# Asia Employment Law: Quarterly Review

2019-2020

ISSUE 28: SECOND QUARTER 2020

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Updated as of June 2020

# 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-eighth edition, we flag and comment on employment law developments during the second 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'*

AUSTRALIA
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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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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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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?*

AUSTRALIA
5 MAR
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## 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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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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AUSTRALIA

**5 MAR** 2020

## Changes to Queensland and Victoria's Industrial Manslaughter laws passed; first conviction of industrial manslaughter in Australia

Victoria's 'workplace' or 'industrial' manslaughter legislation is set to come into effect on 1 July 2020 after passing into legislation at the end of 2019. Victoria is the fourth state to legislate a specific criminal offence of industrial manslaughter following the Australian Capital Territory in 2004, Queensland in 2017 and the Northern Territory in 2019.

In addition, the Queensland legislation has recently been extended to the mining and resources sector which was previously carved out.

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 20 May 2020 the Queensland Parliament extended the current industrial manslaughter offence to the resources sector. This was done in response to six deaths in Queensland's resource sector over the previous 12 months.

The *Mineral and Energy Resources and Other Legislation Amendment Act 2020* extends 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)).

The amendments provide for fines of up to $13 million 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. The commencement date for these offences is yet to be confirmed.

*Queensland: First conviction of industrial manslaughter recorded in Australia*
The extension of the offence preceded the first conviction under Queensland's industrial manslaughter laws on 11 June 2020.

In *R v Brisbane Auto Recycling Pty Ltd & Ors* [2020] QDC 113 the District Court of Queensland convicted and fined Brisbane Auto Recycling Pty Ltd (Company) $3 million after it pleaded guilty to causing the death of the worker, and being "negligent about causing the death," contrary to section 34C ("Industrial manslaughter–person conducting business or undertaking") of the *Queensland Work Health and Safety (WHS) Act*. An employee of the Company was crushed and killed by a forklift on the Company's premises. The two directors of the Company admitted that they knew of the risk to the safety of their workers, but consciously disregarded that risk and that there were no safety systems in place at the Company.

The directors pleaded guilty to charges of reckless conduct (Category 1 offences) and were sentenced to 10 months in prison which is to be served wholly suspended due to mitigating factors including their age and lack of prior criminal history.

*Victoria: Increase to 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 4 June 2020, the Victorian Parliament passed the *Crimes Amendment (Manslaughter and Related Offences) Act 2020* which increases the maximum term of imprisonment from 20 to 25 years.

*R v Brisbane Auto Recycling Pty Ltd & Ors [2020] QDC 113*
*Mineral and Energy Resources and Other Legislation Amendment Act 2020*
*Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Act 2019 (Vic)*
*Crimes Amendment (Manslaughter and Related Offences) Bill 2020*

**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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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*

AUSTRALIA
20 MAR 2020

## 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*

AUSTRALIA
27 MAR 2020

## 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.

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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 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)*

AUSTRALIA

8 APR 2020

## Federal Government introduces JobKeeper wage subsidy program

On 8 April 2020, the Australian Government called an emergency sitting of Parliament to enact laws to create the Government's 'JobKeeper' wage subsidy program (the **Program**). The Program is a temporary six month wage subsidy in response to COVID-19, and was described by Prime Minister Scott Morrison as "the biggest economic lifeline in Australia's history".

The Program subsidises 'Qualifying Employers' who continue to pay the wages of 'Eligible Employees' during the JobKeeper Period. After paying wages, Qualifying Employers will be reimbursed by the Australian Tax Office at a flat rate of $1,500 (before tax) for each Eligible Employee per JobKeeper fortnight. The payment is available from 30 March 2020 to 27 September 2020.

The laws provide Eligible Employers who access the Program with broad powers to stand down employees, reduce hours, change usual working days and location or request an employee to take annual leave during the JobKeeper period. These powers are subject to specific criteria being met, in particular, that the request or direction is given because of changes to business attributable to either the COVID-19 pandemic or government initiatives to slow the transmission of COVID-19.

In order to be eligible for the Program, a Qualifying Employer must have been carrying on a business in Australia at 1 March 2020 and meet the 'decline in turnover test' (at any time during the JobKeeper period). This test asks employers to project a requisite fall in turnover of either 50%, 30% or 15% depending on the entity's turnover and/or whether they are a registered charity with the Australian Charities and Not-for-Profit Commission.

Eligible Employees include full-time, part-time and long-term casuals (those engaged on a regular and systemic basis for longer than 12 months) providing they were employed by a Qualifying Employer at 1 March 2020. However, there are visa and residency requirements, as well as provisions to stop employees obtaining the JobKeeper payment from two employers or whilst accessing particular Government welfare schemes.

The Program is currently under review, with the Government expected to make a formal announcement about its continued operation on 23 July 2020.

*Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020 (Cth)*
*Coronavirus Economic Response Package (Payments and Benefits) Act 2020 (Cth)*
*Coronavirus Economic Response Package (Payments and Benefits) Rules 2020 (Cth)*
*Corrs insight: implementing the JobKeeper Program*

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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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## Deadline for first reporting periods under Modern Slavery Act extended

The Federal Government has announced an extension to the reporting deadlines for entities that are required to comply with the *Modern Slavery Act 2018* (Cth) in light of COVID-19.

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.

Changes have been made to the reporting deadlines for both the Foreign Financial Year period (which ended on 31 March 2020) and the Australian Financial Year Period (which ends on 30 June 2020). The six month deadline for reporting periods ending after 30 June 2020 remains unchanged. These changes are outlined in the table below.

| **Reporting period** | **Original deadline for submission of modern slavery statement** | **New, extended deadline for submission of modern slavery statement** |
|---|---|---|
| 1 April 2019 – 31 March 2020 (Foreign Financial Year) | 30 September 2020 | 31 December 2020 |
| 1 July 2019 – 30 June 2020 (Australian Financial Year) | 31 December 2020 | 31 March 2021 |
| Reporting periods ending after 30 June 2020 | The six month deadline for reporting periods after 30 June 2020 remains unchanged | |

The announcement follows a reminder from the Federal Government of the enhanced risks of vulnerable workers in supply chains becoming exposed to modern slavery as a consequence of the coronavirus pandemic.

In March New South Wales Legislative Council's Standing Committee on Social Issues also released a report that recommended changes be made to the State's *Modern Slavery Act 2018* (NSW) to ensure harmonisation between the federal and New South Wales reporting schemes.

*Government extends reporting deadlines for entities required to comply with the Modern Slavery Act 2018*
*Modern Slavery Act: Information for reporting entities about the impacts of coronavirus*
*Corrs Insight: COVID-19: modern slavery reporting deadline changes*
*Commonwealth Modern Slavery Act – Guidance for reporting entities' guide*
*Modern Slavery Act 2018 (Cth)*
*NSW Legislative Council Standing Committee on Social Issues - Modern Slavery Act 2018 and associated matters final report*

AUSTRALIA
**20 MAY**
2020

## Full Federal Court hands down Rossato decision, providing a 'casual' with leave entitlements

On 20 May 2020, the Full Court of the Federal Court handed down its decision in *WorkPac Pty Ltd v Rossato* [2020] FCAFC 84. The case was a test case run by the labour hire company WorkPac which attempted to have the Court declare that:

- a former employee, Mr Rossato, who had been engaged under a series of six 'casual' employment contracts over six years, was in fact a casual employee; and
- by paying a 'casual loading' of 25% to Mr Roassato throughout his employment, it was able to set-off any annual leave, personal leave and compassionate leave entitlements he may have been entitled to had he been classified as a permanent employee.

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The Court refused to make the declarations, and determined that Mr Rosatto had been incorrectly characterised as a casual by WorkPac. Further the Court held that WorkPac could not offset any leave entitlements owing to Mr Rossato by taking into account the casual loading the company had paid to Mr Rossato during his employment.

*The facts of Rossato*
Mr Rossato had been engaged under a series of six employment contracts, all of which characterised his employment at two Queensland mines as 'casual'. Mr Rossato was also paid a 25% casual loading rate which was expressed to be in lieu of his entitlements in relation to annual leave, personal leave, notice of termination and redundancy pay. The contracts also included a payment in recognition of the 'intermittent nature of casual work'.

After his retirement, Mr Rossato brought a claim against his employer, WorkPac, seeking annual leave which he had not taken over the period of his employment with the Company, together with periods of personal and compassionate leave that had been taken by him over that period. The case was unusual in that WorkPac undertook to meet Mr Rossato's costs in the litigation, in recognition of the fact that WorkPac wished to use the case as a means of reversing an earlier decision that had gone against it because of certain concessions made by the Company in the course of the litigation.

The Court held that WorkPac had failed to show that there was no 'firm advance commitment' to continuing employment for Mr Rossato. To have done so would have required that there be 'irregularity, uncertainty, unpredictability, intermittency and discontinuity in the pattern of work'. Here, Mr Rossato was notified of his rostered shifts far in advance, and was provided with meals and accommodation by WorkPac's client (the operator of the mines).

WorkPac was not able to offset any leave entitlements owing to Mr Rossato by taking into account the casual loading the company had paid during his employment. In essence, this was because there was no 'mistake' in the legal sense of that term, nor evidence of mistake being the cause of the casual loading payment WorkPac made. Further, the purpose for which the loading was paid was different in character from the purposes for which WorkPac sought to apply the funds.

Whilst the decision has resulted in considerable commentary and concern by employer groups, the members of the Court in *Rossato* were at pains to point out, whether an employee is a 'true casual', will turn on the fact of each case and not all 'fact-situations' will be as clear-cut as in this case.

Following the *Rossato* decision, Attorney General Christian Porter states it may be necessary to "consider legislative options" including extending casual conversation opportunities and including a definition of casual employee within the *Fair Work Act 2009* (Cth). The issue of casual employment is currently being considered by one of the Attorney-General's five industrial relations reform groups, which will be held until September 2020.

Workpac have filed an application to have the matter heard by the High Court of Australia. The High Court is likely to decide in August or September whether it will hear the appeal.

*WorkPac Pty Ltd v Rossato [2020] FCAFC 84*
*Corrs insight: No casual affair: double dipping and the Rossato decision*
*Transcript, ABC Insiders, (5 June 2020)*

AUSTRALIA
**26 MAY**
2020

## Attorney-General forms working groups with industry bodies and unions to tackle Industrial Relations reform

On 26 May 2020, Prime Minister Scott Morrison, in the course of an address to the National Press Club, announced that Industrial Relations reform was a key legislative priority for his Government, stating that "the current system is not fit for purpose."

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As part of a targeted industrial relations reform agenda, Attorney-General Christian Porter set up separate working groups to address the Government's five priority areas:

- Award simplification.
- Enterprise agreement making.
- Casuals and fixed term employees.
- Compliance and enforcement.
- Greenfields agreements.

Membership of each group will include employer and union representatives, as well as individuals chosen on the basis of their demonstrated experience and expertise and that will include small businesses, rural and regional backgrounds, multicultural communities, women and families.

The groups will meet five times a fortnight from 3 June until September 2020. Mr. Porter stated that he hoped legislation in relation to the five areas would be introduced by the end of the year, even if the working groups fail to achieve consensus.

In subsequent statements, Mr Porter has indicated that working group three will consider including a definition of casual into the *Fair Work Act 2009* (Cth), whilst working group four will consider issues including wage theft and underpayments. Following the announcement, the Prime Minster and Attorney-General have also indicated that working group two will consider modifying or abolishing the better-off-overall-test, which is currently required in order to pass enterprise agreements.

*Attorney-General's Department 'Industrial Relations Consultations'*
*Media Release, Roundtable kicks off IR reform process, (3 June 2020)*
*Transcript, National Press Club Address – Scott Morrison, (26 May 2020)*
*Transcript, ABC Insiders, (5 June 2020)*

AUSTRALIA

**15 JUN**

2020

## Senate Inquiry into 'Wage Theft' hearings postponed further due to COVID-19, final report date extended to June 2021

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

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

On 15 June 2020, the Senate granted the Committee an extension to hand down their report by the last parliamentary sitting day in June 2021. An initial extension had previously been granted until 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, which must be provided by employers to all new employees.

Wage theft will also be addressed by one of the Federal Government's industrial relations working groups (see below). The group is comprised of industry bodies and unions, and as appears below, will meet on a regular basis until September 2020, as part of the Federal Government's industrial relations reform agenda. In June, the Victorian State Government also passed Wage Theft legislation - the first of its kind in Australia (see discussion of this measure below).

*Fair Work Ombudsman: Fair Work Information Statement (December 2019)*
*Senate Inquiry: Unlawful underpayment of employees' remuneration*
*Attorney-General's Department 'Industrial Relations Consultations'*

AUSTRALIA
16 JUN 2020

## 'Wage theft' legislation passed in Victoria as Commonwealth considers drafting its own legislation

On 16 June 2020 the Victorian Parliament passed the *Wage Theft Bill 2020* which criminalises 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 *Wage Theft Act 2020* (Vic) is the first of its kind to be introduced by any of the Australian jurisdictions.

Although the legislation is now law, it is not due to commence operation until 1 July 2021.

Under the Act, employers who dishonestly withhold wages, superannuation or other employee entitlements could be fined up to $198,264 for individuals, $991,320 for companies and be sentenced to up to 10 years' jail. The Act also creates new record-keeping offences, to target employers who attempt to conceal wage theft by falsifying or failing to keep records.

The Act establishes Wage Inspectorate of Victoria as a statutory authority with powers to investigate and prosecute offences under the Act.

Employers who make honest mistakes or who exercise due diligence in paying wages and other employee entitlements will not be subject to prosecution under the legislation.

Once it becomes operative, it is highly likely that the legislation will face a constitutional challenge on the ground that it is inconsistent with valid laws of the Commonwealth relating to the enforcement of wage entitlements. Many observers have indicated that they think this challenge is likely to be successful, but that will not become apparent for some considerable time.

Commonwealth Industrial Relations Minister (and Attorney-General) Christian Porter, criticised the passage of the legislation in Victoria, stating: "The Commonwealth's approach will deliver the most vigorous, consistent and robust set of national laws around wage underpayment we've ever seen…It is totally unnecessary for the Andrews Government to rush into this ill-conceived venture."

*Wage Theft Act 2020 (Vic)*
*Announcement: Wage Theft Legislation Passes Victorian Parliament*

AUSTRALIA
19 JUN 2020

## Fair Work Commission issues its Annual Wage Review 2019-20 decision increasing minimum wage by 1.75%

On 19 June 2020, the Fair Work Commission (**Commission**) issued its Annual Wage Review 2019-20 decision.

The *Fair Work Act 2009* (Cth) requires such a review to be conducted by the Commission in each financial year. In consequence of any such review the Commission may make one or more determinations to set, vary or revoke modern award minimum wages, and must make a national minimum wage order.

The Australian Council of Trade Unions had been calling for a 4 % minimum wage increase, while employer bodies were seeking a wage freeze in response to the COVID-19 pandemic. Recognising that the pandemic 'casts a large shadow over the current economic environment', the Commission by a majority decision increased the national minimum wage by 1.75 % to $753.80 per week or $19.84 per hour. The dissenting member of the Commission found that minimum wages should be frozen. This was the first dissent in a minimum wage decision in almost a quarter of a century.

The Commission acknowledged that the impact of COVD-19 differs depending on the relevant industry. In recognition of this, the majority decision sets different starting dates for the wage increase for three different categories of workers. Those covered under 'Group 1' awards, including

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essential service workers in health care, social assistance, teaching and childcare are to receive the increase from 1 July 2020. Group 3 awards cover sectors which have been most adversely affected by the pandemic, including accommodation and food services, arts and reaction services, aviation, retail and tourism, and workers in those sectors will not receive the wage increase until 1 February 2021. Workers in Group 2 industries, which encompasses all other sectors, will receive their increase on 1 November 2020.

*Annual Wage Review 2019-20*

*Annual Wage Review: Decision and Summary*

CONTRIBUTED BY: CORRS CHAMBERS WESTGARTH

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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 periodicpayment 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 laboror 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 thecreation, 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, fulfil their respective obligations.

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## Circular on Expanding the Coverage of the Unemployment Insurance

The Ministry of Human Resources and Social Security ("MOHRSS") and the Ministry of Finance ("MOF") jointly issued the Circular on Expanding the Coverage of the Unemployment Insurance (the "Circular") on May 29, 2020. The Circular touches upon contents in eight respects, including carrying out the provisional policy of unemployment allowances, enhancing the temporary price subsidy standard for a certain period of time and keeping channels open to claim unemployment insurance benefits. Among others, the Circular states that during the period from March to December 2020, the jobless people who remain unemployed at the end of the period of entitlement to unemployment insurance benefits, and the insured and unemployed individuals who do not meet the conditions for filing unemployment insurance benefits, may claim the unemployment allowances for a period of six months, and the unemployment allowance should not exceed 80% of the local unemployment insurance benefits standard. Additionally, during the period between March to June 2020, the amount of the temporary price subsidy offered to those receiving unemployment insurance benefits and unemployment allowances, will be doubled based on the current subsidy standard. Moreover, the Circular requires that each region shall optimize the service processes, shorten the list of the required supporting documents, and cancel additional conditions; and enable the unemployed to file for unemployment insurance benefits online, and in addition to this, make it possible to claim online other types of unemployment insurance benefits such as unemployment allowances by the end of June.

*More...*

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

Mayer Brown: We are not admitted by the PRC Ministry of Justice to practise PRC law. Under current PRC regulations, our firm as with any other international law firm with home jurisdiction outside the PRC, is not permitted to render formal legal opinion on matters of PRC law. The views set out in this document are based on our knowledge and understanding of the PRC laws and regulations obtained from our past experience in handling PRC matters and by conducting our own research. As such, this report does not constitute (and should not be construed as constituting) an opinion or advice on the laws and regulations of the PRC.

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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.

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## 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.

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## 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.

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## 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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## Wages Subsidy for Employers in Hong Kong

The Hong Kong Government introduced an HK$80 billion Employment Support Scheme ("ESS") to help employers retain employees and avoid redundancies. Each eligible employer may receive from the Government a maximum amount of subsidy of HK$9,000 per month per eligible employee during the subsidy period from June to November 2020.

There are certain undertakings and obligations that employers must provide and comply with. The first tranche of the subsidy related to the period June, July and August 2020 and required the employers (a) to ensure that the number of employees on payroll (i.e. with pay) during the months of June to August 2020 cannot be less than the number of employees (paid or unpaid) in March 2020 (the first undertaking); and (b) to use the subsidy to pay wages of the employees (the second undertaking). Failing which, they are required to return a portion of the subsidy to the Government, details are as follows:

(a) Consequences of breaching the first undertaking: If the headcount of employees with pay in any particular month during the subsidy period is less than the headcount in March 2020, the employer will need to repay an amount calculated by the following formula

(the full ESS in that month x the proportionate shortfall in headcount) x a "specified percentage"

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The "specified percentage" depends on the headcount in March 2020:

| Headcount (with and without pay) in March 2020 | Specified Percentage |
|---|---|
| <10 | 10% |
| 10 – 49 | 20% |
| 50 – 99 | 40% |
| 100 – 499 | 60% |
| >500 | 80% |

(b) Consequences of breaching the second undertaking: If an employer's total wage bill in any month is less than the amount of ESS subsidy received for that month then the employer must repay the balance of the subsidy.

A list of employers who have received subsidies, the total number of employees benefited and the amount of subsidies has been made available to the public. The approved list can be found at https://www.ess.gov.hk/en/granted_companies.html

Details of the second tranche of the subsidy for September, October and November 2020 is anticipated to be announced in mid-August 2020.

*More...*

HONG KONG

24 APR

2020

## Review of the Statutory Minimum Wage

The Minimum Wage Commission ("**MWC**") will submit to the Chief Executive in Council its recommendation report on the Statutory Minimum Wage ("**SMW**") rate by the end of October 2020 latest. The current statutory minimum wage is HK$37.50 per hour.

Under the Minimum Wage Ordinance, the MWC must have regard to the need to maintain an appropriate balance between the objectives of forestalling excessively low wages and minimizing the loss of low-paid jobs, and the need to sustain Hong Kong's economic growth and competitiveness. In reviewing the SMW rate, the MWC adopts an evidenced-based approach by looking at research, analysis of relevant statistical data and views expressed under public consultation.

*More...*

HONG KONG

29 APR

2020

## Call for listing COVID-19 as an occupational disease

COVID-19 currently is not an occupational disease under the Second Schedule to the Employees' Compensation Ordinance ( "**ECO**"). The Secretary for Labour and Welfare clarified the following:

- In determining whether a particular disease should be prescribed as a statutory occupational disease, the Labour Department ("**LD**") makes reference to the International Labour Organization's criteria, that an occupational disease is a disease that has a causal relationship with specific exposure in the working environment or work activity, and that the incidence rate of the disease among the exposed workers is significantly higher than the rest of the population.
- An objective evidenced-based approach will be adopted to determine whether a definite causal relationship exists between a disease and a certain type of work, and whether the disease occurs amongst exposed workers at a significantly higher rate than with the general population.
- The LD will keep a close watch on relevant medical and epidemiological data, as well as the extent and risk of community infection, in order to make the appropriate recommendation.
- While COVID-19 is not presently a compensable occupational disease prescribed under the ECO, s. 36 of the ECO stipulates that an employee contracting a disease not prescribed as an occupational disease may still claim compensation from the employer if it is an injury or death by accident arising out of and in the course of employment.  As of 17 April 2020, the

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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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**29 APR** 2020

LD has received a total of 21 cases with employees suspected to have contracted COVID-19 pursuant to reports by employers under the ECO.

**Takeaway for employers**

While COVID-19 is not currently an occupational disease prescribed under the ECO, an employer can still be liable to pay compensation to an employee who suffers a personal injury or death as a result of contracting COVID-19 arising out of and in the course of employment under s. 36 of the ECO.

*More...*

HONG KONG
**18 MAY** 2020

## Dedicated anti-sexual harassment unit within the Equal Opportunities Commission

Hong Kong's Equal Opportunities Commission ("EOC") announced the establishment of Anti-Sexual Harassment Unit ("ASHU") the objective of which is to help victims of sexual harassment to explore options available and support them to make an informed decision about the next step they would like to take. It will also provide victims with a safe and confidential platform to seek free advice from.

The ASHU will specifically:-

- Conduct a review of the current legal regime to identify areas where the protection can be improved and recommend legislative amendments where appropriate,
- Promote public awareness of anti-sexual harassment policies and measures, and
- Serve as a first port of call for those affected by sexual harassment, providing information on the law and advice on where to lodge complaints and obtain a referral to counselling services.

The EOC will continue with its drafting of guidance notes, including those relating to harassment on the ground of breastfeeding under the Sex Discrimination (Amendment) Bill 2020.

The two full papers of the meetings of the Legislative Council Panel on Constitutional Affairs can be found here:

*Work Progress and Key Focuses of the Equal Opportunities Commission 2020*
*Work Progress and Key Focuses of the Equal Opportunities Commission 2019*
*More...*

HONG KONG
**1 JUN** 2020

## Updates on the eMPF Platform

At the Legislative Council's Panel on Financial Affairs on 1 June 2020, the Financial Services and the Treasury Bureau issued updates on the development and implementation of the eMPF Platform, which was first proposed back in December 2018. The Hong Kong Government's target is to complete the eMPF Platform by 2022 at the earliest, and the on-boarding to the eMPF Platform by all trustees in phases within the following 2-3 years.

Notably, the eMPF Platform will serve as a one-stop electronic platform for scheme members to manage their Mandatory Provident Fund (the "**MPF**") portfolio across different schemes anytime and anywhere via online and mobile applications. For employers and self-employed persons, the eMPF Platform will enable them to make MPF contributions through electronic means, and the standardization and automation of the administrative procedures will also reduce the amount of paper work, human error, and inadvertent delays and default contributions caused by contribution surcharge.

For successful launch and smooth operation of the eMPF Platform, the MPF Schemes Ordinance and its related subsidiary legislation will be amended to (i) reflect the changes in the MPF scheme administration workflow after standardisation, streamlining, and automation, (ii) provide a proper legal basis for the designation of the eMPF Platform as the gateway for specified MPF

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scheme administrative procedures, and (iii) delineate the roles, functions, powers, responsibilities and interface of the Government, the MPF Schemes Authority, the eMPF Platform Company, trustees and other stakeholders under the operation of the eMPF Platform.

*More...*

HONG KONG
11 JUN
2020

## Government announces salary subsidies in various sectors for employers to provide recognized professional training and opportunities to graduates and assistant professionals

On 11 June 2020, the Hong Kong Government announced that they will be providing salary subsidies under the Anti-epidemic Fund to approved employers in the engineering, architectural, surveying, town planning and landscape sectors for new graduates and assistant professionals in training.

For university students studying architecture, surveying, town planning and landscape architecture that are graduating this year, a salary subsidy of HK$5,610 per month will be provided to approved employers for the purposes of providing recognized professional training to each eligible graduate. The subsidy period will last up to 18 months, and a total of 500 subsidy places will be made available.

For assistant professionals in engineering, architectural, surveying, town planning and landscape sectors, who will complete their recognized training within this year, a salary subsidy of HK$10,000 per month will be provided to approved employers for the purposes of providing each eligible assistant professional opportunities for recognized professional practice. The subsidy period will last up to 12 months, and a total of 1,250 subsidy places will be made available.

The application were opened from 19 June 2020 till 18 July 2020 through the Development Bureau website.

*More...*

HONG KONG
19 JUN
2020

## New Protections in Hong Kong Discrimination Law

The Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 amends each of the existing anti-discrimination ordinances to extend protection prohibiting discrimination on the ground of breastfeeding and strengthen some of the protections against unlawful discrimination and harassment. The enhanced protections (save for those relating to breastfeeding) commenced with immediate effect on 19 June 2020.

*What are the key changes?*

1. Unlawful breastfeeding discrimination

   The Sex Discrimination Ordinance (SDO) will be amended to provide for unlawful discrimination on the ground of "breastfeeding". Under the SDO, a woman will be treated as breastfeeding if she is engaged in the act of breastfeeding a child or expressing breast milk, or is a person who feeds a child with her breastmilk.
   As with sex discrimination both direct and indirect discrimination is unlawful. So, an employer will be taken to have unlawfully discriminated against an employee on the ground of breastfeeding if it treats her less favourably than it would treat those who are not breastfeeding in the same or not materially different circumstances. Indirect discrimination arises where a condition or requirement is applied to everyone equally but a smaller proportion of women who are breastfeeding can comply than those who are not breastfeeding, she suffers a detriment as a result and the condition or requirement is unjustifiable.
   The above amendments will come into force on 19 June 2021.

*Continued on Next Page*

2. Harassment in the workplace

   The scope of unlawful sexual harassment, disability harassment and racial harassment has been expanded to cover situations where the claimant and respondent are "workplace participants" provided that they work in or attend the same workplace. "Workplace participants" include an intern or a volunteer where there is no employment relationship.
   Interns and volunteers will be personally liable for acts of harassment they commit in the course of an internship or performing the volunteer work.
   A person who engages an intern or volunteer maybe vicariously liable for the unlawful act of harassment their intern or volunteer commits even if the unlawful act was done without their knowledge or approval. It may be a defence to vicarious liability if the person can show that they took such steps as were reasonably practicable to prevent the intern or volunteer from doing the relevant act, or from doing acts of that description.

3. Unlawful race discrimination and harassment by imputation and against "associates"

   The Race Discrimination Ordinance (RDO) has been expanded to cover:
   - "race" or "racial group" that is imputed to a person. So, it is possible to engage in unlawful race discrimination if you treat someone less favourably thinking that they are of a particular race when in fact they may not be; and
   - situations where a person is discriminated against or harassed because of the race of that person's "associate". "Associate" has the same meaning under the RDO and the Disability Discrimination Ordinance (DDO), which includes a spouse of the person, another person who is living with the person on a genuine domestic basis, a relative of the person, a carer of the person, and another person who is in a business, sporting or recreational relationship with the person.

4. Protection against disability and racial harassment by service providers and customers

   Under the SDO, it is unlawful for a service provider to sexually harass a customer in the course of offering or providing goods, facilities or services and for a customer to sexually harass a service provide in the course of acquiring goods, facilities or services.
   The DDO and RDO have now been amended to provide a similar protection to that in the SDO to prohibit disability and racial harassment by service providers and customers. The protection also extends to cover harassment on board Hong Kong-registered ships and aircraft while outside Hong Kong.

5. Protection against sexual and disability harassment against a member or applicant for membership of a club.

   The SDO and DDO have been amended to make it unlawful for a club or the committee of management of a club and its members to sexually harass a person or to harass a person with disability who is or has applied to be a member of the club. A "committee of management of a club" means the group or body of persons (howsoever described) that manages the affairs of that club. As such, a club may be held liable for the conduct of an individual who has a management role within the club even if they are not its employees.

6. Damages for unlawful indirect sex, race and family status discrimination

   Before the amended legislation, no damages will be awarded to a claimant who succeeds in his/her claims for unlawful indirect sex, race and/or family status discrimination if a respondent can prove that the requirement or condition concerned was not applied with the intention of treating a claimant unfavourably. The SDO, RDO and FSDO have been amended to

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19 JUN 2020

remove this "intention" exclusion going forward. So, for unlawful indirect sex, race and/or family status discrimination that is committed on or after 19 June 2020, the Court may award damages to a successful claimant even if the less favourable treatment is unintentional.

Employers should review their anti-discrimination/harassment policies to reflect the new legal requirements and provide appropriate trainings to their employees.

More...

HONG KONG
29 JUN 2020

## Government announces a one-off subsidy to employers in construction sector who have employed long-term casual employees

As the scope of the ESS does not extend to casual workers in the construction sector, employers in the construction sector who has made contributions for "casual employees" under the Mandatory Provident Fund Industry Schemes for at least 15 days during March 2020 this year, will be eligible to apply for a one-off subsidy of HK$36,000 per "qualified employee".

Employers who apply will have to make two undertakings:

(1) Not to make any employees redundant for a period of six months (between August 2020 and January 2021) on receipt of the subsidy; and

(2) To spend the full amount of the subsidy on paying wages to their "qualified employees".

Employers applying for the subsidy have to authorise the MPF trustees to provide their MPF contribution data in March 2020 from August 2020 to January 2021 to the Hong Kong Government and the Construction Industry Council and they will process the applications and determine the number of "qualified employees" and the subsidy amount based on such data. Subsidy is expected to be disbursed by autopay within 6-8 weeks upon applications and applicants will be notified the results by e-mail.

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**Good to know:** follow developments

**Note changes:** no action required

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**Note changes:** no action required

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INDIA

**1 MAR**

2020

## 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...*

INDIA

**24 MAR**

and

**15 APR**

2020

## 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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24 MAR and 15 APR 2020

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.

More...

INDIA
20, 29, 30 MAR and 31 MAR 2020

## 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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INDIA

16, 20, 27 MAR

and

15, 16 APR

2020

## 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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**Note changes:** no action required

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**17 APR** 2020

## 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.

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...*

INDIA
**20 APR** 2020

## 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.

*More...*

INDIA
**30 APR** 2020

## Align Components Private Limited v. Union of India *(Writ petition 10569 of 2020)*

The Bombay High Court has upheld the principle of 'no-pay for no-work' in a case challenging the 29 March 2020 MHA notification (which required employers to pay full salaries during the period of the COVID-19 lockdown). Accordingly, companies can apply this principle to the extent employees refuse to report to work (in areas where the lockdown has been lifted) - however, the nuances to each case would need to be assessed before withholding salaries.

*More...*

INDIA
**5-6, 8-9 MAY**
**9,17 JUN** 2020

## Incentives offered by government for employers and employees

The central government and the State governments have announced certain incentives in light of the COVID-19 outbreak. These include:

- Licenses are granted under the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979, to those who supply contract workers to principal employers. The Ministry of Labour and Employment has extended the validity of licenses, the renewal of which was due in the months of March, April, and May, and June 2020, till 30 June 2020.
- **Telangana**: the State government has extended the applicability of paid holidays order till 30 June 2020. As per the paid holidays order, all shops and establishments which are closed during the lockdown are required to

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declare paid holidays for all categories of employees.

- **Rajasthan**: the State government has allowed the private establishments to function on all days in a week. However, this relaxation is subject to employers complying with certain conditions such as – arrangements should be made to ensure each employee gets at least one day off in a week; working hours should be 9 hours in a day and 48 hours in a week; and wages should be paid for the overtime hours worked, etc.
- **Odisha**: the State government has allowed certain relaxations for factories relating to weekly hours, daily hours, interval of rest, etc. Some relaxations include - (i) no 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. Note that this is a relaxation from the general working hour restriction of 9 hours per day and 48 hours per week; (ii) the periods of work of 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 30 minutes. Further, it is clarified that no female worker shall be allowed to work in factory between 7 p.m. to 6 a.m. (unless specifically permitted by government), and overtime wages should be paid to employees for the additional hours of work performed by them (which is capped at 24 hours per week).
- **Madhya Pradesh**: By way of an amendment to the Madhya Pradesh Industrial Employment (Standing Orders) Act 1961 (**SO Act**), the State government has exempted establishments having 100 or less employees / workers from the applicability of SO Act. Further, the State government has also granted relaxations in terms of - extending the validity of licenses granted under the Contract Labour (Regulation & Abolition) Madhya Pradesh Rules, 1973 for the period of contract for which the application was made; exempting all factories in the State from the applicability of Factories Act, 1948 for the next 1000 days (except for certain provisions related to safety and overtime wages), etc. Further, new industries which will start production for the first time in the next 1000 days will be exempted from the applicability of industrial disputes laws (except for certain provisions related to lay-off and retrenchment).
- **Uttar Pradesh**: By way of an ordinance, the State government has exempted all factories and establishments engaged in manufacturing process from the operation of all labour laws for a period of 3 years. However, this exemption is subject to compliance with certain conditions, which includes *inter-alia*, that - the name and details of all workers should be entered electronically in attendance register; workers should not be paid less than minimum wages, the payment of wages should be credited in workers bank accounts; and spread over of the work should not more than 12 hours in a day, etc.
- **West Bengal**: the State government has extended the last date for filing return in Form-III under West Bengal State Tax on Professions, Trades, Callings and Employments Act, 1979 for the year ending 31 March 2020, till 30 September 2020 (electronically) and 7 October 2020 (in paper form).
- **Chandigarh**: the government has granted several relaxations to factories relating to weekly hours, daily hours, interval of rest, etc. for a period of 3 months (i.e. till 2 September 2020). Some relaxations include - (i) no 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. Note that this is a relaxation from the general working hour restriction of 9 hours per day and 48 hours per week; (ii) the periods of work of 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 30 minutes. Further, it is clarified that no female worker shall be allowed to work in factory between 7 p.m. to 6 a.m.

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- Employers of shops and commercial establishments in Chandigarh (which are registered under the Punjab Shops and Commercial Establishments Act, 1958) are allowed to keep their outlets operational on all days of a week for a period of 3 months (i.e. 8 September 2020). This relaxation is however subject to certain conditions, which includes - (a) compliance with all provisions of that law in relation to working conditions, rest interval, weekly off, etc; (b) opening and closing hours of the establishments remains the same throughout the week as notified by Chandigarh Administration from time to time; (c) rotation of employees is done in order to ensure that each employee gets a mandatory weekly off.

*More...*
*More...*
*More...*
*More...*
*More...*

INDIA

15,18 MAY

2020

## Reduction in the rate of provident fund (PF) contributions

The Indian government has announced a relief package to support businesses in India against the economic effects of COVID-19. Under the package -

a. (a) the Indian government will make PF contributions (of 24% of the employee's basic wages, i.e. 12% employers' contribution and 12% employees' contribution) for March-July 2020. This benefit is available only for small establishments having up to 100 employees, of which 90% or more earn below INR 15,000 per month. Thus, this would not be applicable if more than 10% employees at the establishment earn above INR 15,000. Establishments eligible for this benefit do not have to make any separate application to receive the benefit. The online PF portal will automatically send a communication to the covered employer's accounts, requiring them to file an electronic challan cum receipt (ECR). Such covered establishments should disburse wages to employees without making any PF deductions. Upon filing of the ECR (and submitting some declarations), the online PF portal will automatically remit the 24% contribution amount.
b. for establishments not covered under (a), the rate of PF contributions will be reduced from the existing 12% rate (for employer and employee each) to 10% (each for employer and employee contributions). This reduction will be in effect till for the contribution-periods of May to July 2020.

*More...*
*More...*
*More...*

INDIA

21 MAY

2020

## Instructions for commencement of domestic air travel, safety measures to be followed by passengers, and specific operating guidelines for airlines.

The Indian government has permitted domestic airline operations with effect from 25 May 2020. Further to this, the Ministry of Civil Aviation (**MoCA**) has issued instructions for commencement of airline operations, and measures to be followed by air passengers. The MoCA instructions inter alia provide that –

- a self-declaration or the Aarogya Setu app status would be obtained from passengers to confirm that the passenger is free of COVID-19 symptoms.
- passengers will be required to wear face masks.
- no physical check-in at the airport counters will be done and only passengers with confirmed web-check in shall be allowed to enter the airport, etc.
- passengers should report to the airport at least two hours before the departure.
- In Annexure II, the MoCA has prescribed detailed guidelines to be followed by air passengers - this covers obligations on individuals

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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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commencing from the point of origin to the airport, before entering the terminal building, security checks, boarding, while traveling in the aircraft, post-arrival activities (such as, baggage collection and exit from the airport).

*More...*

INDIA
24 MAY
2020

## Guidelines for domestic travel (air/train/inter-state bus travel)

Pursuant to the resumption of domestic air travel and road transport, the MoHFW has released guidelines to be followed by persons undertaking travel within the country. The measures under these guidelines *inter-alia* include that - all passengers should download the *Aarogya Setu* app on their mobile devices; during boarding and travel, all passengers should use face covers/mask and follow hand hygiene, respiratory hygiene and maintain environmental hygiene, etc.

Further, asymptomatic passengers will be permitted to go with the advice that they shall self-monitor their health for 14 days. But those found symptomatic will be isolated and taken to the nearest health facility, for further assessment.

*More...*

INDIA
30 MAY
2020

## 'Unlocking India' (Phased relaxation of lockdown restrictions imposed for containment of COVID-19).

On 24 March 2020, the Ministry of Home Affairs (**MHA**) had ordered a nationwide lockdown of 21 days between 25 March 2020 14 April 2020 (Lockdown 1.0) for the containment of COVID-19 outbreak. The lockdown was subsequently periodically extended from 15 April 2020 till 3 May 2020 (Lockdown 2.0), 4 May 2020 till 17 May 2020 (Lockdown 3.0), 18 May 2020 till 31 May 2020 (Lockdown 4.0). In each of these lockdown phases, the government had restricted the operations of certain select activities. However, currently, the government has adopted the strategy of 'unlocking' the restrictions. As per the MHA order and guidelines that are effective between 1 June 2020 and 30 June 2020 (**Unlock 1.0 MHA Guidelines**) the lockdown has been extended only in the 'containment zones' till 30 June 2020.

Under the Unlock 1.0 Guidelines, the MHA has generally permitted all activities to operate - however, certain activities that were previously prohibited such as, hospitality services, shopping malls, educational institutions, international air-travel, etc. will be allowed to reopen in a phased manner (with consultation and feedback from respective State governments). However, the State governments have the ability to prohibit certain activities, even in areas outside containment zones or impose the necessary restrictions based on their assessment of the local situation.

In-line with the relaxations under the MHA's Unlock 1.0 Guidelines, the State governments in most locations have allowed private offices and manufacturing units to operate at 100% staff capacity (provided they are situated in non-containment zones). However, in locations where there is a high-incidence of COVID-19 (such as, Maharashtra and Tamil Nadu), the governments are taking a cautious and controlled approach - with some States even returning to a phase of complete lockdown. For example, in Mumbai and Pune, private offices can operate with only up to 10% staff or 10 persons, whichever is more. From 19 June 2020, the city of Chennai (Tamil Nadu) has been completely 'locked' till 30 June 2020, and only a few 'essential service providers' are allowed to operate. Among others, telecommunications, essential IT/ ITES establishments and factories which require continuous processes or manufacture essential commodities are considered as exempted from the complete lockdown and are hence, allowed to operate (with minimal staff capacity).

*Continued on Next Page*

INDIA
30 MAY
2020

Further, the Unlock 1.0 guidelines have prescribed the 'National Directives for COVID-19 Management' (**National Directives**) that are required to be followed throughout India, with specific directives for employers to comply with. The National Directives *inter-alia* mandate -

- compulsory usage of face covers (masks) at the workplace;
- practising work-from-home as far as possible;
- ensuring thermal scanning at all entry exit points of the workplace;
- having staggered work / business hours, lunch breaks, and shifts;
- providing hand wash and sanitizers;
- frequently sanitizing the workplace, all common facilities and points which come into human contact (such as door handles) including between shifts.

Further, the Unlock 1.0 MHA Guidelines provide that employers should use best efforts to ensure that the 'Aarogya Setu' application is installed on the phones of all employees. Persons aged 65+, persons with co-morbidities, pregnant women and children below 10 years of age are generally advised to stay at home. Further, there is also a nationwide curfew each night between 9 p.m. to 5 a.m. (with extensions of these curfew timings in some States).

*More...*
*Maharashtra notifications*
*Maharashtra notifications*
*Tamil Nadu notifications: A copy of the Tamil Nadu complete lockdown order (dated 16 June 2020) is attached in the email. Amendment to the Tamil Nadu complete lockdown order (dated 17 June 2020)*

INDIA
4 JUN
2020

## SOP on preventive measures to contain the spread of COVID-19 in offices.

The Ministry of Health and Family Welfare (**MoHFW**) has released a Standard Operating Procedure (**SOP**) to be followed by offices to contain the spread COVID-19 and also respond to positive cases in a timely manner.

The SOP provides for - (a) generic preventive measures to be followed at all times; (b) measures specific to offices; (c) measures to be taken on occurrence of a COVID-19 positive case; and (d) disinfection processes to be followed in case of occurrence of a suspect/confirmed case.

In case a person appears symptomatic at the workplace, the SOP *inter-alia* provides that –

- The ill person should be isolated in a room at the workplace to maintain distance from others at the workplace.
- The nearest medical facility (hospital/clinic) or state/district helpline should be informed.
- If there are one or two cases reported, the disinfection procedure will be limited to places/areas visited by the patient in past 48 hrs. There would be no requirement to close the entire office building/halt work in other areas of the office and work can be resumed after disinfection as per laid down protocol.
- However, if there is a larger outbreak, the building/block would have to be closed for 48 hours after thorough disinfection. All the staff will work from home, till the building/block is adequately disinfected and is declared fit for re-occupation.

Following this, State governments have also issued SOPs imposing similar obligations and have setup specific helplines for reporting. It is also relevant to note that the SOPs of some State governments could contain more stringent guidelines, as per which the workplace needs to be temporarily shut down in case a positive case is detected.

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INDIA

12 JUN

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## Ficus Pax Private Limited vs Union of India. *(W.P. (C) No. 10983 of 2020)*

On 29 March 2020, the MHA had ordered employers to pay full salaries for the period the establishments were closed during the lockdown. Soon after, several employer associations filed petitions before the Supreme Court (**SC**) and various high courts, challenging the validity of this order. Although the MHA 29 March 2020 order has not been in force since 18 May 2020, the litigations continue.

In one of the petitions, the SC has passed an interim order, as per which employers and employees can independently (or with the involvement of labour authorities) enter into negotiations to resolve disputes around salary payments (for the period their establishments were closed during the lockdown).

*More...*

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INDONESIA

**10 JAN**

2020

## 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.

INDONESIA

**17 MAR**

2020

## Protection of Employees and Business Continuity in the Face of COVID-19

In response to the COVID-19 pandemic, the Indonesian Minister of Manpower (MOM) issued MOM Circular Letter No. M/3/HK.04/III/2020 dated March 17, 2020, regarding the Protection of Employees and Business Continuity in Preventing COVID-19. This circular letter was issued to all governors in Indonesia with instructions to work toward the prevention and handling of COVID-19 cases in the workplace and to protect the wages of employees during the pandemic. These instructions include:

**Prevention and handling of COVID-19 cases in the workplace:**

i. Provide guidance for and supervision of the implementation of regulations in the field of Occupational Safety and Health (*Kesehatan dan Keselamatan Kerja* or "K3").
ii. Register and report to the relevant agencies every suspected COVID-19 case in the workplace and instruct all companies to anticipate the potential spread of COVID-19 by taking preventative measures.

**Protection of wage of employees during the pandemic:**

i. Employees being monitored for COVID-19 or suspected to be ill with a potential case of COVID-19 or who are unable to come to work due to illness must receive their full wages.
ii. Any change to the amount of employees' wages is subject to an agreement between the company and its employees.

INDONESIA

**8 APR**

2020

## Suspension of Services Related to the Utilization of Foreign Workers

In the wake of COVID-19 and its declaration as a national emergency, the Indonesian Minister of Manpower (MOM) suspended all services related to new applications for the utilization and licensing of foreign workers. MOM Circular Letter No. M/4/HK.04/IV/2020 dated April 8, 2020, regarding Services for the Utilization of Foreign Employees in Relation to the Prevention of COVID-19 was issued to all governors in Indonesia to announce the suspension of these services.

This circular letter remains in effect until the pandemic is declared over by the Indonesian government.

INDONESIA

**20 MAY**

2020

## Public Housing Savings Program

The Government of Indonesia (GOI) has issued GOI Regulation No. 25 Year 2020 dated May 20, 2020, regarding Organization of Public Housing Savings. This government regulation was issued to implement Law No. 4 Year 2016 regarding Public Housing Savings (*Tabungan Perumahan Rakyat* or "Tapera").

Tapera is a savings program that allows participants to accrue benefits in the form of funds to be used for housing. The funds and investment proceeds may also be withdrawn after the participation period has ended. Tapera is set at 3% of employees' monthly wage, with 0.5% paid by the employer and the remaining 2.5% paid by the employee. All private sector employees have been required to participate in the Tapera program beginning May 2027.

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INDONESIA
28 MAY 2020

## Protection of Employees Against COVID-19 through the Work Accident Social Security Program

The Indonesian Minister of Manpower (MOM) issued MOM Circular Letter No. M/8/HK.04/V/2020 dated May 28, 2020, regarding Protection of Employees Against COVID-19 through the Work Accident Social Security Program. This circular letter was issued to all governors in Indonesia to ensure that high-risk employees receive insurance coverage for work-related illnesses or injuries under the BPJS Employment national social security program.

This circular letter categorizes employees at high risk of contracting COVID-19 as those involved in caring for patients in hospitals, health facilities or other places designated by the government to treat COVID-19 patients. These employees include (i) medical personnel and health personnel, (ii) support personnel such as cleaning staff, laundry workers and other employee who face risks, and (iii) volunteers.

INDONESIA
5 JUN 2020

## COVID-19 Prevention in the Workplace During the New Normal

Officials in DKI Jakarta province issued health and safety protocols for companies as workplaces reopen and employees return to work as part of the transition to what is being called the "new normal". These protocols are contained in Head of the Manpower, Transmigration and Energy Service Office of DKI Jakarta Province Decree No. 1363 Year 2020 dated June 5, 2020, regarding Protocols for COVID-19 Prevention and Control in Offices/Workplaces During the Transitional Period to a Healthy, Safe and Productive Society (the "Decree"). The Decree requires all companies in Jakarta to (i) report the implementation of the protocols via bit.ly/bekerja-kembali; and (ii) sign an integrity pact agreeing to implement the measures in the Decree and then place the pact in a public area of the workplace where employees can read it.

This Decree contain 23 measures that companies must implement including limiting the number of employees present in the office/workplace to a maximum of 50% of the total number of employees.

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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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JAPAN
MAR
2020

## 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.

*More...*
*More...*
*More...*

JAPAN
1 APR
2020

## Equal pay for equal work

On April 1, 2020, the Fixed-Term and Part-Time Workers Act came into effect, and regulations relating to  equal pay for equal work were strengthened.

*More...*

JAPAN
1 APR
2020

## Amendment to the Civil Code of Japan

The revisions of the Civil Code came into effect on April 1, 2020.  The amendments include a number of changes to the contract law in Japan. For example, the rules of statute of limitations, defect liability, offset and service contracts were amended.

In relation to HR related matters, as a result of the revisions of the Civil Code and the Labour Standards Act, the statute of limitations for unpaid overtime allowances has changed from two years to three years. In the future, it will be changed to five years. In addition, the personal reference form (*mimoto hosho sho*) must be revised to satisfy the new requirements under the Civil Code.

JAPAN
1 JUN
2020

## Preventive measures for workplace bullying

In Japan, workplace bullying is a social problem. The Japanese government revised the Labor Measures Comprehensive Promotion Act in order to obligate employers to take measures to prevent workplace bullying. The amendments will apply to large sized enterprises from June 1, 2020, and will apply to small-medium sized enterprises ("SMEs") from April 1, 2022. However, SMEs must make efforts to prevent workplace bullying even before April 1, 2022.

*More...*

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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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MALAYSIA **5 MAR** 2020

## Reduction of Employee's portion of Statutory Contribution Rate of Employees Provident Fund

Through the Employees Provident Fund (Amendment of Third Schedule) Order 2020, with effect from April 2020 to December 2020, all employee statutory contribution for the Malaysian Employees Provident Fund was reduced from 11% to 7%. This new rate applies to those below 60 years old who are liable for contribution. This was one of the steps taken by the Malaysian Government as a part of its 2020 Economic Stimulus Package.

Notwithstanding, employees may elect to maintain the rates of 11%.

*More...*

MALAYSIA **16 MAR** 2020

## 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.

*More...*
*More...*

MALAYSIA **17 MAR** 2020

## Employment Retention Programme

In view of the widespread of the Novel Coronavirus in Malaysian, the Malaysian Social Security Organization ("SOCSO") 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.

*More...*

MALAYSIA **20 MAR** 2020

## 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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MALAYSIA

1 APR 2020

## 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.

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.

More...

MALAYSIA

27 MAY 2020

## Workers' Minimum Standards of Housing And Amenities Act 446 (Amendment) 2019

This Act serves as an amendment to the old Workers' Minimum Standards of Housing and Amenities Act 1990. In 2019, the legislative had passed the Act and was scheduled to take effect on 1 June 2020. However, a grace period of 3 months has now been extended to the employers, and the effective date is scheduled on 1 September 2020.

The amendments cover a minimum standard for space requirement for workers' accommodations, basic facilities for the housing and workers, and safety and hygiene elements to foreign workers in **all sectors**.

More...
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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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CONTRIBUTED BY: Shearn Delamore &Co.

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NEW ZEALAND
**5 MAR**
2020

## 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.

NEW ZEALAND
**14 APR**
2020

## Epidemic Preparedness (Employment Relations Act 2000 – Collective Bargaining) Immediate Modification Order 2020

The Employment Relations Act 2020 was amended for the duration of the Epidemic Notice to extend timeframes for collective bargaining, and to allow alternative ratification processes if the existing ratification process was impracticable during COVID-19.

*More...*

NEW ZEALAND
**14 APR**
2020

## Innovative Landscapes (2015) Ltd v Popkin [2020] NZEmpC 40

Ms. Popkin was terminated on the grounds of redundancy. On a claim for unjustifiable dismissal, she received an award of compensation in the Employment Relations Authority of $15,000. Innovative Landscapes claimed in the Employment Court that:

a. The remedies were excessive;
b. The termination was justified because of the company's financial position; and
c. The financial circumstances of the company should be considered when ordering compensation for hurt and humiliation.

While Chief Judge Inglis agreed that there were genuine reasons for the redundancy, the process was flawed in such a way that it resulted in an unjustifiable dismissal, not an unjustifiable disadvantage. As section 103A(5) provides that a Court must not determine a dismissal to be unjustified solely because of minor defects in the process, it must follow that where defects that are not minor and in fact caused unfair treatment of the employee, there can be a finding of unjustifiable dismissal based on procedural defects.

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NEW ZEALAND
14 APR 2020

The Court found that the financial circumstances of the employer should not be taken into account when awarding compensation for hurt and humiliation. As there is a mechanism in the Employment Relations Act 2000 for instalment payments where the employer is in a financial position that requires it, it must have been the intention of Parliament that that would be the only option for employers with financial difficulty.

More...

NEW ZEALAND
14 APR 2020

## Metropolitan Glass & Glazing Ltd v Labour Inspector [2020] NZEmpC 39

Metro Glass had a Short-Term Incentive Scheme (**STI Scheme**) which paid staff bonuses at the discretion of the company after certain criteria were met. Payments were specified to:

- Be at the discretion of the company, even if all criteria were met; and
- Not form part of the employee's gross earnings under the Holidays Act 2003 (Act).

The Employment Court found that the STI Scheme was not discretionary under sections 14(b)(i) and 5 of the Act, and fell under the category of productivity and incentive payments under section 14(a)(iv), and was therefore part of employees' gross earnings.

Although the STI Scheme was offered via letter and not in each employee's individual employment agreements, the Court interpreted "employment agreement" widely to include the terms of the STI Scheme.

Metro Glass also included in the 2017 version of the Scheme a clause that, as consideration for the Scheme, employees would widen their restraint of trade to cover all of New Zealand. This did not prevent the STI Scheme from becoming part of employees' gross earnings.

Parliamentary history was considered when defining what constitutes a "discretionary payment". The Court concluded that it should only cover gratuitous bonuses such as Christmas bonuses, not contractual arrangements such as the STI Scheme.

The bonuses were therefore to be included when calculating employees' holiday pay under the Act.

This has significant ramifications for businesses who offer incentive bonuses that they consider to be discretionary – it is likely that they will fall under section 14(a)(iv) and form part of the employee's gross earnings when calculating holiday pay.

The Court also found that there is only one approach available to an employer under the Act for dealing with paying employees not yet entitled to holiday pay when the employer commences a closedown period. That is, they must be paid 8% of their gross earnings per section 34(2) of the Act, and then leave can be taken in advance for some or all of the closedown period subject to agreement between employee and employer under section 34(4). Metro Glass's policy did not line up with this.

The case is being appealed to the Court of Appeal by Metro Glass at the time of writing.

More...

NEW ZEALAND
7 MAY 2020

## Leota v Parcel Express Ltd [2020] NZEmpC 61

Mr Leota was a driver for courier company Parcel Express. Leota asked the Court for a declaration that he was an employee. Parcel Express argued that he was an independent contractor.

While the agreement that Mr Leota had entered into stated he was an independent contractor, English is not Mr Leota's first language, and he did not have a grasp of the legal differences between being an employee or an independent contractor. The way in which a working relationship is described is not determinative. The Court looked at the control held by Parcel Express

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7 MAY 2020

including the predetermined run given to Mr Leota, his inability to choose his customers, change his days of work and take leave without approval, as well as the fact he had to be at the Parcel Express depot at specific times of each day. The Court found that the scales were firmly tilted in favour of a finding of Mr Leota's employment status, and the Court found he was an employee. Parcel Express was unable to show that Mr Leota truly enjoyed any of the perceived benefits of being an independent contractor, and in reality he was at a disadvantage by being classed as a contractor.

*More...*

NEW ZEALAND

16 MAY 2020

## COVID-19 Response (Further Management Measures) Legislation Act 2020:

Schedule 19 adds provision for workers on parental leave to return to work for a temporary period to respond to circumstances relating to the outbreak of COVID-19, without forfeiting the benefits of their remaining parental leave (amending the Parental Leave and Employment Protection Act 1987).

The amendment applies retrospectively from 25 March 2020 and will be repealed after two years from the end of the COVID-19 response period, which ends three months after the date the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

The worker's role must not be able to be reasonably able to be filled by someone else, or there must be higher demand than usual for the role.

The amendment allows the worker's parental leave payments and parental leave to pause during their return to work, resuming once they return to parental leave, and continuing for the full period that the worker would have been entitled to payments or leave were it not for the return to work. However, time will continue to run for the purpose of preterm baby payments and subsequent children provisions

*More...*

NEW ZEALAND

27 JUN 2020

## Employment Relations (Triangular Employment) Amendment Act 2019:

This Act came into force on 27 June 2020. This Act amends the Employment Relations Act 2000 and allows employees or employers to apply to the Employment Relations Authority to join a controlling third party to personal grievance proceedings. The Authority can also join a controlling third party to personal grievance proceedings where

A controlling third party is defined as a party who has a contract with an employer under which an employee of the employer performs work for that party, and that party exercises, or is entitled to exercise, control or direction over the employee that is similar to the control or direction that an employer does our is entitled to exercise. This will cover the arrangements of many labour hire workers, temporary workers and secondees.

The Authority is required to grant the application to join the controlling third party where:

- There is an arguable case that the party is a controlling third party;
- There is an arguable case that the controlling third party's actions caused or contributed to the grievance; and
- The notice requirements of section 115A have been complied with. These requirements are:
  - » The employee has notified the controlling third party within 90 days of the alleged personal grievance occurring; or
  - » The employer has notified the controlling third party within 90 days of the employee raising the personal grievance with the employee.

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Click here to view **2019 edition**

**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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11 JUN 2020

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23 JUN 2020

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Click here to view 2019 edition

**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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**Looking Forward**

CONTRIBUTED BY: ROMULO — ROMULO MABANTA BUENAVENTURA SAYOC & DE LOS ANGELES

SINGAPORE
**1 JAN**
2020

## 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<br>Max. S$204,000 | Min. S$76,000<br>Max. S$225,000 |
| Compensation limit for total permanent incapacity | Min. S$88,000<br>Max. S$262,000 | Min. S$97,000<br>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...*

SINGAPORE
**6 JAN**
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 ("TGFEP")

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 TGFEP. 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.

*More...*

SINGAPORE
**14 JAN**
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.

*More...*
*More...*

LOOKING BACK

SINGAPORE
**14 JAN** 2020

## 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.

*More...*

SINGAPORE
**15 JAN** 2020

## 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.

*More...*
*More...*

SINGAPORE
**21 JAN** 2020

## 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.

More...

SINGAPORE 13 FEB 2020

## 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.

More...

SINGAPORE 18 FEB 2020

## 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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More...
More...

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**Good to know:** follow developments

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LOOKING BACK

SINGAPORE
18 FEB 2020

## 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.

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...*

SINGAPORE
3 MAR 2020

## 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.

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...*

SINGAPORE
3 MAR 2020

## 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 Minster for Manpower Josephine Teo ("**MOS**") announced in her COS speech that this wage ceiling has increased from S$15,000 to S$20,000.

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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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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**Good to know:** follow developments

**Note changes:** no action required

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SINGAPORE
**3 MAR**
2020

## Work pass policies tightened

On 3 March 2020, the Minster 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.

*More...*
*More...*

SINGAPORE
**11 MAR**
2020

## 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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SINGAPORE

16 MAR 2020

## 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.

*More...*
*More...*

SINGAPORE

31 MAR 2020

## High Court confirms admissibility of Coroner's Certificate in work injury compensation hearing

On 31 March 2020, the High Court issued its decision in *Great Eastern General Insurance Ltd and another v Next of Kin of Md Sharif Hossain Rana Abdul Malek* [2020] SGHC 64. This was an appeal on an Assistant Commissioner's ("**AC**") decision allowing for compensation under the Work Injury Compensation Act (Cap 354) ("**WICA**") to an employee who passed away after a piece of timber fell on him at a worksite. The employer and insurer appealed on the basis that (i) the Coroner's Certificate was inadmissible in WICA proceedings based on Section 45 of the Coroners Act (Cap 63A) ("**Coroners Act**"), and (ii) there was insufficient evidence that the cause of death was the impact by the falling timber.

The High Court, upon examining the provisions of the Coroners Act, held that the appellants' reliance on Section 45 of the Coroners Act was misconceived. While the Coroner is not to decide on questions of criminal, civil and disciplinary liability at an inquiry, the Coroner's Certificate may be admitted in judicial proceedings (including WICA proceedings) as evidence of the cause of death. On the evidence, it was more likely than not that the cause of death was the impact of the falling timber. While the expert report adduced by the appellants points towards an alternative cause of death, the Court highlighted that that the report noted that this alternative cause was a rare one for which the deceased did show many symptoms of. nofiyAccordingly, the appellants failed to rebut the evidence that the cause of death was the impact by the falling timber.

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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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SINGAPORE 1 APR 2020

## MOM extends temporary scheme allowing transfer of WP holders between employers

Since 2 March 2020, firms in the manufacturing and services sectors were allowed, under a six-month temporary scheme, to hire existing PRC WP holders with the agreement of their employers without the workers leaving Singapore. On 1 April 2020, MOM announced that the scheme will be expanded as follows:

- Inter-sectoral transfer of WP holders will be allowed for all sectors; and
- Transfer of foreign workers whose WPs are within 40 days of expiry will be allowed for all sectors.

The scheme lasts till 31 August 2020. Hiring firms must meet any prevailing criteria applicable to their respective sectors.

*More...*

SINGAPORE 6 APR 2020

## Employers strongly encouraged to grant additional paid leave to working parents with childcare needs during COVID-19 pandemic

In its press reply dated 6 April 2020, MOM stated that in view of the JSS pay-outs, employers are strongly encouraged to provide additional paid leave to working parents with childcare needs, particularly those affected by preschool closures. Employers should also allow these working parents to tap on their childcare or annual leave entitlements.

*More...*

SINGAPORE 7 APR 2020

## The MOM revises mandatory notification process on cost-cutting measures

With effect from 12 March 2020, the MOM requires all employers who implement cost-cutting measures exceeding a certain threshold to notify the MOM. The process was revised on 7 April 2020, following which employers are required to notify MOM if they:

- are registered in Singapore;
- have at least 10 employees; and
- implement cost-cutting measures resulting in (i) more than 25% reduction in gross monthly salary for local employees, or (ii) more than 25% reduction in basic monthly salary for foreign employees.

The notifications must be made within seven calendar days after the measures are implemented.

*More...*

SINGAPORE 9 APR 2020

## Court of Appeal sets out causation principles for breaches of fiduciary duties

On 9 April 2020, the Court of Appeal issued its decision in *Sim Poh Ping v Winsta Holding Pte Ltd and another and other appeals* [2020] SGCA 35. The matter involved the breach of fiduciary duties by several directors of a group company ("**Winsta Group**"), namely the diversion of corporate opportunities away from the Winsta Group, entering into interested party transaction between the Winsta Group and their own corporate vehicles and turning a blind eye to these breaches by other directors.

The Court of Appeal upheld the findings of the High Court on the directors' breach of their fiduciary duties. On the issue of the quantum of equitable compensation, Court of Appeal observed that various approaches have been taken by the Singapore High Court with respect to causation for non-custodial breach of fiduciary duties (i.e. a breach not involving any damage to or loss of property in the custody of the fiduciary):

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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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SINGAPORE
9 APR 2020

- Approach 1: Under this strict approach (also known as the rule in *Brickenden*), a fiduciary in breach is not permitted to argue that the company would have suffered the damage in any event;
- Approach 2: The plaintiff company is required to show that the damage in question was caused by the fiduciary in breach; and
- Approach 3: This is a hybrid approach where the burden of proof is reverse such that the fiduciary is required to prove that the damage suffered by the plaintiff company would have occurred in any event.

The Court of Appeal rejected Approaches 1 and 2 in favour of Approach 3. Under Approach 3, the burden of proof on showing there was a breach of fiduciary duties remains with the plaintiff company but the fiduciary is given the opportunity to prove that the plaintiff company would have suffered the loss in any event, even absent the breach, and therefore strikes the appropriate balance between the parties.

*More...*

SINGAPORE
4 MAY 2020

## Jobs Bank advertisement not required for hiring a Personalized Employment Pass (“PEP”) holder

In response to a Parliamentary Question, the Minister of Manpower clarified that the requirement under the Fair Consideration Framework for employers to advertise job vacancies on MyCareersFuture.sg and consider the local workforce fairly before hiring an Employment Pass (“**EP**”) holder does not apply to PEP holders. PEP holders are however required to notify MOM when they find employment.

*More...*

SINGAPORE
6 MAY 2020

## Tripartite partners to release advisories on ensuring sustainability of outsourced sectors affected by COVID-19

On 6 May 2020, MOM announced that the tripartite partners will publish Tripartite Advisories to guide service buyers and providers on measures to ensure sustainability of outsourced sectors affected by COVID-19. It published its TA on Ensuring Sustainability of the Security Sector together with the press release. The tripartite partners had earlier published its TA on Ensuring Sustainability of the Cleaning Sector on 17 April 2020.

Amongst others, the TAs call for service providers to comply with employment regulations to ensure the well-being of their employees, and for fair remuneration of service workers.

*More...*
*More...*
*More...*

SINGAPORE
20 MAY 2020

## MOM issues advisory on retrenchment benefit payable to retrenched employees as a result of business difficulties due to COVID-19

On 20 May 2020, MOM issued an advisory on the payment of retrenchment benefits to employees who were let go due to COVID-19. The key points stated in the advisory are as follows:

- Employers should head the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment and consider implementing the cost-saving measures outlined therein before turning to retrenchment as a last resort.
- Employers in sound financial position should continue to pay retrenchment benefit according to existing agreements or prevailing norms (currently between 2 weeks and 1 month salary per year of service).
- Employers whose business are adversely affected should renegotiate with its employees and/or union for a fair retrenchment benefit linked to the employee’s years of service.

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- Employers in severe financial difficulties despite government support measures should negotiate with their unions (where applicable) for a mutually acceptable retrenchment benefit package. Non-unionised employers could provide a lump sum of one to three months of salary as retrenchment benefit, instead of linking retrenchment benefits to the employees' years of service. The lump sum must take into consideration the employer's financial position and JSS pay-outs received.
- Extra consideration and generosity should be afforded to lower wage employees.

*More...*

SINGAPORE 26 MAY 2020

## Government provides additional funding support for employers in view of COVID-19 Pandemic

On 26 May 2020, the Finance Minister delivered his speech on the Fortitude Budget which features additional funding support for employers affected by COVID-19. The key initiatives benefiting employers are as follows:

**Enhancements to Jobs Support Scheme ("JSS")**

Under the JSS, the Government will co-fund between 25% to 75% of the first $4,600 of gross monthly wages of local employees. The base tier of support varies with different business sectors. Following the Fortitude Budget, the JSS has been extended by one month to cover wages paid from October 2019 to August 2020. Employers allowed to resume business operations following the easing of Circuit Breaker measures on 2 Jun 2020 will revert to receiving their base tier of support. Businesses not allowed to resume operations immediately on 2 Jun 2020 will continue to receive JSS at the enhanced level of 75% of the first $4,600 of gross monthly wages until August 2020 or until they are allowed to resume operations, whichever is earlier. The JSS payouts will be calculated automatically from the employer's CPF contributions and issued in four tranches: April, May, July and October 2020.

The Finance Minister also announced that the sector classification for the different JSS payout tiers have been revised. Amongst others, the qualifying criteria for 75% wage support has been expanded for businesses in the aviation and aerospace sector, the tourism, hospitality, conventions and exhibitions sector, and the built environment sector.

**Enhancements to SkillsFuture Mid-Career Support Package ("SMCSP")**

The SMCSP provides salary support to businesses which hire local workers who had undergone eligible reskilling or training programmes. Moving forward, the SMCSP will cover the hiring of local workers of all ages (previously only applicable to workers aged 40 and above). Employers hiring an eligible local worker aged 40 and above can now receive salary support of 40% (up from 20%) for six months, capped at $12,000 (up from $6,000) in total for each eligible worker. Employers hiring an eligible local worker aged below 40 can now receive salary support of 20% for six months, capped at $6,000 in total for each eligible worker. The list of eligible reskilling and training programmes has also been expanded.

**Other cost relief measures – foreign worker levy and rebate extended, CPF increases deferred**

For businesses not allowed to resume operations on 2 Jun 2020, existing foreign worker levy waiver and rebates will be extended for up to two months. The rate of levy waiver will be 100% in June 2020 and 50% in July 2020, and the amount of rebate will be $750 in June 2020 and $375 in July 2020. This is in addition to the levy waivers for the months of April and May and two previous rounds of rebates announced on 6 and 23 April 2020.

The planned increase in CPF contribution rates for senior workers (and accordingly the CPF Transition Offset Scheme) will also be deferred from 1 January 2021 to 1 January 2022.

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**Good to know:** follow developments

**Note changes:** no action required

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## Requirements for Safe Management Measures ("SMM") for resumption of business after the circuit breaker

On 9 May 2020, the tripartite partners (i.e MOM, National Trades Union Congress and Singapore National Employers Federation) issued details of SMM which all employers must comply with before they may resume operations. The SMM was further updated on 1 June 2020. The updated SMM requires employers to, amongst others:

- **Appoint a SMO and implement a detailed SMM monitoring plan.** The SMO is to assist in the implementation, coordination and monitoring of SMM.
- **Actively enable employees to work from home.** WFH should be the default arrangement and employers should review work processes and provide the necessary equipment for employees to do so.
- **Implement safe distancing measures at work and the workplace.** Work and break hours should be staggered, and shift or split team arrangements should be implemented where suitable. Precautions must be taken to ensure a 1 metre physical spacing between persons at all times.
- **Ensure that necessary personal protective equipment ("PPE") be worn at the workplace.** Employers must ensure that all onsite personnel, including employees, visitors and suppliers, wear a mask and any other necessary PPE at all times at the workplace. Employers must ensure that they have sufficient masks for all employees.
- **Control access at the workplace.** Employers must use the SafeEntry visitor Management system to record the entry and exit of all personnel at the workplace. These persons must declare via SafeEntry or other means that they are not under SHNs or QOs, have not had contact with a confirmed COVID-19 case in the past 14 days and do not exhibit fever or flu-like symptoms before they are allowed to enter.
- **Ensure hygiene at the workplace.** Employers must ensure regular cleaning and provide cleaning and disinfecting agents at specified areas.
- **Conduct checks to detect and manage unwell cases.** Employers must conduct regular checks for temperature and respiratory symptoms for all onsite employees and visitors twice daily or where relevant. Employers must prepare evacuation plans for unwell personnel. Employees who have visited a clinic must submit their medical certificates and any COVID-19 related medical records to the employer, and the employer should discourage these employees from clinic hopping and require them to closely monitor their health before returning to the workplace.
- **Manage confirmed cases.** Employers must vacate and cordon off the immediate section of the workplace premises where the confirmed case worked and carry out thorough cleaning of areas exposed to confirm cases in accordance with the National Environment Agency's guidelines.

In addition to the SMM which is applicable to all businesses, employers must also abide by relevant sector specific requirements which can be found on the GoBusiness website.

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## MND-MOM to introduce new dormitories with improved living standards for migrant workers

On 1 June 2020, MOM issued a joint media release with the Ministry of National Development ("**MND**") on plans to create additional housing spaces for migrant workers to reduce density in dormitories. The following spaces will be created to house about 60,000 workers in the short to medium term:

- Quick Build Dormitories ("**QBDs**") lasting two to three years;
- Temporary fitting out of currently unused state properties such as former schools and vacant factories; and
- Construction Temporary Quarters built by contactors to house workers at worksite.

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In the long term, it is planned that these short to medium term housing spaces will be replaced by purpose-built dormitories.

The following improved living standards will be piloted at the new QBDs:

| Standards | Current | Improved |
|---|---|---|
| Living space | ≥ 4.5sqm per resident, including shared facilities | ≥ 6sqm per resident, not including shared facilities |
| Occupancy per room | No maximum beds per room. | ≤ 10 beds per room. Use of single deck bed only, with 1m spacing between beds |
| Toilets | ≥ 1 set of toilet, bathroom, sink and urinal: 15 beds | ≥ 1 set of toilet, bathroom and sink to 5 beds |
| Sick bay and isolation facility | ≥ 1 sick bay bed per 1,000 bed spaces. Additional isolation spaces (to be stood up if needed) at 19 beds per 1,000 bed spaces. | ≥ 15 sick bay beds per 1,000 bed spaces. Additional isolation spaces (to be stood up if needed) at 10 beds per 1,000 bed spaces |

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SINGAPORE 1 JUN 2020

## The MOM requires employers to allow relocation and transfer of foreign workers to receive levy waiver and rebate

As part of the conditions for the waiver of foreign workers levy and rebate announced by the Government on 26 May 2020, the MOM will require employers to accept two conditions:

- Employers must allow the MOM to move foreign workers cleared of COVID-19 to a cleared dormitory; and
- Employers must allow the MOM second or transfer workers to another company in need of workers but whose own worker are in dormitories which have not been cleared.

Employers are required to make an online declaration by 10 June 2020 that they accept these conditions.

*More...*

SINGAPORE 4 JUN 2020

## Employers who disguise retrenchment may risk withdrawal of government support

Minister of Manpower, Josephine Teo, told Parliament that employee who disguise retrenchment to sidestep their obligations to give retrenchment benefit may be penalised. This may include, amongst others, the withdrawal of work pass privileges and governmental support such as the Jobs Support Scheme, which co-pays part of the salary of workers. She also stated that the MOM and Tripartite Alliance for Fair and Progressive Employment Practices will also identify companies whose planned wage cuts seem excessive and intervene where necessary.

*More...*

SINGAPORE 4 JUN 2020

## Employers remain responsible for work injuries suffered by employee while working from home ("WFH")

In response to a Parliamentary Question, the Minister of State for Manpower clarified that WFH arrangements do not change an employer's responsibility for work injury compensation ("**WIC**"). The key is in establishing that the injury arose while the employee is doing work at home and not while performing non-work activities. WIC insurance purchased by employers will cover WFH injuries.

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SINGAPORE 5 JUN 2020

## MOM to start taking enforcement actions against employers who do not pay salaries electronically

In response to a Parliamentary Question, the Minister of Manpower stated that MOM will in due course take enforcement action for non-compliance with the requirement for employers of workers living in dormitories to pay their salaries electronically. While the vast majority of employers have complied, a small number of employers had previously declared their inability to make electronic payments due to reasons such as technical difficulties.

*More...*

SINGAPORE 9 JUN 2020

## MOM issues updated advisory on salary and leave arrangements

On 9 June 2020, MOM issued an updated advisory on salary and leave arrangements ("**Salary Advisory**") post-circuit breaker.

Local Employees

Under the Salary Advisory, employers whose businesses are operating must pay local employees working fully their prevailing salaries, including the employer's Central Provident Fund ("**CPF**") contributions.

Employers who cannot resume business operations should, as far as possible pay a baseline monthly salary (including employer's CPF contributions) to. For employees who are assigned work, those earning up to $4,600 should be paid their prevailing salaries (including employer's CPF contributions), while those earning more than $4,600 should be provided a baseline monthly salary (including employer's CPF contributions) and additional pay for work done on a pro rata basis, subject to a cap of his prevailing salary. Employers should consider the following measures to make up for any shortfalls from the employee's prevailing salary:

- Send the employee for training courses approved for Absentee Payroll Funding from the Government;
- Apply for Flexible Work Schedule ("**FWS**");
- Allow the employee to consume his existing leave entitlements; or
- Grant additional paid leave to the employee.

The Salary Advisory states that employers should not act unilaterally in putting their local employees on prolonged no-pay leave without any baseline salary regardless of any financial difficulties.

Foreign Employees

Foreign employees working full time must also be paid their prevailing salaries. Employers who cannot resume business fully or face poor business prospects should also endeavour to pay prevailing salaries by taking the follow measures:

- Provide the foreign employee with relevant training and upskilling;
- Apply for Flexible Work Schedule ("**FWS**");
- Allow the employee to consume his existing leave entitlements; or
- Redeploy the affected foreign employee to another role within the company;

If the above is not possible, employers should only place the foreign employee on extended no-pay leave with his consent in writing, or implement wage reductions by mutual agreement with the employee and union (where applicable).

*More...*

SINGAPORE 17 JUN 2020

## Ministry of Manpower issues fines to employers and shut down workplaces for flouting Safe Management Measures ("SMM")

Following the lifting of the circuit breaker measures on 2 June 2020, the MOM had imposed the SMM to be implemented in the workplace to reduce the transmission of COVID-19. As part of its enforcement measures, the MOM had conducted inspection of workplaces to ensure that the SMM had been implemented and detected a number of lapses in the workplace. Fines were

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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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imposed on 52 employers. Seven workplaces were also ordered to shut down for multiple lapses with six of them having many employees at the workplace notwithstanding that they could work from home. Employers of these seven workplaces have worked with the MOM to correct their work practices and had their stop work orders lifted in about a week.

*More...*

SINGAPORE 22 JUN 2020

## New licence conditions for employment agencies ("EAs") to strengthen fair hiring

The Fair Consideration Framework ("**FCF**") requires that the local workforce be fairly considered for jobs. Previously, the FCF requirements as set out in the Tripartite Guidelines on Fair Employment Practices ("**TGFEP**") were only directly applicable to employers. On 22 June 2020, MOM announced that new licence conditions taking effect from 1 October 2020 will require that EAs licenced by MOM comply with the TGFEP when recruiting on behalf of clients.

This means that from 1 October 2020 onwards, EAs must:

- Brief their clients on requirements in the TGFEP;
- Make reasonable efforts to attract Singaporeans for job vacancies;
- Consider all candidates based on merit; and
- Help their client fulfil requirements to advertise job vacancies on MyCareersFuture.sg where applicable.

*More...*

SINGAPORE 24 JUN 2020

## MOM states that TAFEP will intervene to assess fairness and reasonableness of cost-saving measures which appear to be excessive

On 24 June 2020, MOM, together with the Tripartite Alliance for Fair and Progressive Employment Practices ("**TAFEP**"), released key findings on cost-saving measures notified by employers impacted by COVID-19.

In the press release, MOM stated that TAFEP will intervene to assess if cost-saving measures were fair and reasonable with reference to relevant tripartite advisories if the measures notified appear to be excessive. Since 12 March 2020, TAFEP engaged about 700 employers, 300 of which agreed to review measures such as by providing more wage support or requiring that employees clear fewer days of annual leave. TAFEP also handled more than 600 complaints from employees who felt their employers' cost-saving measures were unfair or unreasonable. Although MOM had found that most employers have been fair and reasonable in implementing cost-saving measures thus far, it states that it will investigate complaints and take actions against employers who do not treat employees fairly.

*More...*

SINGAPORE 25 JUN 2020

## MOM revokes 140 work passes for breach of circuit breakers measures, SHNs or QOs

On 25 June 2020, MOM announced that 140 work passes have been revoked between 1 May 2020 and 25 June 2020 for breaching circuit breaker measures, SHNs or Quarantine Orders ("**QOs**"). 42 work pass holders were caught outside their residence while on SHN or QO, while the remaining 98 were caught eating, drinking and gathering in groups in dormitories, private residences or public spaces when social gatherings were prohibited. These work pass holders have also been permanently banned from working in Singapore.

MOM states that it will continue to take such enforcement measures and reminds employers of their joint responsibility to ensure that workers abide by safe distancing measures and SHN or QO requirements where applicable.

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27 JUN 2020

## Foreign worker levy rebates extended for Construction, Marine Shipyard and Process sectors

On 27 June 2020, the MOM announced that foreign worker levy (FWL) rebates for the Construction, Marine Shipyard and Process sectors will be extended till end 2022 to assist employers in adjusting to more stringent Safe Management Measures ("**SMM**"). From August 2020 till December 2021, firms in these sectors will receive a $90 rebate monthly for each Work Permit ("**WP**") holder. The Government will decide closer to December 2021 if there is a need to further extend the FWL rebate by another year to December 2022.

A Construction Support Package ("**CSP**") has also been extended to firms in the local Construction sector. Under the CSP, the Government will co-fund 50% of salaries of Safe Management Officers ("**SMOs**") who are Singapore citizens or permanent residents for six months from September 2020 to February 2021, provided that the firm adheres to COVID-Safe Worksite practices.

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SINGAPORE

30 JUN 2020

## MOM updates advisories on COVID-19 situation

The Ministry of Manpower ("**MOM**") has issued a number of advisories to employers in relation to COVID-19. The advisories are being updated on a regular basis. Employers are to heed the following:

**Advisory for employers and employees travelling to and from affected areas in response to increase in cases of COVID-19**

- Employers and employees are to defer all work-related travel plans and regularly check the Ministry of Health ("**MOH**") advisories.
- Employers should remind all employees to defer all travel abroad and obtain a health and travel declaration from employees on whether they have travelled overseas recently and their upcoming travel plans.
- Employers bringing work pass holders into Singapore must seek the MOM's approval prior to doing so. They must also ensure they can meet additional responsibilities such as paying for their COVID-19 test and 14 days stay at a dedicated Stay Home Notice ("**SHN**") facility.
- During the mandatory SHN period, employers must ensure employees stay away from the workplace but employers may adopt flexible work arrangements to allow employees to continue working from outside the workplace.

**Advisory on Safe Management Measures ("SMM") for workers on employer-provided transportation**

Employers, transport providers and drivers must ensure SMM are implemented when ferrying workers on all employer-provided transportation:

- All passengers must wear mask at all times.
- Passengers should not interact or talk at all times while on the motor vehicle.
- When using a lorry or van to transport workers, each seated passenger shall have a clear floor space of at least 0.496 square metres.
- Private transportation must be provided for workers working in dormitories.

**Advisory for employers on TraceTogether SMS notification for persons tested positive for COVID-19**

Should any employee receive a notification on TraceTogether, employers should:

- Advise the worker to wear a mask and assure the worker that he or she would be cared for.
- The worker should be isolated from other employees.
- The worker and close contacts should await further instructions from MOH.

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**Updated advisory on salary and leave arrangements**

- The Job Support Scheme ("**JSS**"), which is meant to support employers to retain and continue to pay their employees, has been extended to cover wages for August 2020 wages and the level of support has been enhanced for severely affected sectors and businesses that cannot resume operations.
- Employers should take into account the JSS when working out cost-saving measures with unions and employees to save jobs.
- Local employees who continue to work must be paid their full salaries and Central Provident Fund contributions.
- Employers who cannot pay their employees their prevailing salaries should (i) consider sending employees for suitable training approved for Absent Payroll Funding so that their salary during training would be supported by the Government, (ii) apply for Flexible Work Scheme to allow time-banking of additional salary payments to offset overtime pay in the future, (iii) allow employees to consume their leave, and (iv) grant additional paid leave to employees.
- Employers should support their employees to take on a second job to make up for their loss of income.
- Employers are cautioned not to unilaterally put their employees on prolonged no-pay leave without any baseline salary.
- Employers should give special consideration for lower-wage employees.
- Employers should continue to take care the well-being of their foreign workers and they must be paid their prevailing salaries.
- Employers are to obtain their foreign workers' consent in writing if they are placed on extended no-pay leave.
- Businesses not permitted to resume full operations and for all businesses in construction, marine shipyard, process sectors, the Government is extending the Foreign Worker Levy waiver and rebate for two months.
- Employers must notify MOM if they implement cost-cutting measures beyond a certain threshold.

**Advisory to employers on Safe Living measures ("SLM") for foreign worker dormitories**

Employers are required to implement SLM for foreign worker dormitories. In tandem with this, the MOM has introduced new Work Pass Conditions on non-domestic Work Permit and S Pass Holders and their employers. Employers are required to:

- Ensure measures to limit inter-mixing amongst residents at workers' dormitories.
- Monitor the health of their employees and take necessary precautions. Employees should be required to submit daily readings to MOM and unwell workers should be isolated and provided medical treatments.
- Ensure workers only leave dormitories for work.
- Ensure workers have access to food and essential items, regardless of whether they are eligible to work.
- Co-operate with dormitory operators to facilitate new rooming arrangements, which may be necessary due to the dormitory clearing process.

In relation to the above, MOM may take enforcement action against employers for failure to comply with certain obligations such as observing safe distancing at the workplace and ensuring that employees serve out their Stay-Home Notices ("**SHNs**"). MOM has previously revoked and suspended work pass benefits of employers for allowing employees who are required to stay home to report to work, and had also issued stop work orders and remedial orders against employers who flouted safe distancing rules.

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SOUTH KOREA
**1 JAN** 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.

SOUTH KOREA
**1 JAN** 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.

SOUTH KOREA
**1 JAN** 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.

SOUTH KOREA
**1 JAN** 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.

SOUTH KOREA
**1 JAN** 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.

SOUTH KOREA
**1 JAN** 2020

## 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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SOUTH KOREA
1 JAN 2020

Adjustment Act ("TULRAA"), and ruled that the Article must be amended by December 31, 2019, and shall continue to be effective until then.

Since then, the process to amend the Article to provide that employers providing financial support for operating labor unions may be exceptionally permitted within the scope of not infringing upon the independent operation or activities of labor union is ongoing, but the amendment was not legislated by December 31, 2019, which was the deadline presented by the Constitutional Court. Accordingly, the Article prohibiting employers from providing financial support for operating labor unions will be invalidated from January 1, 2020.

SOUTH KOREA
16 JAN 2020

## Enforcement of the amended Occupational Safety and Health Act

The Occupational Safety and Health Act, which has been amended to enhance protection of employees from occupational accidents, will take effect as of January 16, 2020. The major amendments are as follows:

- The scope of legal protection has been broadened to include all persons who provide labor. Accordingly, new safety and health measures have been introduced for persons in special types of employment
  1. insurance agents/ post office insurance salespersons;
  2. direct operators of construction machinery;
  3. private institution material tutors;
  4. golf caddies;
  5. delivery workers;
  6. quick service riders;
  7. loan salespersons;
  8. credit card salespersons; and
  9. substitute drivers and delivery riders who provide labor via delivery apps, etc.
- In addition to business owners, those who place orders for construction projects and franchisors shall also be responsible for preventing occupational accidents.
- Principal companies will have enhanced responsibilities such as greater responsibilities for the safety of subcontracted workers, and obligation to select qualified subcontractors which have the ability to prevent occupational accidents.
- In-house subcontracting of work involving harmful/hazardous materials will be prohibited/limited to further protect workers' lives and safety.
- Construction sites in which occupational accidents frequently occur will be subject to enhanced requirements for safety measures.

SOUTH KOREA
31 JAN 2020

## Promulgation and Implementation of the Enforcement Rules to the Labour Standards Act ("LSA") for Improvement of Special Overtime Work Approval System

The amendment to the Enforcement Rules to the LSA for improvement of the special overtime work approval system became effective as of January 31. The special overtime work approval system temporarily allows additional overtime work exceeding the 52-hour workweek if an employer obtains "employee's consent" and "approval of the Minister of Employment and Labor" under "special circumstances".

Under the previous Enforcement Rules to the LSA, "special circumstances" were limited to "cases where it is required to address disasters, calamities or other accidents corresponding thereto". However, with a growing number of exceptional cases that make it inevitable for businesses to exceed the overtime hours limit due to the 52-hour workweek and reduced number of business types exempted from the overtime hours limit, the Enforcement Rules to the LSA expanded the applicable scope of the special overtime work approval system.

**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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SOUTH KOREA
**28 FEB** 2020

## 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.

SOUTH KOREA
**31 MAR** 2020

## Use of Annual Leave for Employees with Less than 1 year of Service Period

The Labour Standards Act was amended to provide that if an employee has worked for less than one (1) year and has not used his/her annual leave prior to the end of the first year of service, such annual leave shall expire. The Amendment also provides that the system to encourage use of annual paid leave shall be applicable to employees who have worked for less than one (1) year or who have recorded less than 80 percent attendance.

SOUTH KOREA
**31 MAR** 2020

## Clarification of Several Liability of Principal Company for Unpaid Wages

The Labour Standards Act was amended to clarify that if a project is sub-contracted once (i.e., is not re-subcontracted), a principal company shall be jointly and severally liable for a subcontractor's failure to pay wage to its employee if such failure is due to the principal company. Previously, the law only expressly stipulated the scope of responsibility in the event a project was subcontracted on several levels. As such, the previous law was not clear on the principal company's scope of responsibility if the project was only subcontracted once (i.e., the project was not re-subcontracted by the subcontractor).

SOUTH KOREA
**31 MAR** 2020

## Implementation of Compulsory Order System

The Occupation Safety and Health Act was amended to provide that if the fatality of an employee due to the employers' violation of its obligation to provide health and safety measures occurs and a conviction (excluding a suspended sentence) or a summary order is imposed against an employer, (i) if a suspension of punishment is imposed, the employer may be ordered to attend a lecture which is required to prevent occupational incidents concurrently; and (ii) if a fine or a more severe punishment or summary order is imposed, the employer may be ordered to complete occupational safety and health programs concurrently.

SOUTH KOREA
**30 APR** 2020

## Stricter Requirements for Withdrawal of Retirement Payment during Employment

Prior to the Amendment, regardless of the amount of medical expenses, interim settlement or partial withdrawal of retirement benefits was permitted if an employee has paid medical expenses for diseases or injuries that require medical care for six (6) months or longer. To prevent depletion of retirement income due to employees' abuse of interim settlement or partial withdrawal, the Amendment restricts the grounds for interim settlement or partial withdrawal to cases in which an employee has paid medical expenses for diseases or injuries that require medical care for six (6) months or longer and has paid medical expenses in the excess of 12.5% of his/her total annual wages.

SOUTH KOREA
**1 MAY** 2020

## Outplacement Services for Retiring Employees

The Enforcement Decree of the Act on Hiring the Elderly was amended to provide that large-sized employers (1,000 employees or more) are required to provide outplacement services such as employment referrals for employees the age of 50 years old or older who have been with the Company for at least one (1) year (or three (3) years with respect to fixed-term employees) and who plan to leave the Company involuntarily are eligible to receive one or more of the following job-seeking services within 3 years prior to the anticipated

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retirement date – (i) experience/capability assessment and job-seeking consultation, (ii) placement services, (iii) education regarding job-seeking or business establishment, (iv) other services recognized by the Minister of Employment and Labor as necessary for outplacement and establishment of business. That said, if the Company has a business necessity for retirement of an employee, such services shall be provided within 1 year prior to the anticipated retirement date or within 6 months following the retirement date.

SOUTH KOREA
27 MAY 2020

## Improvement of Working Conditions of Construction Workers

The Enforcement Decree of the Act on Employment Improvement Measures Regarding Construction Workers was amended as follows.

- The Amendment requires principal companies for construction projects over a certain size (public construction projects with a contract amount of 50 million KRW or higher and a construction period of 30 days or longer) to pay the subcontractor wages separately from other construction costs, and check the specifications on wages to prevent delayed payment of wages by the subcontractor.
- In addition to the grounds in which principal companies (original contractor) are required to directly pay for retirement saving plans (1. the principal company has agreed with the business owner to pay for the retirement saving plan; 2. the principal company has not paid the business owner for the retirement saving plan without justifiable reasons), the Amendment stipulates that in the following cases, the principal company may directly pay for the retirement saving plan if the matter is attributable to the principal company: 3. bankruptcy decision, 4. decision to commence rehabilitation procedures, 5. commencement of joint management procedures.
- Previously, only public construction projects of the amount of 300 million KRW or higher and private construction projects of the amount of 10 billion KRW or higher were required to subscribe to the retirement saving plans. As such, construction workers for small construction projects were not entitled to such benefits and the Amendment expanded the subscription obligation scope to public construction projects of 100 million KRW and higher and private construction projects of 5 billion won and higher. To provide financial stability for construction workers upon retirement, the Amendment expanded the scope of the daily base of the retirement savings plan from "1,000 KRW or higher and up to 5,000 KRW or lower" to "5,000 KRW or higher and up to 10,000 KRW or lower". In construction projects ordered after May 27, 2020, 6,500 KRW must be provided as daily base of the retirement savings plan while 5,000 KRW must be provided for projects ordered prior to May 26, 2020.

SOUTH KOREA
9 JUN 2020

## Follow up measures to the special employment stabilization measures for COVID-19

The Employment Insurance Act was amended to stabilize the labour market amidst the uncertainties caused by COVID-19. The Amendment provides employment maintenance subsidy to employers that were not entitled to such subsidy provided that they take certain employment maintenance measures pursuant to agreements with employees such as reduction in wages, guarantee of employment for a certain period, etc.

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**5 FEB** 2020

## 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.

SRI LANKA

**13 FEB** 2020

## 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.

SRI LANKA
**18 FEB** 2020

## 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.

SRI LANKA

**4 MAY** 2020

## Tripartite Agreement.

Agreement was reached on 4th May 2020 between the Employers' Federation of Ceylon, some Labour Unions and the Government Task Force set up to look into the effects of the pandemic on employment related matters. The features of the Agreement are as follows below.

1. The scheme will be applied to pro-rate wages in respect of employees who cannot be deployed at work simultaneously with others due to health restrictions – e.g. where Government guidelines dictate that only a given percentage (or number) of employees could be employed on a particular day.
2. It will apply to monthly paid employees in all sectors, and was initially to be limited in its application for the months of May and June 2020 but we have recently received information that the period will be extended till 30th September 2020.
3. While being applicable to all sectors without exception, any employer who cannot afford to pay employees based on this scheme could make representations to the Commissioner General of Labour.
4. Only employees who reported for duty or those who could not do so due to restrictions imposed by employers due to health reasons are eligible to be considered under this scheme.

   Nonetheless, employees unable to report for work to due to restrictions imposed by the authorities, could also be considered under this scheme and payments made on the basis that they have been 'benched'.

   Employees who absent themselves from work despite being rostered and fail to provide acceptable reasons for their absence should be placed on no pay (in lieu of days of such absence).

   Others who may provide satisfactory explanations, should be placed on leave, as appropriate.
5. According to the agreement reached, employers will apportion and pay wages for days worked based on the basic salary, and for the days not worked (days on the bench without any work) wages will be apportioned and paid either at the rate of 50% of the basic wage or Rs 14,500/-, whichever is higher. [It may be noted in this connection that the daily rate would be determined by dividing the monthly rate by either 30 or 26 – depending on whether the employee is covered by the "Shop and Office Act" or a Wages Board decision for a particular trade which stipulates that the daily rate would be determined by dividing the monthly rate by 26]. The following is a clarification of the application of the scheme, together with an example.

   Step 1. - To ascertain the daily rate at which employees who performed work should be paid the following method of calculation should be applied.

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a. Divide the Monthly basic salary by 30 / 26 days.

b. Thereafter, to arrive at the salary to be paid for the days worked, multiply the daily rate by the number of days worked.

Step 2. - To ascertain the daily rate at which employees who were "benched" have to be remunerated –

a. divide Half the Basic Salary OR Rs 14,500/-, whichever is higher, by 30 / 26 days.

b. Thereafter, to arrive at the salary to be paid for the days not worked, multiply the daily rate by the number of days not worked.

Step 3.

To ascertain the Monthly salary to be paid to an employee, add the figures finally arrived at.

Example: Assuming an employee whose daily rate is the monthly rate divided by 30, is offered 15 days of work and is "benched" for 15 days.

| | Basic Salary - Rupees | | 30000 | | 20000 |
|---|---|---|---|---|---|
| Step 1 | Daily Rate | 30,000/30 | 1000 | 20000/30 | 666 |
| | Salary for the days worked | | 15000 | | 9990 |
| Step 2 | Daily Rate | 15,000/30 | 500 | 14500/30 | 483 |
| | Salary for the days not worked | | 7500 | | 7250 |
| Step 3 | Total Salary for the month | | 22500 | | 17240 |

Though this agreement does not have the force of law it is not unlikely that officers of the Labour Department in seeking to conciliate industrial disputes relating to the matter - and/or arbitrators/industrial courts in settling them - would be mindful of the agreement and may well use its substance as a guideline in determining what is just and equitable.

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CONTRIBUTED BY: John Wilson Partners

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**30 JAN**

2020

## 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 temperate 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.

TAIWAN

**22 FEB**

2020

## 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.

TAIWAN
2 MAR
2020

## 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.

TAIWAN
20 MAR
2020

## The Ministry of Labor's explanations regarding the rules in the Labor Standards Act and Occupational Safety and Health Act in response to workers working extended hours and on holidays as a result of revitalization and reconstruction efforts in industries impacted by COVID-19

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-3-Zi-1090050303
Issue date: March 20, 2020

According to the Ministry of Labor's announcement on March 20, the COVID-19 pandemic is considered a "force majeure" situation, thus the Labor Standards Act special rules on extended work hours and work on holidays during "force majeure situations" apply, and the daily or monthly regular work hour and overtime restrictions (<12 hours total/day, <46 hours overtime/month) do not apply.

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## The Ministry of Labor's Interpretation regarding the exclusions in calculating the average wages under Article 2, Paragraph 4 of the Labor Standards Act

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-2-Zi-1090130209
Issue date: March 30, 2020

Effective January 15, 2020, the following days and wages are not to be included in the determination of "average wages" per Article 2, Paragraph 4 of the Labor Standards Act: 1) Quarantine leave requested by the worker per Article 3 of the Special Regulations on the Prevention of Serious Infectious Pneumonia and the Provision of Relief Stimulus and 2) Quarantine care leave requested by the worker pursuant to the response measures from the Central Epidemic Command Center.

TAIWAN
**1 MAY**
2020

## The Ministry of Labor revises the "Model Work Rules"

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-1-Zi-1090130431
Issue date: May 1, 2020

1. Pursuant to the amendments to Articles 53, 54 and 55 of the Labor Standards Act, the May 2020 version of the Model Work Rules changes "loss of mental faculties or physically disabled" wordings to "physical or mental handicapped". The affected provisions include Article 35 (compulsory retirement), Article 36 (pension payment and standards) and Article 44 (occupational hazard compensation).
2. A new Article 11-1 is inserted regarding the circumstances for termination of the employment agreement by the worker without prior notice; a footnote explanation added to Article 34 on voluntary retirement to clarify that an employer must obtain approval from the local competent authority if it provides an early retirement plan that is more favourable than the Labor Standards Act and is now requesting pension payment from the worker's pension reserve fund.
3. The work rules review notes now also specify that demerits to workers should not include termination or reduction of wages, nor shall there be penalizing or compensatory fines.

TAIWAN
**10 JUN**
2020

## Amendment to Article 80-1 of the Labor Standards Act

Issued by: The President's Office
Ref. No.: Hua-Zhong-1-Yi-Zi-10900063561
Issue date: June 10, 2020

As the Labor Standards Act only specified the public disclosure of the name of the employer entity and its responsible person who were sanctioned by the competent authority for violation of labor laws, the information disclosures by central and local competent authorities have not been consistent in practice, and as a result has not been helpful for the public to keep watch on the offending employer, this amendment further includes the "date of sanctions, the provision of law violated and the fine imposed" as information that should be publicly disclosed so that workers may timely receive information regarding labor conditions, while also protecting the public's right to know.

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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.

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## 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...*

THAILAND
10 APR
2020

## Thailand Announces COVID-19 Visa Relief Measures

Following the announcement of a state of emergency on March 26, 2020, Thailand has put in place several measures that limit international travel as part of its efforts to stop the spread of COVID-19, including the closure of land borders with neighboring countries and the prohibition of arrivals by almost all international commercial passenger flights. These measures have left many non-Thai citizens in the country in a difficult position, due to the potential expiry of visas during a period when travel is being widely restricted. To address the issue, on April 8, 2020, Thailand's Ministry of Interior announced a notification granting visa relief measures for the benefit of all visiting and resident foreigners of all nationalities, and holders of all types of visas, including Thai permanent residence permits, who have been affected by the state emergency.

The immigration measures are summarized below:

- Visas that expired on or after March 26, 2020, will be automatically extended to April 30, 2020. This applies to persons who entered into Thailand with any type of visa, including visas under the privileges of the Board of Investment (BOI), the Industrial Estate Authority of Thailand (IEAT), or the Petroleum Act; visas on arrival; and visa exemptions. After the situation has improved and returned to normal, visa holders must apply for extensions of stay under the normal procedures applicable to their case, unless notified otherwise.
- Those due to give a 90-day report between March 26 and April 30, 2020, inclusive, are temporarily exempted from the 90-day report requirement during this period. After the situation has improved and returned to normal, their 90-day report duty will resume, unless notified otherwise.
- Permanent residence permit holders who have already obtained an endorsement before leaving Thailand, but who are unable to return to Thailand before the expiry date of the one-year period for their return (a requirement to retain their residence status), have been granted an automatic extension to the expiry date. When the situation has improved, they must urgently return to Thailand within a time frame that will be announced by the Immigration Bureau.
- Citizens of neighboring countries who have entered Thailand holding a border pass will be allowed to stay in Thailand while the borders with these countries are closed. However, all border pass holders will be required to leave Thailand within seven days after the borders are reopened.

*More...*

THAILAND

**24 APR** 2020

## COVID-19: Thailand Eases Provident Fund Requirements and Prohibits Strikes and Lockouts

In the latest of a suite of measures designed to help employers and employees weather the COVID-19 crisis, the Thai government has published legislation allowing the temporary cessation of provident fund contributions for employers and employees in crisis and preventing the use of strikes or lockouts in employment disputes while the government's emergency decree is in force.

**Provident Fund Measures**

On May 5, 2020, the Announcement on Designation of Types of Business, Duration, and Conditions for Employees or Employers to Cease or Postpone the Submission of Savings or Contributions to the Provident Fund in Areas Affected by Economic Crisis, Disaster, or Other Severe Events Affecting Economic Conditions was published by the Ministry of Finance in the Government Gazette.

This announcement exempts both employers and employees from their duties to submit contributions to the provident fund between May 5 and December 31, 2020, subject to certain criteria and their agreement to make use of the exemption under the announcement. The provident fund membership status of employers and employees who avail themselves of these measures will not be affected.

In order to make use of the exemption under the announcement, employers will have to certify that they meet the following conditions:

- The business is facing an operational crisis because of the COVID-19 pandemic; and,
- The business is facing a financial crisis.

The exemption also requires a resolution of approval from either:

- A resolution by a general meeting of the provident fund members, held in accordance with the fund's regulations, resolved in accordance with the regulations for counting votes in general meetings or by at least half of the meeting attendees if the fund regulations are silent on vote counting; or,
- A unanimous vote from all members of the fund committee if the meeting cannot be held for any reason.
- In addition, if the provident fund is a pooled fund consisting of more than one employer, resolutions must be obtained from meetings of the members of each employer, or from the fund committee of each employer.

The employer or the fund committee must notify the registrar that they have resolved to make use of the exemption, attaching the following documents:

- A certification, signed by the employer's directors, certifying that the business is facing operational difficulties because of the COVID-19 pandemic, and is thus facing a financial crisis; and,
- The meeting report for the resolution with details of the acknowledgement of the employer's situation and details of the resolution to use the exemption (showing the decision on whether to cease or postpone contributions, and the decision on the duration of the cessation or postponement).

The employees and employer can resume their contributions to the provident fund before the end of the agreed period by jointly agreeing and notifying the registrar. In addition, during the temporary cessation or postponement of contributions by employers, employees can still submit their contributions to the provident funds. The employer has full discretion over whether to submit employer contributions in that circumstance.

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**Important:** action likely required

**Good to know:** follow developments

**Note changes:** no action required

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**Strikes and Lockouts**

In addition, on May 8, 2020, the Announcement on Determination of Unsettled Disputes to be Resolved by Labor Relations Committee and Forbidding Lock Outs or Strikes during the Announcement of Emergency Situation under the Law Regarding Public Administration in Emergency Situations, issued by the Labor Ministry, was published in the Government Gazette.

This announcement prohibits employees and employers from using strike or lockout measures under the Labor Relations Act B.E. 2518 (1975) during the emergency situation period announced under the Emergency Decree, currently set to expire on May 31, 2020 (subject to extension). The announcement also states that any strike or lockout that commenced before May 8, 2020, must end, and that all employees must return to work or employers must reinstate the employees. Any unsettled disputes under the Labor Relations Act that occurred during the emergency situation period must now be considered and resolved by the Labor Relations Committee.

*More...*

THAILAND

18 JUN 2020

## COVID-19: Thailand to Relax Rules on T.M.30 Immigration Requirements

The Royal Thai Police has issued a notification which relaxes the requirement for property owners or hotel managers in Thailand to notify an immigration office every time a foreign national stays in their property. Titled "The Royal Thai Police Notification on Residence of Heads of Household, House Owners, Landlords, or Managers of Hotels, Who Accommodate Foreign Nationals on a Temporary Basis," the notification was published in the Government Gazette on June 16, 2020, and will take effect on June 30, 2020.

Under the notification, there will still be a duty for landlords or hotel owners to submit a T.M.30 form to an immigration office within 24 hours of a foreign national staying at their premises. However, they are no longer required to resubmit a T.M.30 form every time a foreign national returns to stay at the same place, which was an onerous requirement under the previous version of notification, issued in 1979.

Under the new notification, when the head of a household, property owner, landlord, or hotel manager submits a new T.M.30 form to the immigration office, they will also be required to indicate the period that each foreign national will stay at their premises, i.e., the arrival and expected departure dates.

In the event that a foreign national travels and stays in another place on an occasional basis, and then returns to stay at the same premises within the period of stay specified in the T.M.30, then a new T.M.30 will need not be submitted each time they arrive. The new rules are applicable to all foreign nationals who stay in Thailand on any type of visa, including holders of multiple-entry visas and re-entry permits which enable the holders to leave and return to Thailand within their visa validity period.

**Where to Submit the T.M.30**

The T.M.30 must be submitted at the local immigration office where the residence or hotel is located, or to the Immigration Office Headquarters for residences and hotels in Bangkok. It can be submitted in person, by post, online at www.immigration.go.th, or via the Section38 Android or iOS application (subject to the requirements of the immigration office).

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**Good to know:** follow developments

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## Increasing family circumstance deductions of personal income tax.

On 2 June 2020, the Standing Committee of the National Assembly issued Resolution 954/2020/UBTVQH14 on increasing family circumstance deductions for personal income tax ("**PIT**"). The key content of Resolution 954 is as follows:

- The family circumstance deductions for a taxpayer is increased from VND9 million to VND11 million per month (approximately from US$388 to US$475); and
- The family circumstance deductions for each dependent shall be increased from VND3,6 million to VND4,4 million per month (approximately from US$155 to US$189).

The family circumstance deduction means the amount deductible from taxable income prior to assessing tax payable on income from business activities or income from salary or wages of a resident individual taxpayer. A resident individual means any person satisfying one of the following conditions: (i) being present in Vietnam for a period of one hundred and eighty-three (183) days calculated within one (1) calendar year or within twelve (12) consecutive months from the date of entry into Vietnam; or (ii) having a regular residential location in Vietnam being a residential location for which permanent residence has been registered or a property rented pursuant to a lease for residential purposes.

Dependents include children, spouses, parents, other individuals who must meet certain conditions. Each dependent can only be assessed for one taxpayer.

Resolution 954 will take effective from 1 July 2020 and applies for the whole calendar year of 2020. The PIT amount temporarily paid for earlier months of 2020 shall be finalized at year-end 2020.

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