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中国动态： 双语版亚洲雇佣法：季评

2019-2020

第三十期：2020年第四季度

Asia Employment Law: Quarterly Review

2019-2020

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索引 INDEX:

中国 CHINA

引言 Introduction

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

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

在第三十期中，我们将回顾并评点2020年第四季雇佣法发展情况，同时列出一些2021年立法、咨询、政策及判例法方面的预期重大变革。

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

我们衷心希望本刊对阁下有所助益。

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

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

In this thirtieth edition, we flag and provide comment on anticipated 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.

顺颂商祺 With best regards,



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2020

中国
CHINA重要:
可能需要
采取行动Important:
action likely
required不可不知:
关注发展动态Good to know:
follow
developments注意变更:
无需采取行动Note changes:
no action
required

回顾

Looking
Back

展望

Looking
Forward

回顾 LOOKING BACK

中国
1月30日
2020CHINA
30
JAN
2020

《关于切实做好新型冠状病毒感染的肺炎疫情防控期间社会保险经办工作的通知》

人力资源和社会保障部于2020年1月30日发布《关于切实做好新型冠状病毒感染的肺炎疫情防控期间社会保险经办工作的通知》(下称《通知》)。《通知》要求,一是确保各项社会保险待遇按时足额发放;二是强化经办大厅防控措施;三是推行“不见面”服务;四是开辟医护及相关工作人员工伤保障绿色通道;五是允许参保企业和个人延期办理业务。其中,《通知》指出,因受疫情影响,用人单位逾期办理职工参保登记、缴费等业务,经办机构应及时受理。对灵活就业人员和城乡居民2020年一次性补缴或定期缴纳社会保险费放宽时限要求,未能及时办理参保缴费的,允许疫情结束后补办,并在系统内标识。逾期办理缴费不影响参保人员个人权益记录,补办手续应在疫情解除后三个月内完成。

[更多...](#)

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

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

[More...](#)中国
2月20日
2020CHINA
20
FEB
2020

《关于阶段性减免企业社会保险费的通知》

人力资源和社会保障部等三部门于2020年2月20日发布《关于阶段性减免企业社会保险费的通知》(下称《通知》)。《通知》规定,自2020年2月起,各省、自治区、直辖市(除湖北省外)及新疆生产建设兵团可根据受疫情影响情况和基金承受能力,免征中小微企业三项社会保险单位缴费部分,免征期限不超过5个月;对大型企业等其他参保单位(不含机关事业单位)三项社会保险单位缴费部分可减半征收,减征期限不超过3个月。《通知》明确,自2020年2月起,湖北省可免征各类参保单位(不含机关事业单位)三项社会保险单位缴费部分,免征期限不超过5个月。受疫情影响生产经营出现严重困难的企业,可申请缓缴社会保险费,缓缴期限原则上不超过6个月,缓缴期间免收滞纳金。《通知》还指出,2020年企业职工基本养老保险基金中央调剂比例提高到4%,加大对困难地区的支持力度。

[更多...](#)[Continued on Next Page 接下页](#)

重要：
可能需要
采取行动

Important:
action likely
required

不可不知：
关注发展动态

Good to know:
follow
developments

注意变更：
无需采取行动

Note changes:
no action
required

回顾

Looking Back

展望

Looking Forward

中国
2月20日
2020

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.

More...

中国
2月21日
2020

CHINA
**21
FEB**
2020

《关于阶段性减征职工基本医疗保险费的指导意见》

国家医疗保障局等三部门于2020年2月21日联合发布《关于阶段性减征职工基本医疗保险费的指导意见》(下称《意见》)。《意见》提出,自2020年2月起,各省、自治区、直辖市及新疆生产建设兵团(以下统称省)可指导统筹地区根据基金运行情况和实际工作需要,在确保基金收支中长期平衡的前提下,对职工医保单位缴费部分实行减半征收,减征期限不超过5个月。同时,《意见》明确,原则上,统筹基金累计结存可支付月数大于6个月的统筹地区,可实施减征;可支付月数小于6个月但确有必要减征的统筹地区,由各省指导统筹考虑安排。缓缴政策可继续执行,缓缴期限原则上不超过6个月,缓缴期间免收滞纳金。《意见》还要求,各省要指导统筹地区持续完善经办管理服务,确保待遇支付,实施减征和缓缴不能影响参保人享受当期待遇。

更多...

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

Continued on Next Page 接下页

2020

中国
CHINA

回顾 LOOKING BACK

重要：
可能需要
采取行动Important:
action likely
required不可不知：
关注发展动态Good to know:
follow
developments注意变更：
无需采取行动Note changes:
no action
required

回顾

Looking
Back

展望

Looking
Forward中国
2月21日

2020

CHINA

21
FEB

2020

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.

[More...](#)

《关于订立电子劳动合同有关问题的函》

人力资源和社会保障部办公厅于2020年3月4日发布《关于订立电子劳动合同有关问题的函》。该函称，北京市人力资源和社会保障局《关于在疫情防控期间开展劳动合同管理电子化工作的请示》收悉，经研究答复如下：用人单位与劳动者协商一致，可以采用电子形式订立书面劳动合同。采用电子形式订立劳动合同，应当使用符合电子签名法等法律法规规定的可视为书面形式的数据电文和可靠的电子签名。用人单位应保证电子劳动合同的生成、传递、储存等满足电子签名法等法律法规规定的要求，确保其完整、准确、不被篡改。符合劳动合同法规定和上述要求的电子劳动合同一经订立即具有法律效力，用人单位与劳动者应当按照电子劳动合同的约定，全面履行各自的义务。

[更多...](#)中国
3月4日

2020

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 laborer by consensus. In entering into a electronic form of labor contract, data messages and electronic signatures are treated as the written form provided that they comply with the provisions of such laws and regulations relating to the Law on Electronic Signatures. Employers shall ensure that the creation, transmission and filing of electronic labor contracts meet with the requirements set out in such laws and regulations relating to the Law on Electronic Signatures and that the contracts are complete, accurate and have not been modified. An electronic labor contract that complies with the provisions of the Labor Contract Law and the aforesaid requirements will be legally binding once it has been concluded, the employer and the laborer shall, as agreed in the electronic labor contract, fulfil their respective obligations.

[More...](#)中国
5月29日

2020

CHINA

29
MAY

2020

《关于扩大失业保险保障范围的通知》

人力资源社会保障部和财政部于2020年5月29日发布《关于扩大失业保险保障范围的通知》（下称《通知》）。《通知》规定了阶段性实施失业补助金政策、阶段性提高价格临时补贴标准、畅通失业保险待遇申领渠道等八方面内容。其中，《通知》提出，2020年3月至12月，领取失业保险金期满仍未就业的失业人员、不符合领取失业保险金条件的参保失业人员，可以申领6个月的失业补助金，标准不超过当地失业保险金的80%。同时，2020年3月至6月，对领取失业保险金和失业补助金人员发放的价格临时补贴，补贴标准在现行标准基础上提高1倍。《通知》还要求，各地要优化经办流程，减少证明材料，取消附加条件；要在实现线上申领失业保险金基础上，于6月底前实现失业补助金等其他失业保险待遇线上申领等。

[Continued on Next Page](#) 接下页

2020

中国
CHINA

LOOKING BACK

重要：
可能需要
采取行动Important:
action likely
required不可不知：
关注发展动态Good to know:
follow
developments注意变更：
无需采取行动Note changes:
no action
required

回顾

Looking
Back

展望

Looking
Forward中国
5月29日
2020

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 price subsidy standard for a certain period of time and keeping channels open to claim unemployment insurance benefits. Among others, the Circular states that during the period from March to December 2020, the jobless people who remain unemployed at the end of the period of entitlement to unemployment insurance benefits, and the insured and unemployed individuals who do not meet the conditions for filing unemployment insurance benefits, may claim the unemployment allowances for a period of six months, and the unemployment allowance should not exceed 80% of the local unemployment insurance benefits standard. Additionally, during the period between March to June 2020, the amount of the temporary price subsidy offered to those receiving unemployment insurance benefits and unemployment allowances, will be doubled based on the current subsidy standard. Moreover, the Circular requires that each region shall optimize the service processes, shorten the list of the required supporting documents, and cancel additional conditions; and enable the unemployed to file for unemployment insurance benefits online, and in addition to this, make it possible to claim online other types of unemployment insurance benefits such as unemployment allowances by the end of June.

[More...](#)中国
6月22日
2020

CHINA

22
JUN

2020

《关于延长阶段性减免企业社会保险费政策实施期限等问题的通知》

人力资源和社会保障部、财政部和税务总局于2020年6月22日发布《关于延长阶段性减免企业社会保险费政策实施期限等问题的通知》（下称《通知》）。《通知》规定，各省、自治区、直辖市及新疆生产建设兵团（统称省）对中小微企业三项社会保险单位缴费部分免征的政策，延长执行到2020年12月底。各省（除湖北省外）对大型企业等其他参保单位三项社会保险单位缴费部分减半征收的政策，延长执行到2020年6月底。湖北省对大型企业等其他参保单位三项社会保险单位缴费部分免征的政策，继续执行到2020年6月底。《通知》进一步明确，受疫情影响生产经营出现严重困难的企业，可继续缓缴社会保险费至2020年12月底，缓缴期间免收滞纳金。以个人身份参加企业职工基本养老保险的个体工商户和各类灵活就业人员，2020年缴纳基本养老保险费确有困难的，可自愿暂缓缴费。

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

Continued on Next Page 接下页

2020

中国
CHINA

回顾 LOOKING BACK

回顾

重要：
可能需要
采取行动Important:
action likely
required不可不知：
关注发展动态Good to know:
follow
developments注意变更：
无需采取行动Note changes:
no action
required

回顾

Looking
Back

展望

Looking
Forward中国
6月22日
2020
CHINA
22
JUN
2020

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.

[More...](#)

《关于做好共享用工指导和服务的通知》

人力资源和社会保障部办公厅于2020年9月30日发布《关于做好共享用工指导和服务的通知》(下称《通知》)。《通知》包含支持企业间开展共享用工、保障企业用工和劳动者工作的自主权、妥善处理劳动争议和查处违法行为等八部分内容。其中,《通知》规定,各级人社部门指导员工富余企业(下称“原企业”)在将劳动者安排到缺工企业工作前征求劳动者意见,与劳动者协商一致。共享用工期限不应超过劳动者与原企业订立的劳动合同剩余期限。同时,劳动者在缺工企业工作期间,缺工企业未按照约定履行保护劳动者权益的义务的,劳动者可以回原企业,原企业不得拒绝。《通知》还明确,对通过共享用工稳定职工队伍的企业,阶段性减免社保费、稳岗返还等政策可按规定继续实施。

[更多...](#)中国
9月30日
2020
CHINA
30
SEP
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 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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