly at the bargaining table than a private sector CEO or board chair, an authority is still covered by the good faith bargaining obligations in respect of its conduct away from the bargaining table (e.g. it is required to disclose relevant information).

The union is seeking, in its new application, to subject the Employment Minister (as the Government's public representative) to the good faith bargaining requirements. This would potentially have an impact, for example, on public statements the Minister may wish to make about the conduct and progress of the negotiations. The matter will be an important test case on the extent to which Ministers and senior public servants are required to have direct involvement in bargaining.

AUSTRALIA

25 AUG 2016

Fair Work Commission Full Bench Maintains Strict Approach to Bargaining Notice Requirements

In another 2:1 majority decision, a Full Bench of the FWC in *Uniline Australia Limited* [2016] FWCFB 4969 held that an enterprise agreement should not be approved because (at an earlier stage in the bargaining process) notices of representation rights had not been provided to employees within the required 14-day timeframe.

The Full Bench majority determined that the statutory requirement, for agreement approval, that employees voting in favour of an agreement must also have 'genuinely agreed' to it (FW Act, section 188) could not be satisfied in circumstances where employees had not been issued with representation notices in a timely manner. In the instant case, where bargaining had not actually commenced until some two years after the notices had originally been issued, this proved fatal to the ultimate application for approval of the agreement.

The decision has major implications for many other enterprise agreements currently being negotiated, where bargaining notices may not have been validly issued, and also for some agreements already approved by the FWC (which could potentially be invalidated).

AUSTRALIA

31 AUG 2016

High Court Invalidates Federal Visa Exemptions for Offshore Platforms

In *Maritime Union of Australia v Minister for Immigration and Border Protection* [2016] HCA 34, the High Court of Australia resolved the question whether visa requirements in the Migration Act 1958 (Cth) apply to workers on offshore resource projects.

The Court invalidated a 2015 Ministerial Determination which had purported to exempt, from the definition of "offshore resources activity" in the *Migration Act*, all operations and activities involving the use of a vessel or structure that is not an Australian resources installation. In the Court's view, the Determination exceeded the Commonwealth's regulation-making power which only permitted exclusions from visa rules, not their entire negation in particular contexts.

The ruling's practical effect is that foreign workers engaged on vessels and facilities in the Australian offshore oil and gas sector now need to obtain visas to work on those facilities.

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LOOKING BACK

AUSTRALIA

11 OCT 2016

Victorian Supreme Court Clarifies Privacy Obligations During Misconduct Investigations

In *Jurecek v Director, Transport Safety Victoria* [2016] VSC 285, the Supreme Court of Victoria clarified the application of the Information Privacy Principles (IPPs) under Victorian privacy legislation to an investigation of employee misconduct on social media.

Ms Jurecek was the subject of an investigation and the issuing of a formal warning in relation to alleged misconduct in the form of abusive posts and exchanges with a colleague on Facebook. She alleged that Office of the Director, Transport Safety Victoria ("(TSV") breached the IPPs in the conduct of the investigation, by (among other things) collecting personal information from her Facebook account without her consent.

However, the Court found that the information had been collected for a legitimate purpose and through authorised means which were not unreasonably intrusive. Further, the information could not have been obtained from Ms Jurecek directly without jeopardising the investigation. TSV had not, therefore, breached the IPPs. However as privacy laws differ around Australia, employers need to be mindful of the requirements of the applicable legislation when carrying out misconduct investigations involving employees' personal information.

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AUSTRALIA

14 OCT 2016

Parliament Passes Legislation to Deal with Victorian CFA Dispute

The *Fair Work Amendment (Respect for Emergency Services Volunteers) Act 2016* (Cth) was passed by federal Parliament on 10 October and came into effect four days later. It responds directly to a long-running bargaining dispute in the state of Victoria's Country Fire Authority (CFA). The legislation aims to prevent the approval of any enterprise agreement for a 'designated emergency management body' like the CFA, which would adversely impact that body's ability to engage or deploy its volunteers. This arose from a concern on the part of the federal Government that the proposed CFA agreement would prioritise the interests of the organisation's employee (and largely unionised) firefighters, at the expense of its much larger volunteer force.

The CFA dispute became very prominent in the context of this year's election campaign, with the federal Coalition pledging to intervene in the dispute through the legislation which came into force in October. At present, the CFA and the United Firefighters Union are continuing to negotiate with the assistance of the Fair Work Commission (FWC). Therefore no agreement has yet been submitted for approval, and the provisions of the new legislation have not been tested.

AUSTRALIA

24 NOV 2016

Registered Organisations Legislation Passed with Addition of Whistleblower Protections

The *Fair Work (Registered Organisations) Amendment Act 2016* (Cth) (RO Act) was passed by federal Parliament on 22 November 2016 and received royal assent on the 24 November. It imposes additional regulatory requirements upon federally registered trade unions and employer organisations, in the wake of the 2015 Final Report of the Royal Commission into Trade Union Governance and Corruption.

The RO Act establishes a new regulator, the Registered Organisations Commission, to oversee enhanced obligations applicable to registered organisations' officers in relation to (for example) disclosure of remuneration arrangements, related party transactions and material personal interests. The legislation also increases civil penalties and imposes criminal liability for serious breaches of officers' statutory duties to act in good faith and for proper purposes, and not to misuse their position or information for personal advantage.

To secure passage of the RO Act in the Senate, the Government agreed to amendments which significantly expand the legal protections for those wishing to raise concerns about malfeasance within registered organisations. The Government also committed to extend similar protections to those making disclosures of wrongdoing in the corporate and public sectors, within 18 months. A parliamentary inquiry examining the options for the proposed expansion of federal whistleblower legislation is to report by mid-2017.

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LOOKING BACK

AUSTRALIA

29 NOV 2016

Federal Court Overrules Fair Work Commission Approval of Aldi Enterprise Agreement

In Shop, *Distributive and Allied Employees Association v Aldi Stores Pty Ltd* [2016] FCAFC 161, a majority of the Full Court of the Federal Court found that the FWC should not have approved an enterprise agreement to cover an Aldi distribution centre in South Australia.

The majority judges determined that two statutory requirements for the approval of an agreement had not been satisfied in this case: (1) there were no employees 'covered' by the agreement at the time it was made, as the relevant employees were already employed in other parts of Aldi's business and covered by other agreements; and (2) the agreement did not pass the 'better off overall test' on the basis of the required comparison of benefits and detriments with all relevant awards.

The Court was also expected to, but did not finally, determine the important question raised in numerous previous court and FWC decisions: whether non-compliance with the prescribed form of the notice of representational rights (issued to employees at the commencement of bargaining) will prove fatal to the later approval of the resulting agreement. Katzmann J expressed the view that strict compliance with the notice requirements is necessary, while the dissenting judge (Jessup J) felt that the issue had not properly been put before the FWC in the approval proceedings and the third judge (White J) did not express a concluded view on the issue.

AUSTRALIA

2 DEC 2016

Government Finally Secures Passage of Building and Construction Industry Legislation

The *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) (Building Act) came into effect on 2 December, realising the Coalition Government's three-year objective of reinstating the specialist regulator for the construction industry: the Australian Building and Construction Commission (ABCC).

The Building Act empowers the ABCC to exercise investigative and enforcement powers, including in respect of the legislation's new prohibitions of unlawful industrial action, unlawful picketing and coercive conduct by building industry unions. Maximum penalties for breaches of these prohibitions have also been increased from A$54,000 to A$180,000.

Another important feature of this regulatory framework is the Government's new Code for the Tendering and Performance of Building Work 2016, which establishes industrial relations requirements for building companies and contractors bidding for Commonwealth-funded projects. These requirements include strict limitations on the content of enterprise agreements, although tenderers with pre-existing agreements will have until 29 November 2018 to enter into Code-compliant agreements.

More...
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:

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.

More...

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.

More...

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".

More...
More...

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

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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Looking Forward

CHINA
23 FEB 2016

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

More...
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More...

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.

More...

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%

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Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

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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.

More...
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.

More...

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)

More...

CHINA
11 JUL 2016

Circular of Beijing Municipal Human Resources and Social Security Bureau, Tianjin Municipal Human Resources and Social Security Bureau and Hebei Provincial Human Resources and Social Security Department on the Measures for Trans-regional Collaboration among Beijing, Tianjin and Hebei Province in Labour Security Supervision Cases

Con't

LOOKING BACK

CHINA
11 JUL 2016

This Circular is made and issued jointly by the Beijing Municipal Human Resources and Social Security Bureau, Tianjin Municipal Human Resources and Social Security Bureau and Hebei Provincial Human Resources, as part of the integration of Beijing, Tianjin and Hebei Province, aiming mainly to address the trans-regional collaboration among the said regions in labour security supervision cases. It provides for the circumstances, the way, the scope and the time limitation of the trans-regional collaboration among the said three regions, etc.

More...

CHINA
25 JUL 2016

Circular of the Ministry of Human Resources and Social Security on Issuing the Measures for the Credit Rating of Enterprises in Abidance of Labor and Social Security Law

The Measures were made and promulgated by the Ministry of Human Resources and Social Security on 25 July 2016. The Measures mainly provides that the Ministry shall give the credit rating of enterprises in labor and social security law abidance and take different supervision measures against enterprises with different credit ratings. For Class A enterprises, the frequency of routine labor and social security inspections shall be reasonably reduced. For Class B enterprises, the frequency of routine labor and social security inspections shall be reasonably increased. By taking different supervision measures against enterprises of different classes, it procures the enterprises to better abide by PRC labor laws and regulations.

More...

CHINA
27 JUL 2016

Opinions of the Ministry of Human Resources and Social Security, the Ministry of Education, General Administration of Sport of China and All-China Federation of Trade Union on Strengthening and Improving the Labor Security Administration of the Professional Football Clubs

The Opinions raise such principles as: that the clubs and the football players shall enter into labor contracts which shall include the mandatory clauses of general labor contract and those special clauses meeting the traits of football area; and that the football players shall join the social security plan. It is believed that in the future, there shall emerge some special labor regulation on professional football players.

More...

CHINA
1 SEP 2016

The Measures for Publicising Acts in Material Violation of Labor Protection Laws

The Measures clarify cases of violations by 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, acts of violation and relevant disposal information. The administrative departments of human resources and social security shall retain the publicised acts of material violation of Labour Protection laws in the archives of employers' legal compliance and credibility, and conduct information sharing and joint corrections in accordance with the law.

More...

CHINA
5 SEP 2016

Rules of Beijing Municipal Arbitration Commission for Disputes over Labor and Personnel

The Rules waere made and promulgated by Beijing Municipal Arbitration Commission for Dispute over Labor and Personnel on 5 September 2016. The Rules mainly set out the Commission's compositions , duties, work procedures, work discipline, etc.

More...

LOOKING BACK

CHINA

28 SEP 2016

Circular of the Ministry of Human Resources and Social Security and the Ministry of Finance on Issuing the Interim Measures for the Administration of the Occupational Annuity Fund

The Ministry of Human Resources and Social Security and the Ministry of Finance have jointly issued the Interim Measures for the Administration of Occupational Annuity Fund on 28 September 2016 which came into force as of the date of promulgation. The Measures stipulate that occupational annuity fund shall be managed by a centralized entrusted investment operation; an occupational annuity fund plan shall involve only one trustee and one custodian, while appropriate investment managers may be selected in accordance with the scale and size of the assets; and the duties and prohibited acts of such personnel above shall be clarified. The Measures specify that the assets of the occupational annuity fund shall be limited to investments available domestically including bank deposits, treasury bonds, financial products of commercial banks and securities investment funds. In particular, the total ratio of investment in stocks, stock funds, mixed funds and stock pension products shall not be higher than 30% of the net value of assets under entrusted investment in the portfolio products. Additionally, the Measures put forward that the agent shall adopt the quota measurement method for account management, monthly contribution as per unit of the net value of the occupational annuity fund be made in full into the account of the beneficiary.

More...

CHINA

8 OCT 2016

Circular Seeking Comments from Industrial Sectors on the Assessment of Labour Capability – Assessment of Non-Occupational Injuries and Disabilities or Incapacity due to Illness of Employees

The Department of Occupational Injury of the Ministry of Human Resources and Social Security has formulated the standard for Assessment of Labour Capability — Assessment of Non-Occupational Injuries and Disabilities or Incapacity due to Illness of Employees (Draft for Comments) (the "Draft for Comments") solicit comments from relevant entities before 15 November , 2016. The Draft for Comments classified the loss of capacity into three degrees: total loss of capacity, substantial loss of capacity and partial loss of capacity, and have set up related assessment Articles 43, 44 and 37 respectively. The original assessment standards have set out the criterion for "dyskinesia identification standard", "dyspnea classification" and so on. The Draft for Comments basically follow the arrangement and contents of the original standards, but seek to amend the "liver function identification standard" in order to uniform this with the currently adopted domestic standard. Moreover, the original standards also stipulate that "anyone who has met the criteria of substantial loss of capacity in three or more illnesses, is confirmed to be in total loss of capacity ".The Draft Comments seek to changes this to : "Anyone who has met the criteria of substantial loss of capacity in two or more illnesses is confirmed to be in total loss of capacity".

More...

CHINA

31 OCT 2016

Circular of the Ministry of Human Resources and Social Security on Issuing the Guidelines for Entrusted Management Contracts for Occupational Annuity Plans ("the Guidelines")

The Guidelines were made and promulgated by the Ministry of Human Resources and Social Security on 31 October 2016, which mainly provide guidelines for entrusted management contracts for occupational annuity plans, custody contracts for occupational annuity plans and investment management contracts for occupational annuity plans.

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

CHINA

28 NOV

2016

Circular on Several Issues concerning the Transfer and Continuation of Basic Pension Insurance Relationships of Urban Enterprise Employees

The Circular was made and promulgated by the Ministry of Human Resources and Social Security on 28 November 2016 and came into force as of the date of issuance. The Circular clarifies that the insured who receives the basic pension under multiple schemes after the implementation of the Interim Measures for the Transfer and Continuation of Basic Pension Insurance Relationships of Urban Enterprise Employees (the "Measures") shall consult with the social insurance agency to retain only one pension insurance relationships and continue to receive pension benefits. The other pension insurance relationship shall be cleared up and the balance of funds in the personal account under such relationship shall be refunded to the individual on a lump sum basis. According to the Circular, where enterprises in cities and towns move as a whole from one province to another province, their pension insurance relationships shall be transferred and continued in accordance with the Measures. Where enterprises established and operated under the guidance of provincial government level above, are to be transferred as a whole, the pension insurance relationship shall be properly transferred and continued according to the consultation of the two provinces.

More...

CONTRIBUTED BY: 競天公誠律師事務所 JINGTIAN & GONGCHENG

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")

More...

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

HONG KONG
26 JAN
2016

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

Con't

HONG KONG **12 FEB** 2016

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

Con't

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

Con't

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...

HONG KONG

8 JUL 2016

Case Update: Retired Employee Entitled to Accrued Unpaid Balance of Long Service Bonus – Construction of Deeming Provision – *FWD Life Insurance Co (Bermuda) Ltd v Cheng Wing Yiu Dumas* HCMP 2365/2014

A case reminder on the importance of having clearly drafted documentation that work in conjunction with each other.

Facts

The Plaintiff (an insurance company) sought to recover sums of money, including different types of bonus payments, from the Defendant (former Chief Regional Director) after cessation of employment.

The Individual Agency Agreement ('IAA") entered into by the Plaintiff and the Defendant includes the following terms:

10. (ii) This Agreement shall also terminate in the event of the retirement or death of the Agent...
(iii) ...retirement shall be deemed to occur:-
    a. On the thirty-first day of December coincident with or next following the attainment of the Agent of the age of sixty (60) years or the attainment of such other age as may be agreed in writing between the Company and Agent,

The Long Service Bonus ("LSB") plan includes the following terms:

2. If the agreements between the company and the agency heads terminate any reasons other than death or retirement, any accrued but unpaid LSB shall be forfeited.

3. If an agency head retires from the company after reaching the age of 65 and does not engage with any insurance and/or financial service company operating in Hong Kong, then the normal payment arrangement will apply.

The Defendant attained the age of 60 on 17 November 2013 and tendered his resignation on 20 January 2014.

Con't

HONG KONG
8 JUL 2016

Claims

The Defendant claimed that he had retired upon attaining the age of 60, and accordingly he was entitled to all accrued LSB.

The Plaintiff argued that the Defendant was not retired, but had resigned. Resignation constitutes neither death nor retirement, and accordingly, pursuant to the LSB plan, any accrued but unpaid LSB was forfeited.

Rulings

The judge accepted that although it may well have been the intention of those formulating the rules in respect of the LSB to create a situation where accrued LSB was forfeited by an agent who retired prior to the age of 65, that is not the effect achieved by the clause(s).

After considering at length the expression "deemed" as used in clause 10(iii), the judge concluded that:

- By virtue of the operation of the terms of the IAA, the Defendant, although he may have been unaware of the fact, had been retired by the Plaintiff on 31 December 2013, and did not work for the Plaintiff during January 2014. His purported resignation was in fact an empty gesture.
- Clause 2 in the LSB plan does not operate to forfeit unpaid LSB; the Defendant is therefore entitled to the accrued balance of LSB standing at the date of his retirement, 31 December 2013.

Judgment

HONG KONG
16 JUL 2016

Hong Kong Employment (Amendment) Bill 2016 Lapsed

As the fifth term of office of the Legislative Council ("Legco") ended on 16 July, the Hong Kong Employment (Amendment) Bill 2016 (the "Bill") lapsed.

The Bill sought to amend the Employment Ordinance 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. 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.

Bills Committee (including Legco brief, agenda and minutes of meetings)
Bill

HONG KONG
18 JUL 2016

The Equal Opportunities Commission Announces Findings from The Equal Opportunities Awareness Survey 2015

The Equal Opportunities Commission ("EOC") has released the findings from the "Equal Opportunities Awareness Survey 2015", which has been conducted periodically since 1998 to research on topics such as the general public's overall attitude and understanding on discrimination issues. In total, 1,500 members of the general public (aged 15 or above) and 213 EOC service users had responded to the questionnaire survey in 2015.

Major findings include:

- 9% of the general public respondents claimed that they had experienced discrimination or harassment in the past year. Of these, the most common forms were age discrimination (43%) and sexual harassment (27%), with more than half of these incidents occurring in the work environment or during the job application process.
- Issues viewed by the public as priority areas include: promoting access to public premises by people with visual impairment who are accompanied by guide dogs and encouraging public venues operators to support breastfeeding.
- When asked to evaluate the overall performance of the EOC (on a scale of 1-10, with 10 denoting "very good"), the average score obtained from the general public was 6.3 and that from EOC service users was 7.1

Press Release
Report

HONG KONG

24 JUL 2016

Second-Stage Consultation on Working Hours Policy Directions Ended

The Standard Working Hours Committee ("SWHC") launched the three-month Consultation on Working Hours Policy Directions on April 25 to gauge the views of various sectors of the community on the working hours policy directions under exploration. The consultation period ended on July 24. According to the Secretary for Labour and Welfare, Matthew Cheung, SWHC is expected to submit the relevant report to the government by the end of November 2016.

Press Release
Consultation Document
Matthew Cheung's Response to Media Enquiry (Chinese only)

HONG KONG

31 AUG 2016

Privacy Commissioner Issued "BYOD (Bring Your Own Device)" Information Leaflet

Privacy Commissioner for Personal Data, Hong Kong issued the "BYOD (Bring Your Own Device)" Information Leaflet (the "Information Leaflet") to highlight the personal data privacy risks that an organisation needs to be aware of when it develops a BYOD policy.

BYOD practice allows employees to use their own mobile devices to access and work with their employers' organisational information, such information is effectively transferred from a secured corporate system to an employee's less secure device. Even though the personal data is stored on a device owned by the employee, the organisation remains fully responsible for compliance with the Personal Data (Privacy) Ordinance (the "Ordinance") in respect of the data transferred.

If an organisation wishes to remotely manage an employee's BYOD device or track its location in case it is lost, there is a "reverse" flow of the employee's private information stored in the BYOD device back to the organisation's system. This also poses personal data privacy risks to the employee; again, the organisation is fully responsible for compliance with the Ordinance in respect of that data.

Apart from emphasising the importance of having sufficient reminder to employees and sufficient technical measures in place, the Information Leaflet also suggests best practices in allowing employees to use BYOD equipment:

- Establishing a BYOD policy describing its governance;
- Conducting a risk assessment to ascertain the types of personal data to be accessible by, or stored in, the BYOD equipment, and the harm and likelihood of its loss or unauthorised disclosure;
- Applying technical solutions to reduce or contain the risks; and
- Devising a monitoring and review mechanism to ascertain compliance to the BYOD policy while keeping up with any business changes.

Media Statement
Information Leaflet

HONG KONG

27 OCT 2016

Case Update: First Case in Hong Kong Confirming Door Discrimination Unlawful – No Injury to Feelings Proved (*Yiu Shui Kwong v Legend World Asia Group Limited*)

This case, although not involving discrimination in the field of employment provides is a case of interest in that although there was a finding of direct sex discrimination, no substantial damages were award to the claimant.

Background

As a marketing strategy, the respondent club habitually charges its male customers a higher entrance fee. The claimant, a male club-goer, with the legal assistance of the Equal Opportunities Commission, sought a declaration that the respondent was in breach of the Sex Discrimination Ordinance, Cap. 480 ("**SDO**") and an order that it amends its pricing policy and for damages.

Con't

HONG KONG

27 OCT 2016

The complaint involved direct discrimination which, unlike indirect discrimination, cannot be justified. There was also no suggestion that the respondent could avail itself of any of the exceptions provided in the SDO. In any case, the respondent did not file a response and therefore interlocutory judgment was entered against it.

Claims

The claimant claimed (i) the difference between what he paid and what the respondent had charged its female patrons, (ii) damages for injury to feelings; and (iii) exemplary damages.

Rulings

- The Court reiterated that damages for injury to feelings is not automatic once it is established that there has been unlawful discrimination.
- The Court recognised that translating subjective hurt feelings into hard currency is bound to be an artificial exercise. For the purposes of assessing damages, what the Court had to do was to make a determination on the basis of the available evidence as to whether the claimant had suffered any injury to his feelings as a result of the less favourable treatment he received from the respondent.
- The claimant obtained what he had bargained for in terms of enjoyment, the Court did not regard him as a true "victim" and no award was granted to him:
  - » The respondent's pricing policy was openly displayed at its entrance
  - » The respondent's staff would invariably explain the pricing policy to patrons
  - » The claimant had paid the entrance fee knowing the price difference
  - » The claimant spent hours inside the club and enjoyed the facilities and services at the time
  - » The claimant did not suffer from any injury to his feelings; he would obtain a windfall if exemplary damages were ordered to punish the respondent.

Judgment
Statement issued by the Equal Opportunities Commission

HONG KONG

31 OCT 2016

Minimum Wage Commission Submitted its Recommendations on Reviewing the Statutory Minimum Wage Rate

The Minimum Wage Ordinance requires a review of the Statutory Minimum Wage ("SMW") rate to be conducted at least once in every two years. Following the public consultation process that ended in May and various meetings between employer's organisations and advocacy groups, the Minimum Wage Commission (the "**MWC**") submitted its recommendation report on the Statutory Minimum Wage rate to the Chief Executive in Council on 31 October 2016.

News

UPDATE: On 20 January 2017, notice was gazetted to increase the SMW rate to HK$34.50 per hour (up from the current HK$32.50 per hour). To reflect the change to the SMW rate, the current HK$13,300 monthly cap (above which an employer is not required to keep a written record of the employee's hours worked) will be increased to HK$14,100 per month.

The relevant legal notices will be tabled in the Legislative Council on 8 February 2017. Subject to approval by the Legislative Council, the changes will take effect from 1 May 2017. Employers should take steps to update their payroll procedures to reflect these changes.

Press Release
Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2017
Employment Ordinance (Amendment of Ninth Schedule) Notice 2017

HONG KONG

NOV 2016

Immigration Department Amended the Guidebook for Entry for Training in Hong Kong to Include Nationals of Vietnam

In general, unless a person has the right of abode or right to land in the Hong Kong Special Administrative Region, he or she requires a visa or entry permit to undergo training in Hong Kong.

Con't

LOOKING BACK

HONG KONG **NOV** 2016

The Guidebook for Entry for Training in Hong Kong (the "**Guidebook**") issued by the Immigration Department sets out the entry arrangements for persons who wish to enter Hong Kong for training. Such entry arrangements do not apply to the nationals of the list of jurisdictions contained in paragraph 2 of the Guidebook. As a result of the amendment, Vietnam was removed from the list, which means that the Immigration Department may now grant visas or entry permits to national of Vietnam.

The entry arrangement remains not applicable to nationals from Afghanistan, Cambodia, Cuba, Laos, Korea (Democratic People's Republic of) and Nepal; and Chinese residents of the Mainland (other than Mainland employees and business associates of well-established and multinational companies based in Hong Kong).

The Guidebook

HONG KONG **16 NOV** 2016

Legislative Council Passed Member's Motion to Urge the Government in Abolishing the Mandatory Provident Fund Offsetting Mechanism

Hon Wong Kwok-kin moved a member's motion on abolishing the Mandatory Provident Fund offsetting mechanism. The motion states:

"that, since the implementation of the Mandatory Provident Fund ("**MPF**") scheme in 2000, its effectiveness has been questioned by society, and the MPF offsetting mechanism (i.e. the use of the accrued benefits derived from employers' MPF contributions to offset severance payments and long service payments) has all along been criticized by society; as at the first quarter of 2016, over $29.2 billion under the MPF scheme was offset, which seriously eroded the hard-earned money of wage earners and directly affected their retirement protection; in this connection, this Council urges the Government to expeditiously abolish the MPF offsetting mechanism and comprehensively review the MPF scheme, so as to ensure that employees' rights and interests will not be undermined and their retirement life be better protected." ("**Member's Motion**")

Separate amendments to the motion moved by six other Legislative Council ("**LegCo**") members had all been negatived and Member's Motion was eventually passed without amendment.

Member's motions are not intended to have legislative effect. However, through debating motions and proposed amendments, Legislative Council members express their views on issues of public concern or call on the Government to take certain actions.

Legislative Council Minutes

HONG KONG **23 NOV** & **19 DEC** 2016

Standard Working Hours Committee Held 24th and 25th Meetings and Has Its Term of Office Extended to January 2017

The Standard Working Hours Committee (the "**SWHC**") has held its 24th and 25th meetings.

The six Labour Advisory Board employee members continued not to attend the meetings. However, the labour representatives on the Labour Advisory Board, together with some Legislative Council members representing the labour constituency had conducted their opinion survey amongst all labour unions in Hong Kong and had presented their consultation report to the Chief Executive and the Secretary for Labour and Welfare, who was to pass the report to the SWHC for its consideration.

In view of the new development, the term of office of the SWHC, originally set to end at the end of November 2016, was extended for two months until the end of January 2017 to allow sufficient time for them to draw up the report for submission to the Government.

Press Release regarding the 24th Meeting
Press Release regarding the 25th Meeting
Transcript of Remarks made by the Secretary for Labour and Welfare

HONG KONG **12 DEC** 2016

All MPF Schemes Must Offer a Default Investment Strategy Starting from 1 April 2017

The Mandatory Provident Fund Schemes (Amendment) Bill 2016 (the "**Bill**") passed by the Legislative Council in May 2016 has introduced the Default Investment Strategy ("**DIS**") and required each MPF scheme to provide the DIS starting from 1 April 2017.

Con't

LOOKING BACK

HONG KONG

12 DEC 2016

From 12 December 2016 until the end of January 2016, the trustees of the MPF schemes will send a DIS Pre-Implementation Notice to holders of all 9.1 million accounts.

What is DIS?

The DIS is an investment solution consisting of two mixed assets funds: the Core Accumulation Fund ("**CAF**") and the Age 65 Plus Fund ("**A65F**"). It is a highly standardized, fee-controlled, investment strategy for MPF members that aims to address the problems of high fees and difficulty in making investment choices and to provide better retirement protection.

Each DIS has three features: globally diversified investment, automatic reduction of investment risk as scheme members approach retirement age, and fee caps.

How does the DIS work?

The DIS will be the default option – if scheme members do not make any choices for their MPF investments, their MPF contributions will be invested according to the DIS. Scheme members can also actively select the DIS if they wish.

The law requires the CAF to hold 60% of its assets in higher risk assets, which generally means global equities, and the remaining 40% in lower risk assets, which generally means global bonds. The A65F is required to hold only 20% of its assets in higher risk assets. Both funds should be invested in a globally diversified manner and in different asset classes, with the aim of reducing and diversifying investment risk.

Once scheme members choose to invest their MPF in the DIS, the benefits they accumulate at or before age 49 will be fully invested in the CAF. When they reach the age of 50, the trustee will automatically adjust their portfolio every year, reducing their holding in the CAF and increasing their holding in the A65F. When they reach age 64, all their benefits will be held in the A65F.

Regarding the fee caps, the management fees must not be over 0.75% of the net asset value of the funds per year, and the recurrent out-of-pocket expenses must not be over 0.2% of the net asset value of the funds per year. This is the first time statutory fee caps are being imposed on the management fees of MPF funds in Hong Kong.

The Bill passed
Other materials in relation to the DIS

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...

INDIA
16 JUN 2016

Shops and Commercial Establishments Permitted to Remain Open Throughout the Year in Telangana

By a government order dated 16 June 2015, the government of Telangana had permitted all the shops and commercial establishments in the State of Telangana to remain open on all 365 days of the year. This permission was initially valid for a period of 1 year. This permission has now been extended for a further period of 3 years through a government order dated 16 June 2016. This permission is subject to the fulfilment of certain conditions, such as, the employees being entitled to a weekly holiday, the employees not being required to work beyond the working hours limits (set at 8 hours a day and 48 hours a week) with any work done in excess of these limits to be recorded by the employer, etc.

More...

INDIA
1 JUL 2016

Model Shops and Establishments Act

Ministry of Labour and Employment has drafted the Model Shops and Establishments (Regulation of Employment and Conditions of Service) Bill, 2016 (**The Model Bill**) with a view to bring about uniformity in conditions governing employment across States. Through a press release dated 1 July 2016, the Ministry of Labour and Employment has stated that the Model Bill has been cleared by the Union Cabinet on 29 June 2016. It will now be sent to the governments of States, which will have the option of adopting the Model Bill as is or modifying it as per the requirements of the individual State before adopting it. The implementation of the Model Bill cannot be predicted right now as it remains to be seen how and to what extent States will adopt it.

More...

INDIA
20 JUL 2016

Social Security Agreement (SSA) with Japan to come into force from October

The Ministry of External Affairs has issued a press release stating that the SSA signed between India and Japan on 16 November 2012 will come into effect from 1 October 2016. While India has signed numerous SSAs, they only come into force once notified. The SSA, once it comes into force, will facilitate the movement of employees and professionals between the two countries. It will also exempt employees from making social security contributions in the host country for a period of up to 5 years. This can be available after obtaining a Certificate of Coverage (**COC**) from the relevant authorities. The benefits acquired under the legislation of one country can be exported to the other country. In addition, employees will also have the benefit of adding the period of service in the two countries for calculating the eligibility requirements under the social security schemes.

More...

INDIA

29 JUL 2016

Amendment of the Child Labour (Prohibition and Regulation) Act, 1986 (the CLPR Act)

Wording: The CLPR Act prohibits the employment of a child (defined to mean any person below the age of 14 years) in 18 occupations and 65 processes as well as regulating the conditions of work in other occupations and processes. The Child Labour (Prohibition and Regulation) Amendment Act, 2016 (the **CLPR Amendment**) has introduced the following changes to the CLPR Act:

- Prohibiting the employment of children in all forms of employment. The only exceptions to this would be helping the family or family enterprise, or working as an artist in the audio-visual entertainment industry. These exceptions come with the caveat that the education of the child should not be compromised.
- Creation of a new definition of an 'adolescent' as someone between the ages of 14 and 18 years. The employment of such adolescents is prohibited in hazardous occupations and processes.
- Employing any child or adolescent in contravention of the provisions of the CLPR Act have been made cognizable (i.e., an offence for which police can arrest without a warrant), with stricter punishments. Parents/guardians have to date been punishable to the same extent as the employer who has employed any child in contravention of the provisions of the CLPR Act. However, the CLPR Amendment exempts parents and guardians from punishment for a first offence.
- Constitution of a Child and Adolescent Labour Rehabilitation Fund spanning one or more districts for the rehabilitation of rescued children and adolescents.

More...

INDIA

2 AUG 2016

Special Economic Zone (SEZ) Work from Home Circular

The Ministry of Commerce and Industry issued a circular dated 2 August 2016 that allows employees working in IT/ITeS establishments in SEZs which are registered as Other Service Providers (**OSPs**) with the Department of Telecommunications to work from home or a place outside the SEZ subject to meeting certain conditions. These conditions inter alia include:

- The person should be a regular employee of the SEZ unit and authorized by the SEZ unit to undertake the work pertaining to that unit;
- Laptop/desktop and secured connectivity should be provided to employees for work from home;
- The export revenue of the resultant products/services should be accounted to the SEZ unit;

Once the employee ceases the work, he/she should be untagged from the SEZ unit and surrender his/her I-card

More...

INDIA

9 AUG 2016

The Employees Compensation (Amendment) Bill, 2016 (ECA Bill)

The Employees Compensation Act, 1923 (**ECA**) provides for payment of compensation to employees and their dependants in cases of death and injury arising out of industrial accidents and occupational diseases. The ECA Bill was passed in the Lower House of the Parliament on 9 August 2016. It will have to be passed in the Upper House of Parliament, and receive presidential assent, before it comes into force. It has introduced a new provision which requires the employers to inform the employees regarding their entitlement for compensation under the ECA at the time of their employment. Failure to do so will lead to a monetary penalty ranging from INR 50,000 to INR 100,000. Under the ECA, any orders passed by a Commissioner could be appealed to the High Court if the amount in dispute was INR 300 or more. The proposed amendment increases this threshold to INR 10,000.

More...

INDIA
10 AUG 2016

The Factories (Amendment) Bill, 2016

The Factories Act, 1948 (**Factories Act**) regulates the conditions of employment in manufacturing units, including working hours. The proposed amendment seeks to increase the permissible limits of overtime in factories, from the current limit of 50 hours per quarter to 100 hours per quarter. In cases of public interest, the overtime threshold can be further extended to 125 hours per quarter. This bill has been passed in the Lower House of Parliament. It would have to be passed in the Upper House of Parliament, and also receive presidential assent, before it comes into force.

More...

INDIA
11 AUG 2016

Maternity Benefit (Amendment) Bill, 2016 (The MB Amendment Bill)

The MB Amendment Bill which seeks to amend the Maternity Benefit Act, 1961 (**MB Act**) was approved by the Cabinet and passed in the Upper House of the Parliament on 11 August 2016. It will have to be passed in the Lower House of Parliament, and also receive presidential assent, before it comes into force. The MB Act protects the employment of women during the time of their pregnancy and entitles them to fully paid absence from work. Currently, the MB Act prescribes paid maternity leave of 12 weeks of which 6 weeks must be mandatorily taken post child birth. Once the MB Amendment Bill comes into force, it will introduce the following changes:

- Increase the duration of paid maternity leave from the current standard of 12 weeks to 26 weeks. For women with two or more surviving children, the duration of paid maternity leave will continue to be 12 weeks.
- Introduce paid maternity leave for a duration of 12 weeks for women who are (a) adopting a child below the age of 3 months, or (b) biological mothers having a child through surrogacy, by using embryo implantation.
- Provide women with the option to work from home after the period of paid maternity leave, on such terms as may be mutually agreed to between the employer and the woman.
- Place an obligation on employers with 50 or more employees to provide crèche facilities to women. While an earlier iterant of the MB Amendment Bill had proposed the distance from the workplace to the crèche to be one kilometer or less, the MB Amendment Bill simply states that it will be as prescribed. We would need to wait for a subsequent government notification in this regard.
- Place an obligation on employers to intimate (in writing and electronically) to every woman newly appointed within the organization about the maternity benefits available to them under law.

More...

INDIA
6 OCT 2016

Enhancement of the wage ceiling under the Employee's State Insurance Act, 1948 (**ESI Act**)

The government intends to raise the wage threshold for coverage under the ESI Act from INR 15,000 to INR 21,000. The draft of the proposed amendment was made available to the public to invite objections or suggestions for a month from 6 October 2016. The government will assess the inputs received before rolling out the amendment.

More...
More...

INDIA
2 NOV 2016

Employees' Provident Funds (Fifth Amendment) Scheme, 2016 (**Fifth Amendment Scheme**)

The Ministry of Labour and Employment has notified the Fifth Amendment Scheme. This amends Paragraph 83(2)(ja)(b) of the Employee's Provident Funds Scheme, 1952 to include a proviso stating that any worker who is a Nepalese national and any worker who is a Bhutanese national shall, on account of the Treaty of Peace and Friendship of 1950 and the India-Bhutan Friendship Treaty of 2007 respectively, be deemed to be an Indian worker (and not an international worker).

More...

LOOKING BACK

INDIA
4 NOV 2016

Draft of Ease of Compliance to Maintain Registers under various Labour Laws Rules, 2016 (**Draft Rules**) published

The Ministry of Labour and Employment has published the Draft Rules to provide for a combined register for ease of compliance with the maintenance of registers under the following labour laws:

- Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996;
- Contract Labour (Regulation and Abolition) Act, 1970;
- Equal Remuneration Act, 1976;
- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- Mines Act, 1952;
- Minimum Wages Act, 1948;
- Payment of Wages Act, 1936;
- Sales Promotion Employees (Conditions of Service) Act, 1976; and
- Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.

The combined register can be maintained electronically or otherwise and must be made available to any concerned inspector for inspection. Schedule A of the Rules provides formats for employee register, wage register, loan recoveries register, attendance register and a register of rest/leave/leave wages.

The Draft Rules have also been made available to the public for three months from 4 November 2016 to invite objections or suggestions. The government will assess any such inputs before amending the law.

More...

INDIA
11 NOV 2016

Employee's Provident Funds (Sixth Amendment) Scheme, 2016

The Ministry of Labour and Employment has notified the Employee's Provident Funds (Sixth Amendment) Scheme, 2016, which amends paragraph 72(6) of the Employee's Provident Funds Scheme, 1952 with respect to the inoperative account into which (a) the amounts due to a member of the Employee's Provident Fund which cannot be paid to him due to want of latest address or the absence of a claim and (b) any amount returned undelivered and remaining unclaimed for a further three years, is deposited. The significant changes are as follows:-

- Prior to the amendment, the accumulation in respect of a member of the Fund who had ceased to be employed or died was transferred to the inoperative account if no application for the withdrawal or transfer of such amount was made within the prescribed timeline. As a result of the amendment, the amount that would now be transferred to the inoperative account would only be in respect of members who have died or retired from service after attaining age of 55 years or migrated abroad permanently. Therefore, the accumulations in respect of a member who has ceased to be employed would no longer be transferred to the inoperative account.
- A new proviso has been inserted, stating that any amount becoming due to a member as a result of supplementary contributions on account of litigation or default by the establishment or a claim which has been settled, but is received back undelivered and is not attributable to the member shall not be transferred to the inoperative account.

More...

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...

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...

INDONESIA
6 JUN 2016

Minister of Manpower Issues New Regulation on Procedures for Sanctioning Employers that Violate Wage Requirements

The Minister of Manpower (MOM) has issued MOM Regulation No. 20 of 2016 dated June 6, 2016 regarding Procedures for the Imposition of Administrative Sanctions as Stipulated in Government Regulation No. 78 of 2015 on Wages ("Reg. No. 20"). Reg. No. 20 implements Article 59 (3) of Government Regulation No. 78 of 2015 on Wages, which sets out procedures for imposing administrative sanctions on employers that are non-compliant with wage requirements. Four types of administrative sanctions can be imposed on employers, as follows:

a. Written warnings;

b. Limitation of employer business activities, including (i) limitation of an employer's production capacity for a certain period; and/or (ii) postponement of the issuance of business permits for employers with business operations in several locations;

c. Temporary suspension of an employer's right to use part or the entirety of its production equipment; and

Con't

INDONESIA
6 JUN 2016

d. Temporary suspension of all business activities.

Reg. No. 20 clarifies that employers are subject to administrative sanctions if they do any of the following:

a. Fail to pay employees their religious holiday allowance (*Tunjangan Hari Raya* or "THR") a minimum of seven days before the religious holiday takes place;

b. Fail to distribute service tips to employees at hotels or hotel restaurants (if applicable);

c. Fail to draw up relevant wage structures and scales and to share this information with employees;

d. Fail to pay weekly or monthly wages on time;

e. Fail to pay any fines resulting from violations of employment agreements, company regulations or collective labor agreements; and/or

f. Withhold employee wages by more than 50% of the total wage amount per wage payment.

INDONESIA
28 JUN 2016

New Regulation on the Coordination of Benefits under the National Health Insurance Program

Companies in Indonesia are required to register employees in the Indonesian Government's health and employment social security programs, part of a Government effort to expand social security benefits to more of the population. Questions remain, however, about the implementation of the new programs and their effect on business.

A number of issues, including coordination of dues, claims and registration, must still be clarified between the Social Security Agency (BPJS) for Health and the Indonesian Life Insurance Association (AAJI).

BPJS Health Regulation No. 4 of 2016 dated June 28, 2016 regarding Technical Guidelines for the Implementation of the Coordination of Benefits under the National Health Insurance Program ("Reg. No. 4") clarifies that any coordination relating to benefits is possible only for BPJS Health participants that obtain additional coverage from insurance companies that are cooperating with BPJS Health.

Under Reg. No. 4, participants may choose to pay their BPJS Health insurance contributions directly to BPJS Health or to an insurance company. If to an insurance company, participants must pay their contributions along with the premium for the additional health insurance coverage. The insurance company must then transfer any such contributions to BPJS Health through its virtual account by no later than the 10th day of each month.

Participants with additional health insurance coverage from more than one insurance company may pay their contributions directly to BPJS Health without having to pay through each insurance company.

INDONESIA
29 SEP 2016

Constitutional Court Decision on Deferral of Minimum Wage

Indonesia's Constitutional Court has issued Decision No. 72/PUU-XIII/2015 dated 29 September 2016 regarding Judicial Review of the Employment Law. The Constitutional Court found the phrase "but is not required to comply with the prevailing minimum wage provision for the period of deferment" in the elucidation of Article 90(2) of the Employment Law to be unconstitutional and not legally binding. Article 90(2) of the Employment Law provides that if an employer is unable to pay the applicable minimum wage, then the employer can defer payment of such minimum wage. The elucidation suggests that when the period of deferral of the relevant minimum wage ends, the employer must start paying the minimum wage but is not required to pay the minimum wage during the period of deferral (i.e., the employer is not obligated to later pay the applicable minimum wage in arrears). With this decision, it would appear that even when an employer obtains approval to defer the implementation of a new minimum wage, the employer must later pay the applicable minimum wage in arrears for the period of deferral when the deferral period ends. Recognizing that employers are only able to obtain approval to defer the application of a new minimum wage based on clear evidence of financial necessity, this decision is very controversial.

LOOKING BACK

INDONESIA

27 OCT 2016

Governor of Jakarta Issues New Regulation on Minimum Wage for 2017

Wording: The Governor of the Special Capital City Region of Jakarta has issued Regulation No. 227 of 2016 dated 27 October 2016 regarding the Jakarta Provincial Minimum Wage for 2017 ("Reg. No. 227"). Beginning 1 January 2017, the minimum wage in the Special Region of Jakarta will be IDR 3,355,750 per month.

Under Reg. 227, companies in Jakarta are prohibited from paying workers less than IDR 3,355,750 per month. Companies can, however, seek to defer the application of the new minimum wage by submitting an application for postponement to the governor's office no later than 10 days before 1 January 2017.

The Jakarta minimum wage is going up 8.25% in 2017 from the previous year.

INDONESIA

2016

Ratification of 2006 Maritime Labour Convention

Wording: The Indonesian government and the House of Representatives have agreed to ratify the Maritime Labour Convention ("MLC"), an International Labour Organization convention first established in 2006, through the issuance of Law No. 15 of 2016 ("Law 15/2016").

Law 15/2016 covers, inter alia, salaries, work requirements, working hours and breaks, medical treatment, and social and healthcare security for seafarers and maritime workers.

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: 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

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

JAPAN

1 AUG

2016

Amendments to the Employment Insurance Act and Other Relevant Acts

Amendments to the Employment Insurance Act and other relevant acts were enacted on March 29th, 2016. The purpose of these amendments is to enable employees to achieve a balance between their work and personal life (i.e., their need for childcare and family care) and to realize the "Promoting Dynamic Engagement of All Citizens" policy, which is one of the policy goals of Shinzo Abe Cabinet.

First, with regard to family care leave commencing on or after August 1st, 2016, both the rate and maximum amount of family care leave benefits were increased. The purpose of family care leave benefits is for the government to compensate employees who are enrolled in the Japanese employment insurance scheme and satisfy certain condition for their loss of earnings during periods when they take leave to care for their family members.

Set out below is a brief overview of these amendments:

1. Increase in the benefit rate
   Before the amendments, the daily amount of family care leave benefits had been calculated at 40 percent of the daily salary payable at the commencement of family care leave. Through the amendments this rate was increased from 40 percent to 67 percent.
2. Increase in the maximum amount of benefits
   The maximum daily amount of family care leave benefits was also increased from 14300 JPY to 15730 JPY.

Secondly, the amendments also include the following changes that will become effective from January 1st, 2017:

- To enable employees to take family care leave separately on multiple occasions (up to 3 times and 93 days in total);
- Besides taking family care leave, to enable employees to apply for shorter working hours more than 2 times during a three-year period in order to care for their family members;
- To enable employees to be exempted from overtime work in order to care for their family members;
- To enable employees to take childcare leave and family care leave in a half-day unit;
- To broaden the scope of children for whom employees can take childcare leave;
- To broaden the scope of fixed-term employees who are eligible to take childcare leave; and
- To require employers to take necessary measures to prevent employees from harassing or bullying their colleagues on account of their pregnancy, delivery or taking childcare leave or family care leave.

No significant policy, legal or case developments are anticipated within the employment space during 2016 Q4.

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...

MALAYSIA
1 AUG 2016

Employees Provident Fund (Amendment) Act 2016

Amongst the main amendments to the Employees Provident Fund Act which comes into effect on 1st August 2016 are as follows:-

a. A member of the fund can now elect to have all his funds in his account to be managed according to the principles of Shariah;

b. In order to ensure that the funds are managed under Shariah principles a Shariah Advisory Committee would be established;

c. Any contribution by a member after he attains the age of 55 years may only be withdrawn when the member attains the age of 60 years.

MALAYSIA
1 OCT 2016

Minimum Retirement Age (Amendment of Schedule) Order 2016

Effective from 1 October 2016, the Minimum Retirement Age (Amendment of Schedule) Order 2016 has inserted a new category of employee to be excluded from the Minimum Retirement Age Act 2012:-

"a person who has been employed on a fixed term contract of service inclusive of any extension, of more than twenty four months but not more than sixty months with basic wages of twenty thousand ringgit per month and above".

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.

Con't

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.

NEW ZEALAND
1 JUL
2016

Increase in Amount of Paid Parental Leave

From 1 July 2016, there was an increase in the level of government-funded paid parental leave entitlements. For individuals who meet the requirements for paid parental leave under the Parental Leave and Employment Protection Act 1987, payments are paid at the lesser of:

- $527.72 per week; or
- The greater of the employee's ordinary weekly pay or the employee's average weekly income.

The next adjustment is due on 1 July 2017.

More...

LOOKING BACK

NEW ZEALAND
7 SEP 2016

A Ltd v H [2016] NZCA 419

On 7 September 2016, the Court of Appeal issued an important decision on employment investigations by making it clear that employers do not have to conduct investigations "akin to a judicial inquiry".

Mr H was a pilot who was investigated and summarily dismissed for serious misconduct in relation to a claim that he had sexually harassed a novice flight attendant (Ms C) during a layover. In *H v A* Ltd [2014] NZEmpC 189, the Employment Court found that the dismissal was unjustified due to several procedural defects in the investigation, particularly in relation to the way the investigator interviewed relevant individuals and more vigorously questioning Mr H on any inconsistencies.

On appeal, A Ltd argued that the Court had required the employer to undertake an investigation *"akin to a judicial inquiry"*. The Court of Appeal, in allowing the employer's appeal and:

- Acknowledged that investigators must be even-handed and adopt a balanced approach, but this does not mean each witness must be questioned in exactly the same manner;
- Held that the investigator was entitled to *"structure his approach around the inherent implausibility of an innocent purpose and accidental touching in these circumstances"*; and
- Affirmed that the requirement under s 103A of the Employment Relations Act 2000 is *"for an assessment of substantive fairness and reasonableness rather than 'minute and pedantic scrutiny' to identify any failings."*

NEW ZEALAND
3 NOV 2016

Proposed Changes to PAYE ("pay as you earn") Tax Reporting

Wording: The Minister of Revenue has released early information on a number of proposals intended to simplify the administration of PAYE tax. The proposals include:

- Employers would no longer be required to file an employer monthly schedule. Instead, they would file PAYE information on a payday basis from 1 April 2019
- Employers using payroll software would be able to file their information directly from their payroll system
- The payroll subsidy, which subsidises employers to outsource their PAYE obligations to listed payroll intermediaries, would cease from 1 April 2018

The Government is not proposing to change the dates by which PAYE and related deductions have to be paid to Inland Revenue. However, employers will be able to make these payments on payday if they choose to.

The proposals are likely to be included in a tax bill for consideration by Parliament in 2017.

NEW ZEALAND
24 NOV 2016

Proposed Legislative Changes for Pay Equity Announced by Government

The Equal Pay Act 1972 and the Employment Relations Act 2000 are set to be amended next year to implement recommendations provided by the Joint Working Group on Pay Equity.

Earlier this year, the Joint Working Group provided a report setting out a number of recommendations in relation to pay equity, including:

- Principles to provide guidance to employers and employees for identifying, assessing and resolving pay equity claims; and
- A process that can be used by employers and employees to address pay equity, including a bargaining process based on the Employment Relations Act framework.

The proposed changes were announced by the government on 24 November 2016 and are likely to be implemented through legislative changes next year.

More...

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.

More...

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.

More...

PHILIPPINES
21 JUL 2016

Republic Act No. 10911

An Act prohibiting discrimination against individual in employment on account of age. The prohibitions includes (a) printing or publishing or causing to be printed or published in any form of media, including the internet, any notice of advertisement relating to employment suggesting preferences, limitations, specifications and discrimination based on age; (b) requiring the declaration of age or birth date during the application process; (c) declining any employment application because of the individual's age; (d) discriminating against an individual in terms of compensation, terms and conditions or privileges of employment on account of such an individual's age; (e) denying any employee's or worker's promotion or opportunity for training because of age; (f) forcibly laying off an employee or worker because of old age; or, (g) imposing early retirement on the basis of such employee's or worker's age.

More...

PHILIPPINES
25 JUL 2016

DOLE Department Order No. 162-2016

Suspending the registration of new applicants as contractor or subcontractor under DOLE Department No.18-A. Department Order No. 18-A governs the application and provides for the requirements for registration of contractors and subcontractors.

More...

PHILIPPINES
25 JUL 2016

Labor Advisory No. 10-2016

Prohibiting labor only contracting and declaring it to be illegal. "Labor only contracting" refers to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform job, work or service for a principal and the following elements are present: (a) the contractor does not have substantial capital or investments in the form of tools, equipments, machineries, work premises, among others, and the workers recruited or placed such person are performing activities which are directly related to the principal business of such employer, and, (b) the contractor does not exercise the right of control over the performance of the work of the employee. In cases of labor only contracting, the person or intermediary is considered a mere agent of the employer (principal) who shall be responsible to the worker in the same manner and extent as if the latter were directly employed by the employer (principal).

More...

No significant policy, legal or case developments are anticipated within the employment space during 2016 Q4.

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: ROMULO
ROMULO MABANTA BUENAVENTURA SAYOC & DE LOS ANGELES

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.

More...
More...

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.

More...

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

Con't

SINGAPORE
24 MAY 2016

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

More...
More...

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.

More...

SINGAPORE
11 JUL 2016

Ministry Of Manpower Remains Concerned About Workplace Safety

On 11 July 2016, the Minister for Manpower, Mr Lim Swee Say ("**Minister**"), stated that the Ministry of Manpower ("**MOM**") is deeply concerned with the worsening workplace safety and health situation, as there were more fatalities in the first half of 2016 as compared to the same period last year. This is against the backdrop of the MOM's four-pronged strategy that was first announced in April 2016, which included the imposition of stiffer penalties against companies found to have breached workplace safety measures. This statement by the Minister is a clear indication that the MOM is still highly focussed on reducing workplace accidents and companies are well advised to improve overall workplace safety.

More...

SINGAPORE
24 JUL 2016

A Holistic Approach Towards Ensuring Workplace Safety

In line with the focus by the Ministry of Manpower ("**MOM**") on ensuring workplace safety, the Chairman of the Workplace Safety and Health Council ("**WSHC**"), Mr Heng Chiang Gnee, advocated the use of a "holistic approach" in managing the safety, health and well-being of employees in the workplace. Such an approach is aimed at ensuring that there is an equal emphasis by companies on both safety and health of their employees.

More...

SINGAPORE
26 JUL 2016

Increase To Salary Criteria For Employment Pass

In light of the Singapore Government's overarching policy to ensure that more Singaporeans are employed in professional, managerial or executive positions, the Ministry of Manpower ("**MOM**") announced that with effect from 1 January 2017, the qualifying fixed monthly salary for Employment Pass applications will be increased to S$3,600 from S$3,300 (which was put in place on 1 January 2014). More interestingly, in its announcement, the MOM stated that the salary applicable to an applicant must be commensurate with the applicant's work experience and skillset. This serves to highlight the fact that the MOM continues to take advocate a Singaporean First approach in its policies, and companies seeking to employ foreign employees over local ones will continue to be the subject of the MOM's scrutiny.

More...

SINGAPORE
27 JUL 2016

Court Of Appeal Rules On Employer's Duty Of Care In Providing References

In Ramesh s/o Krishnan v AIA Life Insurance Singapore Pte Ltd [2016] SGCA 47, the Singapore Court of Appeal held that AIA Life Insurance Singapore Pte Ltd ("**AIA**") had breached its duty of care when providing employment references to a prospective future employer of its ex-employee. In assessing the applicable standard of care, the Court of Appeal reviewed cases in various jurisdictions and held that an employer owes its ex-

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SINGAPORE
27 JUL 2016

employee a duty of care to exercise reasonable care to ensure that facts stated in the reference are true, and that any opinions expressed in such reference are based on and supported by facts which are true. In addition, the employer must also exercise reasonable care to ensure that the reference given does not give an unfair or misleading impression of the employee, even if the discrete pieces of information which it contains are factually correct. Interestingly, the Court of Appeal stated that the employer should not include in the reference any complaint or allegation against the employee which the employee had no knowledge of and had not been given an opportunity to explain or defend himself. In summing up, the Court of Appeal held that it was just and fair to impose the above duty of care on employers as a negligently prepared reference may result in material harm to the employee concerned, and the general inclination that an employer may have to damage the prospects of an employee that is about to join a competitor.

More...

SINGAPORE
2 AUG 2016

Employment Syndicate Dismantled By MOM

Following a 2 day enforcement operation in late July, the Ministry of Manpower ("**MOM**") announced that it had arrested 6 members who were members of a syndicate involved in bringing in foreign workers for illegal employment. According to the press release issued by the MOM, the syndicate would set up shell companies and 'employ' phantom local employees in order to obtain the quota to employ foreign workers. Once the foreign workers have been brought into Singapore, they will be free to source for alternative employment, which is an infringement of Singapore's Employment of Foreign Manpower Act. In exchange for being brought into Singapore, the foreign workers would pay large amounts of monies to the syndicate. The MOM also emphasised the need for companies to ensure that their foreign workers are sourced leally and that the employment of illegal foreign workers has an overall negative impact on employment opportunities for Singaporeans.

More...

SINGAPORE
16 AUG 2016

Employment Claims Tribunal To Take Effect From 1 April 2017

The amendment to the Industrial Relations Act, which sets out the mandate for the new Employment Claims Tribunal ("**ECT**") was passed by Parliament on 16 August 2016. First mooted in April 2014, the ECT was aimed at providing employees, including employees who do not fall within the ambit of the Employment Act, with an alternative avenue for seeking redress against their employers, as opposed to filing a civil claim. With effect from 1 April 2017, the ECT will have the mandate to hear salary disputes between employees and their employers, as well as other contractual employment claims, including claims for bonus and overtime payments. On this, it is worth noting that before proceeding to the ECT, the employee and employer must first attempt to mediate the dispute. In addition, the dispute must be heard within 1 year after the claim arises or within 6 months after the termination of the employment relationship.

More...

SINGAPORE
24 AUG 2016

Additional Conditions For Factory-Converted Dormitories From 1 January 2017

From 1 January 2017, operators of Factory-Converted Dormitories ("**FCD**"), i.e. industrial premises used to house foreign workers, will be required to meet 4 additional conditions before their permits will be granted or renewed. These 4 additional conditions are as follows:

1. Foreign workers must be provided with a feedback channel to report issues related to the housing conditions.
2. Each foreign worker must be provided with an individual locker.
3. The FCD must contain at least 1 sick bay and have in place a contingency plan to deal with cases of infectious diseases.
4. Wi-Fi must be provided within the FCD.

On the above, the operator must provide documentary evidence that it is able to meet the above conditions and failure to do so will result in a permit not being granted or renewed.

Con't

SINGAPORE
24 AUG 2016

To ensure compliance, the Ministry of Manpower will also conduct regular inspections and enforcement action will be taken against operators who fail to adhere to these conditions.

More...

SINGAPORE
14 SEP 2016

Review of CPF Investment Scheme By Singapore Government

Singapore's Deputy Prime Minister, Tharman Shanmugaratnam ("**DPM**"), announced on 13 September 2016 that the Central Provident Fund Scheme was not fit for its purposes and will be reviewed in due course. By way of background, the Central Provident Fund is a statutory social security program made up of contributions by employers and employees. Under the current CPF Investment Scheme, an individual is allowed to use the monies contained in his CPF account in a wide range of investments. This is aimed providing individuals with the option of earning higher returns on their CPF monies. However, according to the DPM, the current structure does not achieve this purpose as individuals are paying investment management fees which eroded their returns and individuals are undermining their own interest by 'buying when the market is euphoric and selling when prices are down'. Given this, to ensure that the purpose of the CPF Investment Scheme is met, a review is necessary.

More...

SINGAPORE
10 OCT 2016

Ministry of Manpower Announces Scrutiny On Triple-Weak Companies

On 10 October 2016, the Minister for Manpower announced in Parliament that his Ministry is currently subjecting about 300 Employment Pass applications from 250 companies to closer scrutiny as these companies were found to be weak in the Singaporean core, weak in commitment to nurturing the Singaporean core, and weak in relevance to the economy. This follows from the refinements made by the Ministry of Manpower to the Employment Pass application process on 8 April 2016. This announcement by the Minister makes clear that there is no abatement in the Singapore Government's overall effort to ensure compliance with the Fair Consideration Framework, which requires businesses in Singapore to consider Singaporeans fairly for job opportunities, particularly for managerial or executive positions.

More...

SINGAPORE
13 OCT 2016

New National Framework To Raise Standards Of HR Professionals

At a human resources symposium on 13 October 2016, the Minister for Manpower, Mr Lim Swee Say, announced that in an effort to raise the overall standards of HR professionals, a new National Human Resource Professional Certification Framework will be put piloted from 24 October 2016. Under this new framework, HR professionals will be required to clock 150 hours of structured training, and will be assessed on their skills, knowledge and experience. If this pilot assessment is successful, the framework is expected to be launched officially from July 2017.

More...

SINGAPORE
1 NOV 2016

Three Individuals Charged For Fraudulently Obtaining Work Passes

In keeping with the Singapore Government's recent trend of ensuring that Singaporean employees are not unfairly discriminated against, three individuals were charged by the Ministry for Manpower for fraudulently obtaining work permits for foreign employees. According to the MOM, the individuals had conspired to obtain the work permits under the name of one business, although it was intended that the foreign employees would work for a separate business. If found guilty of the charges, these three individuals could be sentenced to a term of imprisonment (between six months to two years) and/or a fine of up to S$6,000 per offence.

More...

SINGAPORE
7 NOV 2016

Irresponsible Retrenchments – No Clear Evidence In Singapore

In response to a query in Parliament on 7 November 2016, the Minister for Manpower, Mr Lim Swee Say, stated that in the first 3 quarters of 2016, 11,890 employees were retrenched in Singapore. This is an increase from the 8,590 employees who were retrenched in the first 3 quarters of 2015. However, in spite of the increased numbers, the Minister stated that there is no clear evidence to show that Singapore companies had engaged in irresponsible retrenchment, i.e. there is no evidence to show that such companies had disguised their retrenchment exercises to avoid paying retrenchment benefits. According to the Minister, out of the 29 appeals that were submitted by retrenched workers in 2015 and 2016, 28 appeals were from employees who were not entitled to retrenchment benefits because they had served for less than 2 years, or such benefits were not provided for in their employment contract or collective agreement. Nevertheless, business should note that in light of the current economic climate, the manner in which retrenchment exercises are carried out remain a key focus for the Singapore Government.

More...

SINGAPORE
10 NOV 2016

Increased Paternity Leave And Unwed Mothers Entitled to Maternity Leave From 1 January 2017

From 1 January 2017, working fathers will be entitled to 2 weeks of Government-paid paternity leave (up from the current 1 week), and unwed mothers will be entitled to 8 weeks of paid maternity leave (not currently provided). This is following changes to Child Development Co-Savings Act and Employment Act respectively. In addition, shared parental leave will be increased to 4 weeks (up from the current 1 week) from 1 July 2017. Given these changes, employers will be required to review their existing practices to ensure that they remain compliant with the relevant legislation.

More...

SINGAPORE
21 NOV 2016

Increased Flexibility In Work Arrangements And Leave Benefits Offered By Singaporean Companies

According to the Conditions of Employment Survey issued by the Ministry of Manpower ("**MOM**") on 21 November 2016, an increasing number of companies in Singapore are offering unplanned time-off or ad-hoc-tele-working. In addition, the proportion of employees who are working at companies with at least one formal flexi-work arrangements (such as unplanned time-off and different reporting times) has increased by 2% from 2015. The MOM further stated that companies with these arrangements had a lower resignation rate. As the Singaporean workforce evolves and as technology becomes more advanced, flexible working arrangements are becoming increasingly commonplace in various multinational companies. However, companies are well-advised to ensure that when putting in place such arrangement, legal issues such as security of information and workplace safety and health obligations are considered.

More...

SINGAPORE
23 NOV 2016

Employer Fined For Infringing Singapore's Employment of Foreign Manpower Act

On 22 November 2016, the Ministry of Manpower ("**MOM**") announced that the managing director of Lian Lee Wooden Case Maker Co Pte Ltd was fined S$60,000 and banned from employing foreign employees after pleading guilty to 20 charges under Singapore Employment of Foreign Manpower Act ("**EFMA**"). According to the press release by the MOM, the managing director had deducted amounts of between S$575 to S$9,000 from the salaries of foreign workers as a condition or financial guarantee for employment. Such practices, which are also referred to as kickbacks, are expressly prohibited by the EFMA, and an infringement of this prohibition is a criminal offence. In this press release, the MOM reiterated that it takes a serious view of such practices, and any employers found to have engaged in such practise will be barred from employing foreign employees.

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LOOKING BACK

SINGAPORE

25 NOV 2016

Mandatory Retrenchment Notification From 1 January 2017

With effect from 1 January 2017, all businesses in Singapore (which employ at least 10 employees) that retrench more than 5 employees within a 6 month period will be required to notify the Ministry of Manpower ("**MOM**") within 5 working days after the notice of retrenchment is provided to the 5th employee. This requirement was released by the MOM, together with its tripartite partners, National Trade Unions Congress and the Singapore National Employers Federation. According to the press release, this notification is to enable the relevant agencies to provide assistance to retrenched local employees in light of the current economic downturn. Employers are well-advised to adhere to this new requirement, as the failure to provide notification within the relevant timeline is an offence, which is punishable with a criminal fine of up to S$5,000.

More...

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 Q3 and Q4.

SRI LANKA
3 AUG
2016

SC APPEAL No. 84/2011 SC (Spl) LA 194/2010 C. A. Application No. 777/20

In **Brown and Company Limited Vs. The Commissioner of Labour, M.V Thegarajah and 4 others**, the Respondent former employee complained to the Commissioner of Labour about the manner of calculation of gratuity.

The Respondent had been employed at Brown and Company for 24 years and retired on the 31st October, 1986. At the time of his retirement his last drawn salary was Rs. 30,000/- and he received a gratuity of Rs. 750000/-.

Thereafter he returned to (temporary) employment on the 1st of November, 1986. He worked till the 30th of June, 2006 and his salary at the time he left was Rs. 540,000/-.

He was paid gratuity again based on an erroneous calculation of the period of service as 44 years taking the date of employment as 1st January, 1962. The Respondent was informed of this miscalculation and he returned Rs. 13,104,000/- which was the erroneous overpayment.

By the Commissioner of Labour's order dated 17th September, 2007 it was held that there was an interruption in the employment of the Complainant and the Commissioner directed the company to pay only for the second segment of the employment of the Complainant, i.e. Rs 13,338,000/-.

The Complainant re-initiated the inquiry and the Commissioner directed the Petitioner to pay to the Complainant Respondent, a further sum of Rs. 16,575,000/- as gratuity inclusive of a 30% surcharge.

Being aggrieved by the order, the Petitioner challenged the said decision in the Court of Appeal and the court of Appeal dismissed the application of the Petitioner and the Company had appealed to Supreme Court.

The Supreme Court granted special leave to appeal on 22.06.2011 on the questions of law contained in the Petition which read as follows:-

42(a) Once gratuity has already been taken by the Complainant in the course of his employment, does this not clearly signify a break in his chain of employment and in such event, can such employee be said to be in continuous employment? In this context the Court of Appeal, in its judgment dated 2nd September, 2010 has erred in law in arriving at it's finding that there was no break in his period of service.

42(c) The Court of Appeal erred in law in coming to the finding that there was no break in service of the Complainant Respondent's employment.

42(f) The Court of Appeal misdirected themselves that the physical continuance of employment is the sole basis that determines the continuous and uninterrupted service under the Gratuities Law and thereby erred in law.

On 03.08.2016 the Supreme Court held that the Court of Appeal had erred in its judgment by having decided that the period of service was not interrupted on the basis that the Complainant Respondent had physically come to work on the very next day after the date of retirement at the age of 55 years. The Court of Appeal had ignored the fact that he was retired and then he accepted a fixed term contract and commenced services anew according to the contract and had come on the next day as a worker on contract basis. Due to the aforementioned reasons, the Supreme Court made an order setting aside the Judgment of the Court of Appeal and the decision of the 3rd Respondent, the Deputy Commissioner of Labour. The Appeal of the Appellant was allowed. However no costs were ordered.

SRI LANKA
2 DEC
2016

S.C. Appeal no. 40/2004

This is a case which involved the termination of employment of an employee and the issue of whether the termination was justifiable. The employee was transferred to another division of the employer company. According to the facts of the case, the employee refused to accept and reside in the residence provided within the particular division, and this led to action being taken by the employer and ultimately resulted in the termination of the employment of the employee. It was held by the Court that persistent refusal to give up the quarters occupied by the employee, would amount to insubordination.

Con't

LOOKING BACK

SRI LANKA
2 DEC 2016

The Court held that as a matter of labour law and practice, insubordination is a ground for dismissal in all jurisdictions, unless provoked by management. A refusal to obey reasonable orders justifies dismissal. The Court held that the termination of the employment of the employee was therefore just and equitable.

More...

SRI LANKA
8 DEC 2016

Victor Perera Vs. Ranliya – Garment Industries Ltd – S.C. Appeal no. 01/2005

The facts of the case – the employee was a driver who was on probation at the time of the termination of his employment. The employer's position was that the employee was the leader of an illegal and unlawful assembly and that the employee was responsible for breach of peace at the company. The Court held that the acts of the employee in question were nothing but grave disobedience which amounted to a breakdown in the continuation of a good relationship of employer and employee and that in those circumstances a dismissal is warranted. It was held that abuse of a superior would justify termination, even if the employee has legitimate grounds of protest.

In the said case, the Court also considered the issue of whether the employer has the right to terminate the employment of the employee without any notice or payment of compensation when the employee was on probation. The principles relating to the status of a probationer in the case of Brown & Co. Ltd. Vs. Samarasekara were considered by the Court. The said case lays down guidelines which determine whether and when a probationer could be dismissed from employment. The Court held that if mala fides or ulterior motives could be shown on the part of the employer or that the employee was victimized, then the termination in those circumstances would be unjustifiable and the employee would be entitled to relief. The Court in the instant case held that the Applicant employee had not placed any acceptable material before the Tribunal/Court to establish that termination of employment was done mala fides or for ulterior motives.

More...

SRI LANKA
14 DEC 2016

Sri Lanka Insurance Company v. Commissioner of Labour and 2 others – SC Appeal 27A/2009; Supreme Court Judgment on the question of the distinction between an "independent contractor" and an "employee"

The facts of the case – the 3rd Respondent, the employee, had filed a complaint with the Commissioner of Labour regarding certain Employees' Provident Fund payments claimed to be due to the employee. The question was whether the 3rd Respondent was an employee or an independent contractor and whether he fell within the definition of "covered employment" in terms of the Employees' Provident Fund Act. The Court held that the employee's employment was not that of an independent contractor and that the employee did fall within the scope of the Employees' Provident Fund. The Court held that the applicable tests and the ultimate deciding factors were the "control" and "integration" tests. The Court held that the service provided by the 3rd Respondent was not for himself or for a business belonging to him and that it was a service done for the Petitioner company and that the 3rd Respondent was part and parcel of the Petitioner's business and that he therefore was a workman or employee.

More...

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.

More...

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.

More...

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.

More...

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)"

Con't

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...

TAIWAN
21 JUN 2016

The Ministry of Labor Announced the Applicable Rules After the Expiration of Certain Amended Provisions of the Enforcement Rules of the Labor Standards Act, effective June 21, 2016

The Ministry of Labor announced in its Lao-Dong-Tiao-3-Zi-10501312390 Circular dated June 21, 2016 that since the amendments to the Enforcement Rules of the Labor Standards Act promulgated on December 9, 2015 and coming into effect on January 1, 2016 will no longer remain in effect after June 21, 2016, from June 21, 2016 afterwards, the relevant articles of the Enforcement Rules of the Labor Standards Act shall revert to their previous versions prior to the amendments dated December 9, 2015 and coming into effect on January 1, 2016.

More...

TAIWAN
21 JUN 2016

The Ministry of Labor Published its Interpretation of Overtime Work under the Labor Standards Act, Effective June 21, 2016

The Lao-Dong-Tiao-3-Zi-10501312430 Circular published by the Ministry of Labor on June 21, 2016 states that "overtime work", based on Article 30, Paragraph 1 of the Labor Standards Act, refers to the time an employee works beyond eight hours a day or forty hours a week. However, if working hours have been shifted in accordance with the Labor Standards Act, then overtime shall refer to the time outside of such adjusted working hours.

In addition, although Article 20-1 of the Enforcement Rules of the Labor Standards Act refers to a "regular 84-working hour every two weeks" schedule, as it is inconsistent with the current Labor Standards Act prescribing a 40-working hour week, that Article shall no longer be applicable and is hereby replaced with this Circular.

This Circular is effective on June 21, 2016.

More...

TAIWAN
29 JUN 2016

The Ministry of Labor Announced that from August 1, 2016, an Employer May Not Schedule an Employee to Work Seven Consecutive Days; There Must be At Least One Regular Day Off every Seven Days

The Lao-Dong-Tiao-3-Zi-10501314430 Circular published by the Ministry of Labor on June 29, 2016 annuls the Tai-Nei-Lao-Zi-398001 Circular published by the Ministry of the Interior on May 17, 1986, effective August 1, 2016. The main points are as below:

Con't

TAIWAN
29 JUN
2016

Even though Article 36 of the Labor Standards Act states that, "A worker shall have at least one regular day off in every seven days," the Tai-Nei-Lao-Zi-398001 Circular has previously allowed for moving around the statutory one day off if it is necessary to do so and the labor union or the employees consented to such an arrangement. This has led to some employers attempting to maximize the number of consecutive working days by moving the days off to the beginning and the end of a two-week cycle, thereby creating a 12 consecutive working day schedule. The Ministry of Labor seeks to address this practice by requiring there to be at least a day off every seven days with no exceptions or adjustments. Violators may be fined from NT$20,000 to NT$300,000.

More...

TAIWAN
16 AUG
2016

The Ministry of Labor Amended the Guidelines to Hiring Part-Time Workers to Strengthen the Labor Rights of Part-Time Workers

The Lao-Dong-Tiao-1-Zi-1050131695 Circular published by the Ministry of Labor on August 16, 2016 amended the Guidelines to Hiring Part-Time Workers. The main points are as below:

1. The calculation method for wedding, funeral, personal and sickness leaves is adjusted for compliance with the statutory reduction of working hours: [Average working hours per week / 40] * number of leave days * 8 hours.
2. Clearly set out the rights of workers and calculation of leaves in accordance with the Act of Gender Equality in Employment.
3. Added the calculation for job hunt leaves and the period of advance notice.
4. Amended relevant provisions in accordance with the "Grading Table of Wages for Labor Insurance" last amended on April 24, 2015.

More...

TAIWAN
10 SEP
2016

The Ministry of Labor Issued an Announcement Regarding the Regular Off Days Under Article 36 of the Labor Standards Act, Effective 1 October 2016

Article 36 of the Labor Standards Act provides that workers get one regular day off every seven days. The idea is that a worker should not be made to work for more than six days consecutively. The Ministry of Labor announced in its Lao-Dong-Tiao-3-Zi-1050132134 Circular dated 10 September 2016 that if any of the following circumstances is present, an employer may, provided that the workers have consented, rearrange mandated days off during a two-week period so that there are up to 12 days between the days off:

1. For the butchery trade and the transportation industry which, for the convenience of the general public, may need to work for more than six consecutive days during the Chinese New Year, commemorative holidays, Labor Day and other days prescribed by the Central Competent Authority.
2. The difficulty to travel to the work location (out at sea, high up in the mountains or other remote areas) .
3. Workers working overseas, on ships, airplanes, at examination sites or conducting annual maintenance in power plants may need to work for more than six consecutive days.

When the workers have worked for more than six days consecutively based on the rearrangement, the employer shall consider the workers' health and safety. The employer may not cause the workers to continue working for more than six days consecutively after the above circumstances for the rearrangement have been resolved.

TAIWAN
19 SEP
2016

The Ministry of Labor Announced the New Minimum Wage Rates

The Ministry of Labor announced in its Lao-Dong-Tiao-2-Zi-1050132177 Circular dated on 19 September 2016 that the new minimum wage rates will increase to NT$126 per hour effective from 1 October 2016, later to NT$133 per hour and NT$21,009 per month effective from 1 January 2017.

LOOKING BACK

TAIWAN

7 OCT 2016

The Ministry of Labor amended the Enforcement Rules of the Labor Standards Act

The Lao-Dong- Guan-2-Zi-1050127775 Circular published by the Ministry of Labor on 7 October 2016 amended Articles 7-1, 7-2, 7-3 of the Enforcement Rules of the Labor Standards Act. The main points are as below:

1. To require post-termination non-compete clauses to be in writing to avoid future disputes.
2. Reasonable post-termination non-compete restrictions must meet the following rules:
   - i. No more than two years and may not exceed the life of the information or trade secret that the employer is seeking to protect;
   - ii. Geographical restrictions must be based on the employer's actual business operations area;
   - iii. Type of restricted work shall be clearly specified and substantially similar to the departing employee's work;
   - iv. The restricted competitors shall be clearly specified and must be in actual competition with the employer.
3. Compensation in consideration of the post-termination non-compete obligations shall meet the following guidelines:
   - i. Monthly compensation shall be no less than 50% of the average monthly wage the employee received just prior to departure.
   - ii. Sufficient for the employee's daily livelihood expenses during the non-compete period.
   - iii. Amount should be comparable with the restrictions on duration, region and scope of business activity.
   - iv. The employer and the employee should agree beforehand whether the compensation would be lump-sum or monthly.

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

THAILAND

AUG

2016

National Pension Fund

The Cabinet is considering legislation to establish a national pension fund, which would function like a mandatory provident fund scheme. Under the current provident fund scheme, employers are not obligated to provide provident funds, and a provident fund only comes into existence when it is set up by agreement between employer and employees and registered as a provident fund. Once established, employers and employees make matching contributions (though the law was recently amended to accommodate higher contributions by employees). If enacted, the new legislation would eventually require participation by all employers and employees. The current plan is that the requirement would phase-in over time, with larger employers facing an earlier compliance date than smaller employers. It remains to be seen how the new national pension fund would interact with already-existing provident funds, and how this would impact employer obligations. The legislation is expected to become effective this year, with employer/employee obligations starting to phase in from 2018.

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.

VIETNAM
26 MAY 2016

A New Decree Regulating on Statutory Pay Rate for Public Officials, Public Employees and Armed Forces Personnel

On 26 May 2016, the Government of Vietnam issued Decree No. 47/2016/ND-CP on statutory pay rate for public officials, public employees and armed forces personnel. Notably, the monthly basic salary is adjusted from VND1,150,000 per month to VND1,210,000 per month (an increase of 5%) which is used for social insurance calculation. The cap for calculating the maximum social insurance contribution therefore increases from VND 23,000,000 per month to VND24,200,000 per month.

This Decree takes effect as from 15 July 2016.

LOOKING BACK

VIETNAM

14 NOV 2016

Decree 153/2016/ND-CP

On 14 November 2016, the Government issued Decree No. 153/2016/ND-CP ("**Decree 153**") which provides for new regional minimum salaries for employees hired under labour contracts, including employees working in foreign invested enterprises. Decree 153 replaces Decree No. 122/2015/ND-CP (of 14 November 2015).

Decree 153 provides for four regional minimum salaries: VND3,750,000; VND3,320,000; VND2,900,000; and VND2,580,000 depending on which region the relevant enterprise is located in.

The new regional minimum salaries provided for in Decree 153 apply from 1 January 2017, and are paid to untrained employees performing simple jobs. The lowest salaries payable to trained employees must be at least 7% higher than the regional minimum salaries. As from 1 January 2017, employers are required to adjust the minimum salaries to be paid to their employees if those stated in the relevant contracts are lower than the new minimum salaries. Employers are encouraged to pay higher salaries than the regional minimum salaries to their employees.

More...

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