



MAYER | BROWN

Asia Employment Law: Quarterly Review

2019-2020

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Introduction

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 produces the **Asia Employment Law: Quarterly Review**, an e-publication covering 15 jurisdictions in Asia.

In this twenty-seventh edition, we flag and comment on employment law developments during the first quarter of 2020 and highlight some of the major legislative, consultative, policy and case law changes to look out for in 2020.

This publication is a result of ongoing cross-border collaboration between 15 law firms across Asia with whose lawyers Mayer Brown 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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Due to COVID-19 Attorney-General has paused consultations on Industrial Relations reform

In September 2019, Attorney-General and Industrial Relations Minister Christian Porter commenced a review of 'potential improvements in Australia's Industrial Relations system.' The reform process was proceeding by way of discussion papers released by the Attorney-General's office to which employers, employee groups and other interested parties were invited to respond.

Due to the impacts of COVID-19, on 12 February 2020 the Attorney-General Department announced that the industrial relations consultation process has 'paused', but that it would recommence in due course.

Before the suspension, consultation was ongoing regarding the following topics:

- improving protections of employees' wages and entitlements;
- review of the Code for the tendering and performance of Building Work 2016; and
- cooperative Workplaces – How Australia can capture productivity improvements from more harmonious workplace relations.

Consultation has completed on the first two discussion papers which called for feedback on:

- a proposal to increase the term of enterprise agreements (beyond the current four-year nominal expiry date under the FW Act) that cover major new 'greenfields' projects; and
- the enforcement and penalties regime under the *Fair Work Act 2009* (Cth) including a criminal sanctions for 'wage theft'.

Attorney-General's Department 'Industrial Relations Consultations'

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Modern Awards altered to introduce prescriptive arrangements for annualised wage arrangements

From 1 March 2020, new annualised salary clauses (described as 'annualised wage arrangements') commenced as terms of 22 modern awards (which provide industry specific minimum terms and conditions for employers and employees covered by that award). The awards amended included the awards covering employers and employees in the hospitality, broadcasting, manufacturing and mining industries and also clerical, administrative and office staff in banking, finance, insurance and legal services sectors. For a full list, see *Four Yearly Review of Modern Awards [2019]* FWCFB 8583.

The changes were made as part of the Fair Work Commission's four-yearly review of Modern Awards.

The Commission has provided four model clauses that will replace the existing 'annualised salary clause' in the relevant awards. These clauses aim to place appropriate safeguards on annualised salaries to ensure that employees do not receive less than the base rate provided by their applicable award. The decision to introduce the model clauses was made in the shadow of significant Australian employers admitting to underpaying workers by failing to pay them correctly under existing annualised salary arrangements.

All four clauses include the following common features:

- paying an amount in satisfaction of various modern award entitlements;
- advising an employee of the terms of the modern award that are satisfied by the 'annualised wage arrangement';
- identifying the outer limit of the number of ordinary hours or overtime hours in a given pay period or roster cycle that are compensated for by the annualised wage arrangement; and

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- performing an annual reconciliation. This includes keeping a record of starting and finishing times, as well as unpaid breaks, for the purposes of the reconciliation.

The clauses differ in relation to the degree of agreement required to utilise an 'annualised wage arrangement' and requirements for employees to sign off on the record of their hours worked.

The changes will not affect employers and employees covered by an enterprise agreement or who have entered into a Guarantee of Annual Earnings or an Individual Flexibility Agreement that varied relevant terms. The Commission will also recognise common law annualised wage set off clauses as an alternative to the 'annualised wage arrangement' under the award.

Employers in industries which are covered by the affected modern awards should, as a matter of urgency, review the payment of salaries to employees on an annual basis (as opposed to an hourly rate) to ensure that the arrangement is compliant with the applicable model clause.

[Four yearly review of modern awards – Annualised Wage Arrangements Annualised Salaries: what are the options?](#)

Changes to Queensland and Victoria's Industrial Manslaughter laws

Four Australian States and Territories have now adopted legislation specifically dealing with the offence of 'industrial' or 'workplace' manslaughter. The first was the ACT in 2004, followed by Queensland (2017), and most recently the Northern Territory and Victoria (2019). In addition, the Queensland legislation has recently been extended to the mining and resources sector. Legislation to create such an offence is also currently before the Western Australian parliament, but has not yet become law.

Queensland: Extension of offence to the Queensland Resources Sector

On 4 February 2020 a Bill was introduced to the Queensland Parliament, which if passed, would extend the current industrial manslaughter offence to the resources sector. The Bill was introduced in response to six deaths in Queensland's resource sector over the previous 12 months.

Specifically, the *Mineral and Energy Resources and Other Legislation Amendment Bill 2020* aims to extend industrial manslaughter offences to mining and quarry legislation (*Coal Mining Safety and Health Act 1999* (Qld), the *Mining and Quarrying Safety and Health Act 1999* (Qld), the *Explosives Act 1999* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld)).

If passed, the Bill will provide for fines of up to \$13m and imprisonment of up to 20 years for senior officers of Queensland mining or quarry companies, if workers die through their employer's criminal negligence. The new offence will be an indictable offence with usual criminal procedural requirements. Prosecutorial decisions will be made by the Work Health and Safety prosecutor and are not subject to time limitation periods. Penalties range up to \$13 million.

Victoria: proposal to increase the maximum criminal punishment

Victoria's industrial manslaughter offences are set to commence on 1 July 2020, following the passing of the *Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Act 2019* (Vic) in December 2019. On 5 March 2020, Victoria's Labor government introduced the *Crimes Amendment (Manslaughter and Related Offences) Bill 2020* to increase the maximum term of imprisonment from 20 to 25 years. The Bill has passed the Legislative Assembly and has moved for a second reading in the Legislative Council.

[Mineral and Energy Resources and Other Legislation Amendment Bill 2020 Explanatory Notes – Mineral and Energy Resources and Other Legislation Amendment Bill 2020](#)

[Workplace Safety Legislation Amendment \(Workplace Manslaughter and Other Matters\) Act 2019 \(Vic\)](#)

[Crimes Amendment \(Manslaughter and Related Offences\) Bill 2020](#)

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Wage theft legislation introduced in Victoria

On 19 March 2020 the Government of Victoria introduced a the *Wage Theft Bill 2020* which, if passed, will criminalise the act of 'dishonestly' withholding 'the whole or part of an employee entitlement owed by the employer to the employee' or authorising or permitting another person to do so. The Bill is the first of its kind to be introduced by a State or Territory and may be the subject of constitutional challenge given the Commonwealth's historical attempts to 'cover the field' in respect of matters relating to workplace relations.

Under the Bill, employers who dishonestly withhold wages, superannuation contributions or other employee entitlements will face fines of up to \$198,264 for individuals, \$991,320 for companies and up to 10 years jail.

The legislation will also capture employers who dishonestly falsify employee entitlement records, such as payroll records, or who dishonestly fail to keep employment records.

The offences extend to those who authorise or permit such actions, including a company's board of directors if it can be established that the board gave that authorisation or permission.

Under the Bill a company may be deemed to have authorised or permitted 'wage theft' if it is proven that a corporate culture existed within the employer that directed, encouraged, tolerated or led to the relevant conduct being carried out.

[Wage Theft Bill 2020 \(Vic\)](#)

[Announcement: New Laws to Crack Down on Wage Theft](#)

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Senate Inquiry into 'Wage Theft' hearings postponed due to COVID-19, final report date extended to December 2020

In November 2019, the Senate referred an inquiry to the Senate Standing Committee on Economics (Committee) into:

- the causes, extent and effects of unlawful non-payment or underpayment of employees' remuneration by employers; and
- measures that can be taken to address the issue.

As a result of the health risks posed by COVID-19, all previously scheduled face-to-face public hearings of the Committee are postponed until further notice. The Committee is currently exploring the possibility of hearings via teleconference to engage with relevant stakeholders. The Committee has received 91 submissions, with the final report now expected 3 December 2020.

The inquiry follows a series of high profile disclosures by employers of historical underpayments and non-compliance with labour standards. These include disclosures by major employers such as Woolworths and Qantas and has highlighted systemic flaws or complacency in the governance and payroll systems used by employers to monitor and pay employee entitlements.

In response to these disclosures, the Fair Work Ombudsman published an updated version of the Fair Work Information Statement. This document must be provided by employers to all new employees.

[Fair Work Ombudsman: Fair Work Information Statement \(December 2019\)](#)

[Senate Inquiry: Unlawful underpayment of employees' remuneration](#)

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First reporting period for Modern Slavery Act approaches

The *Modern Slavery Act 2018* (Cth) requires entities based or operating in Australia with an annual consolidated revenue of more than \$100 million to assess, address and report on the risks of modern slavery in their supply chains and operations.

The first reporting period for the Modern Slavery Act finishes at the end of June 2020, with lodgement due in December. As employers approach the

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close of the first reporting period, the time is ripe to ensure all steps are in place to comply with their new obligations. Those required to report should ensure they are:

- mapping supply chains and operations;
- identifying and assessing areas exposed to risk of modern slavery;
- ensuring policies and procedures are in place to address and manage those risks; and
- engaging with suppliers.

For those entities who may be daunted by the new obligations, first steps might include identifying someone to be responsible for leading the process, establishing a cross functional team and committing to a program of work. It will be important for reporting entities to engage in the process meaningfully. All are expected to find risks of modern slavery in their supply chain, and these risks cannot always be eliminated in the short term. After the first reporting period, entities should stay abreast of developments, including best practice recommendations and common strategies to eradicate modern slavery in the years to come.

*Commonwealth Modern Slavery Act – Guidance for reporting entities' guide
Modern Slavery Act 2018 (Cth)*

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Circular on Ensuring Effective Work on Social Insurance during the Period for Prevention and Control of the Novel Coronavirus Pneumonia Outbreak

The Ministry of Human Resources and Social Security issued the Circular on Ensuring Effective Work on Social Insurance during the Period for Prevention and Control of the Novel Coronavirus Pneumonia Outbreak (the "Circular") on Jan 30, 2020. The Circular calls for efforts to: 1. ensure various social insurance benefits will be distributed in time and in full; 2. beef up precautions in service halls; 3. promote "non-face-to-face" services; 4. provide a "green passage" for medical workers and relevant personnel regarding work-related injury insurance affairs; and 5. allow enterprises that have joined in the social insurance scheme to handle relevant business at a later date. Among others, the Circular states that where employers file applications for handling such business as registration of employees joining in the social insurance scheme and payment of social insurance contributions beyond the time limit, due to impacts of the novel coronavirus epidemic, the social insurance service agencies shall accept and process their applications in a timely manner. For individuals in flexible employment, and urban and rural residents, the time frame to make supplementary lump-sum payment or periodic payment of social insurance contributions for 2020, is relaxed. Such individuals or residents will be allowed to make supplementary payments after the end of the epidemic situation. If they fail to make the contributions in time, this will be marked in the system. Making contributions beyond the time limit will have no impact on the personal rights and interests of individuals joining in the social insurance scheme, and formalities for supplementary contributions should be completed within three months following the end of the epidemic.

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Provisional Reduction and Exemption of Social Insurance Contributions Paid by Enterprises Circular

Three departments including the Ministry of Human Resources and Social Security issued the Circular on Provisionally Reducing and Exempting the Social Insurance Contributions Paid by Enterprises (the "Circular") on Feb 20, 2020. The Circular states that starting from February 2020, provinces (except Hubei Province), autonomous regions, municipalities directly under the Central Government, and the Xinjiang Production and Construction Corps may, according to the extent of the epidemic situation's influence in the local region, and in consideration of the balance of the social insurance fund, exempt small- and medium-sized enterprises (SMEs) and micro firms from making contributions to three types of social insurances paid by employers, for a period of up to five months. Halve the contributions to three types of social insurances paid by employers, among large enterprises and other insured entities (excluding government bodies and public institutions) for a period of up to three months. The Circular adds that as of February 2020, employers in Hubei Province may exempt various types of insured entities (excluding government bodies and public institutions) from making the contributions to three types of social insurance, for a period of up to five months. Enterprises getting into serious trouble with production and business operations as a result of the coronavirus outbreak, may apply for deferring payment of the social insurance contributions, and the deferment may last, in principle, for up to six months, during which no overdue fines will be charged. Furthermore, the Circular states that the central adjustment for the basic pension insurance fund for enterprise employees will be raised to 4% in 2020 to enhance support to regions which are in difficulties.

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Guiding Opinions on Provisionally Reducing the Employees' Basic Medical Insurance Contributions

Three departments including the National Healthcare Security Administration jointly issued the Guiding Opinions on Provisionally Reducing the Employees' Basic Medical Insurance Contributions (the "Opinions") on Feb 21, 2020. The Opinions state that starting from February 2020, all provinces, autonomous regions, municipalities directly under the Central Government, and the Xinjiang Production and Construction Corps (collectively as the "provinces") may, according to the operation status of the social insurance fund and the practical needs and on the premise of ensuring the medium- and long-term balance between revenues and expenditures of the social insurance fund, instruct regions under overall planning to halve the contributions to employees' medical insurance paid by enterprises for a period of up to five months. Meanwhile, the Opinions clarify that in principle, in the region under overall planning where the cumulative balance of the fund is sufficient to cover payments for over six months, may halve the contributions; but in the region where the reduction is truly necessary but the cumulative balance is only enough to cover payments for less than six months, the contributions reduction shall be arranged by the province. In addition, the policy for payment deferment may continue to apply, and the deferment may last, in principle, for up to six months, during which no overdue fines will be charged. Furthermore, the Opinions call on provinces to instruct the regions under overall planning to constantly improve processing management services and to ensure the payment of benefits, adding that contribution reduction and deferment cannot affect the entitlement of the insured employees to insurance benefits for the current period.

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Letter on Matters concerning the Conclusion of Electronic Labor Contracts

The Ministry of Human Resources and Social Security issued the Letter on Matters concerning the Conclusion of Electronic Labor Contracts (the "Letter") on Mar 4, 2020. The letter states that the Request for Instructions on Electronization of Labor Contract Management during the Epidemic Prevention and Control Period submitted by the Beijing Municipal Human Resources and Social Security Bureau has been well received, and a feedback is given as below after research: an employer may enter into, in electronic form, a labor contract with a laborer by consensus. In entering into a electronic form of labor contract, data messages and electronic signatures are treated as the written form provided that they comply with the provisions of such laws and regulations relating to the Law on Electronic Signatures. Employers shall ensure that the creation, transmission and filing of electronic labor contracts meet with the requirements set out in such laws and regulations relating to the Law on Electronic Signatures and that the contracts are complete, accurate and have not been modified. An electronic labor contract that complies with the provisions of the Labor Contract Law and the aforesaid requirements will be legally binding once it has been concluded, the employer and the laborer shall, as agreed in the electronic labor contract, fulfill their respective obligations.

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Hong Kong District Court rules on the calculation of statutory holiday pay and annual leave pay

In *Mackinlay Andrew Antony v Hong Kong Dragon Airlines Ltd* [2020] HKDC 64, the District Court examined, among other things, the calculation of statutory holiday pay ("**SHP**") and statutory annual leave pay ("**SALP**") under the Employment Ordinance ("**EO**").

Background

The Plaintiff was a commercial airline pilot. He performed his duties according to a roster prepared by the Defendant on a monthly basis. The roster contained the details of the planned duties (e.g. flying duties), non-active days (e.g. rest days, layover days) and leave days. The Plaintiff was paid a combination of a "fixed" monthly payments being the basic monthly salary and monthly accommodation allowance and various variable payments including Hourly Duty Pay ("**HDP**") and Guaranteed Day off Callout Compensation ("**GDOCC**").

There are three issues before the Court, namely:

- Formula for calculating the SHP and SALP: Whether days on which the Plaintiff was not paid HDP or GDOCC should be disregarded for the calculation of DAW in determining the SHP and SALP as he was not paid full wages on those days?
- Formula for calculating the contractual annual leave pay: Whether the statutory formula for calculating the SALP should also apply to the contractual pay for leave granted in excess of statutory requirements?
- Accommodation allowance: Is the Plaintiff's accommodation allowance "wages" under the EO?

Calculation of SHP and SALP under the EO

SHP and SALP are calculated by reference to the DAW of an employee in the preceding 12 months. In determining the DAW, days on which an employee is not paid "wages or full wages" by reasons for certain "leave days" should be disregarded ("**Disregarded Provisions**"). These "leave days" include:

- any maternity leave, paternity leave, rest day, sickness day, holiday or annual leave taken by the employee ("**Type 1 Reason**"),
- any leave taken by the employee with the agreement of the employer ("**Type 2 Reason**"),
- the employee not being provided by his or her employer with work on any normal working day ("**Type 3 Reason**"), or
- a day of absence from work due to temporary incapacity for which compensation is payable under the Employees' Compensation Ordinance (this type 4 reason is not relevant to the issues in dispute in the present case).

The Court accepted that there should be a 2-stage test for the Disregarded Provisions:-

1. What days, if any, should be considered as days that the employee was not paid "wages or full wages"?
2. For those days, whether the non-payment of "wages or full wages" was by way of Type 1, Type 2 or Type 3 Reasons and as such should be disregarded in the calculation of the DAW?

The Court ruled that employees working in a roster, i.e. the Plaintiff, should generally be deemed to be paid his "wages or full wages" on both his "on-duty" and "off-duty" as rostered. One cannot de-construct the timetable and "cherry-pick" only those designated "on-duty" days as days one gets paid "wages or full wages", and disregard the designated "off-duty" days as days not paid "wages or full wages". Otherwise, by its very nature of having

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different "concentration" of "on-duty" and "off-duty" durations, a roster system would tend to skew the DAW calculation against the legislative intention of providing a fair average of the employee's earnings.

The Plaintiff was not paid HDP or GDOCC on the "non-active days" on his roster including guaranteed days off, available days which he was free of duty and days on which he rested overseas between flights. The Court found that these "non-active days" are "off-duty" period designated in the Plaintiff's roster system and therefore "wages or full wages" were deemed to be paid on those days. As such, these "non-active days" need not be disregarded in the calculation of the SHP and SALP.

The Plaintiff was not paid HDP or GDOCC during the period of suspension. The judge agreed with the Plaintiff that days on which he was on suspension should be disregarded in the DAW calculation under the Type 3 Reason, as the very nature of a suspension would prevent an employee from working on a normal working day.

Contractual annual leave pay

The payment for the contractual annual leave (i.e. annual leave granted in excess of the statutory requirements) is a matter of contractual interpretation. The Plaintiff's contract of employment contained provisions on the number of days of annual leave per year, how they were accumulated and how they would be published in the roster. There is, however, no provision for any entitlement to "paid leave". Looking at all the relevant clauses in the Plaintiff's contract, the Court opined that the intention of the Plaintiff was to subscribe to the roster work system with annual leave built into the system and be paid as it specified. As such, contractual annual leave need not be paid at the statutory rate.

Accommodation Allowance

Under the EO, "wages" is broadly defined to mean any payment for work done or to be done. There are certain exceptions one of which is "the value of any accommodation provided by the employer". The Court considered that if an employer provided quarters for its employees (i.e. a benefit in kind), the value of the actual housing are not "wages". However, as the Accommodation Allowance received by the Plaintiff is in the form of a cash allowance aimed to assist the Plaintiff's mortgage payment for his primary residence, such cash allowance is not "the value of the accommodation provided by the employer".

Takeaway for employers

This case provides important guidance for employers (especially for those who operate a rostering system) on the calculation of wage-based entitlements using the EO formula. Employers should adopt the EO Formula for the purposes of calculating wage-based entitlements of their employees. Otherwise, there is a real risk that there could be an underpayment of the statutory entitlements to the employees, which will expose the employers to both criminal and civil liabilities.

[More...](#)

Does the Labour Tribunal have exclusive jurisdiction over all employment-related disputes?

The case of *Woo Kwok Ping v. The Incorporated Management Committee of Tsuen Wan Trade Association Primary (No 2)* [2020] HKCFI 186 confirms that the Labour Tribunal ("LT") has exclusive jurisdiction over a wide range of employment-related claims, but does not have jurisdiction over claims in tort.

Background

The Plaintiff was employed by the Defendant as a school principal. The contract of employment incorporated by reference the Education Ordinance (Cap. 279) and its subsidiary regulations, 2 Codes and a Guide. The Plaintiff

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was summarily dismissed by the Defendant for misconduct and she subsequently brought proceedings against the Defendant for wrongful dismissal. The Plaintiff alleged among other things that the Defendant had failed to comply with the Education Ordinance.

The Plaintiff sought an injunction order to restrain the Defendant from purporting to dismiss her without going through the procedure under the 2 Codes before taking any action against the Plaintiff, as well as damages.

Jurisdiction of the Labour Tribunal

Under the Labour Tribunal Ordinance ("**LTO**"), the LT has exclusive jurisdiction to determine any claim for a sum of money which arises from the breach of a term of the contract of employment and the failure to comply with the provisions of the Employment Ordinance. If both monetary and non-monetary relief are claimed, the LT has no jurisdiction to hear such claim, unless the claim for non-monetary relief amounts to "window dressing" and that the real claim relates to the one that falls within the LT's exclusive jurisdiction.

Paragraph 3 of the Schedule of the LTO also provides that all claims in tort, whether arising from a breach of contract or a breach of a duty imposed by a rule of common law or by any enactment are expressly excluded from the jurisdiction of the LT. A mixed claim founded in both contract and tort is excluded from the LT.

Court's Decision

The Court considers that an integral part of the Plaintiff's claim concerned the applicability of the Education Ordinance and thus, her cause of action was breach of duty under an enactment (i.e. the Education Ordinance) which was a tort claim. The Plaintiff also claimed both monetary and non-monetary relief (i.e. injunctions). As such, the LT had no jurisdiction over this case.

Takeaway for employers

The LT is designed to provide for the speedy resolution of employment-related disputes, but its jurisdiction is not unlimited. Employers should pay attention to the legal principles governing jurisdiction of the LT and ensure that proceedings are commenced in the appropriate forum.

[More...](#)

Proposal for review of the Personal Data (Privacy) Ordinance

The Hong Kong Personal Data (Privacy) Ordinance ("**PDPO**") is one of the very first data privacy laws in Asia. In light of the rapid technological developments, many jurisdictions have strengthened their data protection regimes in recent years to cope with the growing expectations on personal data protection within the general public. Despite the PDPO was last amended in 2012, the protection afforded by the legislation appeared to be inadequate and thus, it is inevitable that Hong Kong will have to undergo a reform of the PDPO to align its data privacy laws with international standards.

After much anticipation, the Hong Kong government has finally published a paper outlining the proposals for reform of the PDPO (the "**Paper**") for discussion. In essence, the Paper sets out six recommended amendments to the PDPO, including:

1. **Mandatory data breach notification** – Under the existing mechanism, there is no statutory obligation on the data user to notify the Privacy Commissioner of the Privacy Commissioner for Personal Data (the "**PCPD**") or the affected individuals in the event of a data breach. It is proposed that a mandatory data breach notification mechanism be introduced, such that data users would be obliged to report to the PCPD and the affected individuals in the event of a data breach having "a real risk of significant harm". Notification to the PCPD would be made within a specified timeframe.

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2. **Formulation of a data retention policy** – Data Protection Principle 2 of the PDPO requires data users to take all practicable steps to ensure that personal data is not kept longer than is necessary for the fulfillment of the purpose (including any directly related purpose) for which the data is to be used. It does not specify any retention periods for personal data. From a practical standpoint, it is not appropriate to mandate a uniform retention period under the PDPO for all types of data held by different data users, but the government is contemplating whether to require data users to formulate a clear data retention policy setting out the maximum retention periods for different categories of personal data collected.
3. **Enhanced sanctioning powers and penalties** – At present, the PCPD can only issue an enforcement notice directing data users to take remedial steps if they are found to have contravened the PDPO. A data user who fails to comply with the enforcement notice commits an offence and may be liable to a maximum fine of HK\$50,000 and imprisonment for 2 years (and a daily fine of HK\$1,000 if the offence continues). The proposal is to confer powers on the PCPD to impose direct administrative fines (which are linked to the annual turnover of the data user) for contraventions of the PDPO if a certain threshold is met.
4. **Direct regulation of data processors** – The PDPO does not directly regulate data processors, but data users are obliged to use contractual means to ensure that their data processors adopt measures to protect personal data against leakage. The government is considering imposing certain legal obligations on data processors. For example, they may be required to be directly accountable for personal data retention and security and notify the PCPD upon being aware of any data breach.
5. **Expansion of the definition of "personal data"** – The government proposes to broaden the current definition of personal data (i.e. data relating to an "identified" person) to include data relating to an "identifiable" person with the view to strengthening the protection for personal data.
6. **Regulation of doxxing** – The PCPD has handled over 4700 doxxing-related complaints since mid-2019 and the government is considering introducing various measures to curb doxxing behaviour, such as introducing amendments to the PDPO that specifically address doxxing and empowering the PCPD to request the removal of doxxing contents online and to carry out criminal investigation and prosecution.

The government will conduct a more thorough study together with the PCPD on the proposals on the reform of the PDPO. Employers are encouraged to closely monitor the developments from the review of the PDPO going forward.

[More...](#)

An employee cannot sue based on an illegal contract

In *Dumayag, Analyn Pedro v Leung Mei Ling and Another* [2020] HKCFI 276, the High Court dismissed the Claimant's application for permission to appeal against the Labour Tribunal's decision to dismiss her claim based on an illegal contract of employment.

Facts:

The Claimant, a domestic helper, commenced proceedings against a Madam Leung ("Leung") and the personal representative of the estate of a Madam Chow ("Chow") for constructive dismissal and claimed for her statutory and contractual entitlements.

The Claimant was a domestic helper in Leung's home from 23 March 2003 to 2 December 2015. The employer of the first 4 contracts was stated to be Chow, who passed away on 2 December 2009 and Leung was the employer in the fifth contract. The first 4 contracts were approved by the Immigration Department until 2 December 2009 but the fifth contract was not. The

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Claimant claimed that she was employed by Leung under an implied contract as Leung had been her *de facto* employer since she first worked at Leung's home in 2003.

The Claimant alleged that she had been constructively dismissed by Leung as a result of her failure and/or refusal to (1) provide her with an update on the process of obtaining approval from the Immigration Department; (2) obtain approval from the Immigration Department for the fifth contract; and (3) pay her wages owed to her.

The case was heard *ex parte* in the Labour Tribunal (i.e. in Leung's absence). The Labour Tribunal dismissed the Claimant's claim for she had failed to establish her case on the balance of probabilities. The Labour Tribunal found that the Claimant had all along known that her work with Leung was not approved by the Immigration Department and there was no force or coercion applied by Leung to make the Claimant to work. The contract between the Claimant and Leung was illegal hence not enforceable.

Court's Decision:

The terms of the Claimant's alleged implied contract were identical to those under the 5th contract, which she was fully aware that such contract was not sanctioned by the Immigration Department. The Claimant's employment was illegal regardless of whether Leung was the *de facto* employment in the relevant period. As such, the Claimant's claims were bound to fail.

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Labour Department publishes conviction records on EO offences Online

The Labour Department has made available the conviction records on failure to pay wages or sums awarded by the Labour Tribunal or the Minor Employment Claims Adjudication Board (MECAB) under the Employment Ordinance ("**EO**") on its website. The conviction records will be published for 24 months.

Failure to pay wages and sums awarded by the Labour Tribunal or MECAB within the specified timeframe may give rise to criminal liabilities. Both the employer as well as director, manager, secretary or other similar officer of the body corporate, if the offence is committed with their consent, connivance or neglect, may be prosecuted.

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COVID-19 – Employees' protection under the Employees' Compensation Ordinance

The Labour Department clarified an employee who contracts COVID-19 in the course of work could be protected under the Employees' Compensation Ordinance (the "**ECO**").

Under the ECO, if an employee sustains an injury or dies as a result of an accident arising out of and in the course of his employment, or suffers from an occupational disease prescribed by ECO, the employer is generally liable to pay compensation under ECO.

COVID-19 is not currently classified as an occupational disease under the ECO. However, section 36 of the ECO provides that an employee shall have the right to recover compensation for a disease which is not a prescribed occupational disease if contraction of the disease amounts to a personal injury by accident arising out of and in the course of employment.

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Hong Kong Privacy Commissioner issues guidelines for employers amid COVID-19 pandemic

The Privacy Commissioner for Personal Data, Hong Kong has released guidelines for employers on the collection and use of personal data arising from the pandemic.

The guidelines include the following:

- Employers must follow the general rule that the measures taken to collect data should be necessary, appropriate and proportionate. The least privacy- intrusive measures should be preferred.
- It is generally justifiable for employers to collect temperature measurements or limited medical symptoms of COVID-19 information of employees and visitors solely for the purposes of protecting the health of those individuals.
- It is justifiable for employers to ask for travel data from employees who have returned from overseas, especially from high-risk areas. Similar to health data, the collection of travel data should be purpose-specific and minimal data should be collected.
- If an employee unfortunately contracts COVID-19, the employer may notify other employees, visitors and the property management office and others without disclosing personally identifiable information of the infected. Under most circumstances, disclosure of the name and other personal particulars of an infected employee in the notice will not be considered as necessary or proportionate. However, it will not be considered as a contravention of the use principle under the Personal Data (Privacy) Ordinance (i.e. Data Protection Principle 3) for employers to disclose the identity, health and location data of individuals to the government or health authorities solely for the purposes of tracking down and treating the infected, and tracing their close contacts when pressing needs arise.
- Personal data protection should not hinder work-from-home arrangements, but employers and employees should exercise extra caution because of the transfer and use of documents and data away from the professionally-managed work environment. The Privacy Commissioner makes a number of recommendations in relation to the security of personal data in the guidelines.

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Notification for change in the amount of monthly wages under the Employee's Compensation Act, 1923 ("ECA Notification")

On 3 January 2020, the Ministry of Labour and Employment issued a notification setting out the monthly wages to be considered for calculation of amount of compensation under the Employee's Compensation Act, 1923 ("ECA"). The ECA is a Central legislation enacted to provide for payment as compensation to employees for injuries arising out of and in the course of their employment. The calculation for the amount payable varies depending on the injury caused, and in certain instances the amount is a percentage of the employee's monthly wages. The ECA Notification specifies the amount to be taken as monthly wages for calculation of compensation as INR 15,000. Prior to the ECA Notification, this amount was INR 8,000.

[More...](#)**Lockdown imposed in India for containment of COVID-19**

On 24 March 2020, the Ministry of Home Affairs ("MHA") ordered a nationwide lockdown of 21 days (i.e. till 14 April 2020) for the containment of COVID-19 outbreak. Along with the order, the MHA also annexed a set of guidelines which exempted several essential services from the lockdown requirement. On 15 April 2020, the MHA further extended the national lockdown till 3 May 2020 and released revised guidelines on the containment measures ("MHA Revised Guidelines"). The State Governments are required to strictly enforce these guidelines, and some of the State Governments have accordingly issued State-specific orders aligned with the MHA Revised Guidelines. As per the MHA Revised Guidelines, the country would be divided into two parts – 'Hotspots'/containment zones and other areas. The local state and district administrative authorities have been conferred with the power to identify and demarcate the hotspots. Here, hotspots are areas of large COVID-19 outbreaks, or clusters with significant spread of COVID-19. The areas which are identified as hotspots would remain under complete lockdown till 3 May 2020. However, in areas which fall in a non-hotspot zone, certain relaxations in terms of carrying out commercial activities have been permitted since 20 April 2020.

As per the MHA Revised Guidelines, *inter alia*, activities like travel (i.e. flights, trains, metro, and bus), inter- district and inter-state movement of individuals except for medical reasons or in relation to activities permitted under MHA Revised Guidelines, industrial and commercial activities (other than those specifically exempted), social/political/sports/entertainment/academic/cultural/and religious gatherings, etc, will remain prohibited till 3 May 2020. However, to maintain the supply of essential goods and services, the MHA Revised Guidelines exempts several activities from the lockdown requirement. These activities, *inter alia*, include - all health services; agriculture and related activities; banks and ATM's, IT vendors for banking operations, banking correspondents, IRDAI and insurance companies; print and electronic media, IT/ITES services (with up to 50% strength), e-commerce companies, private security services; manufacturing and other industrial establishments with access control in Special Economic Zones (SEZ) and Export Oriented Units (EOU), industrial estates, and industrial townships, manufacturing of IT hardware, etc. Further, select additional activities (except for those located in hotspots/containment zones) have been allowed to operate from 20 April 2020. This includes IT/ITES establishments (with up to 50 % strength), operations of the Reserve Bank of India, RBI regulated financial markets/entities like NPIL, CCIL, payment system operators and standalone primary dealers, IT vendors for banking operations, banking correspondents, ATM operations and cash management agencies, etc. The MHA Revised Guidelines were released along with 'National Directives for COVID-19 Management' ("Directives") and the 'Standard Operating Procedure for Social Distancing for Offices, Workspace, Factories and Establishments' ("SOP"). The

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establishments permitted to operate are required to strictly comply with these.

The Directives, *inter-alia* mention, that all workplaces shall make adequate arrangements for temperature screenings and sanitizers, have one-hour gap between shifts to ensure social distancing, prohibit large meetings, sanitize places between shifts, and encourage use of 'Arogya Setu' amongst employees. Further, the SOP, *inter-alia* mentions, that transportation facility should be provided to workers, vehicles designated for transportation should be allowed to work only with 30-40% passenger capacity, vehicles entering the workplace should be disinfected, provide health insurance to workers, publish list of hospitals in the nearby area which are earmarked for the treatment of COVID-19.

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Restriction on reduction of wages and termination of employment during lockdown

To mitigate the hardship faced by workers during to the lockdown, the Central Government and some of the State Governments have issued orders/ advisories against reduction in pay and termination of job role. These include:

- On 29 March 2020, the Ministry of Home Affairs ("**MHA**") issued an order, *inter alia*, requiring all employers of commercial establishments, factories, shops, etc. to pay salary to the workers on the due date, without making any deductions, for the period that the establishments are closed during the lockdown.
- On 20 March 2020, an advisory was issued from the Ministry of Labour and Employment ("**MLE Advisory**") to the President of the All India Organization of Employers, requesting them to circulate the advisory to employers of all public and private establishments. In the MLE Advisory, employers have been requested to extend cooperation by (a) not terminating employments, particularly of casual or contractual workers; (b) not reducing their wages; (c) deeming an employee to be on duty, in case she/he takes leave or if the establishment is made non-operational due to COVID-19.
- Pursuant to the MLE Advisory, on 30 March 2020, the Chief Labour Commissioner issued a circular ("**CLC Circular**") advising all private and public enterprises not to terminate their employees (including casual and contract workers) or reduce/deduct their wages for the period for which employees take quarantine leaves. Further, the CLC Circular directed the regional heads of all states in India to 'rigorously take up the issue with all principal employers, contractors and all public/private enterprises in case distress calls are received from workers/employees' with regard to termination of services or any reduction in pay.

In light of the advisories issued by the Government, on 31 March 2020, the Supreme Court of India in the case of Alakh Alok Srivastava vs. Union of India, (Civil Writ Petition Number 468/2020), while taking into account the steps taken by government for curbing the outspread of COVID-19 and measures taken to protect migrant workers, held that that non-compliance with an advisory which is issued in the nature of an order made by public authority would attract penalty under section 188 of the Indian Penal Code. Therefore, the court is taking a view that an advisory would also be mandatory.

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Incentives offered by government for employers and employees

The Government has announced certain incentives in light of the COVID-19 outbreak. These include:

- On 16 March 2020, the Employees' State Insurance Corporation extended the date for payment of employee's state insurance contributions for the month of February and March to 15 April 2020 and 15 May 2020, instead of 15 March 2020 and 15 April 2020 respectively. Further, on 13 April 2020, the date for payment of employee's state insurance contributions for the month of February was further extended to 15 May 2020.
- On 20 March 2020, the Ministry of Labour and Employment issued a letter to all the regional heads stating that the last date for filing of unified annual returns for the year 2019 is extended up to 30 April 2020. Generally, the requirement is to file the unified annual returns on the Shram Suvidha Portal between 1 January to 1 February.
- On 26 March 2020, the Union Finance & Corporate Affairs Minister announced INR 1.70 lakh crore as relief package under "Pradhan Mantri Garib Kalyan Yojana" ("PMGKY"). Pursuant to this announcement, the Employees' Provident Fund Organization amended Paragraph 68L of the Employees' Provident Fund Scheme, 1952 ("EPF Scheme") to include pandemic / epidemic as a ground for withdrawal of EPF accumulations. As per the amendment, if a member of the EPF Scheme who is employed in an establishment/factory located in an epidemic/pandemic-affected area makes an application for withdrawal of EPF, the authorities can permit a non-refundable advance to be given to such member. Such advance should not exceed the member's 'basic wages' and 'dearness allowance' of 3 months or 75% of the amount standing to member's credit in the EPF, whichever is less.
- As part of the PMGKY, for small establishments having up to 100 workers, the government has proposed to pay both, the employer and employee's share of PF contributions (12% each) into the PF accounts of wage-earners in the organised sector (who earn below INR 15,000 per month). Such contributions are proposed to be made by the government for the next 3 months i.e. April, May and June.
- On 15 April 2020, the Employees' Provident Fund Organisation issued an order allowing a grace period of 30 days (i.e. from 16 April 2020 to 15 May 2020) for filing of Electronic Challan cum Return to the employers of those establishments which have disbursed the wages for March 2020 to their employees.
- On 16 April 2020, the Karnataka State Government, issued an order, Karnataka Tax on Professions, Trades, Callings and Employments (Removal of Difficulties) Order, 2020 ("Karnataka Order"). By virtue of the Karnataka Order, the due date for professional tax contributions for March 2020 payable by 20 April 2020, got extended to 20 May 2020. Further, the payment of tax for enrolled persons is required to be paid annually by 30 April, however, the Karnataka Order extended this to 30 May 2020 for FY 2020-2021.
- The Ministry of Labour and Employment has extended the validity of licenses, whose renewal is due in the months of March, April, and May 2020, granted under Contract Labour (Regulation and Abolition) Act, 1970 and the Inter State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979, till 31 May 2020.

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Exemption from certain provision of Factories Act, 1948 in Gujarat

By way of a notification dated 17 April 2020, the Gujarat State Government has exempted factories from the applicability of Section 51, Section 54, Section 55, and Section 56 of the Factories Act, 1948 relating to weekly hours, daily hours, interval of rest, and spread over, respectively, for a period of 3 months from 20 April 2020 till 19 July 2020.

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These relaxations are, however, subject to a few conditions which includes that:

- no adult worker shall be allowed or required to work in a factory for more than 12 hours in any day and 72 hours in any week;
- the periods of work of adult workers in a factory each day shall be so fixed that no period shall exceed 6 hours and that no worker shall work for more than 6 hours before he has had an interval for rest of at least half an hour;
- no female workers shall be allowed or required to work in a factory between 7:00 PM to 5:00 AM;
- wages shall be in a proportion of the existing wages.

[More...](#)**Exemption from certain provision of Factories Act, 1948 in Punjab**

By way of a notification dated 20 April 2020, the Punjab State Government relaxed the applicability of Section 54 and Section 56 of the Factories Act, 1948, relating to daily hours and spread over, respectively, to allow optimum utilisation of the workforce in order to tackle shortage of labour caused due to lockdown. These relaxations include, change in the maximum permitted working hours in a day from 9 hours to 12 hours; and change in total spread-over limit for a day from 10.5 hours a day to 13 hours. These relaxations will be effective for a period of 3 months from the date of this notification (i.e. 20 April 2020). The notification also clarified that for the additional hours, workers shall be paid twice the rate of ordinary wages.

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Procedures for Labor Inspection

The Minister of Manpower (“MOM”) has issued MOM Regulation No. 1 Year 2020 dated January 10, 2020 regarding the Amendment of MOM Regulation No. 33 Year 2016 regarding Procedures for Labor Inspection (“MOM No. 1”). This new regulation emphasizes the three stages of labor inspection – educative, non-judicial and judicial.

MOM No. 1 revokes MOM Regulation No. PER.03/MEN/1984 regarding Integrated Labor Inspection.

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COVID -19

The Japanese government has issued various guidelines and Q&As concerning HR-related matters.

The Ministry of Health, Labor and Welfare (“MHLW”) has issued Q&As for employers on HR-related issues arising from COVID-19. These Q&As are periodically updated.

On March 31, 2020, MHLW released a checklist of specific measures to be taken by employers to prevent the spread of COVID-19 infection in the workplace. The guidelines based on the Equal Employment Opportunity Act were revised in relation to healthcare measures for pregnant female workers.

For the period from May 7, 2020 to January 31, 2021, if a pregnant female worker receives guidance from a doctor stating that psychological stress related to the risk of COVID-19 infection affects the health of the mother or fetus, and notifies the employer of the doctor’s guidance, the employer must take necessary measures, such as restricting work or restricting attendance at work.

In addition, the government established a special measure on employment adjustment subsidies to make it easier for employers affected by COVID-19 to receive these subsidies.

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Imposition of Malaysian Movement Control order

Given the widespread disease of the Novel Coronavirus ("Covid-19"), the Malaysian Prime Minister had, on 16 March 2020 declared that the country will be placed on restriction of movement with effect from 18 March 2020, dubbed the "Movement Control Order" or "MCO". The MCO was implemented as a measure to curb the spread of Covid-19 and among other things, prohibited mass gatherings and movements across the nation. Apart from that, Malaysian citizens who breach the MCO may be fined up to MYR1000 or imprisoned for a term of up to 6 months, or both.

Only businesses, listed as "essential services" were entitled to operate during the MCO, at a reduced workforce. Apart from that, there have also been areas which were identified to be under an "Enhanced Movement Control Order". These areas are locations which are found to have a high number of positive Covid-19 cases.

Whilst the MCO was scheduled to only last for 2 weeks from the outset, it has now been extended on several occasions, the latest in which is now scheduled to last until 12 May 2020.

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Employment Retention Programme

In view of the widespread of the Novel Coronavirus in Malaysian, the Malaysian Social Security Organization ("SOCSSO") has introduced the Employment Retention Program ("ERP"), designed to provide financial assistance to employees at a rate of RM600 per month, who agreed to take on unpaid leave by their respective employers as a result of the novel coronavirus Covid-19. The qualifying conditions for the Coronavirus programme are:-

- i. Malaysian employees in private sectors who are registered and have contributed with Employment Insurance System;
- ii. Employees with monthly wages of not more than RM4,000;
- iii. The Unpaid leave period is for a minimum of 30 days.

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Employees Provident Fund (Amendment Of Third Schedule) Order 2020

The Minister of Finance, via the Employees Provident Fund Order 2020, has reduced the monthly statutory contributions for employees with effect from April 2020 to December 2020 from 11% to 7%. The reduction of contribution only affects employees below the age of 60 years old.

Notwithstanding, employees may, choose to maintain the earlier contribution of 11% by completing and submitting the requisite forms.

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Wage Subsidy Program ("WSP")

With effect from April 2020, the Malaysian Government introduced the Wage Subsidy Program ("WSP"). The WSP is a program designed to assist employers where the Malaysian Government will subsidise the payment of employee salaries to the employer for a period of 3 months. The sum of assistance paid out is dependent on the size of the Company as follows:-

- i. Businesses with headcount of 75 or below employees – RM1,200 for every employee
- ii. Businesses with headcount of 76 to 200 employees - RM800 for every employee
- iii. Businesses with headcount of 201 or more employees – RM600 for every employee.

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There are several qualifying conditions, which are:-

- i. Employer/ Employee must be registered with SOCSO;
- ii. Only limited to Malaysian Employee(s) earning RM4,000 and below;
- iii. Business must suffer a decline in sales / revenue of at least 50% compared to January 2020 (only for businesses with headcount of 76 and above);
- iv. Employers not entitled to dismiss, instruct employees to take unpaid leave or decrease wages during period of WSP and 3 additional months thereafter.

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Screen Industry Workers Bill

This Bill was introduced in February 2020 and had its first reading on 5 March 2020. The Bill proposes to provide a framework for workers in this industry. Historically workers in the industry were considered contractors in order to be more appealing to international organisations producing films in New Zealand, as contractors had less rights than employees. The Employment Relations (Film Production Work) Amendment Act 2010 excluded film production workers from the definition of an employee regardless of the content of their contract unless the contract explicitly defines the worker as an employee. The Bill provides protections for screen production workers who are not covered by employment agreements stating that they are employees, including:

- A requirement for parties to act in good faith and a prohibition on exerting undue influence on a worker with regard to collective bargaining or worker organisations;
- A requirement for engagers to provide workers with individual contracts with certain mandatory terms including:
 - » compliance with the Health and Safety at Work Act 2015 and the Human Rights Act 1993;
 - » a complaints process for bullying, harassment or discrimination in the workplace;
 - » the period of notice to terminate the contract and any compensation payable to the worker if the engager terminates the contract;
- The ability for worker organisations and engager organisations to be formed and collective bargaining to be carried out in good faith, together with mandatory collective contract terms;
- Dispute resolution provisions.

This Bill is at the Select Committee stage, accepting submissions until 3 April 2020.

Find a copy of the Bill [here](#) and the status of the Bill [here](#).

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Department of Labor and Employment Labor Advisory (DOLE LA) No. 01, Series of 2020

Suspension of Work in the Private Sector By Reason of Natural or Man-Made Calamity

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DOLE Labor Advisory (DOLE LA) No. 04, Series of 2020

Guidelines on 2019 Novel Coronavirus (2019-nCov) Prevention and Control at the Workplace

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DOLE Labor Advisory (DOLE LA) No. 09, Series of 2020

Guidelines on the Implementation of Flexible Work Arrangements as Remedial Measures due to the Ongoing Outbreak of Coronavirus Disease 2019 (COVID-19)

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DOLE Labor Advisory (DOLE LA) No. 11, Series of 2020

Supplemental Guidelines relative to the Remedial Measures in view of the ongoing outbreak of coronavirus disease 2019 (COVID-19)

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DOLE Department Order (DOLE DO) No. 209, Series of 2020

Guidelines On the Adjustment Measures Program for Affected Workers Due to the Coronavirus Disease 2019

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DOLE Labor Advisory (DOLE LA) No. 12, Series of 2020

Clarificatory Guidelines on the COVID-19 Adjustment Measures Program

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Republic Act No. 11469 otherwise known as "Bayanihan to Heal As One Act"

An Act Declaring the Existence of a National Emergency Arising from the Coronavirus Disease 2019 (COVID-19) Situation and A National Policy in Connection Therewith

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DOLE Labor Advisory (DOLE LA) No. 14, Series of 2020

Clarification on the Non-Inclusion of the One-Month Enhanced Community Quarantine Period On the Six-Month Probationary Period

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Amendments to Work Injury Compensation Act Takes Effect

The Work Injury Compensation Bill 2019 was passed on 3 September 2020. Increases in compensation limits under the Work Injury Compensation Act 2019 took effect on 1 January 2020, as follows:

	Before 1 Jan 2020	From 1 Jan 2020 onwards
Compensation limit for death	Min. S\$69,000 Max. S\$204,000	Min. S\$76,000 Max. S\$225,000
Compensation limit for total permanent incapacity	Min. S\$88,000 Max. S\$262,000	Min. S\$97,000 Max. S\$289,000
Compensation limit for medical expenses	Max. S\$36,000 or up to 1 year from date of accident, whichever comes first.	Max. S\$45,000, or up to 1 year from date of accident, whichever comes first.

[More...](#)

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2020

Rejection of job-seekers or restriction on employees for wearing articles of religious faith constitutes violation of Tripartite Guidelines on Progressive and Fair Employment Practices ("TGFE")

In response to a Parliamentary Question, the Minister of Manpower clarified that refusal to interview and/or hire a jobseeker on the basis that he or she wears articles of religious faith is a violation of the TGFE. The Minister clarified that employees should be permitted to wear articles of religious faith unless the employer has uniform or dress code requirements suited to the nature of the work. If so, such requirements must be clearly communicated to employees and jobseekers. It was also clarified that the Tripartite Alliance for Fair and Progressive Employment Practices received 16 complaints of discrimination based on articles of religious faith from 2014 to 2018.

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2020

First prosecution for false declaration of compliance with Fair Consideration Framework

On 14 January 2020, MOM charged a local logistics firm, Ti2 Logistics Pte Ltd ("**Ti2 Logistics**"), for falsely declaring that it had fairly considered local candidates in accordance with the FCF.

Ti2 Logistics' initial EP application for a foreign candidate was rejected by the MOM because the firm failed to post the requisite job advertisements in accordance with the FCF. Following the rejection, Ti2 Logistics posted the job advertisements. However, although Ti2 Logistics had fulfilled the advertisement requirements on paper and declared in its second EP application that it had interviewed two Singapore citizens and assessed them fairly for the position in question, MOM's investigations revealed that the firm did not in fact consider any of the 22 Singaporean candidates who had expressed interest in the role, as it had already pre-selected the foreign candidate.

Employers convicted of making false declarations in EP applications face up to S\$20,000 in fine and/or 2 years of imprisonment under the Employment of Foreign Manpower Act. A fine of S\$18,000 was imposed on Ti2 Logistics, and Ti2 Logistics was banned from hiring foreign employees for two years.

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Enhanced penalties for discriminatory hiring practices

On 14 January 2020, the Minister for Manpower announced that penalties against employers for workplace discrimination have been enhanced.

This includes penalties for non-compliance with the FCF and the Tripartite Guidelines on Fair Employment Practices ("**TGFEP**"). Under the FCF and TGFEP, employers are to hire based on merits only, and unless otherwise exempted, are to advertise job vacancies to Singapore citizens and permanent residents on MyCareersFuture.sg before making Employment Pass ("**EP**") applications to hire foreigners. Consequently, the penalties for violation are enhanced as follows:

- the minimum debarment period from hiring foreign workers for employers who breach the TGFEP has doubled from 6 months to 12 months, and the maximum debarment period has increased to 24 months;
- debarment for non-compliance with the TGFEP now applies to both renewal of work passes and new applications for work passes. Previously, debarment only largely applied to new applications; and
- MOM will prosecute employers and key personnel who make false declarations of compliance with the FCF.

In addition, the Minister for Manpower expressed that employment agencies are also expected to abide by the FCF and TGFEP. It was announced that the MOM will look into regulating employment agencies to ensure they comply with fair employment practices.

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New Workplace Safety and Health guidelines on crane safety issued

On 15 January 2020, the issuance of two sets of new Workplace Safety and Health ("**WSH**") guidelines on crane safety was announced.

The first set, which relate to the safe use of lorry cranes during lifting operations, sets out, amongst other things, guidelines on the following:

- Risk assessments measures;
- Development and review of lifting plans based on factors such as the lifting equipment, process and environment, amongst others;
- Roles and responsibilities of the responsible person, the lifting supervisor, the lorry crane operator, the rigger and the signal man;
- Common hazards;
- Conditions for safe set-up of lorry cranes;
- Safety considerations in operating lorry cranes such as the rated capacity of the lorry crane, the presence of persons nearby, the health of the crane operator and security of access to the lorry crane;
- Useful devices for ensuring safer listing operations; and
- Requirements for maintenance of lorry cranes.

The second set, relate to guidelines on heavy lifting operations. Amongst other things, the guidelines set out safety issues in equipment selection, operation, inspection and maintenance.

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Director charged for collecting kickbacks from foreign employees under the Employment of Foreign Manpower Act ("EFMA**")**

A director of San Tong Engineering Pte Ltd was charged by the Ministry of Manpower for various offences under the EFMA. Amongst these,

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investigations show that the director was collecting fees from the company's foreign employees as consideration for providing employment. The EFMA prohibits any person from demanding or receiving from any foreign employee any benefit as consideration for employment. This covers the deduction of salary. If found guilty, the director will face a fine of up to S\$30,000, 2 years imprisonment or both.

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Ministry of Manpower ("MOM") conducts spot checks on employees under Leave of Absence ("LOA") workers

As part of the enforcement on LOA measures, the MOM has conducted daily checks in the form of both voice and video calls to ensure work pass holders are serving the mandatory 14-day LOA. The MOM contacts the employer, if the calls are repeatedly missed. Employees working at the workplace is a violation of the LOA. In this regard, the MOM has suspended work pass privileges for errant employers for two years.

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Government introduces Senior Worker Support Package

In his 2020 Budget Statement, the Minister for Finance announced that a Senior Worker Support Package will be introduced to help businesses adjust to the increase in retirement and re-employment age and CPF contribution rates. The Senior Worker Support Package consists of the following measures:

- **Senior Employment Credit ("SEC").** The government will offset wages of employees aged 55 and above and earning up to S\$4,000 a month. The rate of offset increases with the employee's age. The maximum wage offset range from 1% to 8% depending on the year in which it applies and the age of the employee. The SEC scheme will take effect from 1 January 2021 to 31 December 2022.
- **CPF Transition Offset ("CTO").** The government will offset 50% of the increase in employer CPF contribution rates attributable to the employment of Singapore citizens and PRs aged above 55 to 70. The CTO scheme will apply from 1 January 2021 to 31 December 2021.
- **Senior Worker Early Adopter Grant ("SWEA Grant").** The SWEA Grant is provided to employers who implement the higher retirement and re-employment ages ahead of the government's implementation schedule. Funding increases the earlier the company adopts the higher retirement and re-employment ages in advance. Funding for each senior worker aged 60 and above (capped at 50 senior workers per company) is valued at \$1,000 (for advanced implementation by one year) to S\$5,000 (for advanced implementation by three or more years).

To receive the SWEA Grant, employers are required to communicate the relevant changes to their employees and formalise these changes in its HR policies and employment contracts.

- **Part-time Re-employment Grant ("Part-time Grant").** Employers who commit to providing part-time re-employment opportunities for senior workers will be entitled to receive S\$2,500 for each senior worker aged 60 and above (capped at 50 senior workers per company). To receive the Part-time Grant, employers are required to formalise the changes in its HR policies and employment contracts.

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Stabilisation and Support Package for Businesses Affected by COVID-19

On 18 February 2020, the Minister for Finance announced in his 2020 Budget Statement ("**Budget 2020**") that a S\$4 billion Stabilisation and Support Package ("**Support Package**") will be implemented to support businesses affected by COVID-19.

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The Support Package consists of a Jobs Support Scheme, under which the government will offset 8% of gross monthly wages of all local workers in employment for the months of October 2019 to December 2019, up to a monthly wage cap of S\$3,600 per month per employee. The wage support will be paid to employers in the form of a cash grant by 31 July 2020. In addition, in respect of the current Wage Credit Scheme, the Government will increase the co-funding for wage increases to citizens who are Singapore Citizens to 20% (from 15%) and 15% (from 10%) for the years 2019 and 2020 respectively. In this regard, the Government will also raise the qualifying monthly wage ceiling from S\$4,000 per month to S\$5,000 per month.

[More...](#)[More...](#)**MOM looks to more measures to tackle workplace discrimination against persons with mental health conditions**

On 3 March 2020, it was announced that MOM will formulate a Tripartite Advisory on Mental Well-being to educate employers on how to support their employees' mental health. It is anticipated that the advisory will contain practices encouraging employers to provide employees access to anonymised external counselling services and also guidelines on recognising mental health expenses as part of employees' medical benefits. MOM aims to finalise the advisory in the latter half of 2020.

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In the above connection, in December 2019, the Tripartite Alliance for Fair and Progressive Employment Practices published updated guidelines prohibiting employers from asking job applicants to declare their mental health conditions without good reason. The existing prohibited fields were age, gender, race, religion, marital status, family responsibilities and disability.

[More...](#)[More...](#)[More...](#)**Increase in wage requirement for exemption from advertisement obligations under Fair Consideration Framework**

The Fair Consideration Framework ("**FCF**") sets out requirements for employers to consider the local workforce fairly for jobs. The FCF requires employers submitting EP applications to have first considered all candidates fairly. This means that employers must first advertise the job vacancy on MyCareersFuture.sg. Employers are exempted from the advertising requirement when hiring employees to fill more senior positions or when hiring employees earning above a stipulated wage ceiling. On 3 March 2020, the Minister for Manpower Josephine Teo ("**MOS**") announced in her COS speech that this wage ceiling has increased from S\$15,000 to S\$20,000.

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The Minister also cautioned that this advertising requirement is not to be treated as a "paper exercise" and that employers found to have pre-selected a foreign candidate may be banned from hiring or renewing foreign employees. Since January 2020, at least five employers have been taken to task for breaching the FCF requirements and faced enhanced penalties under the updated FCF framework (see further update below on enhanced penalties).

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Work pass policies tightened

On 3 March 2020, the Minister for Manpower announced in the MOM Committee of Supply 2020 speech ("**COS Speech**") that the MOM will implement various measures to tighten work pass policies to ensure that Singaporeans can compete fairly with foreign employees. First, the S Pass sub-Dependency Ratio Ceilings ("**DRC**") for the Construction, Marine Shipyard and Process sectors will be reduced from 20% to 18% in 2021 and further to 15% in 2023. Second, Local Qualifying Salary, which is the minimum salary that local workers need to be paid before they may be counted towards the employer's DRC for hiring foreign employees, will be raised from S\$1,300 to S\$1,400 from 1 July 2020. The intention is so that employers do not hire local employees on token salaries, so that they may increase their quota for hiring foreign workers. Third, the minimum qualifying salary for obtaining an Employment Pass ("**EP**") will be raised from S\$3,600 to S\$3,900. This increase will apply to new EP applications from 1 May 2020 and EP renewals from 1 May 2021.

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Updates to Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment

The MOM, the National Trades Union Congress, and the Singapore National Employers Federation have jointly updated the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment ("**Updated Advisory**") in light of the COVID-19 situation which has significantly impacted the revenue of some businesses.

Under the Updated Advisory, employers which are registered in Singapore and have 10 or more employees must notify MOM within one week if it adopts any cost-saving measures which affects its employees' monthly salaries. Employers will have to provide the following details for notification:

- Types of cost-saving measures implemented;
- Start date of implementation;
- Duration of cost-saving measures;
- Profile of affected employees; and
- Adjustment to monthly salaries of affected employees.
- If the cost-saving measures affect the salaries of foreign employees, employers must seek additional approval from the Controller of Work Passes.

Under the Updated Advisory, employers must communicate and consult with their employees and union (if applicable) before implementing any cost-saving measures. Employers are to implement cost-saving measures that have the least impact on their employees' livelihoods, and retrenchment should only be considered as matter of last resort. Cost-savings measures are ranked from least severe to most severe in the following order:

- Adjustments to Work Arrangements without Wage Cuts (least severe)
- Adjustments to Work Arrangements with Wage Cuts
- Direct Adjustments to Wages
- No-pay Leave (most severe)

As part of adjustments to work arrangements without wage cuts, the Updated Advisory also sets out the use of Flexible Work Schedules ("**FWS**"). FWS allows employers to reduce working hours during this period of downturn and accrue unused working hours to offset future overtime pay that may be incurred. Employers must obtain consent of their employees and union (if applicable) and apply to Commissioner of Labour for approval before implementing FWS.

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MOM advisories on COVID-19 situation

The Ministry of Manpower (“**MOM**”) has been issuing advisories to employers in relation to COVID-19. The advisories are being updated on a very regular basis as the situation evolves. Amongst others, employers are to heed the following:

- Advisory for employers on employees’ non-essential travel in response to updated travel advisory (COVID-19)
- Advisory for employers and employees travelling to and from affected areas in response to increase in cases of COVID-19
- General advisory for workplaces and frontline workers in response to confirmed cases of local transmission of COVID-19 in Singapore
- General advisory for workplace measures in response to DORSCON Orange situation in Singapore
- Advisory to foreign domestic workers (FDWs), employers and employment agencies on COVID-19 precautionary measures
- Advisory on social distancing measures at the workplace
- General advisory for employers if a confirmed or suspect case of COVID-19 is detected at the workplace
- Advisory to permit workers to enter their worksite

In relation to the above, the MOM has taken action against employers for failure to comply with certain obligations, e.g. requiring specified employees to serve out Quarantine Orders, Leave of Absences or Stay Home Notices, as may be applicable. For example, the MOM has revoked and suspended work pass benefits of at least 15 employers for allowing employees who are required to stay home to report to work. Errant employers’ work pass privileges have been suspended for two years while errant employees have been permanently banned from employment in Singapore.

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2020

Expanded scope of application of the 52-hour workweek

To improve the established practice of long work hours, the scope of application of the 52-hour workweek is expanded. The 52-hour workweek has been effective for employers with 300 employees or more since July 1, 2018 and will be effective for employers with 50 to 299 employees as of January 1, 2020. For employers with 5 to 49 employees, the 52-hour workweek will be apply as of July 1, 2021.

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2020

Phased application of the public holidays of government offices to the private sector

Previously, private-sector companies were not required to observe the public holidays of government offices. However, starting from 2020, the public holidays of government offices will be phased in to private companies depending on their size. Effective from January 1, 2020, private companies with 300 employees or more were required to provide their employees paid holidays on the holidays of government offices, such as traditional holidays (Lunar New Year's Day and Chuseok) and national holidays. Companies with 30 or more but fewer than 299 employees will be subject to the same requirement in January 2021, and for companies with 5 or more but fewer than 29 employees, in January 2022.

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2020

Enforcement of the amended Equal Employment Act

Family care leave (without pay) will take effect from January 1, 2020. The scope of "family" under the Equal Employment Act was previously limited to parents, parents-in-law, spouse and children but under the amended Equal Employment Act, grandparents and grandchildren are included in the scope. Employees may request family care leave for the illness, accident or old age of a family member or for childcare and may use the leave in the unit of one (1) day for up to ten (10) days per year. However, the combined days of family care leave (for up to 10 days) and leave of absence for family care (for up to 90 days) may not exceed 90 days per year.

Moreover, the amended Equal Employment Act provides the right to request for reduction of working hours for family care, etc. For employers with 300 or more employees, starting January 1, 2020, when an employee requests a reduction in his/her working hours for family care due to the illness, accident or old age of a family member, his/her own health conditions due to illness, accident, etc., preparations at the age of 55 years or older for retirement or for his/her school work, his/her employer must allow the employee to work for a reduced number of hours. This policy will become effective in phases: from January 1, 2020 for businesses with 300 or more employees; from January 2021 for businesses with 30~299 employees; and from January 2022 for businesses with fewer than 30 employees.

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2020

Increase in minimum wage

The minimum wage for 2020 will be KRW 8,590 from January 1 to December 31, 2020. The 2020 minimum wage will be applicable to all employers, regardless of the type of business activity.

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2020

Change in the social insurance premium rate

The average occupational accident compensation insurance premium rate in 2020 is reduced to 1.56%, 0.09%p decrease from 1.65% in the previous year. The national health insurance premium rate for employer-insured policyholders was increased from 6.46% to 6.67% (by 0.21%p) in 2020.

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Article prohibiting financial support for operating labor unions found unconstitutional

On May 31, 2018, the Constitutional Court of Korea held unconstitutional the section prohibiting the "provision of financial support for operations of labor unions" in Article 81(4) (the "Article") of the Trade Union and Labor Relations

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Parents Allowed to Take Child Care Leave Simultaneously

Under the previous Equal Employment Act, an employee whose spouse is taking child care leave (including child care leave under other laws and regulations) for the same child could not take child care leave. However, with the said provision removed, parents of a child can use child care leave simultaneously.

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SC 160/2010 - Ceylon Grain Elevators Limited v Commissioner General of Labour and Others

Held: A pensionable allowance paid apart from salary must be included in computation of gratuity.

The Commissioner General of Labour directed the Company to pay gratuity to an employee (a Malaysian) who had been employed from 1st June 1988 to 25th July 2004 - on the basis that he had been drawing a salary of US\$ 5600 per month.

The Company challenged the legality of the Commissioner's order by way of an application for a writ from the Court of Appeal, which refused the application.

The Company then sought leave to appeal from the Supreme Court against the judgment of the Court of Appeal, and leave was granted on two questions of law (as stated in the petition), namely –

1. "Whether the Court of Appeal had erred in stating the last drawn salary of the employee was US\$ 5600, and
2. Whether the Court of Appeal had erred in failing to consider the impact on the impugned order of the failure of the 1st and/or 2nd Respondents (the Commissioner General and Commissioner of Labour respectively) to give reasons for the order despite a written request for the same by the Company."

The Supreme Court noted that while the employee had been receiving a basic salary of US\$ 3825, he was also being paid a monthly pensionable allowance of US\$ 1775. The Court held that, in these circumstances, he had been drawing a salary of US\$ 5600 per month and gratuity should be calculated accordingly.

On the second question referred to above, the Court – referring to two documents (marked 2R1 and X 17 respectively), observed that sufficient reasons for the order had been given.

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SC Appeal 138/2017 – Prasanna Peiris v. Toroid International (Pvt) Limited.

Held: Where an employee whose employment had been found to have been unjustly terminated was also found to have subsequently obtained other more lucrative employment, compensation awarded to him should be computed only up to the date on which he/she obtained such other employment.

The employee's employment was terminated for having (allegedly) committed theft of company petrol. The employee made an application to the Labour Tribunal for relief in respect of the said termination and the Tribunal, having held that the termination was unjustified, awarded – in the words of the Supreme Court - "*compensation from the date of termination to the date of deciding the case as well as other additional payments (total amount to be paid being Rs. 732,424)*". The "other additional payments" referred to were not specified by the Court.

The company appealed to the High Court, which affirmed the Labour Tribunal's order. The company then appealed to the Supreme Court.

While the finding of the Labour Tribunal that the termination was unreasonable was held by the Supreme Court to be acceptable, on the question of compensation, it was observed that the employee had lied under oath when he gave evidence in the Tribunal that he had been unemployed from the date of termination; that he had later admitted that he had lied when he gave that evidence; and that, in fact, he had obtained other employment after termination by the employer company (the Appellant) at a higher salary than the salary that he drew from the Appellant.

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In the result, having found that the employee had been without employment for only 10 months, the Supreme Court ordered that the compensation awarded by the Tribunal be varied (reduced) to Rs. 262,580 (26, 258 x 10).

It may be noted that the fact that the employee had, admittedly, lied under oath in claiming relief did not result in his being denied any relief at all.

SC Appeal 79/2012 – Superintendent, Uduweriya Estate and Two Others [Appellants] v. Lanka Wathu Sevaka Sangamaya (on behalf of K. Jayaratne) [Respondent]

Held:

1. The issuing of a formal charge sheet or the holding of a formal domestic inquiry is not mandatory and the failure to do so does not render a termination unjustified.
2. The fact that the employee was acquitted of the charge in the Magistrate's Court does not bar the charge being held to be proved in a Labour Tribunal.

The services of the abovenamed employee ("the employee") were terminated, after a domestic inquiry, on his being found guilty of stealing tea and the Trade Union made an application to the Labour Tribunal, on his behalf, in respect of the said termination.

The Labour Tribunal held that the termination was justified in the face of the evidence adduced in the case and dismissed the application.

The Trade Union thereafter appealed to the Provincial High Court which set aside the order of the Tribunal and awarded 3 years' salary as compensation.

The reasons adduced by the High Court for its judgment were that -

1. The employer failed to conduct a formal domestic inquiry on a formally prepared charge.
2. The charges against the employee had not been read over and explained to him
3. The said domestic inquiry had not been held following the rules of natural justice.
4. The fact that the employee had been acquitted in the trial in the Magistrate's Court on the basis that the charges against him had not been proved beyond reasonable doubt was an important factor which should have been considered in favour of the employee.
5. The High Court could not accept the evidence of the witnesses called on behalf of the employer to establish the charge against the employee.

In appeal to the Supreme Court, the Court having considered the evidence that had been adduced in the case in some detail, found that there was cogent evidence against the employee adduced in the Labour Tribunal, which served to successfully discharge the burden on the employer (i.e. to prove the charge on a balance of probability).

The Supreme Court held that, accordingly, the finding of the High Court that the evidence adduced on behalf of the employer could not be accepted was without substance. In this connection, the Supreme Court also cited with approval the observations made by it in a previous judgment (*Caledonian Tea and Rubber Estates v. Hillman – 79(1) NLR Part I 421 at 425*) to the effect (*inter alia*) that the assessment of evidence was within the province of the Tribunal and that a Court hearing an appeal from a Labour Tribunal could only set aside a finding of fact by the Tribunal where there was no legal evidence to support the finding or where it was not rationally possible and/or perverse.

As regards the matter of the absence of a formal charge sheet and/or a formal domestic inquiry, the Court asserted that there was no mandatory requirement

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for either; and as regards the finding of the High Court that the domestic inquiry had been not been held following rules of natural justice, the Supreme Court observed that the High Court had failed to point out any circumstance or instance where such rules had not been followed and that, therefore, that assertion by the High Court was also without merit.

As regards the acquittal of the employee in the Magistrate's Court, the Supreme Court pointed out that the High Court had failed to appreciate the difference between the standard of proof in a criminal case – which was beyond reasonable doubt and the standard of proof required in a Labour Tribunal – which was proof on a balance of probability.

In the result, the Supreme Court set aside the judgment of the High Court and restored the order of the Labour Tribunal.

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The Ministry of Labor's Occupational Safety and Health Administration issued the "Guidelines for Occupational Safety and Health Measures in Response to COVID-19"

Issued by: The Occupational Safety and Health Administration of the Ministry of Labor

Ref. No.: Lao-Zhi-Wei-2-Zi-1091004580

Issue date: January 30, 2020

Explanation:

The Occupational Safety and Health Administration issued the "Guidelines for Occupational Safety and Health Measures in Response to COVID-19" as a way to assist businesses in following the Occupational Safety and Health Act and other related regulations as well as to strengthen preventive measures against pathogens at the workplace.

For employers:

1. Establish body temperature measurement locations, inform and train employees with respect to disease prevention in the workplace, ensure open ventilation in and regularly clean and disinfect the working area.
2. Prepare appropriate and sufficient number of masks and refrain from prohibiting employees to wear them; if a frontline employee is at risk of being infected, the employer shall provide a personal mask for such employee and make sure the employee is wearing the mask properly.
3. Place priority on employee health and safety. Employee travel to outbreak-affected areas in China should be avoided if not necessary for business.
4. Establish appropriate health follow-up and management measures for employees who have returned from a business or personal trip to outbreak-affected areas recently.

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The Presidential Order for the "Special Regulations for Prevention of and Relief Stimulus in Response of Serious Infectious Pneumonia" to be effective from January 19, 2020 to June 30, 2021

Issued by: The President's Office

Ref. No.: Hua-Zhong-1-Yi-Zi-10900021291

Issue date: February 25, 2020

Explanation:

In order to bring a rapid response to COVID-19, the Presidential Order on February 25 promulgated the "Special Regulations for Prevention of and Relief Stimulus in Response of Serious Infectious Pneumonia". A special budget will be set aside in response to preventive measures and relief stimulus. Employers are to give quarantine leave to those under quarantine or monitoring; disease prevention compensation for the quarantine or monitoring period may be applied for within two years' time.

In terms of disease prevention, Article 2 of the Regulations requires special stipends or supplements provided to medical personnel or any other individuals involved in disease prevention-related work. Bonuses shall be awarded to private medical institutions, corporate persons, organizations and their personnel that attained notable performance in disease prevention work. Compensation shall be provided to those who suffered illness, physical or mental disabilities or death in the course of disease prevention work, or their children's education shall be paid for.

For quarantine leave, Article 3 states that those that are required to submit to home or group quarantine and/or monitoring shall be given quarantine leave by their institutions, businesses, schools, corporate persons and organizations

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that they are employed at during the quarantine or monitoring period. They may not be deemed as away without leave or be forced to take personal leave or other types of leave, nor shall their attendance bonuses be taken away, terminated or otherwise face unfavourable dispositions. For those that are taking care of family members who are on quarantine or monitoring leave but are unable to take care of themselves, they shall also be granted disease prevention quarantine leave. If the competent authority has recognized individuals that agree to submit to quarantine and the individuals do not violate any quarantine or disease prevention related regulations during the quarantine period, they may apply for disease prevention compensation for the period they underwent quarantine or monitoring. The compensation may be applied for within two years after the end of the quarantine or monitoring period.

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The Ministry of Labor announced the amendment of Articles 286-3, 324-7 and 325-1 of the Regulations on Occupational Safety and Health Facilities to protect the health of food delivery workers.

Issued by: The Ministry of Labor

Ref. No.: Lao-Zhi-Shou-Zi-10902004602

Issue date: March 2, 2020

Article 286-3: Employers are required to provide helmets, reflectors and extreme temperature protection measures, communications equipment for emergency use and other necessary occupational safety equipment to workers who uses motorcycles, bicycles and other vehicles for food delivery services. If the employer has at least 30 food delivery employees, it shall establish a food delivery hazard prevention plan and implement such plan pursuant to the central competent authority's regulations. Those that have less than 30 employees may keep implementation records or documents as a substitute; those records or documents shall be kept for three years.

Article 324-7: Employers shall evaluate the traffic, weather conditions, number of deliveries, timing and locations in allocating food delivery work to employees.

Article 325-1: Article 286-3 and Article 324-7 also apply to employers who instruct individuals with whom they have no employer-employee relationships to personally perform food delivery services.

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Thailand to Increase Minimum Wage across all provinces

The National Wage Committee of Thailand's Ministry of Labour has announced a new minimum daily wage, which will take effect on January 1, 2020. The announcement increases the minimum wage by THB 6 per day for workers in nine provinces—Bangkok, Chon Buri, Nakhon Pathom, Nonthaburi, Pathum Thani, Phuket, Prachin Buri, Samut Prakan, and Samut Sakhon—and by THB 5 in all other provinces.

With these changes, the sliding scale for the minimum daily wage in 2020 will range from THB 313 to THB 336, as detailed in the table below.

[More...](#)**Thailand's Social Security Office Prepares Further COVID-19 Assistance Measures**

Thailand's Ministry of Labor is soon expected to issue two regulations and an announcement to formalize and implement the Social Security Office's policy on COVID-19 assistance measures, reflecting two recent cabinet resolutions. Drafts are now being considered by the Office of the Council of State, after which they will be sent for the minister's signature and announced in the Government Gazette. The following measures are expected to be announced:

(1) Regulation on Entitlement to Compensatory Benefits in the Event of Unemployment Due to Force Majeure B.E. 2563 (2020)

The Ministry of Labor will revise the definition of force majeure in the relevant law to include hazards from communicable human diseases classified as serious under relevant laws relating to communicable diseases. This revision will bring the COVID-19 pandemic within the definition of force majeure, allowing the Social Security Office to apply section 79/1 of the Social Security Act ("SSA") to pay compensation to employees who have had to cease working and are not receiving wages from the employer, but whose employment has not been terminated, as a result of one or more the following events related to the COVID-19 pandemic:

- The employer orders the cessation of specific employees' work due to the force majeure obstructing normal business operations.
- The employee has to cease working due to the force majeure, with the approval of the employer.
- The government orders the employer to close the business as a preventive measure for the pandemic of disease.

Employees will be entitled to receive compensation during the work cessation period at a rate of 62% of their daily wages forming the basis of contributions to the Social Security Office. This entitlement is limited to a maximum of 90 days.

(2) Regulation on Criteria and Rates for Compensatory Benefits in the Event of Unemployment Amidst the Economic Crisis B.E. 2563 (2020)

This regulation will declare an economic crisis from March 1, 2020, to February 28, 2022, and will allow the Social Security Office to pay compensation to employees whose employment contract ends for the following reasons during this period:

- Termination by the employer. This entitles the employee to receive compensation at the rate of 70% of their daily wages forming the basis of contributions to the Social Security Office. This entitlement is limited to 200 days for each termination.
- Resignation or expiration of definite employment. This entitles the employee to receive compensation at the rate of 45% of their daily wages forming the basis of contributions to the Social Security Office, limited to 90 days for each period of unemployment.

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(3) Announcement on Rules, Procedures, and Criteria for Deduction of Contributions by Employers and Insured Persons in the Event of Pandemic of COVID-19 B.E. 2563 (2020)

This declaration will temporarily decrease the mandatory Social Security Fund contributions under section 33 of the Social Security Act B.E. 2533 (1990) to 1% for employees and 4% for employers.

Employers and employees should consider the ramifications of these pending regulations so that they can take appropriate actions, if necessary, once the measures are officially issued. The measures above reflect cabinet decisions that are expected to be adopted into legislation in due course, but changes may occur as the legislation passes through the formalities before coming into force. We will continue to update you of any such changes as this situation develops.

[More...](#)

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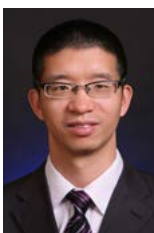
There are no significant policy, legal or case developments within the employment space during 2020 Q1.

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