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中国动态： 双语版亚洲雇佣法：季评

2020-2021

第三十四期：2021年第四季度

Asia Employment Law: Quarterly Review

2020-2021

ISSUE 34: FOURTH QUARTER 2021

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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。

在第三十四期中，我们将回顾并评点2021年第四季雇佣法发展情况，同时列出一些2022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 thirty-fourth edition, we flag and comment on employment law developments during the fourth quarter of 2021 and highlight some of the major legislative, consultative, policy and case law changes to look out for in 2022.

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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最高法出台审理劳动争议案件司法解释

日前, 最高人民法院发布《关于审理劳动争议案件适用法律问题的解释(一)》(下称《解释》), 自2021年1月1日起施行。

《解释》共五十四条, 对劳动争议的纠纷范围、管辖、起诉与受理、仲裁等事项予以明确。其中, 《解释》规定, 劳动者以用人单位的工资欠条为证据直接提起诉讼, 诉讼请求不涉及劳动关系其他争议的, 视为拖欠劳动报酬争议, 人民法院按照普通民事纠纷受理。同时, 劳动合同期满后, 劳动者仍在原用人单位工作, 原用人单位未表示异议的, 视为双方同意以原条件继续履行劳动合同。一方提出终止劳动关系的, 人民法院应予支持。《解释》还提出, 劳动合同被确认为无效, 劳动者已付出劳动的, 用人单位应当按照规定向劳动者支付劳动报酬和经济补偿。

[更多...](#)

SPC Issues Judicial Interpretation (I) on Trial of Labor Dispute Cases

The Supreme People's Court ("SPC") has recently issued the Interpretation on Issues concerning the Application of Law in the Trial of Labor Dispute Cases (I) (the "Interpretation"), with effect from January 1, 2021. The Interpretation consists of 54 articles in total, specifying the scope, jurisdiction, prosecution and acceptance, and arbitration of labor disputes. Among others, the Interpretation stipulates that where an employee directly institutes a lawsuit on the strength of a slip on wage default issued by the employer as evidence, and the claims do not involve any other dispute over labor relationship, it shall be regarded as a dispute over the default on labor remunerations and shall be accepted by court as a general civil dispute; where, after the expiration of a labor contract, the employee still work for the original employer and the original employer does not express any objection, it shall be deemed that the parties agree to continue the performance of the labor contract in accordance with the original terms and conditions; if a party proposes to terminate the labor relationship, the court shall support it. The Interpretation also points out that where a labor contract is confirmed as invalid but the employee has already provided labor services, the employer shall pay the labor remuneration and financial compensation to the employee in accordance with the relevant provisions.

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《关于下放国务院所属部门人力资源服务机构审批管理权限的通知》

人力资源和社会保障部办公厅于2021年8月3日发布《关于下放国务院所属部门人力资源服务机构审批管理权限的通知》(下称《通知》)。《通知》明确, 现将国务院所属部门人力资源服务机构审批管理权限下放北京市人力资源和社会保障局, 请做好有关承接工作, 实现国务院所属部门人力资源服务机构的属地化管理。《通知》进一步规定, 相关下放权限包括: 一是下放国务院各部委、直属机构及其直属在京事业单位和在京中央直管企业、全国性社团申请行政许可审批备案权, 涉及从事职业中介活动的审批事项等三类。二是下放国务院所属部门人力资源服务机构日常管理权。

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Circular on Delegating the Approval and Management Authority of Human Resources Service Agencies of the Departments under the State Council

The Ministry of Human Resources and Social Security ("MOHRSS") issued Circular on Delegating the Approval and Management Authority of Human Resources Service Agencies of the Departments under the State Council

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("Circular") on August 3 2021. The Circular states that the approval and management authority of the human resources service agencies of the departments under the State Council is now delegated to the Beijing Municipal Human Resources and Social Security Bureau. Relevant transition work shall be carried out effectively to achieve the administrative localization of the human resources service agencies of the departments under the State Council. The Circular further stipulates that, the delegation of authority relates to two aspects: the first is to delegate the approval and record-filing authority for administrative licensing applied for by the ministries, commissions and directly affiliated institutions of the State Council and their directly affiliated public institutions in Beijing, Beijing-based enterprises directly under the Central Government, and national associations, involving three categories of approval items such as engaging in employment intermediary activities. The second is to delegate the day-to-day management authority of the human resources service agencies of the departments under the State Council.

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《关于职业院校毕业生参加事业单位公开招聘有关问题的通知》

日前, 人力资源和社会保障部发布《关于职业院校毕业生参加事业单位公开招聘有关问题的通知》(下称《通知》)。《通知》要求, 事业单位公开招聘要树立正确的选人用人理念, 破除唯名校、唯学历的用人导向, 切实维护、保障职业院校(含技工院校, 下同)毕业生参加事业单位公开招聘的合法权益和平等竞争机会。同时, 《通知》提出, 鼓励引导职业院校毕业生积极投身乡村振兴事业, 职业院校毕业生与普通高校毕业生同等享受艰苦边远地区基层事业单位公开招聘倾斜政策。乡村振兴重点帮扶县基层事业单位工勤技能岗位补充急需紧缺技能人才的, 可面向职业院校毕业生专项招聘。

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Circular on Issues concerning Vocational College Graduates' Participation in the Open Recruitment of Public Institutions

On November 4, 2021, the Ministry of Human Resources and Social Security ("MOHRSS") has issued the Circular on Issues concerning Vocational College Graduates' Participation in the Open Recruitment of Public Institutions (the "Circular"). The Circular requires that, public institutions must establish the correct concept of selection and employment, break with the practice of only hiring from prestigious schools and those with academic qualifications, and earnestly safeguard and ensure that graduates of vocational colleges (including technical colleges, the same below) have legal right to participate in public institutions' open recruitment and have an equal opportunity to compete for positions. Additionally, the Circular proposes the actions to encourage and guide graduates of vocational colleges to actively participate in the cause of rural revitalization, and that graduates of vocational colleges and those of ordinary colleges and universities equally enjoy the preferential policy of open recruitment of grassroots public institutions in difficult and remote areas. Where grassroots public institutions in key counties receiving assistance for rural revitalization need to recruit skilled workers of urgently needed, they may carry out special recruitment actions targeted graduates of vocational colleges.

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