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Asia Employment Law: Quarterly Review

2019-2020

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Updated as of December 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 thirtieth edition, we flag and comment on employment law developments during the fourth quarter of 2020 and highlight some of the major legislative, consultative, policy and case law changes to look out for 2021.

This publication is a result of ongoing cross-border collaboration between 15 law firms across Asia with whose lawyers Mayer Brown has had the pleasure of working with closely for many years. For a list of contributing lawyers and law firms, please see the *contacts page*.

We hope you find this edition useful.

With best regards,

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Due to COVID-19 Attorney-General has paused consultations on Industrial Relations reform

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

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

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

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

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

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

Attorney-General's Department 'Industrial Relations Consultations'

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Modern Awards altered to introduce prescriptive arrangements for annualised wage arrangements

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

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

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

All four clauses include the following common features:

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

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

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

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

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

Four yearly review of modern awards – Annualised Wage Arrangements
Annualised Salaries: what are the options?

AUSTRALIA

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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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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

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Wage theft legislation introduced in Victoria

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

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

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

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

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

Wage Theft Bill 2020 (Vic)
Announcement: New Laws to Crack Down on Wage Theft

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

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

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

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

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

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

Fair Work Ombudsman: Fair Work Information Statement (December 2019)
Senate Inquiry: Unlawful underpayment of employees' remuneration

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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2020

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

AUSTRALIA

28 APR 2020

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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26 MAY 2020

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

AUSTRALIA
25 JUN
2020

Western Australia unveils overhaul of the State industrial relations system

On 25 June 2020, Western Australia's Labor Government introduced the *Industrial Relations Legislation Amendment Bill 2020* (**Bill**) into Parliament as part of a major overhaul of the State industrial relations system. The Bill was formulated in response to recommendations from the 2018 Final Report of the Ministerial Review of the State Industrial Relations System, and the 2019 Inquiry into Wage Theft in Western Australia.

The Bill will amend the *Industrial Relations Act 1979* (**WA**) (**IR Act**), the *Long Service Leave Act 1958* (WA) and the *Minimum Conditions of Employment Act 1993* (WA) (**MCE Act**). Key reforms include:

- Expanding the definition of 'employee' to include people engaged in domestic service in private homes, who are currently not covered by the IR Act or MCE Act. The Bill also extends coverage under the MCE Act to include people paid wholly by commission, people with disabilities employed in a supported employment service, volunteers, and those appointed as wardens by the National Trust.
- Giving the Western Australian Industrial Relations Commission (**WAIRC**) capacity on its own motion to vary the scope of private sector awards.
- Expanding employment record requirements. Employers who make false or misleading employee records, or issue a false or misleading pay slip will be liable for a civil penalty.
- Giving the WAIRC an equal remuneration jurisdiction, allowing it to make an equal remuneration order on application from an individual employee, or group of employees.
- Strengthening protection of employee rights, such as by prohibiting employers from engaging in sham contracting and from taking damaging action against employees who make an employment-related inquiry.
- Enhancing the power of industrial inspectors.
- Strengthening enforcement mechanisms and increasing penalties. The maximum penalty for contravening an industrial instrument will be increased from $2,000 to $60,000 for bodies corporate and $12,000 for individuals. The Bill also establishes penalties for serious contraventions, $600,000 for bodies corporate and $120,000 for individuals, and establishes accessorial liability for involvement in a contravention.

On 20 August 2020, the Bill was passed in the Legislative Assembly and is now before the Legislative Council.

Industrial Relations Reform in Western Australia
Industrial Relations Legislation Amendment Bill 2020

AUSTRALIA
15 JUL
2020

The Victorian Inquiry into the On-Demand Workforce releases its report

On 15 July 2020, the Victorian Inquiry (**Inquiry**) into the On-Demand Workforce released its report (**Report**). The Inquiry was established in October 2018 by the then Minister for Industrial Relations in Victoria. The Inquiry was chaired by former Fair Work Ombudsman, Ms Natalie James.

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AUSTRALIA

15 JUL 2020

The Inquiry's terms of reference required it to 'inquire into, consider and report' on 'the extent and nature of the on-demand economy in Victoria, for the purposes of considering its impact on both the Victorian labour market and Victorian economy more broadly'.

The Report identified six reasons why action is required to revise the current system:

1. The inherent uncertainty of the work status test;
2. The fragmented and limited nature of advice and support about work status;
3. Inaccessible resolution pathways to determine work status;
4. The emergence and conduct of platforms;
5. High incidences of low-leveraged workers accessing work via platforms and working under 'borderline' work status; and
6. Inadequate protection for non-employee 'small business' platform workers.

Key recommendations made to government by the Inquiry to address these issues include:

- Clarify, codify and align the status of on-demand workers across different laws;
- Provide streamlined advice and support to workers and the availability of a mechanism for accessible, fast resolution of work status;
- Enhance transparency and fairness in relation to work arrangements;
- Provide access to collective bargaining for non-employee platform workers;
- Consider extending award coverage to platform workers; and
- Enhance and streamline existing unfair contract remedies to make them suitable and effective for platform workers.

The Inquiry was of the clear view that the Commonwealth Government, in collaboration with State Governments and other stakeholders, should 'lead the delivery of the recommendations' regarding the national workplace system. It did recognise, however, that the Commonwealth might not be prepared to assume this role, in which case Victoria 'in consultation and collaboration with other states… should pursue administrative and legislative options to improve choice, fairness and certainty for platform workers'. Such measures would need to be constitutionally available, align with the State Government's broader priorities, be 'appropriate in the current regulatory landscape', and 'meet the needs of the current and future workforce'.

On 23 June 2020, Victorian Treasurer and Industrial Relations Minister Tim Pallas confirmed that the Victorian Government will draft its own workplace laws to protect gig economy workers. The Treasurer stated Victoria would plug the gaps and fix the inequities in the system to ensure these workers have the right to fair pay and safe working conditions.

Most of the Inquiry's key recommendations, however, fall wholly or mainly within the legislative competence of the Commonwealth. This would encompass all recommendations that require amendment of the Fair Work Act 2009 (Cth). The Federal Government has indicated an awareness of the issues which prompted the establishment of the Inquiry. It has, however, given no public indication of its attitude to the recommendations set out in the Report. On the information available, it also appears that the on-demand issue is not on the agenda of any of the five Working Groups which are currently examining possible reforms to the federal workplace relations legislation.

Inquiry into the Victorian On-Demand Workforce
Corrs insight: On-demand working and the changing workplace
Media release: Shining A Light On The Gig Economy

AUSTRALIA

21 JUL 2020

Federal Government extends JobKeeper wage subsidy until March next year

On 21 July 2020, the Federal Government announced that the JobKeeper wage subsidy of $1,500 a fortnight would be dropped to $1,200 per fortnight

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21 JUL 2020

from late September and to $1,000 per fortnight from early January 2021. The changes would see a two-tier system implemented, separating out employees who worked for 20 hours or less per week prior to the pandemic. The second tier of employees would receive $750 a fortnight from September, decreasing to $650 a fortnight from January.

On 7 August 2020, the Federal Government announced further arrangements and changes in eligibility rules for the JobKeeper wage subsidy (**JobKeeper Bill**). Key adjustments included:

- A shift in the employee reference date from 1 March to 1 July 2020, expanding employee eligibility; and
- A change to the turnover reference period such that, from 28 September 2020, businesses will only need to demonstrate that their actual turnovers have significantly declined in the previous quarter.

On 25 August 2020, the Attorney-General unveiled legislation to implement the new JobKeeper scheme. Under the current scheme, businesses are eligible to receive JobKeeper payments for their employees if they have suffered a 30% reduction in turnover. The JobKeeper Bill states that businesses which will no longer meet the eligibility requirement for the wage subsidy will still retain the power to cut their staff hours by up to 60% if they can show turnover had fallen by at least a tenth. The Shadow Industrial Relations Minister, Mr Tony Burke, advised that Labor would not oppose the JobKeeper Bill but may seek amendments.

The JobKeeper Bill passed the lower house on 27 August 2020 and Labor's proposed amendments were unsuccessful. Labor's concerns were that:

- many workers, including about one million short-term casuals, were excluded from JobKeeper; and
- employers who were no longer eligible for JobKeeper were able to reduce workers' hours by 60 per cent – a safety net should instead be created so the hours could not be reduced below the JobKeeper payment.

The JobKeeper Bill passed the Senate on 1 September 2020 with minor amendments. The amendments narrowed the list of eligible financial service providers able to provide the turnover certificate required to give JobKeeper-enabling directions.

JobKeeper payment, Australian Taxation Office
JobKeeper payment and income support extended, Media Release, Prime Minister of Australia (21 July 2020)
Press Conference - Australian Parliament House, ACT, Transcript, (21 July 2020)
More support for more businesses and workers, Media Release, (7 August 2020)

AUSTRALIA

23 JUL 2020

Victoria announces payment for workers required to self-isolate while awaiting COVID-19 test results

On 23 July 2020, Victorian Premier Daniel Andrews announced a one-off $300 support payment to any Victorians who have taken a COVID-19 test and have to self-isolate pending the result of the test. Mr Andrews said that the new support payment is aimed at combating the financial repercussions of having to isolate after a test. A person is eligible for this support payment if they:

- are over the age of 17;
- are currently residing in Victoria;
- are likely to have worked during the period of self-isolation or quarantine and cannot work as a result of the requirement to stay at home, isolate or quarantine;
- are not receiving any income, earnings or salary maintenance from work as a result of not being able to work during the period of self-isolation or quarantine at home;
- have exhausted sick leave entitlements including any special pandemic leave; and

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- are not receiving JobKeeper or any other Australian Government income support.

Victorians who are tested positive to the COVID-19 test and need to self-isolate may also be eligible for the Pandemic Leave Disaster Payment. This is a lump sum payment of $1,500 to help Victorians during the 14-day period in which they are unable to work because of their self-isolation or quarantine. To be eligible for the Pandemic Leave Disaster Payment, the person must not receive an income from their employment or sick leave entitlements during their 14 days of self-isolation.

$450 Coronavirus (COVID-19) Test Isolation Payment (Department of Health and Human Services)
Pandemic Lave Payment if you live in Victoria (Services Australia)

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2020

Paid pandemic leave awarded to aged care workers, Federal Government considers extending leave to other workers

On 27 July 2020, the Fair Work Commission handed down a ruling which provided that aged care workers employed under the Aged Care Award, the Nurses Award and the Health Professionals Award will be entitled to two weeks' paid leave if they are required to self-isolate due to having COVID-19 symptoms or being a close contact of a confirmed case. The amendments came into effect on 29 July 2020, and will last for three months.

The Fair Work Commission's ruling follows the submissions from the Australian Council of Trade Unions, the Health Services Union and the Australian Nursing and Midwifery Federation calling for paid pandemic leave to apply for all staff in aged care across the country until the end of September.

Since the Fair Work Commission's ruling, the Federal government has also been considering expanding the scope of the paid pandemic leave to more workers in Victoria. The Labor Opposition and trade unions have called for all workers to be given paid pandemic leave. Attorney-General Christian Porter said the government will consult with both employers and unions before coming to a decision. Mr Porter said "this includes working with the Australian Council of Trade Unions to identify data and evidence illustrating where circumstances may arise where a lack of financial support for a workplace absence could manifest as a contributing cause of workplace transmission of COVID-19, particularly in Victoria".

As to whether now is a good time to bring in paid pandemic leave, Mr Porter said that the leave "represents a cost impost on businesses at a time when they can least afford that". The previous day, Mr Porter stated in response to the request for paid pandemic leave "the system is working relatively well at the moment in terms of coping with that scenario where people have to be self-isolated for a period."

Prime Minister Scott Morrison states the issue will be addressed by Mr Porter's working groups, "so I think it is best that those discussions are held there. We are conscious of the issues and we are seriously pursuing them."

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3 AUG
2020

ASIC provides advice to companies regarding financial statements following Rossato decision

The Australian Securities and Investment Commission (**ASIC**) has issued a guidance note in relation to financial reporting and audit requirements under Chapter 2M of the *Corporations Act 2001* (Cth). The guidance note states that:

- Companies should consider whether they should provide for additional employee entitlements (including annual leave, personal and carer's leave, compassionate leave, public holiday pay, and redundancy payments) for past and present 'casual employees' who were employed in circumstances covered by the recent Full Federal Court decision in *WorkPac Pty Ltd v Rossato* [2020] FCAFC 84 (**Rossato**), which was handed down on 20 May 2020.

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- Companies should make a provision for this in their next financial statement.
- While no provision would be required for 'casual employees' who are unaffected by the decision, a provision or contingent liability may be required for 'casual employees' employed in circumstances that were not clearly covered by the decision.

The guidance note follows the decision in *Rossato*, which held that a casual employee who was engaged on a regular and systematic basis was entitled to the paid leave entitlements of a permanent employee and that the employer was also prevented from 'setting off' the outstanding leave entitlements against the casual loading previously paid to the employee.

The *Rossato* case is currently on appeal at the High Court. Attorney General and Industrial Relations Minister Christian Porter has applied to intervene in the case, arguing that businesses that have paid those workers the typical 25% extra casuals receive should be able to offset that against any leave payments they owe. He said employers should not have to "pay for the same entitlements twice" in what some business groups have branded "double dipping".

He also said that "the very unfortunate effect of the Full Federal Court decision was that it ... has the potential to expose businesses to significant financial liability during a period where businesses are facing their greatest ever challenge due to the ongoing COVID-19 pandemic," and that "the government's position has always been that it is not fair to pay for the same entitlements twice."

COVID-19 implications for financial reporting and audit: Frequently asked questions (ASIC)
Corrs Insight: No casual affair - double dipping and the Rossato decision

AUSTRALIA
5 AUG
2020

Victoria introduces 'permitted worker scheme' under Stage 4 restrictions

Under COVID-19 stage 4 restrictions imposed on 3 August 2020, the Victorian Government announced that only certain 'permitted workplaces' would be allowed to operate on-site in metropolitan Melbourne.

From 5 August 2020, employers that require their staff to attend a permitted workplace must issue employees with a 'permitted worker permit'. This must be produced by the worker on request to show they have a valid reason to leave home, and is aimed at ensuring that essential workers do not have to repeatedly explain themselves if stopped by police.

Employers can issue a worker permit to an employee if:
- The employer is on the list of permitted activities;
- The employee is working in an approved category for on-site work;
- The employee cannot work from home; and
- The employer has implemented a COVIDSafe Plan.

Law enforcement, emergency services and health workers carrying employer-issued photo ID clearly identifying the employer are not required to hold a permit.

The permit must include:
- The name, Australian business number, company address and trading name of the employer;
- The name and date of birth of the employee;
- The employee's regular hours and place of work.

Employers must also authorise a person within the business to issue the permit.

The permitted worker permit scheme further provides that:
- workers must not use a permit if they are required to self-isolate following a positive COVID-19 test result, or are close contact with someone who has tested positive;

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- workers must carry photo ID as well as a permit when travelling to and from workplaces;

Employers who issue worker permits to employees who are not eligible for a permit, or otherwise breach the permitted worker scheme requirements, face penalties of up to $19,826 (for individuals) and $99,132 (for businesses). On-the-spot fines of $1,652 may be issued to those not carrying a permit when travelling to and from work.

As of 27 September 2020, restrictions in metropolitan Melbourne have been reduced but the permitted workplace and worker scheme remains in place. The scheme will continue until at least 11 October 2020, and will likely operate until Victoria records no new COVID-19 cases for 14 days, triggering the 'last step' in the State's roadmap to reopening.

Worker Permit Scheme
Permitted workplaces
Creating a COVIDSafe workplace
Coronavirus (COVID-19) roadmap for reopening

AUSTRALIA

13 AUG 2020

High Court hands down *Mondelez* decision, allowing an appeal from the Full Federal Court

On 13 August 2020, the High Court of Australia handed down its decision in *Mondelez Australia Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union Known as the Australian Manufacturing Workers Union (AMWU)* [2020] HCA 29.

By a 4:1 majority, the High Court reversed the earlier decision of the Full Court of the Federal Court and, in doing so, provided much-needed clarification as to what is meant by 'a day' in section 96 of the *Fair Work Act 2009* (Cth) (**FW Act**) for the purpose of calculating employee entitlements to paid personal/carer's leave (personal leave).

The High Court held that one 'day' refers to a notional day consisting of one-tenth of the equivalent of an employee's ordinary hours of work in a two-week period. An employee's entitlement to '10 days of paid personal leave', regardless of their roster arrangement, is therefore to be calculated and paid at the rate of 1/26th of that employee's ordinary hours of work in a year.

A necessary consequence of this interpretation is that some employees who work their ordinary hours on a compressed roster (e.g. a nine day fortnight) may exhaust their entitlement to '10 days' of personal leave in a year before they can take ten separate calendar days of leave without loss of pay, and that part time employees will receive personal leave on a pro-rata basis.

In arriving at this conclusion, the High Court overturned a majority decision of the Full Court of the Federal Court just under a year ago which determined that an employee's entitlement to 10 days of personal leave in the FW Act is an entitlement to be paid for 10 separate 24 hour periods, where the employee is not able to attend for scheduled work because they are ill, injured or face an unexpected emergency. *Mondelez* provided all employees at its chocolate plant in Tasmania with a fixed pool of hours of personal leave each calendar year but then deducted personal/carer's leave based on the hours actually 'worked' in respect of each period of absence.

For some employees, who were rostered on longer shifts, this system means that they could potentially exhaust their allocation of paid personal leave before they can have the benefit of 10 separate calendar days of leave (and have to access any additional leave as unpaid leave).

The High Court decision requires employers to ensure all full-time employees accrue and deduct personal leave at the rate of 1/26th of ordinary hours worked, regardless of how long a shift on a particular day might be when personal leave is taken.

Corrs Insight: Clear as day – High Court reverses Federal Court decision in Mondelez Mondelez Australia Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union [2020] HCA 29.

AUSTRALIA
25 AUG
2020

Federal Parliament passes the *Treasury Laws Amendment (Your Superannuation, Your Choice) Act 2020*

On 25 August 2020, the Senate passed the *Treasury Laws Amendment (Your Superannuation, Your Choice) Act 2020* (**Act**), which reintroduces amendments to the Superannuation Guarantee (Administration) Act 1992 (Cth) with the effect of stopping unions from negotiating enterprise agreements that force employees into contributing to a specific superannuation fund for their compulsory employer contributions. The Act will come into effect on 1 January 2021 and will apply to new workplace determinations and enterprise agreements. It was first introduced into Parliament by the Morrison Government in November 2019.

The Senate also passed an amendment moved by independent South Australian senator Rex Patrick, which requires Australian Prudential Regulation Authority (**APRA**) to review the changes after 30 months of them coming into operation. The APRA review under this amendment aims to identify "unintended consequences" of the changes made by the Act on the operation of defined benefits schemes, included their continuing viability and profitability.

A joint statement from Treasurer Josh Frydenberg and Assistant Minister for Superannuation, Financial Services and Financial Technology Jane Hume said that the Act "addresses the findings of the Financial System Inquiry and the Productivity Commission Inquiry into the efficiency and competitiveness of the superannuation system which found that this reform was 'much needed' and that denying choice of fund can discourage member engagement and lead to them paying higher fees".

Treasury Laws Amendment (Your Superannuation, Your Choice) Act 2020
Explanatory memorandum
Supplementary explanatory memorandum
Second reading speech

AUSTRALIA
9 SEP
2020

Queensland passes Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020

On 9 September 2020, the *Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020* (**Bill**) was passed by the Queensland Parliament.

The Act follows from an Inquiry into wage theft in Queensland (**Inquiry**), which tabled its report to Parliament in late 2018. In February 2019, the Queensland Government gave its response to the report, indicating its acceptance of the majority of the recommendations of the Inquiry.

The Act criminalises wage theft by amending the Queensland Criminal Code to include an offence of 'stealing by employers'. Employers found to have stolen an amount payable to an employee (including unpaid or underpaid hours, unpaid penalty rates, unpaid superannuation, unreasonable deductions, and sham contracting) will face up to 10 years' imprisonment. The amendments also insert a fraud offence, where the offender is or was an employer of the victim, carrying a maximum penalty of 14 years' imprisonment.

The new offences came into operation on 14 September 2020, when the Act received Royal Assent.

While the Commonwealth government is taking steps towards criminalising wage theft at the federal level, Queensland joins a number of other Australian states who have pursued their own wage theft laws. Similar legislation is currently before the Western Australian Parliament, and Victoria passed equivalent wage theft laws in June 2020 which will come in to effect in July 2021. Concerns remain, however, that State legislation in this area is potentially inconsistent with existing federal regulation, and is therefore unconstitutional.

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2020

Queensland Industrial Relations Minister Ms Grace Grace MP told Parliament that the State Government had made numerous submissions to the Federal government urging it to criminalise wage theft but stated that 'the time waiting for a national response on the scourge of wage theft is over'.

Hearings for the ongoing Federal Senate inquiry into wage theft were postponed in June 2020 due to COVID-19, with the final report date pushed back to June 2021. Wage theft is also being addressed by one of the Federal Government's industrial relations working groups. The group is comprised of industry bodies and unions and has been meeting on a regular basis until September 2020, as part of the Federal Government's industrial relations reform agenda.

Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020
Industrial Relations Minister Statement: New legislation to make wage theft a crime
Inquiry into wage theft in Queensland

AUSTRALIA
6 OCT
2020

Federal Budget 2020 handed down with the introduction of the JobMaker Plan

On 6 October 2020, Treasurer Josh Frydenberg handed down the 2020/2021 Federal Budget (**Budget**). The Budget has a predominant focus on addressing the impacts of the COVID-19 pandemic on the Australian economy, with a particular emphasis on jobs and employment.

JobMaker Plan
The $74 billion JobMaker Plan, outlined in the Budget, is a key element of the Government's Economic Recovery Plan. The JobMaker Plan is expected to create 450,000 jobs for young people.

Under the "JobMaker Hiring Credit" scheme, eligible employers will receive $200 per week if they hire a person aged between 16 and 30, and $100 a week if they hire anyone aged between 30 and 35. Employers will be eligible for the payment if their new employee has been on JobSeeker, Youth Allowance or the Parenting Payment and will be given at least 20 hours of work a week. However, some employers such as government agencies, major banks and those claiming the JobKeeper payment will not be eligible for the Hiring Credit. The scheme will be available for up to a year.

Also under the JobMaker Plan is the "Boosting Apprenticeships Wage Subsidy", which will subsidise up to 50% of the wages of new apprentices and trainees (capped at $7,000 per quarter). This will apply to apprentices and trainees who commence with any business regardless of their size, industry or location.

Federal Budget 2020-2021
Federal budget 2020: Coalition banks on $98bn injection to jolt Australia's economy back to life

AUSTRALIA
22 OCT
2020

ACCC establishes class exemption for independent contractors and businesses with a turnover of less than $10 million to bargain collectively

On 22 October 2020, the Australian Competition and Consumer Commission (**ACCC**) announced that a new class exemption is due to commence in early 2021 which will allow small businesses, franchisees and fuel retailers to join a collective bargaining group to negotiate with suppliers or customers about the supply or acquisition of goods or services, without having to seek the ACCC's approval. To be covered by this class exemption, independent contractors and businesses must have a turnover of less than $10 million. All franchisees are covered and there is no cap on their aggregated turnover.

The ACCC may grant a class exemption to businesses which allows the business to carry out certain types of conduct which would otherwise risk breaching competition laws. The ACCC can only grant an exemption if it is satisfied that the effect of the conduct is unlikely substantially to lessen competition or is likely to result in a net public benefit.

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2020

University of Sydney labour law professor Shae McCrystal has said that the exemption is a "big step forward" for gig economy workers and others classified as independent contractors. Professor McCrystal also said that the exemption will give these workers an "ability to negotiate collectively with their platforms without having to seek permission" on such matters as delivery pricing, risk bearing, insurance and compensation for petrol costs. The exemption, however, limits information sharing amongst group members and does not allow small businesses to engage in industrial action such as collective boycott of a supplier. As Professor McCrystal and Dr Tess Hardy pointed out in an academic paper published ahead of the exemption being finalised, this may leave groups of independent contractors with no effective way "to press their claims" if platform businesses refuse voluntarily to bargain or negotiate.

Bargaining go-ahead a "big step forward" for gig workers, Workplace Express (23 October 2020)
Sydney Law Review
Class exemption will enable small businesses to collectively bargain

AUSTRALIA
2 NOV
2020

The Fair Work Commission varies 97 awards to address overtime payments for casual employees

As part of its 4 yearly review of modern awards, the Fair Work Commission (**FWC**) handed down a decision varying the casual and overtime provisions in 97 modern awards.

While the wording of the variations is not identical in each award, some common examples of the variations include clarifications on:

- how casual and overtime loadings interact;
- whether casuals are entitled to overtime;
- the hours when overtime applies; and
- calculation of overtime pay rates for casual employees.

In relation to the calculation of overtime rate of pay for casual employees, some awards will use a cumulative approach while others will use a compounding approach. Under the cumulative approach, the casual loading and the overtime penalty rate are added separately to the minimum hourly rate. In contrast, under the compounding approach, the overtime penalty rate is applied to the casual rate of pay inclusive of casual loading.

By way of example, the *Clerks – Private Sector Award 2020* (**Clerks Award**), has been varied to state that where a casual works overtime, they must be paid the overtime rates set out in the award. A new table has been inserted into the Clerks Award specifying the overtime rate for casual employees, and adopts the cumulative approach. A full-time or part-time employee covered by the Clerks Award working overtime on a Sunday will be paid 200% of the minimum hourly rate while a casual will be paid 225%. In effect, the casual's overtime rate is calculated by adding the casual loading (25%) to the full-time/part-time overtime penalty rate (200%).

The changes to 96 of the 97 Awards came into effect on 20 November 2020. The amendments to the Aged Care Award 2020 will come into effect on 1 March 2021.

Decision (30 October 2020)
Statement (4 December 2017)
Updates to casual and overtime clauses in most awards
List of awards affected

AUSTRALIA
3 NOV
2020

Western Australia passes model work health and safety laws

On 3 November 2020, the Western Australian Parliament passed the *Work Health and Safety Bill 2019* (WA) (**WHS Bill**). This comes 12 years after the Western Australian Government agreed to introduce the harmonised model work health and safety (WHS) laws that have already been implemented in the Australian Capital Territory, New South Wales, the Northern Territory,

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Queensland, South Australia, Tasmania and the Commonwealth. The WHS Bill received royal assent on 10 November 2020.

The *Work Health and Safety Act* 2020 (WA) (**WHS Act**) consolidates workplace safety under a single act covering all workplaces in Western Australia and replaces the *Occupational Safety and Health Act 1984* (WA) and elements of the *Mines Safety and Inspection Act 1994* (WA) and *Petroleum and Geothermal Energy Safety Levies Act 2011* (WA). It brings the law in Western Australia broadly into line with the other harmonised jurisdictions (ie all jurisdictions apart from Victoria), although there are some significant differences as to matters of detail.

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2020

The key features of the WHS Act are outlined below:

- **Duty of care** – a broad duty of care is imposed on a "person conducting a business or undertaking" (**PCBU**), who must ensure, so far as is reasonably practicable, the health and safety of workers of the PCBU and those who are influenced or directed by the PCBU.
- **Duty to consult, co-operate and co-ordinate with other PCBUs** – a PCBU must consult, co-operate and co-ordinate with other PCBUs who also have a duty in relation to the same activities.
- **Duty to consult with workers** - a PCBU must consult workers who carry out work for the business or undertaking and who are directly affected by health and safety matters.
- **Industrial manslaughter** – an indictable offence with a maximum penalty of 20 years' imprisonment and $10 million fines for bodies corporate.

Model work health and safety laws finally coming to WA
Work Health and Safety Act 2020 (WA)

Victorian Government announces development of a new Secure Work Pilot Scheme to provide up to five days of sick and carer's pay at the national minimum wage for casual or insecure workers

AUSTRALIA

23 NOV

2020

On 23 November 2020, the Victorian Government announced that it is developing a Secure Work Pilot Scheme to provide greater economic security for casual or insecure workers in certain priority industries. The government-funded Scheme will provide such workers up to five days of sick and carer's pay at the national minimum wage.

In a media release, Premier Daniel Andrews stated the Scheme will commence by 2022 and is expected to cover occupations with high rates of casualisation, such as "cleaners, hospitality staff, security guards, supermarket workers and aged care staff".

A consultation process on the design of the Scheme involving workers, industry and unions is currently on foot and was allocated $5 million in the 2020/2021 Victorian Budget. The Scheme will be rolled out in two phases over two years with the eligible occupations for each phase to be finalised through the consultation process.

The announcement came after Victoria's second wave of COVID-19 cases saw a large number of positive infections among essential and insecure workers who worked across multiple work sites or attended work while symptomatic. Premier Andrews stated that, "When people have nothing to fall back on, they make a choice between the safety of their workmates and feeding their family. The ultimate decision they make isn't wrong – what's wrong is they're forced to make it at all."

Victorian Government Secure Work Pilot Scheme
Media Release from the Premier, (23 November 2020)
Casuals' sick pay scheme starts small, ends with "massive tax": Porter, Workplace Express, (23 November 2020)
Casuals sick pay plan set for clash, The Age, (24 November 2020)
Sick pay for casuals 'a job-killing tax', The Australian, (24 November 2020)
Sick pay strife, Herald Sun, (24 November 2020)
Casual workers sick leave: 5 days guaranteed for insecure employees, Herald Sun Online, (23 November 2020)

AUSTRALIA

9 DEC 2020

Federal legislation passed allowing for amalgamated unions to de-merge after five years of merger

On 9 December 2020, the federal government introduced and passed the Fair Work (Registered Organisations) Amendment (Withdrawal from Amalgamations) Act 2020 (**Withdrawal Amendment**), which received royal assent on 15 December 2020. The Withdrawal Amendment allows the Fair Work Commission (**FWC**) to accept applications from a constituent union (**Constituent**) to demerge from an amalgamation of multiple unions five years or more after the amalgamation has occurred. The FWC may only accept applications if it is satisfied that it is appropriate to do so and must take into account:

- whether the amalgamated organisation has a record of not complying with workplace or safety laws and any contribution of the Constituent to that record on that part; and
- the Constituent's ability to promote and protect the economic and social interests of its members as an independent registered organisation.

Under the previous legislation, a constituent part of an amalgamated organisation could only apply to the Fair Work Commission (**FWC**) for a secret postal ballot to be held in order to determine whether the constituent should de-merge *within* five years of the amalgamation. The amendment provides an additional avenue for a de-merger to occur beyond this five year period.

Fair Work (Registered Organisations) Amendment (Withdrawal from Amalgamations) Bill 2020
Newsflash: Porter introduces IR omnibus legislation, Workplace Express, (8 December 2020)

AUSTRALIA

9 DEC 2020

Introduction of the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020

On 9 December 2020, the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (**Bill**) was introduced into Federal Parliament. They key proposed changes under the Bill are set out in the table below:

Topic	Key proposed changes
Casual employment	Employers can define any employee as a casual, with no leave entitlements or job security, at the time employment commences, provided that the offer of employment makes "no firm advance commitment to continuing and indefinite work according to an agreed pattern of work" and the employee accepts this offer.
	The employer must make an offer to a casual employee to convert their employment to permanent employment if: 1. the casual has been employed for a period of 12 months; and 2. for the last six of those months, the casual has worked a regular pattern of hours on an ongoing basis that they could continue to work as a full-time or part-time employee (without adjusting the hours).
	If a court finds that an employee, who is not a casual employee, has been employed as a casual and paid a casual loading, the court must reduce any amount of permanent entitlements that the employee may have by an amount equal to the loading amount.
Additional hours agreements	Certain part-time employees who work at least 16 hours per week and are covered by specific modern awards can enter into a "simplified additional hours agreement" wherein they agree to work additional hours at their ordinary rate of pay.

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Topic	Key proposed changes
Additional hours agreements	Employers in industries that are covered by specified modern awards can issue "flexible work directions" to their employees, which relates the employee's duties or location of work.
Enterprise agreements	Relaxations to the "better-off-overall test" (**BOOT**), which currently requires enterprise agreements to make any worker better off compared to under their modern award. Under the proposed changes, the Fair Work Commission: 1. would need only to consider patterns or kinds of work, or types of employment, that the employees are currently engaged in, or are reasonably foreseeable, not those that are hypothetical, or are not reasonably foreseeable; 2. may consider the overall benefits (including non-monetary benefits) that employees would receive under the agreement, compared to the relevant modern award; and 3. must give significant weight to any views relating to whether the agreement passes the BOOT that have been expressed by employers, employees and their bargaining representatives.
Compliance and enforcement	Creation of a criminal offence for employers who act dishonestly and systematically underpay one or more of its employees.
	The small claims cap will be increased from $20,000 to $50,000.
	The maximum civil penalty for sham arrangements will be increased by 50%.
Greenfields agreement	Greenfields agreements relating to "major projects" may have a nominal life of up to eight years. Major projects include projects of at least $500 million and projects with expenditure between $250 million and $500 million that has national or regional significance or contributes to job creation.

Background

The Bill follows the conclusion of the deliberations of five industrial relations 'working groups', which were established in 2020 to tackle reform in the Federal Government's priority areas of:

- award simplification;
- enterprise agreement making;
- casuals and fixed term employees;
- compliance and enforcement; and
- greenfields agreements for new enterprises.

The five groups comprised of employers, industry groups, employee representatives and government for each of the priority areas.

Formal working group meetings concluded on 18 September 2020. On 24 September, Industrial Relations Minister Christian Porter conceded that the working groups did not reach a clear consensus on the major issues and said the government would work on a "common sense" compromise position, leading to the proposed Bill.

Reactions and current status of the Bill

Shortly after the release of the Bill, the Labor opposition and the Australian Council of Trade Unions (**ACTU**) expressed dissatisfaction with parts of the Bill, particularly in relation to the proposed changes to the BOOT.

ACTU secretary Sally McManus said some of the changes to the BOOT under

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9 DEC 2020

the Bill was "extreme" law, and would not rule out industrial action to protest the proposed changes, stating "the trade union movement will fight as hard as necessary". Ms McManus explained that the rationale of this view was that "working people have been on the front lines of this pandemic all the way through 2020. We should not have, at the end of 2020, working people being punished by cuts to their pay and a weakening of job security."

The opposition Labor party vowed not to vote for the Bill as it stands, arguing that the Bill's safeguards are too weak and other changes streamlining the approval process for enterprise agreements will make it easier for employers to coerce their staff into agreeing to below-award bargains.

On 15 December 2020, the Bill was referred to a Senate inquiry to be undertaken by the Education and Employment Legislation Committee (Committee). The Committee will examine the provisions in detail and will be accepting public submissions about the legislation until Friday, 5 February 2021. The Committee is due to report on Friday, 12 March 2021.

Porter cool on small business award; & more Workplace Express, (24 September 2020)
Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 Explanatory memorandum
Bill home page
Industrial relations reform fact sheets
Union backlash over jobs shake-up, The Australian, (9 December 2020)
BOOT exception causing pain for Porter, Workplace Express, (10 December 2020)
Submissions deadline looming for terse omnibus bill inquiry, Workplace Express, (19 January 2020)

AUSTRALIA

10 DEC 2020

Federal Senate Select Committee on Job Security established to conduct inquiry into the impact of insecure work

On 10 December 2020, the Senate Select Committee on Job Security (**Committee**) was appointed by resolution of the Senate. The Committee will conduct an inquiry into the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions (**Inquiry**).

The Inquiry's terms of reference include:

- the extent and nature of insecure work in Australia;
- the risks of insecure work exposed or exacerbated by the COVID-19 pandemic;
- workplace and consumer trends and the associated impact on employment arrangements in the 'gig' and 'on-demand' economy;
- the effectiveness, application and enforcement of existing laws, the Australian industrial relations system and policies;
- accident compensation and taxation schemes; and
- the interaction of government agencies and their procurement policies with insecure work and the 'on-demand' economy.

The committee is currently calling for submissions to the Inquiry, which are due by 31 March 2021, and will table its final report on 30 November 2021.

The federal Inquiry follows similar recent inquiries conducted at the state level into the gig economy and insecure work. In July 2020, the Victorian Inquiry into the On-Demand Workforce released its report containing 20 recommendations to government. The Victorian Government sought further submissions and public consultation on these recommendations, which it is now considering before formally responding to the report. In November 2020, the NSW Government established an investigative Taskforce led by SafeWork NSW and Transport NSW to examine a number of recent fatalities of food delivery drivers, and to determine how to improve safety in the industry. In early 2021, the NSW State Insurance Regulatory Agency will also begin public consultations on the design of a workers compensation scheme specifically for gig economy workers.

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AUSTRALIA

10 DEC 2020

Select Committee on Job Security
Inquiry into the Victorian On-Demand Workforce
SafeWork NSW Media Release: New taskforce to investigate gig economy deaths

Click here to view **2019 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

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CONTRIBUTED BY:

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LOOKING BACK

CHINA

30 JAN

2020

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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CHINA

20 FEB

2020

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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CHINA

21 FEB

2020

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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CHINA

4 MAR

2020

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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CHINA

29 MAY

2020

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

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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.

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Circular on Issues concerning Extending the Applicable Period of the Policy for Provisional Reduction and Exemption of the Social Insurance Contributions Borne by Enterprises and Others

The Ministry of Human Resources and Social Security ("MOHRSS"), the Ministry of Finance ("MOF") and the State Taxation Administration ("STA") jointly issued the Circular on Issues concerning Extending the Applicable Period of the Policy for Provisional Reduction and Exemption of the Social Insurance Contributions Borne by Enterprises and Others ("Circular") on June 22 2020. The Circular states that the policy that waives the contributions to three types of social insurance payable by employers among small- and medium-sized enterprises and micro firms in all provinces, autonomous regions, municipalities directly under the Central Government and the Xinjiang Production and Construction Corps (collectively as provinces), will be implemented for a longer period of time till the end of December 2020. The policy that halves the contributions to three types of social insurance borne by employers among large enterprises and other insured entities in all provinces (excluding Hubei Province) will be extended till the end of June 2020, and the policy that waives the contributions to three types of social insurance due by employers among large enterprises and other insured entities in Hubei Province will continue to be applicable till the end of June 2020. The Circular further clarifies that enterprises faced with serious problems with production and operation due to the fallout of the COVID-19 epidemic, will be allowed to continue to postpone the payment of social insurance contributions to the end of December 2020, with no fines for late payment charged during this period. Individual businesses and individuals in various flexible employment, that take out the enterprise employees' basic pension insurance in their personal capacity, may defer the contributions to the basic pension insurance of their own accord, if they really cannot afford to make the contributions in 2020.

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2020

Circular on Working Effectively on Guidance and Services for Shared Employment

The General Office of the Ministry of Human Resources and Social Security ("MOHRSS") issued the Circular on Working Effectively on Guidance and Services for Shared Employment (the "Circular") on September 30 2020. The Circular contains eight parts including supporting the shared employment among enterprises, guaranteeing the autonomy of enterprises to recruit and employees to work, and handling labour disputes and investigating and

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handling illegal acts in a proper manner. Among others, the Circular requires that departments of human resources and social security at all levels shall guide an enterprise with surplus employees (the "former enterprise") to seek the opinions of and reach a consensus with an employee before assigning him or her to an enterprise in shortage of employees, and the period of shared employment shall not exceed the remaining period of the labour contract concluded between the employee and the former enterprise. Meanwhile, during the period when the employee works for the enterprise he or she is assigned to, if such enterprise fails to perform the obligation to protect the rights and interests of the employee as agreed, the employee may return to the former enterprise, and the former enterprise shall not refuse. The Circular also specifies that enterprises that stabilize their workforce through shared employment may still be subject to such policies as phased reduction or exemption of social insurance premiums and refunds for stabilizing employment as required.

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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Looking Forward

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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.

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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HONG KONG **14 JAN** 2020

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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HONG KONG **20 JAN** 2020

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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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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HONG KONG

23 JAN 2020

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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HONG KONG **10 FEB** 2020

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

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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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HONG KONG

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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.

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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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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.

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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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HONG KONG
1 JUN 2020

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.

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Click here to view **2019 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

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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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HONG KONG **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.

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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.

More...

HONG KONG **JUL** 2020

Further Wage Subsidy for Employers in Hong Kong

The Government announced the second tranche of the wage subsidy under the Employment Subsidy Scheme (**ESS**). The subsidy is for payment of wages from September to November 2020.

Under the second tranche of the wage subsidy:

(a) each eligible employer may receive a maximum subsidy of HK$9,000 per month per eligible employee from September to November 2020; and

(b) eligible employers are required to undertake that (i) the number of paid employees (excluding those on no-pay leave) in September, October and November 2020 should not be less than the total number of paid and unpaid employees in March 2020, and (ii) to spend all the wage subsidies on paying wages to their employees. The Government may claw back the wage subsidy disbursed in full or in part for any breach of the undertakings.

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

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HONG KONG **1 JUL** 2020

Launch of FinTech Anti-epidemic Scheme for Talent Development

On 1 July 2020, the Government announced the launch of the HK$120 million FinTech Anti-epidemic Scheme for Talent Development (**FAST Scheme**) under the second round of the Anti-epidemic Fund to support the development of

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financial technology in Hong Kong. The FAST Scheme is a job creation scheme administered by Cyberport to provide financial assistance to local companies engaged in the financial technology sector while creating 1,000 new jobs.

The FAST Scheme will offer a quota of 1,000 openings for application on a first-come-first-served basis. Each eligible employer can only apply for one subsidy of HK$10,000 per month up to 12 months between 2 July 2020 and 2 July 2022 for one new full-time position.

The FAST Scheme is open for online application from 12:00p.m. on 2 July 2020 to 11:59 a.m. on 2 July 2021. More details of the FAST Scheme are available at https://fast.cyberport.hk/en/

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HONG KONG
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2020

Enhanced Maternity Benefits in Hong Kong

On 9 July 2020, the Legislative Council passed the Employment (Amendment) Bill 2019 enhancing the maternity leave benefits of female employees who are employed under a continuous contract of employment.

What are the key changes?

1. An increase in the statutory maternity leave entitlement from the existing 10 weeks to 14 weeks.
2. The daily rate of maternity leave pay for the extended period of maternity leave (i.e. the additional four weeks) shall be at the rate of four-fifths of the employee's daily average wages. The maternity leave pay for these four weeks is capped at HK$80,000 per employee. While the Government has committed to reimburse employers' payment in respect of the extended period of maternity leave, details of the arrangement are not available yet.
3. The period of pregnancy mentioned in the definition of "miscarriage" will be shortened from 28 weeks to 24 weeks. A female employee who suffers a miscarriage at or after 24 weeks of pregnancy will be entitled to maternity leave (if other conditions are met).
4. A certificate of attendance will be accepted as proof of entitlement to sickness allowance for a day on which a female employee attends a medical examination in relation to her pregnancy.

The new measures will come into operation on 11 December 2020.

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HONG KONG
24 JUL
2020

Changes to the Hong Kong Mandatory Provident Fund Schemes Ordinance

On 24 July 2020, Mandatory Provident Fund Schemes (Amendment) Ordinance 2020 (**Amendment Ordinance**) came into effect, bringing changes largely of an administrative nature to the mandatory provident fund (**MPF**) legislation. It empowers the Mandatory Provident Fund Schemes Authority (**MPFA**) to establish a wholly-owned subsidiary and to delegate its functions to such subsidiary. The purpose is to build and operate an electronic system (i.e. the eMPF Centralised Platform) for more efficient administration of MPF schemes.

In addition, the new Amendment Ordinance gives the MPFA the power to charge approved trustees of a registered MPF scheme an annual registration fee of 0.03% of the net asset value (which is revised from 0%) of the MPF scheme, with effect from 1 October 2020. The trustees are not permitted to pass the fee onto the MPF scheme or scheme members.

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HONG KONG

6 AUG 2020

Hong Kong Court Upheld Employee's Claim for Guaranteed Bonus despite Potential Claim by Employer

The Court of Appeal (**Court**) in *Xu Yi Jun v. GF Capital (Hong Kong) Ltd* [2020] HKCA 663 allowed the employee's claim for guaranteed bonus despite the employer's potential claim against her for gross misconduct.

Facts:

The Plaintiff's employment contract with the Defendant provides, among other things, that she would be paid a guaranteed bonus for the year 2016 (**Bonus**). The Bonus is subject to a forfeiture provision where any outstanding payments of the Bonus would be forfeited if she was found guilty of any gross misconduct before 31 March 2017 (**Due Date**).

In around October 2016, the Defendant decided to delay the payment of the Bonus pending the completion of the investigation on the Plaintiff's misconduct in April 2016. The investigation was completed in May 2017 and certain failings of the Plaintiff were identified. The Plaintiff made no response to such findings and resigned voluntarily in June 2017.

The Plaintiff claimed against the Defendant for payment of the Bonus with interest. It is the Defendant's position that the loss and damages it had suffered as a result of the Plaintiff's alleged failure to exercise reasonable care and skill in the performance of her duties could be set-off against the Bonus or any liability due to the Plaintiff.

Court's Decision:

The Court first held that for the Defendant must have come to a finding that the Plaintiff is guilty of gross misconduct before the Due Date in order to forfeit the Bonus, but the Defendant did not. The Court further held that the Bonus, although it is not wages under the EO, is a sum due to an employee. As deduction from wages and any other sum due to an employee is strictly regulated under the EO, no deductions from the Bonus shall be made unless otherwise permitted under section 32(2) of the EO. After looking to relevant legislative history, the Court formed the view that "deduction", which is not defined under the EO, is wide enough to cover an equitable set-off by raising a claim for unliquidated damages in a legal action. Accordingly, the Defendant is not permitted to exercise an equitable set-off against its liability to pay the Bonus.

Takeaways for employers:

Bonus disputes within the financial industry is not uncommon as bonus forms a substantial part for the remuneration package of many financial industry professionals. Bonus clauses should be carefully drafted to allow flexibility for the employers to adjust, withhold or forfeit the bonus in full or in part. To enable the employers to adjust the bonus before and/or after it is awarded, employers may consider building in provisions on malus (i.e. to reduce all or part of the unvested portion of the bonus) or claw back (i.e. to require an employee to return the bonus awarded) provisions in the employment contract and/or bonus policy.

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HONG KONG

17 AUG 2020

Hong Kong Court Holds Parent Company Liable for Employment Claims of Subsidiary's Employee

In *Yung Wai Tak Abraham William* (翁怀德) *v. Natural Dairy (NZ) Holdings Limited (in Provisional Liquidation)* [2020] HKCFI 2067, the Court of First Instance (**Court**) held that, although the employee's written contract was made with Nation Resources Ltd, a **Subsidiary** of Natural Dairy (NZ) Holdings Limited (**Parent**), the Parent was held jointly liable for the employee's claims for outstanding wages and various terminal payments as a joint employer of the employee.

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Facts:

The Parent was a Hong Kong-listed company and had at the relevant time joint provisional liquidators appointed to it.

The Subsidiary was wholly owned by the Parent. The employee was employed by the Subsidiary as its company secretary under a written employment agreement (**Contract**). The employee was later dismissed from his position.

The employee sued the Subsidiary and the Parent in the Labour Tribunal claiming outstanding wages, payment in lieu of notice, a severance payment and salary adjustment. The Labour Tribunal held the Subsidiary liable as the employee's sole employer and dismissed the claims against the Parent. As the Subsidiary could not afford to pay the sums involved, the employee appealed to the Court.

Court's Decision:

In determining whether the Parent was a joint employer of the employee, the Court applied the "overall impression" test and examined, among other things, the proper interpretation of the Contract and the parties' conduct, relevant circumstances and other contemporaneous documentary evidence.

It was held by the Court that:

- The Contract had to be construed as a whole document in order to ascertain the parties' true intentions;
- Although the Contract states that the Subsidiary may assign any duties to the employee, such duties could not be construed to extend to duties for other group companies after considering the entire Contract including the preamble, which contemplated that the employee would perform duties as the Subsidiary's company secretary only;
- The term in the Contract stating that the employee had no other agreements with any other group companies (including the Parent) did not prohibit or preclude the employee from entering into a separate employment agreement with the Parent;
- The employee was performing work for the Parent under a separate employment contract as the Contract did not impose any legal obligation on the employee to perform duties for the Parent;
- The employee's recruitment process, the parties' subsequent conduct and other contemporaneous documents indicated that the Contract did not accurately reflect the true intentions of the employee, the Subsidiary and the Parent; and
- The compelling overall impression was that the employee was the Parent's employee and the Parent was unable to provide sufficient evidence to prove that the employee was working for the Parent under a secondment arrangement with the Subsidiary.

Takeaways for Employers:

It is not unusual for employees within a group of companies to be employed by one company within the group to perform work at or for other group companies. There is also a tendency to treat these employees as employees of the group even though the employment relationship is only with the employing company. Care needs to be taken to ensure that the legal employment relationship and employment obligations remain with the designated group company. Steps employers should take include:

- **Set out duties in the contract of employment.** The written contract of employment with the employing company should state that the employee's duties involve assisting other group companies, if that is the case.

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HONG KONG **17 AUG** 2020

- **Document secondment arrangements.** If there is a secondment of the employee to another group company, then that secondment arrangement should be appropriately documented.
- **Monitor and document changes to duties.** An employee's duties can change over time. Keep track of changes and where there have been any material changes to the employee's contract of employment and/or duties, these should be documented in writing.

The judgment is available at the following link (in Chinese only): https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=130255&QS=%2B&TP=JU

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HONG KONG **26 AUG** 2020

Points to Note for Employment-related Personal Data Systems

On 26 August 2020, the Office of the Privacy Commissioner for Personal Data, Hong Kong (**PCPD**) released an inspection report about the employment-related personal data system of a company in the food and beverage industry. While no material deficiencies were found, the PCPD identified the following areas for improvement which are generally applicable for all employer.

In respect of job applicants:

- to cease to collect partial Hong Kong Identity (**HKID**) Card number;
- to provide a Personal Information Collection Statement (**PICS**) or a contact person from which a copy of the PICS could be obtained; and
- to conduct timely erasure of personal data collected through instant messaging applications.

In respect of employees:

- to ensure that each HKID Card copy collected and held is marked with the word "COPY" across the entire image; and
- to ensure that the retention period of personal data stated in the online privacy policy and that stated in the employment application form are consistent.

The full report "Personal Data System of a Data User in the Food and Beverage Industry" issued by the PCPD is available at the following link: https://www.pcpd.org.hk/english/enforcement/commissioners_findings/files/R20_18950_Eng.pdf

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HONG KONG **10 SEP** 2020

Giving Warnings and Making Announcements – a Helpful Step to Summary Dismissal

The Court of First Instance (**Court**) in *Tse Wing Yee* (谢咏仪) *v. Hena Group Company Limited* (阳华集团有限公司) [2020] HKCFI 2359 held that the employees who were frequently late for work could not be summarily dismissed due to the employer's acquiescence in the absence of warnings and announcements.

Facts:

The employment contracts of the 1st and 2nd Plaintiff provided, among other things, that they are required to start working at 9:00am, but both of them were frequently late to work, and for at least 20 minutes each day for the 1st Plaintiff. While an individual employee received a warning letter regarding her tardiness, the 1st and 2nd Plaintiff have never received any warnings. The Defendant has also never given any announcements to all its employees regarding the strict enforcement of the 9:00am start.

In December 2015, the Defendant requested the 1st Plaintiff, as human resources supervisor, to submit the attendance record of all employees for making salary deductions due to tardiness for the first time. On 15 February

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10 SEP 2020

2016, the Defendant dismissed the 1st and 2nd Plaintiff. However, the 1st and 2nd Plaintiff continued to work until 17 and 19 February 2016 respectively.

The 1st and 2nd Plaintiff claimed against the Defendant, among other things, termination payments on the ground that they were dismissed due to redundancy. It is the Defendant's position that the 1st and 2nd Plaintiff were summarily dismissed so no termination payment or notice is required.

Court's Decision:

The issue before the Court is whether the Defendant could dismiss the 1st and 2nd Plaintiff summarily under section 9 of the Employment Ordinance (**EO**) when the Defendant was found to have tolerated their tardiness.

In cases where the employer has been tolerating a particular misconduct, such as tardiness, courts have to consider: (1) whether a warning should have been issued, and (2) whether the employer's acquiescence is put to an end with or without warning. On the facts, the Court held that there is no valid ground for summary dismissal for two major reasons: (1) the Defendant only took action for its employees' tardiness in December 2015 but had never checked the time records of each employee easily accessible at the Defendant's office, and (2) the Defendant did not put an end to its acquiescence by giving individual warnings to the 1st and 2nd Plaintiff or making announcements.

Under section 31Q of the EO, if summary dismissal cannot be established, there is a presumption that an employee has been dismissed by an employer due to redundancy, unless the employer proves otherwise. As the Defendant failed to do so, the Court upheld the decision that the Defendant is treated to have given the 1st and 2nd Plaintiff 2 days' and 4 days' notice respectively as they continued to work after 15 February 2016.

Takeaways for Employers:

Summary dismissal is a very serious act as employees will not be entitled to any termination payment upon dismissal. While warnings and announcements are not legally required or conclusive in establishing summary dismissal, they are helpful in putting an end to any unintended acquiescence of certain misconduct by employers. To avoid losing the right to summarily dismiss an employee, employers are advised to take appropriate actions before an incident of misconduct arises, such as the timely review of available records. After the finding of any misconduct, employers should do more than giving warnings to defaulting employees and make announcements to all employees regarding the relevant misconduct.

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HONG KONG

18 SEP 2020

The Court Dismissed an Employer's Appeal against Conviction of Unlawful Termination of an Injured Employee

The Court of First Instance (**Court**) in *HKSAR v. 邦辉工程有限公司* (Bonfide Engineering Limited) [2020] HKCFI 2369 dismissed the employer's appeal against the conviction of unlawful dismissal, despite the employee's delay in reporting the work-related injury.

Facts:

On 15 August 2017, the arm of an employee of the Defendant had been injured by chemical burns during work and he was on sick leave from 22 to 24 August 2017. After the lapse of more than six months, he filed a Notice of Accident with the Labour Department (**LD**) on 7 March 2018 as he was constantly told by the Defendant not to report to the LD. He had been on sick leave intermittently from 22 January 2018 to 15 March 2018 and was dismissed by the Defendant orally when he resumed work on 16 March 2018.

It was confirmed that the employee was suffering from an occupational disease prescribed in Schedule 2 of the Employees' Compensation Ordinance (**ECO**) on 15 August 2017. A Certificate of Assessment was later issued, stating that

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he sustained an injury which resulted in permanent loss of earning capacity of 11%.

At the Magistrates' Court, the Defendant was found to have unlawfully dismissed the employee contrary to section 48(1)(a) of the ECO and was fined HK$12,000. The Defendant appealed to the Court against the conviction.

Court's Decision:

Section 5(1) of the ECO provides that an employer is liable to pay compensation in accordance with the ECO if an employee suffered personal injury by accident arising out of and in the course of the employment. When an employee suffers from permanent incapacity which entitles him to compensation, section 48 of the ECO prohibits the termination of employment except under limited circumstances.

The Defendant's conviction was upheld. The Court expressed its understanding as to why the employee did not report to the LD regarding his injury as he did not want to trouble his boss to minimise any impact on his long-term job and he underestimated the severity of chemical burns. The Court also held that the Defendant's oral dismissal of the employee was effective even though it was not put on record by the human resources department.

Takeaways for Employers:

Employers should be mindful of the statutory prohibitions on termination of employment of an injured employee. It is a criminal offence for employers to terminate and/or give notice to terminate an employee who is entitled to compensation under the ECO before the LD has issued the relevant certificate on the assessment of injury. The only exception to this prohibition is to obtain the consent of the Commissioner for Labour to the intended termination, but such consent is rarely granted.

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HONG KONG

18 SEP

2020

Launch of Financial Industry Recruitment Scheme for Tomorrow

On 25 September 2020, the Government announced that the HK$180 million Financial Industry Recruitment Scheme for Tomorrow (**FIRST Scheme**) under the second round of the Anti-epidemic Fund is to be launched. The FIRST Scheme is a cross-sectoral job creation scheme dedicated to the financial services industry with the aim of creating 1,500 full-time jobs in the financial services sector.

Each eligible employer can apply for a salary subsidy of up to HK$10,000 per month for per month per new hire for 12 months. The maximum number of positions is 25 or 5% of the employer's existing headcount rounded off to the nearest whole number, whichever is lower. For employers with less than 30 employees, the eligible headcount will be one only.

Online application for the FIRST Scheme is open from 9:00am on 30 September 2020 and will close at 11:59pm on 31 March 2021. More details of the FIRST Scheme are available at www.fsdc.org.hk/en/first/about

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HONG KONG

25 SEP

2020

Hong Kong Equal Opportunities Commission Issues Guidance on Breastfeeding Discrimination

In preparation for the protection against unlawful breastfeeding discrimination under the Sex Discrimination Ordinance (**SDO**) which will come into force on 19 June 2021, the Equal Opportunities Commission released a guidance for employers on equality for breastfeeding women and a leaflet on breastfeeding discrimination in the workplace. The guidance and leaflet do not have legislative force and so non-compliance with the recommendations in them will not in itself be a breach of any legal requirement. However, if the

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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circumstances are such that the elements for unlawful discrimination are satisfied, there may potentially be a breach of the SDO. That said, of course an employer that complies with best practice is unlikely to breach the law.

Equality for Breastfeeding Women Guidance for the Employment and Related Sector
The leaflet on breastfeeding discrimination in the workplace
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HONG KONG **2 NOV** 2020

Hong Kong Court Reinforces Jurisdictional Limits of the Labour Tribunal

In *Lee Yiu Hong v Well-in Hotel Supplies Company Limited* [2020] HKCFI 2760, the Court of First Instance (**Court**) reinforced the limits in the Labour Tribunal's jurisdiction and did not grant permission to the employer to appeal.

Facts:

The employee worked for the employer as its sales director and claimed against the employer for unpaid commission after his resignation. The Labour Tribunal allowed his claim in part and awarded costs against the employer.

In the application for permission to appeal, the employer only raised that the employee's breach of duties of fidelity and good faith owned to the employer was not considered by the Labour Tribunal.

Court's Decision:

The Court dismissed the employer's application on the basis that the Labour Tribunal would have no jurisdiction to deal with the employer's claim. The Court emphasised that all claims in tort are expressly excluded from the Labour Tribunal's jurisdiction, including mixed claims founded in both contract and tort. As such, a claim in both tort and contract for the alleged breach of confidence arising from the employee's threat to misuse confidential information in company computer and documents cannot be made in the Labour Tribunal.

Takeaways for Employers:

The Labour Tribunal does not have jurisdiction to hear employment claims which based in tort, and this is expressly provided for under the Labour Tribunal Ordinance. Employers should consider the appropriate tribunal or court before making a claim, otherwise the claim may be struck out and they may be ordered to pay for the costs incurred by the other side.

More...

HONG KONG **5 NOV** 2020

Hong Kong Employers Granted Interim Non-solicitation Injunction against Former Employees

In *AB Club Limited and Others v Chan Yin Ki Cubie and Others* [2020] HKCFI 2769, the Court of First Instance (**Court**) granted an interim injunction enjoining the former employees of a corporate group from soliciting clients and other employees but refused to grant the employers' application for a Springboard injunction.

Facts:

The employers were companies forming part of a corporate group (**Group**) and engaged in the business of marketing and selling overseas properties to Hong Kong buyers.

The employees were employed by various companies within the Group. Except for one employee, the employment contracts for all other employees contained, among other things, a non-solicitation clause (**Clause**). Some of the employees incorporated companies before and after resignation from their respective group company employer. After the employees resigned from the Group, they joined these newly incorporated companies which were in direct competition with the Group.

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The employers commenced action in the Court and sought, among other things, against four employees an interim injunction restraining them from soliciting clients and employees of their former employers for 12 months (**Non-solicitation Injunction**) and from carrying on certain business for six months (**Springboard Injunction**) from the date of termination of their employment.

Court's Decision:

The Court granted the Non-solicitation Injunction but refused to grant the Springboard Injunction. A Springboard injunction is a type of injunction that a court can grant to remove any advantage or head start an employee may have obtained through misuse of their employer's confidential information.

1. Springboard Injunction

The Court held that the employers had delayed by some three weeks in seeking this injunctive relief from the Court during which the newly incorporated companies were allowed to carry on business. This indicated that they had no urgency in putting a stop to the competing business pending a more substantive hearing of the employers' application for an injunction. The Court also considered that damages are not necessarily difficult to assess in the factual context of this case. In the circumstances, the Court concluded that the risk of injustice is higher if it ordered the Springboard Injunction in the interim.

2. Non-solicitation Injunction

On the other hand, the Court was satisfied that the employers established a good arguable case that three employees were in breach of their contractual duties of non-solicitation provided under the Clause. The Court saw little prejudice (if any at all) to hold the three employees to their contractual non-solicitation obligations in the interim and granted the Non-solicitation Injunction.

Takeaways for Employers:

- **Take action promptly and without delay.** Generally, a delay of as short as two weeks may be a ground for the court to refuse interim relief. Employers should therefore act quickly if they want to apply for an injunction.
- **Consider including express contractual non-competition restraint.** In the case reported above, the employers presumably did not have a contractual non-competition clause and applied for a Springboard injunction. Employers should consider including an express non-competition clause in their contract of employment. Employers should also ensure that the geographical scope, area, duration and scope of activities of the restrictive covenants are reasonably necessary to protect their legitimate interests.
- **Review restrictive covenants regularly.** Employers should review restrictive covenants regularly to take account of any promotions and changes in an employee's duties to maximise enforceability.

The judgment
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HONG KONG

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2020

A Lesson from the Hong Kong Court of Final Appeal's Landmark Decision on Sex Discrimination

In *Leung Kwok Hung (also known as "Long Hair") v Commissioner of Correctional Services* [2020] HKCFA 37, the Court of Final Appeal (**CFA**) unanimously allowed the Appellant's appeal in finding direct sex discrimination against male prisoners on the restriction on hair length imposed by correctional facilities. Employers should be aware of the implications that this landmark decision may have on the dress code for their employees.

Continued on Next Page

Facts:

Upon admission to the correctional facilities, the Appellant was required to have his hair cut pursuant to a standing order (**SO**) which provides that (a) the hair of all male prisoners will have to be kept short and that (b) generally, a female prisoner's hair shall not be cut shorter than it was on admission without consent. The Appellant applied for judicial review the lawfulness of the decision to require him to cut his hair (**Decision**), where he was allegedly discriminated against on the account of his sex.

The Court of First Instance found in favour of the Appellant declaring that the Decision constituted direct sex discrimination. The Court of Appeal however overturned the findings and the Appellant appealed to the CFA. The CFA unanimously allowed the Appellant's appeal.

CFA's Decision:

The key issue in dispute was whether the Decision constituted less favourable treatment. The CFA accepted that men and women are not necessarily to be treated identically and a "packaging" approach should be adopted to determine if there is any less favourable treatment in the circumstances. However, the approach is not a "tit for tat" or "swings and roundabouts" approach. In the context where the discriminator had relied on some policies or underlying objectives to demonstrate the differential treatments between the two sexes, it must be shown that the difference in treatments were logically and reasonably connected to such policies and objectives.

Having a requirement for all employees to wear a uniform does not mean that male and female employees have to be in exactly the same attire. For example, if the underlying objective of a dress code is for employees to dress in a business-like manner, a requirement for male employees to wear a collared shirt and tie at work would be acceptable. On the other hand, a ban on female employees to wear trousers would go too far because it is difficult to see how such a ban promotes a business-like image for female employees. The perception that women wearing skirts are more business-like is at most a stereotype and is no defence to discriminatory conduct.

The CFA also observed that social conventions may be a legitimate factor to justify the differential treatments in certain circumstances. For example, segregation in different toilets, or difference in cross gender rub down searches in prisons may be legitimate for privacy and decency reasons.

The stated objective, policy or reason for the difference in treatment between male and female prisoners was custodial discipline. The Respondent claimed that the conventional hairstyle for men in the society is a short one whereas hair can be long or short for women. However, the CFA could not see how

the restrictions with reference to the conventional standards of hair length had any connection with custodial discipline and in any event the Respondent had failed to establish on evidence the alleged conventional standards. Accordingly, the CFA found that less favourable treatment was given to the Appellant when compared with female prisoners and the Decision constituted direct sex discrimination.

Takeaways for Employers:

A dress code which applies across all employees could give rise to claims for both direct and indirect discrimination under the Sex Discrimination Ordinance, Disability Discrimination Ordinance and Race Discrimination Ordinance. Steps that employers may take to minimise their exposure include:

- **Develop a non-discriminatory dress code.** Employers should maintain workplace policies that are gender-neutral and impose policies on both sexes in an even-handed manner. Employers should also avoid dress codes which are biased by stereotypes of the kinds of dress and appearance of a particular sex or race.

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LOOKING BACK

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- **Make sure the requirements are justified.** Employer should include only those requirements which relate directly to the employees' job duties and the nature and circumstances of the employment. Employers should also consider the special needs of the employees, for example their disabilities and religious backgrounds, when implementing the dress code policy.
- **Review policies periodically.** Policies should be reviewed periodically to take into account changing social conventions and avoiding stereotypes.

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HONG KONG
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2020

Hong Kong Privacy Commissioner Issues Guidance Notes on Work-from-Home Arrangements

On 30 November 2020, the Privacy Commissioner for Personal Data, Hong Kong (**PCPD**) issued three guidance notes for the handling of personal data connected with work-from-home (**WFH**) arrangements. The guidance notes aim to provide practical advice to organisations including employers, employees, and users of video conferencing software to enhance data security and the protection of personal data privacy.

Employers should note that their legal obligations as a data user are no different in a WFH arrangement than those in an office environment. However, the circumstances around how personal data may be used, stored and handled will be different in a WFH setting and employers need to cater for that. Employers should consider how personal data may be used, stored and handled in the WFH environment and address their obligations as a data user under the Personal Data (Privacy) Ordinance (**PDPO**). Although the guidance notes are not statements of law and employers have no legal obligation to follow the recommendations in them, employers that comply with the recommendations are unlikely to breach the PDPO.

The three guidance notes issued by the PCPD under the series "Protecting Personal Data under Work-from-Home Arrangements"
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HONG KONG
11 DEC
2020

Enhanced Statutory Maternity Benefits and Reimbursement of Maternity Leave Pay Scheme

The increase in statutory maternity leave to 14 weeks under the Employment (Amendment) Ordinance 2020 is effective from 11 December 2020. Eligible employees whose confinement occurs on or after this date are entitled to 14 weeks of statutory maternity leave. Employers should be aware of their employees' entitlement to statutory maternity leave and maternity leave pay.

The Government has also committed to reimburse employers payment in respect of the extended period of maternity leave, where the maternity leave pay for the four additional weeks of maternity leave is capped at HK$80,000 per employee. In connection with this, the Labour Department has released a fact sheet of the Reimbursement of Maternity Leave Pay Scheme (**Scheme**).

The key details of the Scheme are:

- Employers will be able to apply via a one-stop online portal under the Scheme, which is to be implemented in the first half of 2021;
- As the Scheme is not currently in place, employers are required to keep relevant employment records and other related documents of pregnant employees in order to apply for reimbursement later; and
- The relevant documents to be kept by employers include payment records of statutory maternity leave pay to the employee, proof of the employee's pregnancy and the employee's wage records for the 12 months immediately before the commencement of maternity leave.

The Labour Department has released a set of practical FAQs and a leaflet on the amendments to the Employment Ordinance
The fact sheet about the Scheme
More...

Hong Kong Court Struck out Former Employee's Harassment Claim but Not Victimization Claim

In *Kwong Lai Yan v Scott Bingham v Another* [2020] HKDC 1193, the District Court (**Court**) struck out the employee's claim for sexual harassment against her colleague on the ground that it was out of time, but not her claim for discrimination by victimization against her employer.

Facts:

The Claimant was employed by the 2nd Respondent (**Company**) in April 2014. From April to August 2016, the 1st Respondent, also an employee of the Company, repeatedly sexually harassed her by touching her face and body and making verbal advances and body gestures with sexual undertones to her.

In June 2016, the Claimant reported the 1st Respondent's harassment to the senior management personnel of the Company. When further complaints were made a month later since the 1st Respondent's behaviours persisted, her complaints were dismissed by the senior personnel for her being dramatic. She also attended the Equal Opportunities Commission (**EOC**) in July 2016 but no formal complaint was lodged by her.

The 1st Respondent was dismissed by the Company in August 2016 and left Hong Kong since March 2017. After the 1st Respondent's dismissal, the Claimant attended various meetings with relevant staff members of the Company, where she was blamed, humiliated, accused of being disrespectful and pressurized to share her commission.

The Claimant was subsequently dismissed by the Company in November 2017. In early 2018, she was informed by the EOC that she would have to commence proceedings in the Court herself and that the EOC would not help her because more than 12 months have passed since the time of the act of harassment.

In September 2019, the Claimant commenced an action in the Court for sexual harassment against the 1st Respondent for which the Company was vicariously liable (**Harassment Claim**) and for discrimination by victimization against the Company (**Victimization Claim**). The Company applied to strike out the Claimant's claims on the ground that the claims were made out of time.

Court's Decision:

Generally, the time limitation for claims under the anti-discrimination ordinances is 24 months from when the act complained of was done. If a complaint in relation to the alleged unlawful act was made to the EOC, then the 24-month period shall not include the period that elapsed between the date when the complaint was lodged and the date when the complaint was as certified in writing by the EOC.

1. Harassment Claim

The alleged act of unlawful sexual harassment ceased upon the dismissal of the 1st Respondent in August 2016. However, the Claimant only commenced the action in September 2019 after a lapse of more than three years. This was outside of the 24-month period ending in August 2018 within which proceedings should have been brought. Although the Court may consider claims that are out of time if it is just and equitable to do so in all the circumstances of the case, the Court refused to do so as there was no good reason for the Claimant's delay in bringing her claim especially as the EOC had told her that she would need to bring the claims in the District Court on her own in early 2018.

The Court also commented that the delay would prejudice the Company's position since it could no longer secure the 1st Respondent's assistance to argue against the Claimant's allegations for which it might be vicariously liable.

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LOOKING BACK

HONG KONG
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The Court struck out the Harassment Claim as it was made out of time.

2. Victimization Claim

The Claimant claimed that the victimisation began in July 2016 after she first reported the alleged harassment and ended with her dismissal in November 2017. The Court considered that it is likely that the acts of victimization which took place in different points in time as alleged by the Claimant had a connection among them. Such acts could be considered an act extending over a period of time and shall be treated as done at the end of that period, i.e. November 2017 when the Claimant was dismissed by the Company. As such, the 24-month period commenced in November 2017. The Victimization Claim was brought in September 2019 hence it was not time-barred.

Takeaways for Employers:

This case serves as a reminder that employers could be held vicariously liable for sexual harassment committed by their employees. To defend any claim for vicarious liability, employers should demonstrate that it has taken all reasonably practicable steps to prevent the alleged conduct from happening. As such, it is important for employers to have in place policies and procedures in handling harassment in the workplace, provide anti-harassment training to employees and take disciplinary action against wrongdoers where appropriate.

Employer should also be cautious in terminating the employment of an employee who has made a discrimination or harassment complaint. The employee may have a victimisation claim even though the initial discrimination or harassment complaint was not substantiated.

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Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

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.

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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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INDIA

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.

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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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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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Important: action likely required

Good to know: follow developments

Note changes: no action required

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INDIA

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.

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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.

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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.

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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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LOOKING BACK

INDIA

5-6, 8-9 MAY

9,17 JUN

2020

- 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.

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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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INDIA
21 MAY
2020

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).

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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.

More...

INDIA

6 JUN 2020

Removal of requirements on renewal of registration certificates under the Andhra Pradesh Shops and Establishments Act, 1988 (**AP S&E Act**)

The AP S&E Act requires all employers of shops and establishments to be registered under that statute. The registration certificate granted under the AP S&E Act is valid from the date on which it is issued up to 31 December of the following year. Thereafter, employers are required to renew the registration certificates each year or once in three years (depending of the renewal duration). However, with a view to allow ease of doing business in the state, the state government has now exempted all shops and establishments having a registration under the AP S&E Act from the requirement to renew the registration certificates.

INDIA

12 JUN 2020

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...

INDIA

2,3, 20,31 JUL 2020

Increased threshold for applicability of the Factories Act, 1948 (**Factories Act**) in some States and other changes.

The Factories Act is a central law that primarily governs the working conditions and health-and-safety obligations on employers vis-a-vis factory employees. This law applies to - (a) any premises where 10 or more workers are/were employed on any day in the preceding 12 months and manufacturing process is carried out with the aid of power, and (b) any premises where 20 or more workers are/were employed on any day in the preceding 12 months and manufacturing process is carried out without the aid of power.

However, recently, in some States (Karnataka, Gujarat, Haryana, Madhya Pradesh and Bihar), the threshold of 10 or more workers for applicability of the Factories Act (to manufacturing processes functioning with the aid of power) has been increased to 20 or more workers, whereas the threshold of 20 or more workers (to manufacturing processes functioning without the aid of power) has been increased to 40 or more workers.

The ordinances issued in Gujarat and the Factories (Haryana Amendment) Act, 2020 also provide for compounding of offences under the Factories Act.

Further, the employment of women between 7 p.m. to 6 a.m. at factories is generally prohibited. However, the Haryana amendment to the Factories Act now provides that the State government may allow factories which provide adequate safety and security measures to employ women at between 7 p.m. to 6 a.m..

INDIA

3,11, 31 JUL 2020

Increased threshold for applicability of Chapter VB under the Industrial Disputes Act, 1947 (ID Act) in Karnataka, Punjab and Gujarat

By way of promulgation of ordinances in the respective states, the state governments have relaxed the applicability threshold of Chapter VB of the ID Act.

Continued on Next Page

INDIA

3,11, 31 JUL 2020

Chapter VB of the ID Act sets out the procedures for lay-off, retrenchment, and closure to be followed in industrial establishments (which include factories, mines and plantations). Generally, Chapter VB under the ID Act applies to factories, plants and mines in which not less than 100 workmen are/were employed in the last 12 months. The procedures set out under Chapter VB (for retrenchment, closure, lay-off, etc.) are more stringent that the processes prescribed under Chapter VA (which typically applies to commercial establishments). This is because, industrial establishments covered under Chapter VB would need to obtain the respective state government's prior approval before proceeding with the retrenchment, lay-off, etc.

The state governments of Karnataka, Punjab and Gujarat have now, by way of their ordinances, increased the applicability threshold for Chapter VB from 100 or more workmen to 300 or more workmen employed in the last 12 months.

Further, the ordinances for Punjab and Gujarat also provide that in case of retrenchment under Chapter VB, employers can now terminate employment only by providing three months' notice but can no longer make payments in lieu of such notice period. Further, in case of retrenchment or closure under Chapter VB, in addition to the compensation payable to the workmen concerned, there is now an obligation to pay an amount equal to three months' average pay.

INDIA

9,20, 31 JUL 11,20 AUG 2020

Increased threshold for applicability of the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA) in some States.

The CLRA is a law that governs the engagement of third-party vendor employees by any company/organization. The CLRA is generally applicable to every establishment in which 20 or more workmen are/were employed on any day of the preceding 12 months as contract labour. The CLRA also generally applies to every contractor who employs/had employed on any day of the preceding 12 months, 20 or more workmen. Due to this threshold, it was found that principal employers often refrained from engaging contract labour (due to the compliance associated with the engagement under the CLRA). Therefore, with a view to ease compliance and incentivize further engagement of contract workers, the following state governments have increased the threshold for applicability of the CLRA (for both, principal employers and contractors):

- Karnataka, Punjab, Gujarat and Madhya Pradesh: The threshold for applicability of the CLRA in each of the States has been increased from 20 to 50 contract workmen or more.
- Himachal Pradesh: The limit has been increased from 20 to 30 contract workmen or more.

INDIA

22 AUG 2020

Standard Operating Protocol (SOP) for travel on Vande Bharat and Air Transport Bubble Flights

Although the operation of international flights at full-swing continues to remain prohibited in India, the MHA has permitted operation of international flights under –

- the 'Vande Bharat' scheme, for the evacuation of Indian nationals stranded abroad; and
- the 'Air Transport Bubble Arrangements' which India has entered into with few select countries (such as UK, US, Germany and France). This arrangement allows limited commercial passenger services (through designated airlines) on reciprocal basis.

Passengers on-board on these flights would need to follow the SOP's requirements in relation to hygiene, social distancing and other preventive measures.

'Unlocking India' (further relaxations on the lockdown restrictions imposed for the containment of COVID-19).

On 24 March 2020, the Ministry of Home Affairs (**MHA**) ordered a nationwide lockdown of 21 days between 25 March 2020 and 14 April 2020. This lockdown was subsequently extended a few times. Since June 2020, the MHA has adopted the strategy of 'unlocking' the restrictions and is reopening restricted activities in a phased manner. In the various 'unlock' phases till date, the MHA has restricted the nationwide lockdown only to containment zones and has issued notifications to provide guidelines for each month (since June 2020). Even under the MHA order and guidelines that are effective between 1 September 2020 and 30 September 2020 (**Unlock 4.0 MHA Guidelines**), the nationwide lockdown has been extended only in the 'containment zones'.

Under the Unlock MHA 4.0 Guidelines, the MHA has generally permitted all activities to operate - however, certain activities that were previously prohibited such as, educational institutions, social/cultural/religious congregations, international air-travel and metro rail services, etc. will be allowed to reopen in a graded manner. However, unlike previous MHA guidelines, under the Unlock 4.0 MHA Guidelines, the state governments will not have the ability to impose any lockdown (state/district/sub-division/city level) outside containment zones, without prior consultation with the central government.

In line with the relaxations under the Unlock 4.0 MHA 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 high-incidence locations of COVID-19 (such as Maharashtra), the state governments are taking a cautious and controlled approach - with cities like Mumbai even imposing restrictions on the movement of persons (except for permitted essential activities). For example, in Maharashtra, private offices can operate with only up to 30% of the staff capacity. However, since 17 September 2020, a curfew has been imposed in Mumbai (Maharashtra) thereby restricting the general movement of persons till 30 September 2020. Only a few 'essential service providers' (such as, telecommunications, essential IT/ITES establishments, financial institutions like banks, internet services, print and electronic media) are considered as exempted from the curfew restrictions in Mumbai and are hence, allowed to operate (with minimal staff capacity).

Further, the Unlock 4.0 MHA Guidelines have prescribed the 'National Directives for COVID-19 Management' (**National Directives**) that are required to be followed throughout India. The National Directives mandate the following for workplaces -

- compulsory use 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; and
- frequently sanitizing the workplace, all common facilities and points which come into human contact (such as door handles) which should be performed between work shifts as well.

Further, the Unlock 4.0 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.

INDIA

2 SEP 2020

Due date for filing of returns under the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (PT Act)

The PT Act imposes a tax on all persons employed in any profession, trade, calling or employment. Employers have an obligation under the PT Act to make salary deductions and remit the tax on the employees' behalf in each month. Further, employers are also required to file returns to the authorities in relation to the deductions made by them. The state government has now ordered that if employers were unable to upload returns due to COVID-19 for any period up to June 2020, they can file their returns on or before 30 September 2020. This can be filed on the website of Maharashtra Goods and Services Tax Department.

INDIA

29 SEP 2020

Passing of Labour Codes on Employment

The Indian government is in the process of consolidating 29 existing central labour laws into 4 labour codes. The prime objective of the consolidation has been to facilitate the ease of doing business, the use of technology, and to eliminate multiplicity and inconsistency of definitions across laws. While the Code on Wages, 2019 was already passed by the Parliament and approved by the President on 8 August 2019, the remaining three codes, *viz.* Industrial Relations Code, 2020, Code on Social Security, 2020 and Occupational Health, Safety and Working Conditions Code, 2020 were passed by the Parliament and were approved by the President on 28 September 2020. Based on the labour minister's announcement, the 4 labour codes may possibly come into effect from April 2021.

The key changes under the 3 labour codes which were recently passed is set out below:

Industrial Relations Code, 2020 (IR Code): The IR Code will consolidate and replace 3 existing central labour laws, namely, the Industrial Disputes Act (**ID Act**), the Industrial Employment (Standing Orders) Act, 1946 (**SO Act**) and the Trade Unions Act, 1926.

- The IR Code, *inter alia*, provides the mechanism for investigation, settlement and resolution of industrial disputes, conditions of employment in industrial establishments, recognition of trade unions, certification of standing orders, retrenchment of workmen and closure of industrial establishments.
- Some of the key changes under the IR Code include:
  - » The term 'workman' under the ID Act will be replaced with 'worker.' The term 'worker' covers all employees in individual contributor roles, with the only exceptions being employees in primarily (**a**) supervisory roles earning INR 18,000 or more per month (around USD 250 or more) and (**b**) managerial roles.
  - » The termination process for 'workers' continue to be the same as currently prescribed under the ID Act [which *inter alia* includes, the requirement to comply with the last-in, first-out (LIFO) rule and to pay retrenchment compensation on or before the last day of employment in case of retrenchment].
  - » Under the SO Act, the obligation on employers to draft standing orders (essentially, service rules) and obtain certification from the labour authorities applies to establishments with 100 or more workmen. However, in a few states such as, Karnataka, Maharashtra and Telangana, this threshold has been reduced 50 or more workmen. The IR Code will significantly increase the threshold for the applicability of the provisions relating to standing orders, in that these provisions will apply to industrial establishments (which includes commercial establishments) having *300 or more workers*.

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» Under the IR Code, in addition to retrenchment compensation, employers will be required to make contributions to a worker re-skilling fund (a fund to be setup by the government to promote upskilling of retrenched workers). This will be a one-time contribution, payable at the time of retrenchment (which includes termination for performance and redundancy) and is calculated as 15 days' last drawn wages of the worker.

» Employers with 20 or more workers would be required to constitute a grievance redressal committee ("**GRC**") for resolution of individual grievances. The GRC can have a total of 10 members, and will need to have an equal representation from the workers.

» Currently, only a few states (such as, Maharashtra) impose a mandatory obligation on employers to recognize unions that meet some specific criteria. However, under the IR Code, it would be mandatory for employers in all states to recognize a trade union which meets the prescribed conditions as the sole bargaining agent. Where multiple unions exist, the IR Code provides for the constitution of a negotiating council consisting of representatives of such trade unions.

» The IR Code significantly increases penalties for first time offences, which will be in the range of INR 50,000 to INR 10,00,000 (USD 700 to USD 13500) as opposed to INR 100 to INR 5,000 (USD 2 to USD 100) under the current laws. The IR Code also makes provision for compounding of offences (subject to payment of a prescribed fine).

Code on Social Security (SS Code): The SS Code is one among the 4 labour codes, which will consolidate and replace 9 central labour laws, including -

- The Employees' State Insurance Act, 1948
- The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("**EPF Act**")
- The Employees' Compensation Act, 1923
- The Maternity Benefit Act, 1961
- The Payment of Gratuity Act, 1972

Some of the key changes under the SS Code include:

- Most Indian employment laws have a unique definition of 'wages', with its own list of inclusions and exclusions. This has resulted in considerable ambiguity and has been a subject matter of many disputes and litigations. To bring in an element of consistency, the government has now introduced a uniform definition of 'wages' across all the 4 labour codes.
- This revised/new definition of 'wages' under the SS Code will have an impact on the computation of provident fund contributions and also gratuity payment, which is a long-term service payment made at the time of exit if an employee has completed 5 years of continuous service.
- Employees on fixed term contracts would be eligible to gratuity payment even if the qualifying period of 5 continuous years of service is not met.
- The SS Code permits voluntary registration for and de-registration from the chapter on employees' state insurance for establishments with less than 10 employees. Currently, only the EPF Act provides for voluntary coverage. The SS Code significantly increases penalties for first time offences, which will be in the range of INR 50,000 to INR 1,00,000 (USD 700 to USD 1,400) as opposed to INR 500 to INR 20,000 (USD 10 to USD 300) under the current laws. The SS Code also makes provision for compounding of offences (subject to payment of a prescribed fine).

Occupational Safety, Health and Working Conditions Code, 2020 (OSH Code): The OSH Code is one among the 4 labour codes, which will consolidate and replace 13 central labour laws, including the current Contract Labour (Regulation and Abolition) law, 1970.

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Some of the key changes under the OHS Code include:

- Increased applicability of the provisions on engagement of contract labour, whereby the contract labour related obligations will apply to (**a**) establishments wherein 50 or more contract labour are / were engaged in the preceding 12 months, and (**b**) to manpower supply vendors who deploy / had deployed 50 or more workers in the last 12 months
- Currently, while central and state governments have the ability to prohibit contract labour in certain activities, it is only in a few states (such as Andhra Pradesh and Telangana) that the engagement of contract labour in the core activity of the business is prohibited. The OHS Code prohibits, at a pan-India level, the engagement of contract labour in an establishment's 'core activities' i.e., activities for which the establishment has been setup, including its essential and necessary activities.
- The OHS code limits the definition of 'contract labour' to exclude workers who are regularly employed in the vendor's establishment upon mutually-accepted conditions and who receive periodical increments in pay, social security, welfare benefits, etc. Accordingly, a lot of service companies that deploy their regular employees to work out of client-premises will be excluded from the regulations on contract labour.
- Currently, the laws subsumed by the OHS Code prescribe penalties in the range of INR 500 to INR 1,00,000 (USD 10 to USD 1400). Penalties under the OHS Code are in the range of INR 50,000 to INR 5,00,000 (USD 700 to USD 6800). The OHS Code also makes provision for compounding of offenses (subject to payment of 50% to 75% of the maximum prescribed fine).

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INDIA
5 OCT
2020

Applicability of central labour laws to the Union Territory of Jammu and Kashmir (J&K)

The Ministry of Home Affairs issued the Union Territory of Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Second Order, 2020, ("**Order**") on 5 October 2020, which intends to adopt (extend) various central laws including certain central labour laws, with certain modifications, in the Union Territory of J&K. The relevant central labour laws adopted/extended to J&K include:

- The Industrial Disputes Act, 1947,
- The Contract Labour (Regulation and Abolition) Act, 1970 (which would apply to principal employers in J&K engaging 40 or more contract workers),
- The Industrial Employment (Standing Orders) Act, 1946,
- The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

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INDIA
12 OCT
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2020

Increased threshold for applicability of the Factories Act, 1948 (**Factories Act**) in some states.

The Factories Act is a central law that primarily governs the working conditions and health-and-safety obligations on employers vis-a-vis the factory employees. This law applies to - (a) any premises where 10 or more workers are/were employed on any day in the preceding 12 months and manufacturing process is carried out with the aid of power, and (b) any premises where 20 or more workers are/were employed on any day in the preceding 12 months and manufacturing process is carried out without the aid of power.

However, recently, in states of Bihar and Goa, the threshold of 10 or more workers for applicability of the Factories Act (to manufacturing processes

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functioning with the aid of power) has been increased to 20 or more workers, whereas the threshold of 20 or more workers (to manufacturing processes functioning without the aid of power) has been increased to 40 or more workers.

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INDIA

19 OCT 2020

Female employees allowed to work at night in any type of commercial establishment in Karnataka

The Karnataka Shops and Commercial Establishments Act, 1961 (**S&E Act**) regulates the employment and working conditions of commercial establishments in the state of Karnataka. The S&E Act prohibited the employment of women as employees or otherwise during night hours (defined as the period between 8 p.m. to 6 a.m.). However, an exemption from this general prohibition was granted only to establishments in the Information Technology (**IT**) or IT enabled services (**ITeS**) sector, subject to their compliance with the prescribed conditions (relating to safety, transportation and security of the female employees). This exemption was not automatic, and employers of IT or ITeS establishments were required to make an application for exemption to the jurisdictional labour authorities (along with a list of details of the female employees who were willing to work at night).

However, the Karnataka State Government amended the S&E Act on 19 October 2020 to remove the prohibition on employment of women at night. As per this amendment, a female employee is allowed to work in a 'commercial establishment' at night subject to the prescribed conditions - like, obtaining written consent of a female employee to work at night, providing free GPS-enabled and secure transport facilities to-and-from the women employee's residence and workplace, provision of security guards at the workplace, and separate washroom, dispensary facilities, etc. Hence, all commercial establishments (and not just those establishments in the IT or ITeS sector) are permitted to employ women at night, without the requirement to obtain/apply for any exemption from the authorities.

However, non-compliance with the prescribed conditions could lead to cancellation of the registration certificate issued to the establishment under the S&E Act.

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INDIA

27 OCT & **25 NOV** & **27 NOV** 2020

Guidelines for Surveillance, Containment and Caution (strict enforcement of lockdown measures in containment zones and of restrictions on certain activities).

On 24 March 2020, the Ministry of Home Affairs (**MHA**) ordered a nationwide lockdown of 21 days between 25 March 2020 and 14 April 2020. This lockdown was subsequently extended a few times. Since June 2020, the MHA has adopted the strategy of 'unlocking' the restrictions and is reopening restricted activities in a phased manner. In the various 'unlock' phases till date, the MHA has restricted the nationwide lockdown only to 'containment zones' and has issued notifications to provide guidelines for each month (since June 2020).

For the period between 1 December 2020 to 31 December 2020, the MHA has issued Guidelines for Surveillance, Containment and Caution (**Surveillance Guidelines**). Even under the said Guidelines, the nationwide lockdown is limited in 'containment zones.' However, the Surveillance Guidelines require State Governments and Union Territory Administrations to strictly enforce the following:

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- Preventive measures such as, maintaining social distancing, wearing face masks, hand hygiene, etc.
- Closure of international air travel, except as allowed by the MHA;
- Cinema halls and theatres to be operational only with up to 50% strength.
- There will be no restrictions on inter-state and intra-state movement of persons. Further, no permission/e-passes will be required for such movements.
- Surveillance in the 'containment zone' (which include perimeter control to regulate movement of people, testing, contact tracing and home isolation).

Similar to the previous months, under the Surveillance Guidelines, the MHA has permitted all activities to operate by complying to the respective Standard Operating Procedures (**SOPs**). Under the Surveillance Guidelines, state governments do not have the ability to impose a lockdown outside containment zones (whether at a state / district / sub-division / city level), without prior consultation with the central government. However, States may impose local restrictions based on their assessment (such as night curfews).

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), the state governments are taking a cautious and controlled approach - with cities like Mumbai even imposing restrictions on the movement of persons (except for permitted essential activities). For example, in Maharashtra, private offices can operate with only up to 30% of the staff capacity.

Further, the Surveillance Guidelines requires the States and Union Territories to strictly enforce the 'National Directives for COVID-19 Management'. The National Directives mandate the following for workplaces -

- 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.

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INDIA

5 NOV 2020

Guidelines for International arrivals

The Ministry of Health and Family Welfare (MoHFW) had issued guidelines for international arrivals on 24 May 2020 which among other things, provided for 14 days of mandatory quarantine including 7 days of institutional/medical facility quarantine. Thereafter, the MoHFW issued revised guidelines for international arrivals on 2 August 2020 in supersession to the guidelines dated 24 May which allowed exemption from the mandatory quarantine period, subject to submitting a negative RT-PCR test report. The MoHFW has further issued revised guidelines on international arrivals (**MoHFW Revised Guidelines**) in supersession of guidelines dated 2 August 2020.

The MoHFW Revised Guidelines require travellers to submit a self-declaration form on the designated portal at least 72 hours before the scheduled travel or physically after arrival. Further, before departure, they would also be required to submit an undertaking on a government portal(through concerned airlines) that they would abide by the decision of the appropriate government authority to undergo facility / home quarantine/ self-monitoring of their health for 14 days, or as warranted. The travellers may be allowed to 14 days' home quarantine only for compelling reasons/ cases of human distress such as pregnancy, death in family, serious illness and parent(s) with children of the age of 10 years or below.

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INDIA
5 NOV 2020

The MoHFW Revised Guidelines also allows exemptions from quarantine on submission of a negative RT-PCR negative report or opting for RT PCR test at airport (if facility is available).

More...

INDIA
5 NOV 2020

Haryana State Employment of Local Candidates Bill, 2020 (**Local Candidates Bill**).

The Haryana State Legislative Assembly passed the Local Candidates Bill on 5 November 2020. The Local Candidates Employment Quota Bill provides for reservation for local candidates in private companies, partnership firms, limited liability partnerships, etc. in the state of Haryana. The Local Candidates bill is yet to receive the approval of the Governor after which it will come into effect on a date notified by the State government in the Official Gazette.

Under the Local Candidates Bill, employers would be required to employ 75% local candidates (meaning those domiciled in Haryana) in posts where the gross monthly salary is INR 50,000 (USD 700) or less, or such other amount that may be notified by the state government. Non-compliance with this reservation obligation could be penalized with a monetary fine in the range between INR 50,000 to INR 2,00,000 (USD 700 to USD 2800) in the first instance. In order to be eligible for a reservation, a local candidate is required to register herself / himself on a designation government portal.

Employers may claim an exemption from the reservation requirement if adequate local candidates of the required skill, qualification or proficiency are unavailable. The Bill also requires private employers to (**a**) register every employee earning a gross monthly salary of INR 50,000 or less on the government portal; and (**b**) submit a quarterly report with details of the local candidates employed by them during that quarter.

More...

INDIA
18 NOV 2020

Increased threshold for applicability of the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA) in Bihar.

The CLRA is a central law that governs the engagement of third-party vendor employees by any company/organization. The CLRA is generally applicable to every establishment in which 20 or more workmen are/were employed on any day of the preceding 12 months as contract labour. The CLRA also generally applies to every contractor who employs/had employed on any day of the preceding 12 months, 20 or more workmen.

In order to boost industrial and economic activities, the state government of Bihar has increased the threshold for applicability of the CLRA (for both, principal employers and contractors) from 20 contract workmen or more to 50 contract workmen or more.

More...

INDIA
4 DEC 2020

Introduction of Self/Third Party Compliance Certificate Scheme (**Scheme**)

Under the Factories Act, the occupier/manager of the factory is required to obtain and renew certain licenses, maintain certain records and registers and make some periodical compliances with the authorities. The inspecting authority is entrusted with the responsibility of enforcing the compliance requirements under the Factories Act, and any occupier/manager found non-compliant can be subject to a penalty.

With effect from December 2020, the state government of Andhra Pradesh, on the recommendations of the central government regarding Ease of Doing Business initiative, has introduced an optional Scheme to replace departmental inspections with self-compliance. Under the Scheme, once a factory is enlisted

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INDIA

4 DEC 2020

for inspection, the occupier/manager will have an option to choose from self-compliance (uploading the compliance checklist on the designated portal), third-party compliance certification (compliance by one of the designated third parties) or the inspection by the government authorities. If self-compliance or third-party compliance is opted for, there would normally be no inspection by the government till the next instance of inspection.

More...

Click here to view **2019 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

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.

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.

INDONESIA
12 JUN 2020

Operation of Lifting and Transport Equipment in the Workplace

The Indonesian Minister of Manpower (MOM) issued Regulation No. 8 Year 2020 on June 12, 2020 (Reg. No.8) to set new health and safety requirements related to the operation of lifting and transport equipment in the workplace. Reg. No. 8 consists of 188 articles in 10 chapters.

Reg No. 8 revokes and replaces (i) MOM Regulation No. PER.05/MEN/1985 regarding Lifting and Transport Equipment; (ii). MOM Regulation No. PER.09/ MEN/VII/2010 regarding Lifting and Transport Equipment Operators and Officials; and (iii). MOM Decree No. 452/M/BW/1996 regarding Leasing of Lifting and Transport Equipment.

INDONESIA
14 AUG 2020

Wage Subsidies for Employees During Covid-19

In response to the Covid-19 pandemic, the Indonesian Minister of Manpower (MOM) has issued a regulation that provides wage subsidies for all qualified employees who participate in the Manpower Social Security Program. Under MOM Regulation No. 14 Year 2020 regarding Guidelines for Government Assistance for Employees During Covid-19, employees who earn less than Rp.5 million (about US$340) per month are eligible to receive government assistance in the amount of Rp.600,000 (about US$40) per month.

INDONESIA
1 SEP 2020

Indonesia Relaxes Mandatory Employer Contributions to Manpower Social Security Programs During Covid-19

Government Regulation No. 49 Year 2020 regarding Adjustment of Employment Social Security Contributions During Covid-19 (GR No. 49) was issued with the stated aim of helping to counter the economic downturn caused by the Covid-19 outbreak.

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LOOKING BACK

INDONESIA
1 SEP 2020

The four manpower social security programs affected by the regulation are Work Accident Security, Death Security, Old Age Security and Pension Security.

Under GR No. 49, the Indonesian government provides (i) leniency on the deadlines for the payment of monthly contributions to the four manpower social security programs; (ii) lower monthly contributions to the Work Accident Security and Death Security programs; and (iii) the partial postponement of the monthly contribution to the Pension Security program.

INDONESIA
14 OCT 2020

Exercise and Music Nodes to Achieve Healthy Workers

The Indonesian Minister of Manpower (MOM) issued MOM Regulation No. 317 Year 2020 on October 14, 2020 as a guideline for employers to encourage employees to exercise at the beginning of work and/or after work breaks. The regulation contains information on 20 gymnastic movements and music for employers to use in helping to encourage healthy workers.

INDONESIA
26 OCT 2020

Determination of 2021 Minimum Wage During Covid-19 Pandemic

The Indonesian Minister of Manpower issued Circular Letter No. M/11/HK.04/X/2020 dated October 26, 2020 ("Circular Letter") regarding the determination of provincial minimum wages during the Covid-19 pandemic.

This Circular Letter asks all Governors in the country to consider the national economy during the Covid-19 pandemic and set the 2021 minimum wage in their respective provinces at the same level as the 2020 minimum wage.

INDONESIA
2 NOV 2020

Job Creation Law

Indonesia's closely watched omnibus job creation bill became law on November 2, 2020. The stated aim of Law No.11 Year 2020 on Job Creation is to boost investment and create jobs by streamlining regulations and simplifying the licensing process to improve the ease of doing business in Indonesia.

The Job Creation Law revises various provisions in numerous laws across different sectors, including employment-related laws. Affected laws include Law No. 13 of 2003 on Labor ("Labor Law"), Law No. 40 of 2004 on the National Social Security System ("Social Security (BPJS) Law"), Law No. 24 of 2011 on the Social Security Administrating Body (BPJS) ("BPJS Administrating Body Law") and Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers ("Migrant Workers Law").

The Job Creation Law contains 1,187 pages, divided into 769 pages of actual amendments and 418 pages of elucidation.

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...
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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...

JAPAN
1 SEP
2020

Amendments to Guidelines for Promotion of Side Jobs

The guidelines for promotion of side jobs, originally issued by the Ministry of Health, Labor and Welfare in January 2018, provides standards for employers to follow in managing the working hours and health of employees who engage in side jobs. The guidelines aim to encourage side jobs given that an increasing number of employees wish to obtain additional employment.

The Amendments to the guidelines mainly clarify the following points:

Continued on Next Page

LOOKING BACK

JAPAN
1 SEP 2020

- Points that Employers should consider in relation to side jobs (i.e., confidentiality, non-competition and fiduciary duty of the employees, and bans/restrictions on side jobs)
- Management of the working hours of the relevant employees (e.g., when and how to aggregate working hours for the original employer and the side job employer)
- Matters relating to side jobs that employers should ask the relevant employees to report
- Health care management for the relevant employees

JAPAN
13 & 15 OCT 2020

Three Supreme Court judgments on equal treatment between fixed term employees and permanent employees

The Supreme Court ruled on three cases on October 13 and 15, 2020. In these cases, fixed term employees had claimed for certain benefits which were provided only to permanent employees of the same company. The lower courts were split on this matter. Under Article 20 of the former Labor Contract Act, an employer was prohibited from treating fixed term employees unreasonably differently from permanent employees, taking into consideration factors such as the difference in the content of the work carried out by the employees, their responsibilities, change in job positions and the possibility of job transfers, and other circumstances. It was disputed whether the fact that certain benefits were applicable only to the permanent employees meant that the fixed-term employees who were not given such benefits were being subject to unreasonably different treatment. These three cases confirmed that whether or not such treatment was unreasonable should be determined based on the purposes of the benefits, whether the employee is likely to work continuously, and other circumstances.

Case 1: The Supreme Court ruled that the difference with respect to the amount of bonus and the wages during sick leave did not consist an "unreasonable difference" based on the underlying facts.

Case 2: The Supreme Court ruled that the difference with respect to the payment of the severance payment was not an "unreasonable difference" based on the underlying facts.

Case 3: The Supreme Court ruled that the differences with respect to certain allowances were not "unreasonable differences"; however, the differences with respect to sick leave and additional paid holidays were unreasonable.

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.

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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.

More...

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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MALAYSIA
18 DEC
2020

Reduction of EPF contribution for the Year 2021

Previously, pursuant to the Employees Provident Fund Act 1991, the statutory rate of contribution for employees below the age of 60 is 11%. However, with effect from January 2021 until December 2021, the statutory contribution rate will be **automatically** reduced from 11% to 9% for employees aged under 60 years old. *[Note: For employees above the age of 60, their statutory contribution rate remains unchanged]* The Malaysian Government has decided to reduce employee contributions in order to provide the employees with more disposable income, which in turn will spur the economy and cushion / mitigate the losses from the Covid-19 outbreak.

Be that as it may, the employees do have a choice to maintain their contribution rate at 11%. And any employees who wish to do so will have to fill in Borang KWSP 17A (Khas 2021), and submit the completed form to their respective employers for online registration via i-Akaun (Employer), which will begin from 14 December 2020 onwards.

More...

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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LOOKING BACK

NEW ZEALAND **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.

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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.

More...

Click here to view **2019 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

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NEW ZEALAND **30 JUN** 2020

Protected Disclosures (Protection of Whistleblowers) Bill

This Bill had its first reading on 30 June 2020, and is now currently at the Select Committee stage. The Bill proposes to replace the Protected Disclosures Act 2000, while still promoting the key objectives of that Act. The Bill's current wording:

- clarifies the definition of 'serious wrongdoing';
- enables disclosers to report serious wrongdoing to an appropriate authority at any time;
- strengthens protections for disclosures;
- clarifies the internal procedure requirements for public sector organisations; and
- clarifies the potential forms of adverse conduct disclosers may face.

The Select Committee report for the bill is due in January 2021, but requests for public submissions have not yet opened.

More...

NEW ZEALAND **1 JUL** 2020

Privacy Act 2020

The Privacy Act received Royal Assent on 30 June 2020. The majority of provisions within the Act will only come into force on 1 December 2020. However, there are two exceptions to this, which have come into force from 1 July 2020. These are:

a. Subpart 2 of Part 3, which is in relation to 'codes of practice'. In essence these provisions allow the Privacy Commissioner to modify an information privacy principle (IPP) of the Act to become more or less stringent. These provisions detail when the Privacy Commissioner may issue a code of practice, the statutory process which must be followed in doing so, and the practical impact the issuing of a code of practice will have.

b. Sections 213, 214 and 215 which relate to the Governor General's ability to make Privacy Act related regulations, on the recommendation of the relevant Minister and the Privacy Commissioner.

More...

NEW ZEALAND **6 NOV** 2020

Equal Pay Amendment Act 2020

While the Equal Pay Amendment Act 2020 (**Amendment Act**) received royal assent in August, the provisions came into force in November 2020. The Amendment Act provides a practical and accessible process to raise and resolve pay equity claims, and has lowered the threshold required to initiate a pay equity claim.

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NEW ZEALAND **1 DEC** 2020

Holidays (Increasing Sick Leave) Amendment Bill

The Bill had its first reading on 1 December 2020, and is now at the Select Committee stage. The Bill aims to increase the availability of employer-funded sick leave for employees. The Bill proposes:

- to increase the minimum sick leave entitlement to 10 days per year;
- to retain the maximum accrued entitlement of 20 days' sick leave;
- that the entitlement will apply to any employees (who meet the current criteria) regardless of the number of days that they work per year, rather than on any 'pro-rated' approach; and
- that employees will receive any additional leave entitlements on their sick leave anniversary date, rather than all on the same day.

The Government is currently seeking submissions on the Bill, which are due by 28 January 2021.

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LOOKING BACK

NEW ZEALAND

17 DEC 2020

Increase to the minimum wage

The Government has confirmed it will raise the minimum wage from $18.90 to $20.00 per hour from April 1 2021. The training and starting out minimum wages will also both increase to $16.00 per hour (remaining at 80% of the adult minimum wage).

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LOOKING BACK

PHILIPPINES **13 JAN 2020**

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

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

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PHILIPPINES **31 JAN 2020**

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

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

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PHILIPPINES **4 MAR 2020**

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

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

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PHILIPPINES **14 MAR 2020**

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

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

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PHILIPPINES **17 MAR 2020**

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

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

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PHILIPPINES **18 MAR 2020**

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

Clarificatory Guidelines on the COVID-19 Adjustment Measures Program

More...

PHILIPPINES **24 MAR 2020**

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

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

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PHILIPPINES **30 MAR 2020**

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

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

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PHILIPPINES **4 MAY 2020**

Department of Labor and Employment Labor Advisory (DOLE LA) No. 16, Series of 2020

Interruption of Period for Filing of Application (New and Renewal) of Alien Employment Permits (AEPs) and Private Employment Agency (PEA) Licenses

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PHILIPPINES **16 MAY 2020**

DOLE Labor Advisory (DOLE LA) No. 17, Series of 2020

Guidelines on Employment Preservation Upon Resumption of Business Operation2019 Novel Coronavirus (2019-nCov) Prevention and Control at the Workplace

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PHILIPPINES 16 MAY 2020

DOLE Labor Advisory (DOLE LA) No. 18, Series of 2020

Guidelines on the Cost of COVID-19 Prevention and Control Measures

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PHILIPPINES 5 JUN 2020

DOLE Labor Advisory (DOLE LA) No. 21, Series of 2020

Guidelines on the Verification of the Qualifications of Private Health Workers and/or Their Beneficiaries on the Grant of Compensation

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PHILIPPINES 11 JUN 2020

DOLE Labor Advisory (DOLE LA) No. 17-A, Series of 2020

Establishment Termination Report

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PHILIPPINES 23 JUN 2020

DOLE Labor Advisory (DOLE LA) No. 23, Series of 2020

Engagement or Participation of a Child Below 15 Years of Age in Public Entertainment or Information Pursuant to the Omnibus Guidelines on the Implementation of Community Quarantine in the Philippines

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PHILIPPINES 8 JUL 2020

Department of Labor and Employment Labor Advisory (DOLE LA) No. 24, Series of 2020

Engagement of Children 15 to below 18 Years of Age in Public Entertainment or Information during Community Quarantine

More...

PHILIPPINES 3 AUG 2020

DOLE Labor Advisory (DOLE LA) No. 26, Series of 2020

Payment of Wages and Other Monetary Benefits through Transaction Accounts

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PHILIPPINES 9 SEP 2020

DOLE Labor Advisory (DOLE LA) No. 17-B, Series of 2020

Guidelines on Employment Preservation upon the Resumption of Business Operations

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PHILIPPINES 11 SEP 2020

DOLE Labor Advisory (DOLE LA) No. 24-A, Series of 2020

Revised Guidelines on Engagement of Children 15 to below 18 Years of Age in Public Entertainment or Information during Community Quarantine

More...

PHILIPPINES 11 SEP 2020

Republic Act No. 11494 - *"Bayanihan to Recover As One Act"*.

An Act Providing For COVID-19 Response and Recovery Interventions and Providing Mechanisms To Accelerate The Recovery and Bolster The Resiliency of the Philippine Economy, Providing Funds Therefor, and For Other Purposes. The Act provides, among others, that retirement benefits received by officials and employees of private firms, whether individual or corporate from June 5, 2020 until December 31, 2020 shall be excluded from gross income and shall be excluded from taxation.

More...

PHILIPPINES 16 OCT 2020

DOLE Labor Advisory (DOLE LA) No. 28, Series of 2020

Guidelines on the Payment of 13th Month Pay

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Click here to view **2019 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

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PHILIPPINES
23 OCT 2020

Department of Labor and Employment (DOLE) Department Order (DO) No. 215

Rule Amending Section 12 of Rule 1, Rules Implementing Book VI of the Labor Code on Suspension of Employment Relationship

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PHILIPPINES
31 OCT 2020

DOLE DO No. 218, Series of 2020

Guidelines in the Implementation of COVID-19 Adjustment Measures Program (CAMP) under the Bayanihan to Recover Act [for the tourism sector workers].

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PHILIPPINES
11 NOV 2020

DOLE Labor Advisory (DOLE LA) No. 30, Series of 2020

Clarificatory Guidelines in the Implementation of COVID-19 Adjustment Measures Program (CAMP) under the Bayanihan to Recover Act [for the formal sector workers]

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PHILIPPINES
3 DEC 2020

DOLE Labor Advisory No. 30-A, Series of 2020

CAMP Bayanihan 2 Expanded Coverage of Affected Workers [to include independent contractors/freelancers]

More...

Click here to view **2019 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

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

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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.

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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.

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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.

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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,

Continued on Next Page

SINGAPORE
21 JAN
2020

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.

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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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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...
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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...
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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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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.

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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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LOOKING BACK

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.

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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.

More...

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):

Continued on Next Page

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.

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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.

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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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SINGAPORE
20 MAY
2020

- 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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SINGAPORE
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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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SINGAPORE **1 JUN** 2020

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.

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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.

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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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LOOKING BACK

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.

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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).

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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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SINGAPORE **17 JUN** 2020

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.

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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.

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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.

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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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SINGAPORE
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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
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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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SINGAPORE
16 JUL
2020

Employer charged for breaching duty to take reasonably practicable measures to ensure safety and health of employees in relation to the death of two employees

On 16 July 2020, MOM issued a press release that M.C. Packaging (Pte.) Ltd ("**MCPPL**"), a manufacturer of metal tins and containers, has been charged on two counts under Section 12(1) the WSHA in relation to the death of two of its employees. One employee had been caught between parts of a can palletiser machine while cleaning the machine, and the other had been hit by a reversing forklift while walking across MCPPL's production area.

In relation to the first death, MCPPL was charged for failing to:

- conduct and implement adequate risk assessment for work involving cleaning of a palletiser;
- implement safe work procedures, including an effective lock-out tag-out procedure;
- providing adequate supervision; and
- installing guards to moving parts of the palletiser.

MCPPL had therefore breached its duty to take reasonably practicable measures to ensure the safety and health of its employees.

In relation to the second death, MCPPL was charged for failing to:

- conduct an adequate risk assessment and safe work procedures for forklift-related activities; and
- adequately implement a traffic management plan within the factory, and had therefore breached its duty to take reasonably practicable measures to ensure the safety and health of its employees.

On the fatal incidents, MOM indicated that control measures such as lock-out tag-out for maintenance of equipment and traffic management plan for forklift operations are basic safety measures that every employer must be aware of.

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SINGAPORE
3 AUG
2020

All incoming travellers including work pass holders and dependants to don electronic monitoring device when serving SHN outside dedicated facilities

On 3 August 2020, the MOM announced that with effect from 10 August 2020, all incoming travellers, including long term pass holders and work pass holders and their dependants, entering Singapore and serving their SHN outside of SHN dedicated facilities will need to don an electronic monitoring device throughout the 14-day SHN (except those aged 12 and below). Failure to comply can lead to administrative actions such as revocation or shortening of validity of permits and passes to remain/work in Singapore.

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SINGAPORE
5 AUG
2020

High Court confirms fault not required for liability under Work Injury Compensation Act

On 5 August 2020, the High Court issued its decision *Great Eastern General Insurance Ltd and another v Next of kin of Maripan Ponnusamy, deceased* [2020] SGHC 163. This was an appeal on an Assistant Commissioner's ("**AC**") decision allowing for compensation under the WICA to an employee working as a security guard who had passed away following a fainting spell while on patrol. The insurer had filed an appeal on the basis that this was not an accident within the meaning of the WICA as the employee had pre-existing medical conditions that made him more prone to faint.

The High Court affirmed that the WICA is a social piece of legislation that should be interpreted purposively in favour of employees who have suffered injury during their employment. As such, the WICA does not follow a "fault-based compensation system" and that employees may avail themselves of

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compensation even if no one was at fault for the mishap. The High Court held that the pre-existing medical conditions did not mean that it was not an accident; the fact that the employee fainted and fell in the course of employment meant that he could avail himself of compensation under the WICA.

SINGAPORE **5 AUG** 2020

Employers placed on FCF watch list for potentially discriminatory hiring practices

On 5 August 2020, the MOM updated that a group of 47 employers have been placed on the FCF watch list for potentially discriminatory hiring practices. Of the 47 employers, 30 are in financial services and professional services. The rest are in administrative and support services, manufacturing and education. It was indicated that these employers had an exceptionally high proportion of foreign professionals, managers, executives and technicians compared with their industry peers. Being placed on the FCF watch list means that their EP applications for foreign employees will be scrutinized by the MOM, and the MOM may cut or withdraw these employers' work pass privileges.

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SINGAPORE **7 AUG** 2020

Requirements for insurers under WICA 2019 to be designated by MOM to be deferred

It was previously intended that from 1 September 2020, all insurers intending to sell Work Injury Compensation ("WIC") insurance policies must be designated by the MOM. On 7 August 2020, the MOM announced that due to COVID-19 disruptions, this requirement will only be implemented from 1 January 2021. For employers with existing WIC policies that comply with current WICA requirements and which commenced before 1 January 2021, these policies will remain valid until expiry or 31 December 2021, whichever is earlier.

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SINGAPORE **13 AUG** 2020

Advisories on ensuring sustainability of certain sectors in view of COVID-19

On 13 August 2020, the tripartite partners, together with other industry partners, issued an Advisory on ensuring sustainability of the landscape sector in view of COVID-19 and an Advisory on ensuring sustainability of the strata management and facility management sectors in view of COVID-19 (collectively, the "**Sustainability Advisories**"). The Sustainability Advisories make the following recommendations, amongst others:

- **Ensure workplace safety and health of landscape employees.** Landscape service buyers and providers must implement Safe Management Measures. Amongst others, workers must be given enough rest to minimize fatigue-related incidents and heat-related disorders and be provided with suitable personal protective equipment and cleaning / disinfecting agents (e.g. sanitisers).
- **Prioritisation of landscape maintenance activities.** Redistribution of work from lower to higher priority areas should be considered. If there is a need to redeploy employees to other worksites, service providers should do so on reasonable terms and consult with affected employees and their unions prior to such adjustments.
- **Remunerate workers appropriately.** Service providers should pay workers promptly in accordance with the terms of their employment contracts. For workers with increased workload, service providers should consider increasing their wages, and/or providing them with additional allowances. For workers with reduced workload, service providers should comply with the advisories related to salary and leave arrangements.

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Extension of Jobs Support Scheme

On 17 August 2020, it was announced that the Jobs Support Scheme (JSS) would be extended as follows:

- **Aerospace, aviation, tourism, and all employers that are not allowed to resume on-site operations.** 50% of wages for seven more months until March 2021. Employers that cannot reopen will receive 50% support until March 2021 or such time they are permitted to reopen, whichever is earlier.
- **Built environment sector.** 50% until October 2020; then 30% until March 2021.
- **Prescribed sectors (e.g. Financial Services, Information and Communications Technology and Media, Biomedical Sciences, Precision Engineering, Electronics and Online Retail and Supermarkets).**10% support until December 2020.
- **All other sectors.**10% support until March 2021.

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2020

National Trades Union Congress's Fair Retrenchment Framework

Currently, employers are guided by the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment (the "**TAFEP Advisory**"), which is issued by the Tripartite Alliance for Fair Employment Practices, on matters relating to excess manpower and retrenchment. On 24 July 2020, the National Trades Union Congress proposed a 'Fair Retrenchment Framework' ("**FRF**"), which sets out three key principles:

- 'protecting the Singaporean core of the workforce', e.g. to implement fair selection criteria to ensure that Singaporean core is safeguarded, while due considerations are given to foreign workers;
- 'preserving jobs', e.g. for employers to intervene early and work with unions and workers to preserve as many jobs as possible and undergo retrenchment only as last resort; and
- 'providing job support', e.g. to provide fair retrenchment packages and processes to workers, if retrenchments are inevitable.

On 17 August 2020, it was announced that the TAFEP Advisory will be amended to incorporate FRF principles on conducting retrenchments fairly. No dates have been specifically provided as at the time of writing.

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18 AUG
2020

Employers to ensure routine COVID-19 testing of workers

On 18 August 2020, the MOM announced that employers will have to schedule the following workers to undergo Rostered Routine Testing ("**RRT**") for COVID-19 every 14 days via the Swab Registration System ("**SRS**"):

- Workers staying in dormitories
- Workers in the construction, marine and process sectors (unless the workers are working in company office premises)
- Personnel who go into work sites

The RRT requirements do not apply to workers who have recently recovered from COVID-19 (i.e less than 180 days from date of symptoms onset or detection of infection). For workers on Home Quarantine Order ("**HQO**"), SHN or 5-day Medical Leave, employers should only schedule these workers for RRT after the end of their HQO, SHN or medical leave.

Workers who do not undergo the necessary RRT will not be permitted to return to work and MOM has indicated that unresponsive employers who persistently fail to schedule their workers for RRT may have their work pass privileges curtailed.

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27 AUG 2020

Fair Consideration Framework advertising requirement expanded

Under the Fair Consideration Framework (**FCF**), the MOM requires employers to advertise on MyCareersFuture.sg in a prescribed manner before submitting any EP applications. This is intended to allow locals to be considered first for prescribed jobs. On 27 August 2020, the MOM has announced that besides EP jobs, S Pass jobs will also be subject to the FCF advertising requirement. The FCF expansion will be effective from October 2020.

On the above, employers must double the duration of the advertisement on MyCareersFuture.sg to 28 days, as opposed to 14 days, so that local jobseekers have more time to respond to job openings and for employers to seriously evaluate their applications. This change takes effect from October 2020.

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SINGAPORE

27 AUG 2020

Changes to work pass thresholds

Earlier in 2020, the minimum qualifying salaries for new Employment Pass ("**EP**") and S Pass candidates were respectively S$3,900 and S$2,400. On 1 September 2020, the minimum qualifying salary was raised to S$4,500 (up by S$600) for EP candidates. On 1 October 2020, the minimum qualifying salary was raised to S$2,500 (up by S$100) for S Pass candidates. EP candidates in the financial services sector also will further need to meet a higher minimum qualifying salary on 1 December 2020, at S$5,000 (up by S$500). The minimum qualifying salaries for older and more experienced EP and S Pass candidates will be revised and raised correspondingly. For example, for EP candidates, the MOM had indicated that the minimum qualifying salary for those in their 40s will be around the double the minimum qualifying salary for the youngest EP candidates.

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SINGAPORE

29 AUG 2020

Update to transfers of foreign workers whose work permits are near expiry

Prior to 29 August 2020, transfer of foreign workers whose work permits are within 40 days of expiry were permitted by MOM in response to the disruptions caused by COVID-19. On 29 August 2020, this existing scheme was expanded and firms in all sectors can now hire existing work permit holders from their own or another sector, where the work permits are between 40 days and 21 days (inclusive) to expiry.

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SINGAPORE

1 SEP 2020

Employers required to report and compensate employees for work injuries resulting in any instance of medical leave or light duties

Prior to 1 September 2020, the Work Injury Compensation Act ("**WICA**") only requires employers to report and compensate employees for work-related accidents which result in death or an injured employee being placed on medical or hospitalization leave for specified durations. From 1 September 2020, provisions in the new WICA 2019 (No. 27 of 2019) and Workplace Safety and Health Act ("**WSHA**") subsidiary legislation will require employers to inform MOM and their insurers (if applicable) within 10 days of any work accident that occurs on or after 1 September 2020 and results in an employee being certified medically unfit for work or being placed on light duties. Workers placed on light duties will also have to be compensated for the difference (if any) between what they earn on light duties and their average monthly earnings.

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SINGAPORE **1 SEP** 2020

Other changes taking effect on 1 September 2020 include, amongst other things:

- To expedite claim resolution, compensation can now be based on current incapacity assessment at the earliest opportunity six months from the date of accident. More complex injuries can still be assessed for permanent incapacity at a later date.
- MOM may allow for doctor-switching for current or permanent incapacity assessment where there are strong concerns and evidence of unfair or inadequate incapacity assessment by the employer's doctor.
- Greater recourse for employers to recover compensation paid out on basis of error or fraud.
- Increased penalties for offences.

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SINGAPORE **5 SEP** 2020

Incentive scheme introduced for hiring more locals

The MOM and the Inland Revenue of Singapore ("**IRAS**") has announced that prescribed employers who increase the headcount of their local workforce between September 2020 and February 2021, as compared to August 2020, and increase the number of jobs that pay at least S$1,400 in gross monthly salaries, will be eligible for payouts under the Jobs Growth Incentive ("**JGI**") Scheme. Under the JGI scheme, the Government will co-pay, for 12 months, 25% of the first S$5,000 of the gross monthly salary for each new local hire under 40 years old, and 50% for each new local hire who is 40 years old or above. There are specific eligibility criteria that employers must continue to meet for a 12-month period, and JGI payouts will be reduced if any employee under the employer's employment as at August 2020 leaves the firm after August 2020. This reduction in JGI payout will be computed based on 5%, or the ratio of existing employees who have left the employer to the total number of existing employees as at August 2020, whichever is higher.

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SINGAPORE **5 SEP** 2020

Advisory to employers with Malaysian employees entering Singapore under Periodic Commuting Arrangement

On 5 September 2020, the tripartite partners issued the Advisory to employers with Malaysian employees entering Singapore under Periodic Commuting Arrangement ("**PCA Advisory**"). The Periodic Commuting Arrangement ("**PCA**") scheme allows work and business-related travels between Singapore and Malaysia during the COVID-19 period. Under the PCA scheme, Malaysia Citizens and Malaysia Permanent Residents with valid Singapore work passes are to remain in Singapore for at least 90 days before returning to Malaysia for home leave. The entry and exit between Singapore and Malaysia must be via prescribed checkpoints. Work pass holders approved under the PCA scheme will serve at least 7 days of SHN and undertake a COVID-19 test. The PCA Advisory also provides other guidance in relation to employees entering Singapore under the PCA scheme, which includes, amongst other things:

- Salary and leave arrangements for the employee during the SHN period
- Cost sharing arrangements for entering Singapore, including the costs of COVID-19 tests, transport, SHN accommodation, food and other daily essentials)
- Additional sick leave and cost of medical treatment for employees testing positive for COVID-19
- Leave arrangements for Malaysian employees returning to Malaysia and re-entering Singapore

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SINGAPORE
5 SEP 2020

- Review of employment contract terms e.g. housing and other costs, before employees enter Singapore.

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SINGAPORE
13 SEP 2020

Updated advisory on salary and leave arrangements

On 13 September 2020, the MOM issued an updated Advisory on salary and leave arrangements ("**Salary Advisory**") post-Circuit Breaker.

The essential guidelines on salary payments to local and foreign employees set out in MOM's original Salary Advisory issued on 9 June 2020 remain. In sum, employers whose businesses are operating must pay employees working fully their prevailing salaries, including the employer's Central Provident Fund ("**CPF**") contributions for local employees. Employers who cannot resume business operation should, as far as possible, pay a baseline monthly salary (including employer's CPF contributions, if applicable) to its employees, and make up for any shortfalls from the employee's prevailing salary by taking measures such as applying for Flexible Work Schedule or allowing the employee to consume his existing leave entitlements. The update on 13 September 2020 reminds all employers to continue adopting cost-saving measures to save jobs, taking into account the extended Government support for affected business, including the extension of the Job Support Scheme, Foreign Worker Levy waiver and Foreign Worker Levy rebate.

More...

SINGAPORE
16 SEP 2020

Updated advisories in relation to dormitory workers

Between the period of August to September 2020, the authorities have issued advisories specifically relating to dormitory workers. Amongst others, these include:

- An updated advisory requiring employers to submit an essential errands form for migrant workers to carry out essential errands before migrant workers at dormitories cleared of COVID-19 will be allowed to leave their dormitories to carry out prescribed essential errands such as collection of passport, court hearings, investigations and related activities; essential medical appointments etc.
- An advisory to employers on providing upkeep and maintenance of foreign workers living in dormitories, which includes the upkeep and maintenance of their foreign workers in Singapore even after their work permits have been cancelled, ensuring that meals are safe to eat and delivered to the workers on time, etc.
- An advisory to employers on how medical support for migrant workers should be provided after clearance of dormitories, e.g. via on-site medical centres, regional medical centres, designated general practitioners clinics and telemedicine through prescribed mobile applications for non-emergency medical attention.
- An advisory to employers requiring them to adhere to certain processes before moving migrant workers between cleared dormitories to minimize the risk of transmission of COVID-19.

Failure to meet the requirements of the advisories is a potential breach of law and errant employers may be disallowed from hiring new or renewing existing foreign workers and/or have their security bonds forfeited as a consequence.

More...
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LOOKING BACK

SINGAPORE **23 SEP** 2020

Updated advisory on Requirements for Safe Management Measures at the workplace

On 23 September 2020, the MOM issued an updated advisory on Requirements for Safe Management Measures at the workplace ("**Advisory**"). The key updates are as follows:

- **More employees allowed to return to workplace.** With effect from 28 September 2020, even as work from home ("**WFH**") remains the default mode of working, employees who are able to work from home may, under the Advisory, return to the workplace. Under the updated Advisory, employers must ensure that employees who are able to WFH continue to do so for at least half their working time, and must not allow more than half of such employees (i.e. those who are able to WFH) to attend the workplace at any point in time.
- **Recommendation of measures to reduce congregation of employees.** Such measures include staggering the start time for all employees such that at least half of all employees at the workplace start work in the workplace at or after 10am, as far as possible. For employees who are able to WFH, employers are recommended to put in place flexible workplace hours, which allow them to work partly at home and partly at the workplace during a workday. If it is not feasible to implement staggered timings due to operational reasons, then other systemic arrangements must be implemented to reduce congregation of employees at common spaces. There should also be no cross-deployment or interaction between employees in different shifts, teams or worksites, even outside of work.
- **Work related events at the workplace.** From 28 September 2020 onwards, work-related events that are business-oriented such as conferences, seminars, corporate retreats, annual or extraordinary general meetings and which involve up to 50 people may resume. This is subject to safe management measures such as maintaining a one-metre safe distance between attendees, and not serving food and drinks save for prescribed circumstances.

More...

SINGAPORE **28 SEP** 2020

MOM to start publishing workplace safety and health performance of companies in 4Q 2020 amid other initiatives

On 28 September 2020, the MOM announced that in line with its workplace safety and health ("**WSH**") 2028 strategy, it will begin publishing the WSH performance of companies from the fourth quarter of 2020, starting with construction companies. The MOM will also introduce criteria to disqualify unsafe contractors from all public construction tenders.

More...

SINGAPORE **30 SEP** 2020

Updates to additional requirements to bring work pass holders and their dependants into Singapore

On 30 September 2020, the Ministry of Manpower ("MOM") updated the additional requirements and responsibilities to bring pass holders (work pass holders and their dependants) into Singapore. Pass holders who:

- spent the last 14 consecutive days in Australia (excluding Victoria state) or Vietnam;
- arrive in Singapore from 2 October 2020 onwards; and
- did not transit through countries or regions other than Australia (excluding Victoria State), Vietnam, Brunei and New Zealand

have been added to the list of pass holders who must take a COVID-19 test upon arrival at the airport (S$300 including GST) but are not required to serve Stay-Home Notice ("**SHN**").

More...

SINGAPORE
1 OCT 2020

Changes to FCF take effect

With effect from 1 October 2020, the FCF job advertising requirement has been extended to S Pass applications, and the minimum FCF job advertising duration for EP and S Pass applications has been doubled from 14 to 28 days. The requirement to post job advertisements on MyCareersFuture previously only applied to EPs. Employment agencies are also expected to uphold the TGFEP and the FCF framework.

More...

SINGAPORE
6 OCT 2020

Certain Special Pass holders required to undergo RRT for extension of Special Pass

With effect from 8 October 2020, Special Pass holders who were previously WP holders and who have remained in Singapore for more than 14 days are required to undergo RRT when requesting for a Special Pass extension from the MOM. Employers are advised to submit extension requests at least a week prior to the expiry of the Special Pass to be in time for a swab test. Special Passes will be extended only after the employees have undergone the swab tests. Special Pass holders who fail to undergo the swab test in order to extend their passes will have overstayed and be liable to pay overstaying fines and/or prosecution.

More...

SINGAPORE
16 OCT 2020

National Wage Council ("**NWC**") issues 2020/2021 Supplementary Guidelines

On 16 October 2020, the NWC released Supplementary Guidelines to better assist employers in sustaining businesses and save jobs. The Guidelines apply from 1 November 2020 until 30 June 2021. Key principles include:

a. Minimizing retrenchments to the greatest extent possible. If employers have already exhausted non-wage cost-saving measures and Government support but still face significant cost pressures and poor business prospects, employers should seek employees' support to implement temporary wage cuts to the extent needed to minimise retrenchments.

b. Adopting and maximising utilisation of the Flexible Wage System ("**FWS**"). Employers that have not adopted FWS should treat any wage cuts as adjustments to a new variable wage component in line with FWS principles. If necessary for minimizing retrenchments, then further wage cuts can be made to basic wages.

c. Considering the Annual Wage Supplement ("**AWS**") as a part of employees' annual variable component.

d. Giving special consideration to low-wage workers, such as by implementing wage freeze instead of wage reduction for employees earning a basic monthly salary of up to $1,400.

More...

SINGAPORE
16 OCT 2020

Work pass privileges of two employers suspended for breaching rostered routine testing requirements

On 16 October 2020, the MOM issued a press release concerning the suspension of work pass privileges of two employers for failing to arrange mandatory Rostered Routine Testing ("**RRT**") for their workers who are work pass holders. The errant employers had failed to provide valid reasons or submit an exemption request on behalf of their workers. The MOM will continue to take action against errant employers and/or employees who persistently fail to schedule or attend RRT sessions without valid reasons, including the revocation of work passes and suspension of work pass privileges.

More...

SINGAPORE
17 OCT
2020

Tripartite Partners update advisory on managing excess manpower and responsible retrenchment with key principles on fair retrenchment

On 17 October 2020 the Tripartite Partners released its revised Advisory on Managing Excess Manpower and Responsible Retrenchment ("**Retrenchment Advisory**"). The Retrenchment Advisory, last updated in March 2020, applies to all employers and has been revised in light of inevitable retrenchments amidst the ongoing Covid-19 pandemic. The Retrenchment Advisory includes NTUC's Fair Retrenchment Framework of 24 July 2020 and NWC's 2020/2021 Supplementary Guidelines. Core updates touch on:

a. the need to maintain a strong Singaporean core in retrenchment exercises, where retrenchments should generally not result in a reduced proportion of local employees (this can be achieved by retaining proportionately more locals during a retrenchment exercise);
b. steps for employers on how best to conduct, notify and support affected employees;
c. reskilling and other training assistance opportunities post-retrenchment; and
d. inclusion of a new "Responsible Retrenchment Practices" checklist to guide employers in managing retrenchments responsibly.

More...

SINGAPORE
29 OCT
2020

Tripartite workgroup to roll out initiatives to uplift wages and well-being of lower-wage workers

On 29 October 2020, the Tripartite Partners announced the formation of a Tripartite Workgroup on Lower-Wage Workers ("**Workgroup**"). The Workgroup's goal is to explore and build upon existing measures to further uplift the wages and well-being of lower-wage workers in Singapore. Current measure includes, amongst others, the Workfare Income Supplement ("**WIS**") scheme and the Progressive Wage Model ("**PWM**").

The Workgroup, in consultation with unions, employers and other key stakeholders, intends to roll out by the first quarter of 2022 initiatives that:

a. ensure wage growth in mandatory PWM sectors continue to outpace median wage growth;
b. significantly raise the number of workers covered under the PWM;
c. introduce progressive wages to occupations not currently covered under the PWM
d. recognise and promote stronger societal support for firms paying progressive wages; and
e. advance the well-being of lower-wage workers.

An update is expected to be available some time by mid-2021.

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SINGAPORE
10 NOV
2020

New features rolled out on MyCareersFuture to strengthen fair, inclusive hiring practices

On 10 November 2020, Workforce Singapore ("**WSG**") and the Tripartite Alliance for Fair and Progressive Employment Practices ("**TAFEP**") introduced three new features on Singapore's national job portal ("**My CareersFuture**"). The three purpose-built features are:

a. prompts for employers to adhere to the Tripartite Guidelines on fair Employment Practices ("**TGFEP**") when placing job advertisements;
b. better guidance for employers in crafting neutral job advertisements to attract and find suitable candidates; and
c. a "Report Discriminatory Job Ads" feature making it easier for the public to report discriminatory job postings.

Continued on Next Page

SINGAPORE **10 NOV** 2020

Currently, with the aid of technology, job postings on MyCareersFuture are constantly being reviewed for discrimination. Postings that contain potentially discriminatory terms or mentions are flagged out for further review. Employers of such ads are expected to amend any discriminatory terms and mentions. TAFEP will investigate any breaches of the TGFEP for further actions by the MOM. Since January 2020, the MOM has suspended work pass privileges of 90 employers under the Fair Consideration Framework ("**FCF**"), of which 45 are due to postings of discriminatory job advertisements.

More...

SINGAPORE **17 NOV** 2020

Launch of Tripartite advisory on mental well-being at workplaces

On 17 November 2020, the Tripartite Partners jointly released the Tripartite Advisory on Mental Well-being at Workplaces ("**Advisory**"). The Advisory provides practical guidance and resources for employers, employees and the self-employed to better manage their mental well-being. This advisory is timely in lieu of the current Covid-19 pandemic wherein businesses have been forced to adopt work-from-home arrangements thereby blurring the line between work and home. Key recommendations include:

a. proving access to counselling services which allow employees to speak confidentially to mental health professionals;
b. extending the scope of flexible employee benefits (e.g. medical benefits) to include mental well-being programmes, mental health consultations and treatments;
c. training of management staff to better identify early signs of mental distress amongst employees to facilitate assistance;
d. reviewing the state of employees' mental well-being regularly as part of risk assessment for workplace health;
e. reviewing HR policies to ensure hiring practices, workplace practices and performance management systems are non-discriminatory and merit-based in nature;
f. establishing work-life harmony policy to provide clarity on after-hours work communication; and
g. establishing return-to-work policies to support employees who are recovering from mental health conditions.

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SINGAPORE **18 NOV** 2020

Singapore Government accepts workplace safety and health recommendations from IAP

On 18 November 2020, it was announced that the Singapore Government had accepted the recommendations of the 7th Meeting of the International Advisory Panel for Workplace Safety and Health ("**IAP**"). The recommendations deal with:

a. the strengthening of workplace resilience against infectious diseases;
b. workforce mental health support; and
c. a reminder for employers to remain vigilant to traditional WSH issues.

The MOM stated that it shall work closely with industry stakeholders and the Tripartite Partners (consisting of MOM, the National Trades Union Congress (NTUC) and Singapore National Employers Federation (SNEF)) in the implementation of the above recommendations.

More...
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SINGAPORE **20 NOV** 2020

Four more work passes revoked for breaching stay-home notice requirements

On 20 November 2020, the MOM announced that it had revoked four more work passes for breach of Stay-Home Notice ("**SHN**") requirements. The individuals had left their places of residence without valid reasons or

Continued on Next Page

SINGAPORE **20 NOV** 2020

permission during the period of SHN. The MOM has revoked a total of 44 work passes from 1 May 2020 to 20 November 2020 for breach of SHN requirements. Employers and employees are reminded to observe Quarantine Orders and SHN requirements. Individuals who fail to comply shall be liable to prosecution and face enforcement actions including, but not limited to, the revocation of work passes.

More...
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SINGAPORE **1 DEC** 2020

New minimum qualifying salaries for EP and S Pass take effect

With effect from 1 October 2020, the minimum qualifying salary for S Pass has been raised to S$2,500 for new applications, and qualifying salaries for older and more experienced S Pass candidates have been revised accordingly. With effect from 1 December 2020, the minimum qualifying salary for EP candidates in the financial services sector has been raised to S$5,000 for new applications, and qualifying salaries for older and more candidates have been revised accordingly.

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SINGAPORE **3 DEC** 2020

MOM reminds employers of obligations to provide proper accommodation for foreign employees

On 3 December 2020, the MOM issued a press release in response to an article published on 22 November 2020 in The New Straits Times titled "Homeless Malaysians in Singapore". The press release denounced the claim in the article that over 100 Malaysian work pass holders in Singapore were homeless. While MOM's checks did not reveal any work pass holders sleeping on the streets, it reminds all employers of their obligations under the Employment of Foreign Manpower (Work Passes) Regulations 2012 to provide acceptable accommodations for foreign employees. An Inter-Agency taskforce conducts routine checks for any rough sleepers, and employers of any work pass holders found sleeping in the open will be asked to provide lodging immediately or the Migrant Workers' Centre will house them in the interim if the employer is not able to do so.

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SINGAPORE **17 DEC** 2020

Work pass holders required to update MOM on new residential address or mobile number within five days of any change

On 17 December 2020, the Ministry of Manpower ("**MOM**") issued an advisory requiring all work pass holders, excluding foreign domestic workers ("**FDW**"), to update the MOM of any changes to their residential address or mobile number within five days of any change as part of work pass conditions prescribed under the Employment of Foreign Manpower (Work Passes) Regulations 2012, with effect from 23 December 2020. All Work Permit ("**WP**") holders (excluding FDWs) and S Pass holders are required to download the FWMOMCare mobile application and register their details by 23 December 2020.

Work pass holders are to provide updates through the following channels:

a. WP – FWMOMCare application
b. S Pass – FWMOMCare application
c. Employment Pass ("**EP**") – EP Online.

The MOM will conduct checks at random and during the renewal of work passes. Employers and workers are reminded to comply with the requirements. Enforcement actions may be undertaken against any non-compliance, and may include the revocation of work passes and suspension of work pass privileges.

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LOOKING BACK

SINGAPORE

29 DEC

2020

Pastry chain Twelve Cupcakes pleads guilty for underpaying foreign employees and ex-directors charged

On 10 December 2020, The Straits Times reported that Twelve Cupcakes has pleaded guilty to 15 charges of underpaying foreign employees in 2017 and 2018. Underpayment of foreign employees is an offence under the Employment of Foreign Manpower Act. The Ministry of Manpower ("**MOM**") had received information on contravention of labour laws and its investigations revealed that the employees in question were paid between $1,400 to $2,050 monthly, rather than their contracted fixed monthly salaries of between $2,200 to $2,600. Twelves Cupcakes had initially credited the reduced salaries to employees' bank accounts but from May 2018 onwards, paid the employees their full salaries and required them to return a portion to the company in cash in an effort to conceal the practice. The company was fined S$119,500 on 12 January 2021.

The two founders cum ex-directors of Twelve Cupcakes were also charged on 29 December 2020. Each face 24 charges for allowing the company to underpay or not pay the salaries of foreign employees while they were directors. The new owners of the company, Dhunseri Group, had alleged that it was continuing a practice installed by previous management. If convicted, the ex-directors may be punished with a fine not exceeding $10,000 or imprisonment for a term not exceeding 12 months or both for each charge.

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LOOKING BACK

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

Continued on Next Page

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.

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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SOUTH KOREA
1 MAY 2020

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.

SOUTH KOREA
9 JUN 2020

Operational expense support for labor unions and amendment to the vicarious liability provision for unfair labor practice

On May 31, 2018, the Constitutional Court of Korea held that the article uniformly banning operational expense support to labor unions, which does not infringe upon unions' independent operations or activities, is in violation of the Constitution. Accordingly, the Trade Union and Labor Relations Adjustment Act ("TULRAA") was amended to allow operational expense support to labor unions, provided that such support does not infringe upon

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LOOKING BACK

SOUTH KOREA
9 JUN
2020

unions' independent operations or activities. In addition, on April 11, 2019, the Constitutional Court of Korea held that the article that holds the company vicariously liable for an unfair labor practice committed by an individual is in violation of the Constitution. The TULRAA was revised accordingly and companies that have sufficiently complied with their obligations to prevent unfair labor practice may not be vicariously liable.

More...

SOUTH KOREA
1 JUL
2020

Expanded scope of industrial accident compensation insurance for special employment type workers

The Enforcement Decree of the Industrial Accident Compensation Insurance Act was amended to expand the scope of special employment type workers and self-employed persons eligible for subscription to Industrial Accident Compensation Insurance. Pursuant to the amendment, the following type of workers were added to the scope of special employment type workers eligible for subscription to Industrial Accident Compensation Insurance:

(i) door-to-door salespersons;
(ii) rental product inspectors;
(iii) tutors who visit homes;
(iv) home electronics installers; and
(v) cargo vehicle owners.

More...

SOUTH KOREA
28 AUG
2020

Establishment of penal provision for fraudulent receipt of employment-related government subsidies

To prevent individuals from fraudulently receiving government subsidies in collusion with his/her employer, a penal provision has been added via an amendment to the Employment Insurance Act. Under this provision, if an individual colludes with the employer to receive government subsidies (such as subsidies for employment stabilization and vocational competency development programs, unemployment benefits, childcare leave benefits, benefits for reduction of working hours for childcare and/or maternity leave benefits) via falsification or otherwise fraudulent means, the individual and the employer concerned will face imprisonment of up to five years or a criminal fine of up to KRW 50 million.

More...

SOUTH KOREA
8 SEP
2020

Amendment to the Equal Employment Opportunity and Work-Family Balance Assistance Act ("Equal Employment Act")

In cases where a "severe/serious" warning level is issued due to the spread of infectious diseases on a nation-wide level, etc. the Minister of Employment and Labor ("MOEL") may extend the period of family care leave within a maximum of 10 days (up to 15 days for single parents). In this case, the family care leave period, including the extended days, shall be for up to a total of 20 days per year (a total of 25 days for single parents), and the extended period can only be used for the following grounds:

- When a ""severe/serious"" warning level is issued due to the spread of an infectious disease and a family member is classified as an infectious disease patient, etc. and care is required.
- When the care of a child is required due to a suspension order regarding the school he/she attends, etc.
- When the care of a child is required because he/she is subject to self-quarantine due to an infectious disease or he/she has been ordered not to come to the school he/she attends.
- Other cases that fall under the grounds determined by the MOEL regarding the care of family members by employees.

More...

Click here to view **2019 edition**

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

LOOKING BACK

SOUTH KOREA
1 OCT
2020

Amendment to the Occupational Safety and Health Act ("OSHA")

Under the amendment to the OSHA, on-site trainees are also covered by the safety and health provisions in the OSHA. Specifically, the amendment (i) obliges businesses to provide appropriate protection equipment to trainees, (ii) take safety and health measures for trainees, and (iii) includes penal provisions for businesses that fail to meet the enhanced safety and health measures for on-site trainees.

More...

SOUTH KOREA
27 NOV
2020

Amendment to the Enforcement Decree of the Act on Improving Employment for Construction Workers

It will become mandatory to issue and use electronic cards to report the retirement income funds for construction workers. The electronic card system ("System") is a system that allows workers to use an electronic card when entering and leaving construction sites, and protects construction workers' retirement income funds by preventing the omission/false reports regarding working days. It is also expected that via this System, employers will be able to report the number of working days in a more simplified manner. This System will be compulsory for large construction projects, exceeding 10 billion KRW for public projects and exceeding 30 billion KRW for private projects, for which orders are placed after November 27, 2020. This System will be applicable in stages and will be applied to all construction projects subject to retirement income fund membership from January 1, 2024.

More...

SOUTH KOREA
8 DEC
2020

Amendment to the Act on Equal Employment and Support for Work-Family Reconciliation

In the past, childcare leave could only be used in one (1) increment and thus the employees faced restrictions in flexibly using the system. However, following the amendment, childcare leave can be used in two (2) increments.

More...

SOUTH KOREA
10 DEC
2020

Amendment to the Enforcement Decree and Ministerial Decree of the Employment Insurance Act and the Act on Premium Collection for Employment Insurance and Industrial Accident Compensation Insurance

The Enforcement Decree and Ministerial Decree of the Employment Insurance Act and the Act on Premium Collection for Employment Insurance and Industrial Accident Compensation Insurance were amended to enhance employment safety of artists. Under the amendment, artists are defined as those who provide art/culture-related services pursuant to a service agreement and the artist and the contracting business must each bear 1/2 of the employment insurance contribution. Further details on the contribution rate are to be determined by the Presidential Decree. Artists with such employment insurance may be entitled to 120 to 270 days of insurance payment for job search allowance and 90 days of insurance payment for childbirth. To receive job search allowance, the artist who has lost employment must have made insurance payment for 9 months or more from the past 24 months and must not have voluntarily left employment. Moreover, artists that leave employment due to reduction in pay may be entitled to job search allowance under certain circumstances determined by the Presidential Decree.

More...

LOOKING BACK

SOUTH KOREA

10 DEC

2020

Amendment to the Act on Employment Promotion and Vocational Rehabilitation of Disabled Persons

If businesses with 300 or more employees internally conduct training to improve the awareness of the disabled in the workplace, previously there were no particular restrictions/qualifications. The Amendment provides that internal instructors who have completed instructor training provided by the Employment Agency for the Disabled be utilized for the training.

More...

LOOKING BACK

SRI LANKA

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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SRI LANKA
13 FEB
2020

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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SRI LANKA

18 FEB

2020

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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4 MAY

2020

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.

SRI LANKA

31 JUL

2020

SC Appeal 25/2017 – D.L. Hema Malini de Silva of Uva v. K. Sivasamy

Held: The Labour Tribunal was correct in not acting on facts in respect of the workman's prior misconduct that have not been proved at the inquiry before the Labour Tribunal. It was also correct in itself putting questions to the applicant/employee to ascertain his wages (which was relevant to determine the quantum of relief) and in awarding a sum of RS. 390,000/= being five years' salary as compensation in lieu of reinstatement at an average daily wage of Rs. 250/=. The relief granted was not excessive in the circumstances of this case.

A workman had been employed at the estate of an employer from the year 1977, and his employment was terminated by the employer in December 2004, on the basis that the workman had set fire to the storeroom and had stolen some property belonging to the employer. The workman was 45 years of age and had 27 years of service at the time of termination.

Subsequent to the employer's complaint, the workman was charged for causing mischief by fire with intent to cause destruction of the storeroom, theft of property in possession of the employer and dishonestly receiving stolen property.

The workman filed an application in the Labour Tribunal stating that the said termination was unlawful and unjustified and sought reinstatement with back wages. The application was suspended by the Labour Tribunal until the final determination of the case against the workman in the Magistrate's Court. After the conclusion of the trial at the Magistrate's Court, the workman was acquitted of all the charges.

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31 JUL
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The Labour Tribunal proceeded with the inquiry and by its order held that the employer did not prove the allegations against the workman on the balance of probabilities and as such the termination was unjust and unlawful.

The employer appealed to the High Court of Uva against the order of the Labour Tribunal and the High Court of Uva affirmed the Order of the Labour Tribunal. The employer then sought special leave to appeal from the Supreme Court, against the judgment of the High Court of Uva, and leave was granted on the question of law whether the Honourable Judge of the High Court failed to consider that the Labour Tribunal awarded compensation contrary to the evidence led before the Labour Tribunal.

The Supreme Court considered the following:

- the implications of having pending criminal proceedings before a court of law in securing alternative employment;
- the age of the workman at the time of the termination of employment, the impact it has on securing alternative employment;
- the type of employment that the workman was engaged in, the number of years of service provided to the employer; and
- the age of the workman at the time the inquiry before the Labour Tribunal concluded.

The Supreme Court was of the view that awarding five years' salary as compensation in lieu of reinstatement at an average daily wage of Rs. 250/= was not excessive. The question of law was answered in the negative, and the appeal against the judgment of High Court of Uva was dismissed with costs.

More...

SRI LANKA
7 AUG
2020

SC Appeal 52/2014 – Sascon Knitting Company (Pvt) Ltd v. Commissioner General of Labour and 51 others

Held: In the absence of an express term, a transfer of an employee from one entity to another without the employee's consent is neither legal nor valid and it cannot and should not be permitted or made. The transfer of employees from one company to another without the consent of the employees amounts to an implied termination of its employment with the original company. If such implied termination is permitted, it would amount to termination of employment without any terminal benefits being paid to the employees. The specific terms of employment agreed to by the employees cannot and should not be varied unilaterally by the employer.

The 3rd to 53rd Respondents ('employees') were employed by the Appellant ('employer') for a number of years. In 2006, the employer informed the said employees that they will be transferred to a factory at different premises and to report for work at that premises. The employees refused to accept the transfer/attachment and wrote to the employer that, to their knowledge, the employer did not have a factory at the premises intended for transfer and they were not willing to accept employment at another company.

Upon receipt of the said letters, the employer informed the employees that according to the terms in the letters of appointment, the employees could be transferred to an associate company, and thus the purported transfer is legal and valid. The employees abstained from reporting for work at the new premises and through their trade union made representations to the Commissioner General of Labour ('the Commissioner General') that the employer had terminated their services and requested that they be re-instated.

Upon receipt of the complaints and by virtue of the Termination of Employment of Workmen (Special Provisions) Act no. 45 of 1971 ('the Act') as amended, the Commissioner General held an inquiry. Subsequent to the inquiry, the Commissioner General made an Order that the employer had violated the provisions of the Act and terminated the employment of the employees and directed that compensation be paid to the said employees.

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SRI LANKA
7 AUG
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Aggrieved by the said Order of the Commissioner General, the employer came before the Court of Appeal by way of a writ application. The Court of Appeal upheld the decision of the Commissioner General and dismissed the application with costs.

The employer then sought special leave to appeal from the Judgment of the Court of Appeal and leave was granted on the following questions of law –

- Whether the letters of appointment of the employees set out that they are liable to be transferred from one associate company to another?
- Whether the Court of Appeal has given appropriate consideration to the said term in the letter of appointment when deciding on whether there was a lawful re-location of the employees?

The Supreme Court, in answering the questions of law, held that the Commissioner General, can assume and has jurisdiction to look into the matter and has correctly come to a finding that the purported transfer as evidenced at the inquiry was not a transfer per se but would amount to termination of the service of the employees. It was further held that the employer's act was a violation of the provisions of the Act and terminal benefits were granted to the employees in accordance with the Act.

The transfer of employees from one company to another without the consent of the employees amounts to an implied termination of its employment with the original company. If such implied termination is permitted, it would amount to termination of employment without any terminal benefits being paid to the employees and this would offend and go against the Act itself.

Similarly, basic concepts of labour law, namely the implied right of an employer to transfer a workman from one establishment to another, and the inalienable right of an employee to choose his employer, together with the contractual provisions of the employment contract cannot be ignored but should be examined, considered, analyzed, properly balanced and weighed, from the perspective of the employer as well as from the employee, in arriving at a correct determination.

The questions of law were answered in favour of the employees, and the appeal against the judgment of the Court of Appeal was dismissed with costs.

More...

SRI LANKA
2 OCT
2020

SC Appeal 228/2017 - Rodrigo v. Central Engineering Consultancy Bureau

On 2nd October, the Supreme Court delivered a judgment in the above case interpreting Section 31B(5) of the Industrial Disputes Act which states as follows –

"Where an application under subsection (1) is entertained by a Labour Tribunal and proceedings thereon are taken and concluded, the workman to whom the application relates shall not be entitled to any other legal remedy in respect of the matter to which that application relates, and where he has first resorted to any other legal remedy, he shall not thereafter be entitled to the remedy under subsection (1) (a)" (which provides for an employee whose services have been terminated by his employer to apply for relief from a Labour Tribunal).

The employee concerned (the applicant) had made an application to the Supreme Court alleging that by terminating his services the employer – a business undertaking owned by the Government and thus an 'organ of the State' – had violated his fundamental rights. He subsequently filed an application for relief to the Labour Tribunal as well In its answer to the application to the Labour Tribunal filed by the employee, the employer raised a preliminary objection based on section 31B(5) on the ground that the applicant having "first resorted to another legal remedy" was not entitled to seek any relief from the Labour Tribunal. The objection was upheld by both the

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Labour Tribunal and the High Court, following which the applicant appealed to the Supreme Court, which held as follows -

a. It was clear that the first limb of the section which restricted an applicant's right to seek a remedy from any other forum "in respect of the matter to which that application relates" applied only where proceedings thereon had been taken and concluded and the matter finally determined by the Tribunal.

b. There was no logical reason to think that the Legislature intended to apply one standard in the first limb of the section to limit the curtailment of an employee's right to maintain an action/application in another forum only to instances where he has previously had an application to the Tribunal finally determined; and to apply another and much harsher standard in the second limb of the section and deny an employee the right to maintain an application to the Labour Tribunal merely because he has commenced proceedings in another forum but has not yet received a determination from it.

c. Further, the criteria upon which the second limb of section 31B(5) could be applied were the following –

   i. the action/application by the workman in the court or other forum must cover the same or similar ground as the application to the Labour Tribunal and have the same or similar scope;
   ii. the action/application by the workman in the court or other forum should seek the same or similar substantive reliefs as the application to the Labour Tribunal;
   iii. both the action/application by the workman in the other forum and the workman's application to the Labour Tribunal should be decided upon the core issue of whether the termination of the workman's' services by the employer was done for good cause, according to the principles which are to be applied by the court or other forum; and
   iv. there should not be a significant disparity between the procedure followed by the court or other forum and the procedure followed by a Labour Tribunal.

The Court expressed the view that the second limb of section 31B (5) can be applied only if all these four criteria or, at least, a "sufficient number of them", (unspecified), are met, so as to satisfy the Labour Tribunal that there is no material disparity or divergence between the previous action/application made by the workman to a court or other forum and the subsequent application made by the same workman to the Labour Tribunal.

As regards the particular case at hand, it was held that section 31B(5) did not apply and in this connection it was observed that while the employee's 'fundamental rights application' and his application to the Labour Tribunal sought similar substantive reliefs, the application to the Supreme Court and the application to the Labour Tribunal did not cover the same ground and did not have the same or similar scope in that one was a matter of public law where the focus was on whether the fundamental rights guaranteed by the Constitution had been violated by the State and the other of private law, in that the application was founded and confined within the employer – employee relationship. So also, the fundamental rights application would be decided by examining whether the employee had been subjected to unequal treatment or been denied the equal protection of the law or been made the victim of unreasonable or arbitrary or mala fide action by the employer and the termination of employment was only a part of the issue before the Court to be looked at in the context of the aforesaid matters. In the Labour Tribunal, on the other hand, the issue would be decided solely on the core issue of whether the termination of employment was just and equitable. Further, there was a significant disparity between the procedure followed by the Supreme Court on the one hand, and the Labour Tribunal on the other. In the case of

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SRI LANKA
2 OCT
2020

the former, the employee would first have to be granted leave to proceed and would only thereafter proceed to full hearing – if at all; and, moreover the decision at both stages would be made on the basis of affidavits, documents and submissions. On the contrary, except where it dismissed an application on a preliminary issue of law, a Labour Tribunal had no authority to refuse to hear and determine an application and was obliged to do so.

In conclusion, the Supreme Court stated that in the case under consideration, the proper course for the Labour Tribunal to have taken was to suspend its proceedings pending the conclusion of the proceedings in the Supreme Court, resume hearing thereafter and, when making a final determination, have regard to the outcome of the fundamental rights application – as provided in section 31(3) of the Industrial Disputes Act, which provides that:

"Where an application under subsection (1) relates -

a. to any matter which, in the opinion of the tribunal, is similar to or identical with a matter constituting or included in an industrial dispute to which the employer to whom that application relates is a party and into which an inquiry under this Act is held, or

b. to any matter the facts affecting which are, in the opinion of the tribunal, facts affecting any proceedings under any other law, the tribunal shall make order suspending its proceedings upon that application until the conclusion of the said inquiry or the said proceedings under any other law, and upon such conclusion the tribunal shall resume the proceedings upon that application and shall in making an order upon that application, have regard to the award or decision in the said inquiry or the said proceedings under any other law.]

SRI LANKA
17 NOV
2020

Proposed Increase of Qualifying Age for Withdrawal of Monies in Individual Account/s of the Employees' Provident Fund.

The general rule under the Employees' Provident Fund Act as it stands is that the monies lying to the credit of a member, (an employee on whose behalf contributions have had to be made as provided by the Act), shall be paid to him/her "as soon as may be practicable" after he/she has attained the age of 55 years in the case of males and 50 years in the case of females.

This is subject to the proviso that the said member is not entitled to the such payment if, after attaining the stipulated age he/she continues to work in any "covered employment" - which term includes practically all employments - and will not be entitled to payment until he/she ceases to be in such employment.

In the course of his speech in Parliament when presenting the national budget for the year 2021, the Prime Minister, who is also the Minister of Finance, mentioned that it was proposed to increase the said ages – which he referred to as the mandatory retirement age in the private sector - for both men and women to sixty years.

More...

SRI LANKA
17 DEC
2020

Tripartite Decision Re Payment of Wages Where Full Employment Impossible

In May 2020, the Cabinet of Ministers approved a decision taken by a Tripartite Task Force - consisting of representatives of Employers Federation of Ceylon, some Labour Unions and the Government, (the Ministry of Skills Development, Employment and Labour Relations), - set up by the Minister of Labour to look into the effects of the Covid 19 pandemic on employment in Sri Lanka.

The decision was made with a view to ensuring continuity of business while also ensuring job security. It was decided to implement the following scheme of payment where employers were unable to employ the whole workforce each day due to constraints consequent on the pandemic – in particular, compliance with directives of the Ministry of Health (regarding social distancing etc.)

The features of this agreement were as follows -

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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 was initially to apply to monthly paid employees in all sectors, and to be limited in its application for the months of May and June 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 would 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 50% of 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 decision of a Wages Board. The following is a clarification of the application of the scheme.

   Step 1. - To ascertain the daily rate at which employees who performed work should be paid the following method of calculation should be applied.
   a. Divide the Monthly basic salary by 30 or 26 days as the case may be.
   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 of Rs 14,500/-, (Rs. 7250) 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.

The scheme was subsequently extended till 30th September and, with effect from 1st October, has been further extended until 31st December, for the Tourism Industry. "By a letter dated 17th of December a request was made by the Employers' Federation of Ceylon to the Minster of Labour for the extension of the period of the Tripartite Agreement up to the end of March for the Tourism Industry

Employers in other sectors who/which wish to implement the scheme are obliged to inform the Commissioner General of Labour of the fact and of their concerns and provide, at the end of each month, all relevant details including names of workers employed/not employed and the details of payments made

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LOOKING BACK

SRI LANKA

17 DEC 2020

to each. These would be circulated among the members of the Task Force and if employees/ worker unions have any grievances/objections to raise, they could be communicated to the Commissioner General of Labour and could to be raised at a meeting of the Task Force.

TAIWAN
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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TAIWAN
22 FEB
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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.

TAIWAN
30 MAR
2020

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.

TAIWAN
1 JUL
2020

The Ministry of Labor's order to amend the "Key Points in Labor-Management Negotiations for Reduction of Work Hours Due to Impact from the Economy", effective immediately

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-3-Zi-1090130635
Issue date: July 1, 2020

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TAIWAN
1 JUL 2020

In amending the key points in labor-management negotiations for reduced hours due to the economy, the Ministry of Labor is requiring businesses to report any reductions in shifts or any changes in the implementation or timeframe of such reductions to the local labor administrative authority as well as the corresponding Workforce Development Agency under the Ministry of Labor.

TAIWAN
7 SEP 2020

The Ministry of Labor's order to amend the hourly minimum wage and the monthly minimum wage, effective January 1, 2021.

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-2-Zi-1090077231
Issue date: September 7, 2020

The minimum wage is now amended to be:

i. NT$160 per hour; and
ii. NT$24,000 per month.

TAIWAN
10 SEP 2020

The Ministry of Labor's order to include individuals engaged in the construction and maintenance of land or offshore wind farms as workers defined under Article 84-1 of the Labor Standards Act, effective immediately.

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-3-Zi-1090130808B
Issue date: September 10, 2020

The Ministry of Labor hereby includes individuals engaged in the construction and maintenance of land or offshore wind farms as workers defined under Article 84-1 of the Labor Standards Act.

TAIWAN
29 OCT 2020

The Ministry of Labor's interpretation of Article 16, Paragraphs 1 and 3 of the Labor Standards Act on rules relating to the calculation of the notice period and wage payment standards during the notice period, effective immediately.

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Guan-2-Zi-1090128292A
Issue date: October 29, 2020

Interpretation regarding Article 16, Paragraphs 1 and 3 of the Labor Standards Act on the notice period:

1. The notice period shall start counting from the day after the employer notifies the employee until the last day the employee provides labor services.
2. Wages paid during the notice period shall be based on "the number of notice days multiplied by the daily wages of the employee". The daily wages shall be based on the wages for regular hours worked on the day before the termination of the employment agreement. If wages are calculated monthly, then it shall be the wages for regular hours worked in the month before the termination of the employment agreement divided by 30. If the above amount is lower than the average wage, the average wage shall be used.

TAIWAN
13 NOV 2020

The Ministry of Labor's interpretation that for wages paid in consideration of untaken annual leave of an employee who is on reduced work hours and a corresponding reduction of wages due to overall economic environment – such wages shall be based on the wages paid for regular hours of work in the most recent full month prior to the implementation of the reduced work hours.

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TAIWAN
13 NOV 2020

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-2-Zi-1090130982
Issue date: November 13, 2020

In applying Paragraph 4 of the Article 38 of the Labor Standards Act and Paragraph 2 of the Article 24-1 of the Enforcement Rules for the Labor Standards Act on calculation of wages paid in consideration for untaken annual leave, the Ministry of Labor states that because "reduced work hours" is not considered ordinary work conditions, in the event the employer and the employee agreed to implement reduced work hours due to the overall economic environment, the wages to be paid for untaken annual leave of the employee shall be based on the wages paid for regular hours worked in the most recent full month prior to the implementation of the reduced work hours.

TAIWAN
13 DEC 2020

The Ministry of Labor's interpretation that the make-up leaves under Article 40 of the Labor Standards Act should in principle be provided immediately after an act of God, an accident or unexpected event that requires continuance of work has ended.

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-3-Zi-1090131037
Issue date: December 3, 2020

According to Paragraph 1 of the Article 40 of the Labor Standards Act: "An employer may require workers to suspend all leaves of absence referred to in Articles 36 to 38, if an act of God, an accident or unexpected event requires continuance of work; provided, however, that the worker concerned shall receive wages at double the regular rate for work during the suspended leave, and then also be granted leave to make up for the suspended leave of absence." As the make-up leaves were originally intended to soothe employee fatigue and prevent overwork after the employer has deemed it necessary to keep the employees working in response to an act of God or an accident, those make-up leaves should be arranged and provided as soon as possible after an act of God, an accident or unexpected event that requires continuance of work has ended. This announcement also supplements a previous 1989 circular stating that any make-up leaves arranged between the employer and the employee should be implemented no later than 7 days after the work has been completed.

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

THAILAND

1 JAN

2020

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

MAR

2020

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.

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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...

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.

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

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THAILAND
24 APR 2020

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.

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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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THAILAND
17 JUL 2020

New Regulations on the Minimum Security Standards for Personal Data under the Personal Data Protection Act (PDPA)

On 17 July, 2020, Thailand's Ministry of Digital Economy and Society (MDES) issued a notification in the Government Gazette setting out the minimum security standards for personal data under the Personal Data Protection Act (PDPA). This MDES notification is effective from 18 July, 2020, to 31 May, 2021.

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THAILAND
17 JUL 2020

The minimum standards imposed by the notification are as follows:

1. Data Controller must provide information about their security standards for personal data to their personnel, staff, employees, and relevant persons, and build awareness of the importance of personal data protection, so that all employees strictly comply with these standards.
2. Access controls must be implemented over personal data, and devices for storing or processing personal data, in consideration of the usage and safeguards.
3. There must be a system for the designation of permission and access rights over personal data.
4. User access management must be in place to control access to personal data, so that it can only be accessed by authorized persons.
5. There must by a system for the designation of user responsibilities to prevent unauthorized access, distribution, knowledge, or duplication of personal data, or theft of devices for storing or processing personal data.
6. Procedures must be adopted to monitor records relating to past access, alteration, deletion, or transfer of personal data which corresponds to the process, mode of collection, use, and disclosure of personal data.

The standards set out in the notification are the minimum measures that must be taken by data controllers, and there is no limitation on the standards or measures that provide additional levels of security to the minimum requirements (such as ISO/IEC 27001). The MDES minister is empowered to enforce this notification.

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THAILAND
14 SEP 2020

Thai Government Announces Second Phase of Reductions to Social Security Fund Contributions under COVID-19 Outbreak

On 14 September, 2020, Thailand's Ministry of Labour issued a notification in the Government Gazette to reduce Social Security Fund contribution rates for employers, employees, and insured persons to 2% of wages for a period of 3 months. This was approved by the cabinet on 1 September, 2020.

The Ministry of Labour's Notification Regarding the Criteria, Methods, and Conditions for the Reduction of Employers' and Insured Persons' Social Security Fund Contributions, in the Event of the Coronavirus 2019 (COVID-19) Outbreak ("Notification") is effective from September to November 2020.

Key Points of the Notification

- Employers and the Employees under section 33 of the Social Security Act (SSA) are entitled to a reduction in SSF contributions for September–November 2020. The reduced rate is equal to 2% of the wages of the Employees.
- An insured person who is not an employee but has registered as such under section 39 of the SSA is entitled to a reduction in SSF contributions for September–November 2020, when their required contributions are 96 baht per month.
- If the remittance exceeds the amount specified in the notification, an employer or an employee/person can submit a request to their relevant Social Security Office to be reimbursed the excess amount.

THAILAND
18 NOV 2020

Easing of entry restrictions on foreign workers during the COVID-19 outbreak:

The Ministry of Interior (MOI) issued a notification (Notification re: Exceptions to Restrictions for Foreign Workers from certain Nations to Enter and Stay in Thailand Specifically for Work, according to the Memorandum of Understanding on Labour Cooperation in Relation to the Circumstances Caused by the COVID-19 Pandemic) dated November 18, 2020, lifting some

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restrictions for foreign workers from Cambodia, Laos, and Myanmar starting from November 1, 2020. The foreign workers will be allowed to enter Thailand for work, provided they fall under the definition of a "foreigner" as cited in this notification. A "foreigner" is a foreign worker with Cambodian, Lao or Myanmar nationality, who is permitted to work in Thailand for a period of four years, under the Memorandum of Understanding on Labour Cooperation dated March 1, 2006, and their passports are still valid. Furthermore, qualified foreign workers who complete a four-year employment contract between November 1, 2020, and December 31, 2021, will be allowed to stay in Thailand for another two years. However, they will be required to submit a request to work with the Department of Employment after completing their first year of employment in order to stay in Thailand for another year.

VIETNAM
2 JUN
2020

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.

VIETNAM
18 NOV
2020

Retirement Age

Vietnam Government issued the Decree 135/2020/ND-CP on 18 November 2020 regulating the retirement age with effect from 1 January 2021 in accordance with the Labour Code 2019 ("**Decree 135**").

Under the Labour Code, as from 2021, the minimum retirement age of employees in normal working conditions will be sixty (60) years plus three (3) months for male employees and fifty five (55) years plus four (4) months for female employees ("**Minimum Retirement Age**"). In addition, the Labour Code provides that if an employee's working ability has declined, he/she may retire before reaching the Minimum Retirement Age ("**Early Retirement Age**"), but not later than five (5) years compared to the Minimum Retirement Age.

According to Decree 135, the roadmap for Minimum Retirement Age and Early Retirement Age are set out as below:

Table 1: Minimum Retirement Age

Male employee		Female employee	
Year of retirement	Retirement age	Year of retirement	Retirement age
2021	60 years 3 months	2021	55 years 4 months
2022	60 years 6 months	2022	55 years 8 months
2023	60 years 9 months	2023	56 years
2024	61 years	2024	56 years 4 months

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Male employee		Female employee	
Year of retirement	Retirement age	Year of retirement	Retirement age
2025	61 years 3 months	2025	56 years 8 months
2026	61 years 6 months	2026	57 years
2027	61 years 9 months	2027	57 years 4 months
From year 2028 onwards	62 years	2028	57 years 8 months
		2029	58 years
		2030	58 years 4 months
		2031	58 years 8 months
		2032	59 years
		2033	59 years 4 months
		2034	59 years 8 months
		From year 2035 onwards	60 years

Table 2: Early Retirement Age

Male employee		Female employee	
Year of retirement	Lowest retirement age	Year of retirement	Lowest retirement age
2021	55 years 3 months	2021	50 years 4 months
2022	55 years 6 months	2022	50 years 8 months
2023	55 years 9 months	2023	51 years
2024	56 years	2024	51 years 4 months
2025	56 years 3 months	2025	51 years 8 months
2026	56 years 6 months	2026	52 years
2027	56 years 9 months	2027	52 years 4 months
From 2028 onwards	57 years	2028	52 years 8 months
		2029	53 years
		2030	53 years 4 months

In case an employee continues to work after reaching the Minimum Retirement Age, then the time of retirement is the time of termination of his or her employment contract.

VIETNAM
14 DEC
2020

Employment Outsourcing Services

On 14 December 2020, the Vietnamese Government issued Decree 145/2020/ND-CP regulating details and implementing a number of articles of the Labour Code on labour conditions and relationship ("**Decree 145**"). The Decree 145 has replaced Decree 29/2019/ND-CP on labour outsourcing services ("**Decree 29**").

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2020

Companies providing employment outsourcing services must obtain an employment outsourcing service license in order to provide employment outsourcing services. The employment outsourcing service license is conditional upon the company meeting the following requirements:

- Having a legal representative being an enterprise manager in accordance with the Law on Enterprises, not having any criminal convictions and having worked for the employment outsourcing company for at least a full thirty six months.
- having deposited VND2 billion (about US$85,406).

Decree 145 provides a list of 20 jobs that are allowed to be outsourced by an employment outsourcing company as follows: translator/interpreter/ shorthand taker, secretary/admin assistant, receptionist, tour guide, sales assistant, project assistant, manufacturing programmer, manufacturer/ installer of television broadcasting/telecommunication equipment, operator/ checker/repairer of construction machinery/manufacturing electricity system, cleaner of building/factory, document editor, bodyguard/security staff, telemarketer, processor of financial/tax matters, automobile repairer/ checker, industrial technical drawer/scanner/interior designer, driver, manager/ operator/maintenance staff/servant on vessel, manager/ supervisor/operator/ technicians, maintenance worker/servant on offshore oil and gas platform, pilots/service staff on aircraft/aircraft maintenance engineer/flight controller/ flight dispatchers.

The list above remains the same as the list as previously prescribed in Decree 29.

Decreed 145 will effect from 1 February 2021.

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