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Asia Employment Law: Mid-Year Review

2021-2022

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Introduction

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

To help keep you up to date, Mayer Brown has produced the **Asia Employment Law: Mid-Year Review**, an e-publication covering 14 jurisdictions in Asia.

In this thirty-fifth edition, we flag and comment on employment law developments during the first half of 2022 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 14 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,

Duncan Abate
Partner
+852 2843 2203
duncan.abate@mayerbrown.com

Hong Tran
Partner
+852 2843 4233
hong.tran@mayerbrown.com

Jennifer Tam
Partner
+852 2843 2230
jennifer.tam@mayerbrown.com

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CFMMEU v Personnel Contracting Pty Ltd [2022] HCA 1; *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2

On 9 February 2022, the High Court of Australia handed down its decisions in *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1 (***Personnel Contracting***) and *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2 (***Jamsek***).

These cases provide important guidance regarding the categorisation of work relationships, and specifically, the distinction between a relationship of principal/contractor and employer/employee. In particular they consolidate the focus on the express terms of the contract as determinative of its character that was evident in the decision of the High Court in *WorkPac Pty Ltd v Rossato* [2021] HCA 23 (**Rossato**).

Personnel Contracting

Mr McCourt entered into an agreement with a labour hire company, Personnel Contracting Pty Ltd (**Construct**). This agreement specifically stated that Mr McCourt:

- was 'self-employed';
- was not obligated to accept any work;
- had no claims against Construct regarding leave or superannuation; and
- was required to provide his own equipment including work-boots, hi-vis shirt and hard hat.

Construct offered Mr McCourt work on a construction site for a client of Construct, Hanssen Pty Ltd (**Hanssen**).

Hanssen and Construct had a Labour Hire Agreement whereby Personnel would supply labour to Hanssen upon request. On this basis, Hanssen, Construct and Mr McCourt were in a tripartite arrangement, an agreement often known as an 'Odco Contract'.

For the work performed under the control of Hanssen, Mr McCourt was paid approximately 25% less than the applicable award rate by Construct. The Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) brought proceedings on Mr McCourt's behalf to recover entitlements. It was unsuccessful both at first instance, and on appeal to the Full Court of the Federal Court.

However, the Union's further appeal was upheld by the High Court by a majority of 6:1.

The majority (albeit by three different routes) determined that Mr McCourt was an employee of Construct, based on an assessment of the totality of the relationship at the time the contract was made by reference to the contractual terms.

Court pointed out that despite the critical role of the formal terms of contracts of employment in determining the character of work relationships, there were still a number of contexts where it is necessary to look to the manner in which a contract is performed, rather than just its formal terms, in order to ascertain the character of the relationship. These include:

- where a statute may impact the operation of a contract regardless of its terms;
- where issues concerning variation, waiver, and estoppel arise;
- where the contract is partly oral and partly written and
- where a contract is in reality a 'sham arrangement'.

Jamsek

Jamsek involved two truck drivers who had worked for ZG Operations (and its predecessors) from 1977 until 1986. From that year onwards, they were purportedly engaged as independent contractors. For most of the period

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after 1986 they were engaged through partnerships, and were responsible for providing and maintaining their trucks.

The Drivers brought proceedings to enforce a range of statutory entitlements, eligibility for which depended on whether they were in fact 'employees'. The Drivers were unsuccessful at first instance, but were successful on appeal to the Full Court of the Federal Court.

The decision of the Full Court was in turn reversed by the High Court. In finding that the Drivers were independent contractors the Court affirmed that 'the character of the relationship between the parties in this case was to be determined by reference to the rights and duties created by the written agreement which comprehensively regulated the relationship'.

This was, of course, consistent with both *Rossato* and *Personnel Consulting*, and read together the three decisions enable businesses to engage workers on the basis of independent contractor arrangements with greater certainty and less legal risk than had been the case hitherto. However, businesses still need to be aware that there are several contexts in which post-contractual behaviour may be relevant, and should take care in the performance of the contract to avoid issues such as waiver, variation, and estoppel. They also need to be aware that it is not permissible for parties simply to attach 'a "label" to describe their relationship which is inconsistent with the rights and duties otherwise' set out. Therefore, the relevant contract still requires careful drafting and needs to be comprehensive. This is clearly borne out by the decision in *Personnel Contracting*.

Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd [2022] HCA 1
ZG Operations Australia Pty Ltd v Jamsek [2022] HCA 2
Corrs Insight: 'Categorising work relationships: Contract rules?'

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31 MAR and 21 MAY 2022

Reforms to Western Australia's workplace laws

In March and May 2022, major reforms to Western Australia's occupational health and safety and state industrial relations legislation commenced. At a high level, these reforms bring WA's occupational health and safety legislation and state industrial relations laws more closely into line with the laws which apply in other Australian jurisdictions.

Commencement of model workplace health and safety legislation

On 31 March 2022, the *Work Health and Safety Act 2020* (WA) (the **WHS Act**) and its accompanying regulations commenced. The WHS Act consolidates Western Australia's workplace safety legislation into a single act covering all workplaces in WA and largely adopts the Model Work Health and Safety law which is in place in all Australian jurisdictions other than Victoria.

Among the key changes introduced by the WHS Act are:

- **Broadening the duty of care**: Under the WHS Act, a duty of care is imposed on persons conducting business or undertaking (**PCBU**) to ensure, so far as is reasonably practicable, the health and safety of workers of the PCBU. This casts the legislative net rather wider than the former 'employer" duty.
- **Broadening the class of workers protected**: The WHS Act uses a broader concept of 'worker', as opposed to 'employee', which expressly extends to volunteers, contractors, subcontractors, apprentices, labour hire employees and secondees.
- **Duty to consult**: The WHS Act imposes duties on PCBUs to consult with workers who are directly affected by health and safety matters. The WHS Act also imposes duties on PCBUs to consult, co-operate and co-ordinate with other PCBUs who have a duty in relation to the same activities.
- **Imposition of duties on officers**: The WHS Act introduces a positive duty on officers of a PCBU to ensure the PCBU meets its safety duties.

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- **Industrial manslaughter**: The WHS Act introduces an offence of industrial manslaughter. Under the offence, a PCBU may commit a crime if they engage in conduct which is in breach of certain duties under the WHS Act which results in the death of an individual whilst knowing and disregarding that their conduct is likely to cause the death of, or serious harm to, an individual.
- **Duties to ensure psychological health**: The WHS Act defines 'health' so as expressly to include psychological health and wellbeing. This means that duties to protect workers from risks to health now extends to psychosocial risks such as stress, fatigue and bullying as well as more conventional risks to physical health.

Changes to WA's state workplace relations system

For constitutional reasons, between 21 and 36% of employees in Western Australia are not covered by the national workplace relations system established by the *Fair Work Act 2009* (Cth). Instead these employees, who include employees of unincorporated employers and partnerships, some trust business structures, public sector employers, some associations, non-government organisations and public sector employer and some local government employers, are covered by the State system of industrial regulation.

In December 2021, the *Industrial Relations Legislation Amendment Act 2021* (WA) (**IRLAA**) was passed by the WA state parliament. This measure reforms the State system in a number of ways, most of which are intended to bring the State system more into line with that established under the FW Act. The relevant changes include:

- Expanding employment record-keeping requirements and introducing a requirement for employers to issue payslips;
- Empowering the Western Australian Industrial Relations Commission (**WAIRC**) to hear applications for 'stop bullying' and 'stop sexual' harassment orders in a quick and inexpensive manner;
- Extending the power of the WAIRC to order pay rises on gender pay equity grounds;
- Prohibiting:
  - Employers from taking 'damaging action' against employees who make employment-related inquires;
  - Employers from engaging in 'sham contracting' arrangements;
  - Advertising for jobs at a rate of pay that is less than the applicable minimum wage; and
  - Employers from establishing of 'cash-back' arrangements or making unreasonable deductions from an employee's pay which are for the employer's benefit.
- Strengthening the powers of certain regulators including giving them the capacity to issue compliance notices and enter into enforceable undertakings;
- Strengthening the enforcement mechanisms for non-compliance with certain minimum conditions of employment, including by raising the maximum penalty for non-compliance, introducing higher penalties for 'serious contraventions', introducing accessorial liability to individuals who are engaged in an organisation's contravention and requiring employers who fail to keep relevant employee records to disprove allegations in enforcement proceedings;
- Introducing additional public holidays and providing an entitlement to five day's unpaid family and domestic leave; and
- Increasing the circumstances in which an employee's long service leave is recognised in 'transfer of business' scenarios.

Work Health and Safety Act 2020 (WA)
Industrial Relations Legislation Amendment Act 2021 (WA)

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13 APR 2022

Australian Building and Construction Commissioner v Pattinson [2022] HCA 13

On 13 April 2022, the High Court of *Australia handed down its decision in Australian Building and Construction Commissioner v Pattinson* [2022] HCA 13.

The case arose from the commencement of penalty proceedings against both the Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) and one of its officers by the Australian Building and Construction Commissioner (**ABCC**). The CFMMEU and its officer had contravened s 349 of the *Fair Work Act 2009* (Cth) (**FW Act**) by making misrepresentations to two subcontractors that they were required to become a member of the union in order to perform the work they had attended the site to perform. The Union had a history of prior contraventions of the Act, and s 349 in particular.

At first instance, Justice Snaden awarded the maximum penalty against the CFMMEU in light of its 'history of prior contraventions'.

The Full Court of the Federal Court overturned this decision and substituted lower penalties. In the Full Court's view, a case could not be regarded as being in the worst category of wrongdoing merely by reason of the contravener having a history of prior contraventions: to impose the maximum penalty in such a case would be to impose a penalty disproportionate to the nature, gravity and seriousness of the instant contravention.

On appeal, the High Court overturned the Full Court's decision finding that it fell into error in taking into account the concept or notion of 'proportionality'.

In the case of a repeat offender being penalised for a new contravention, the High Court made clear that that an 'appropriate' penalty is one that strikes a reasonable balance between oppressive severity and the need for deterrence in respect of the particular case. A contravention may be a 'one off' result of inadvertence by the contravenor rather than the latest instance of the contravenor's pursuit of a strategy of deliberate recalcitrance in order to have its way.

In this case, whilst the conduct might not have been the 'worst case' the High Court said that considerations of deterrence, and the protection of the public interest, justified the imposition of the maximum penalty where it was apparent that no lesser penalty would be an effective deterrent against further contraventions of a like kind. Where a contravention is an example of adherence to a strategy of choosing to pay a penalty in preference to obeying the law, a court may reasonably fix a penalty at the maximum set by statute with a view to making continued adherence to that strategy in the ongoing conduct of the contravenor's affairs as unattractive as it is open to a court reasonably to do.

This decision clearly has significant implications for the respondent Union, which often appears to regard monetary penalties and even compensation orders as part of the costs of running its business. However, it is important to note that it could also have significant implications for business, especially in relation to employers who breach work health and safety legislation or industrial legislation (for example in relation to payment of wages).

Australian Building and Construction Commissioner v Pattinson [2022] HCA 13
Corrs Insight: 'High Court decides maximum civil penalties are not just for "worst" conduct'

AUSTRALIA
04 MAY 2022

Qantas Airways Ltd v Transport Workers' Union of Australia [2022] FCAFC 71

On 4 May 2022, the Full Federal Court dismissed an appeal from the Federal Court decision in *Transport Workers' Union of Australia v Qantas Airways Limited (No 2)* [2021] FCA 873, which held that Qantas had contravened the General Protections provisions in Part 3-1 of the *Fair Work Act 2009* (Cth)

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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(**FW Act**) when deciding to outsource certain aspects of its business. It also dismissed an appeal by the Transport Workers Union of Australia (**TWU**) against a refusal by the Federal Court to order the reinstatement of some 1,600 employees who had been dismissed by Qantas in consequence of the outsourcing exercise.

The decisions in this case highlight the risks posed by the General Protections provisions in the context of business restructuring exercises - although they also clearly indicate that it is possible lawfully to undertake radical business restructures without running afoul of Part 3-1 by exercising due diligence in the decision-making process.

The General Protections

Under sections 340 and 341 the FW Act), it is unlawful for a "person" to take "adverse action" against another person because they have a "workplace right", or because they have or have not exercised such a right. A "workplace right" includes being entitled "to the benefit of a workplace law [or] workplace instrument" or being able to "initiate, or participate in, a process or proceedings under a workplace law". This includes participating in "protected industrial action". Under s 346 of the Act, adverse action is also unlawful if it is taken against a person because they are "an officer or member of an industrial association", or propose to engage in lawful industrial action.

According to section 342(1) of the FW Act, an employer would take 'adverse action' against an employee by dismissing them, injuring them in their employment, altering their position to their prejudice, or discriminating between them and other employees of the employer. The causal link between such 'adverse action' and the prohibited reason is of critical significance in this context: taking 'adverse action' will not be unlawful unless it was taken ***because of*** the prohibited attribute.

Under section 361, a "reverse-onus" rests on the party who is alleged to have taken the adverse action, such that they must prove it was not taken due to the alleged reason. If the party cannot discharge this onus the action taken will be held to have been taken for the alleged proscribed reason.

Qantas

The COVID-19 pandemic has had a huge operational and financial impact on the global airline industry. In response to this, Qantas Airways Limited (**Qantas**) made the positions of several thousand of its employees redundant, including 1,600+ whose positions became redundant in consequence of the outsourcing of "below the wing" services such as plane cleaning and baggage handling at ten Australian airports.

The anticipated savings from the outsourcing were in the vicinity of $100 million per annum. As required by the relevant enterprise agreement, Qantas offered the TWU an opportunity to bid for the outsourced work.

The Union's bid was rejected, and following that rejection the TWU commenced proceedings in the Federal Court, submitting that Qantas had engaged in adverse action against its members for the following proscribed reasons:

- that they were union members;
- that they were entitled to benefits of a number of enterprise agreements made under the FW Act;
- to prevent them from exercising their existing right to bargain for the making of a replacement Enterprise Agreement; and
- to prevent them from participating in a protected action ballot or in protected industrial action in future, following the nominal expiry of their Enterprise Agreement.

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Qantas argued that its decision was not for these reasons, but was instead part of the Airline's COVID-19 recovery plan, motivated by the need to achieve cost targets through reduced operating costs, the need to increase variability in its cost base, and the need to improve their business.

At first instance, Justice Lee rejected the TWU's submissions that the adverse action was taken against their members as a result of the membership itself, or that it was to restrict an existing right to bargain a new enterprise agreement. However, Justice Lee held that Qantas had failed to prove that the individuals within the organisation who made the decision to outsource the employees' work were not, to some extent, motivated to prevent the exercise of the outsourced employees' rights that would arise upon the upcoming nominal expiry of their Enterprise Agreement. Justice Lee found Qantas' adverse action was taken for the purpose of preventing all dismissed workers, and not only members of the TWU, from engaging in their future workplace right to participate in industrial action or bargaining for its replacement.

Qantas based its appeal principally on the ground that "workplace rights" could only be rights which existed at the time of the decision to take adverse action. This argument was rejected by the Full Court, which found that where "a presently existing workplace right is required as a precondition … the [employee's] holding of a *contingent* workplace right would suffice".

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In this case, the employees' ability to take protected industrial action was contingent on authority given by a protected action ballot, the capacity to apply for which was an existing workplace right. Therefore, Qantas contravened the Act by taking adverse action on the basis of a "workplace right" by preventing employees from bargaining, or taking protected industrial action, once the Enterprise Agreement soon expired.

The Full Court also upheld the trial judge's finding that Qantas had not discharged its "reverse-onus" of proof by showing that a proscribed reason was not a substantial and operative reason for the decision to outsource the employees. This in turn reflected a failure by the Airline to provide a clear and coherent account of the decision-making process that led to the outsourcing of the 1,600 positions.

Qantas has indicated that it will seek leave to appeal to the High Court against the liability finding. The TWU has not, however, evinced any intention to appeal against the reinstatement decision, but will no doubt press ahead with its application for the imposition of penalties for contravention of the FW Act, and for compensation for its members.

Meanwhile, the decision stands as a warning of the importance of ensuring that decision-making processes in the context of business restructures can be shown not to be driven to any extent by proscribed grounds. This is not impossible, but does require that the decision-making process be carefully thought through, and that all involved in the process adhere to the agreed process.

Qantas Airways Ltd v Transport Workers' Union of Australia [2022] FCAFC 71
Transport Workers' Union of Australia v Qantas Airways Limited (No 4) [2021] FCA 873

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AMIEU v Dick Stone Pty Ltd [2022] FCA 515

In May 2022, the Federal Court handed down its decision in *AMIEU v Dick Stone* [2022] FCA 515 (***AMIEU v Dick Stone***), which provided insight into the operation of the maximum weekly hours provisions in *Fair Work Act 2009* (Cth)'s (**FW Act**). National Employment Standards (**NES**). This decision is of interest because this aspect of the NES, whilst of central importance, has rarely been litigated.

The 38-hour week (plus reasonable additional hours)

The NES provide a series of legislated minimum standards of employment for

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the vast majority of Australian employees. Among other things, they provide that an employer must not request or require a full-time employee to work more than 38 hours per week, 'unless the additional hours are reasonable'. Employees are entitled to refuse to work additional hours if they are unreasonable.

The NES also provide for certain arrangements in relation to averaging these maximum weekly hours over specified periods, provided the average over the specified period does not exceed 38 hours.

AMIEU v Dick Stone

AMIEU v Dick Stone concerned proceedings initiated by the Australasian Meat Industry Employees Union (**AMIEU**) against Dick Stone on behalf of an employee of Dick Stone, Mr Boateng.

Dick Stone is a butcher and meat processer. In 2016 it offered Boateng employment at its plant in western Sydney. Boateng's letter of offer from Dick Stone provided that his ordinary hours of work would be 50 hours per week, usually worked within the range of 2:00 am to 11:30 am Monday to Friday and 2:00 am to 7:00 am Saturday. The letter also said that it was an expectation that, when requested, employees would work a reasonable amount of additional hours. Boateng's employment was also covered by the *Meat Industry Award 2010* (**Award**) and by the FW Act.

Between the commencement of his employment in 2016, and its termination by reason of redundancy in May 2019, Boateng worked 50 hours per week. He was paid an hourly rate that was greater than the minimum ordinary time rate under the Award, but was less than what he would have been entitled to be paid if the hours in excess of 38 hours per week had been paid at the overtime rates specified in the Award.

Following earlier attempts by the AMIEU to resolve its concerns with respect to unreasonable working hours and overtime at Dick Stone, the AMIEU initiated Federal Court proceedings against Dick Stone. In those proceedings, the AMIEU alleged breaches of several aspects of the Award and of the Act, including alleged underpayment and contravention of the aspect of the NES dealing with maximum weekly hours. In due course, Justice Katzmann found in favour of the AMIEU on all counts. In doing so, she provided helpful clarification on the application of the aspect of the NES dealing with maximum weekly hours.

In order for an employer to have contravened the relevant aspect of the NES, they must have 'required' or 'requested' that the employee work more than 38 hours in a week. Dick Stone argued that since 50 ordinary hours of work per week was a term of Boateng's contract of employment into which he freely entered, it could not be said to have been a requirement of his employer or a 'unilateral' request.

Justice Katzmann was 'inclined to the view' that Boateng was 'required' to work 50 hours a week, notwithstanding that he voluntarily entered into the agreement to do so – especially in light of the fact that 'once the contract was made and he began to work pursuant to its terms he was bound to perform his side of the bargain'. In any event, her Honour was of the clear view that at the very least Dick Stone had 'requested' that Boateng work the additional hours. That being the case Dick Stone would have contravened the AF Act, unless the additional hours were found to be 'reasonable'. On the facts, Justice Katzmann found that it was not reasonable to request Boateng to work 12 hours above the stipulated maximum each week. Consequently, in so requesting that Boateng to work these additional hours, Dick Stone had contravened the NES.

In reaching this conclusion, Justice Katzmann determined that the onus of demonstrating that a requirement or request to work additional hours

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is reasonable rests upon the party asserting it. She also held that what is reasonable in any given case "depends on an evaluation of the particular circumstances of both the employee and the employer having regard to all relevant matters including those matters mandated for consideration" by section 62(3) of the FW Act.

Corrs Insight: 'What are reasonable additional hours'

AUSTRALIA
21 MAY
2022

The new Labor government's workplace law agenda

On 21 May 2022, the Australian Labor Party (**ALP**) was elected to Government at Federal level. It enjoys a majority in the Legislative Assembly, and although it does not have a majority in the Senate, it is likely to be able to implement its legislative agenda with the support of the Greens and/or a number of cross-benchers.

The ALP campaigned on a number of employment-related policy proposals, including in relation to security of work, workplace gender equality, and improving the real wages of employees.

Secure work

The ALP has long been critical of what it sees as a trend towards 'insecure' forms of work in Australia. These include casual employment, utilising successive time-limited contracts, engaging workers through labour hire arrangements, and utilisation of independent contractor arrangements. Amongst the new Government's proposals for addressing these issues are:

- **Providing minimum terms and conditions of employment for 'employee-like' forms of labour.** Currently workers who are not categorised as 'employees' do not have access to the benefits of industrial instruments (awards and enterprise agreements) or to many statutory entitlements (including under the National Employment Standards) and protections (such as against unfair dismissal). The new Government has promised to amend the relevant legislation so as to encompass 'employee-like' forms of labour, including in the gig economy.
- **Providing labour hire employees with the right to receive the same terms and conditions as direct employees of host organisations.** Under the banner of 'Same Job Same Pay' the Government proposes that employees who are engaged through labour hire arrangements should be provided with the same terms and conditions of employment as they would receive if they were direct employees of the host organisation.
- **Limiting fixed-term employment.** The Government has committed to ending the practice whereby employers engage employees on a succession of 'fixed-term' contracts which have the effect that the employees concerned are not entitled to legislated entitlements or protections relating to termination of employment where their employment ends upon the expiry of these contracts. It proposes to address this issue by imposing an overall cap of 24 months of fixed-term employment in the same role before the employer is obliged to offer employee concerned a continuing position.
- **Redefining casual employment.** The Government has promised to replace the definition of 'casual employment' that was adopted by the former Coalition Government in 2021. Under that provision the question of whether an employee is a causal largely turns on the nature of the employer's offer of employment that is accepted by the employee. This means that the subsequent behaviour of the parties is largely irrelevant to the character of the employment. The new Government is committed to replacing this with a 'fair' and 'objective' definition which more accurately reflects the behaviour of the parties starting from the premise that a casual employee is an employee who is engaged and paid as such.

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- **Consulting on portable entitlements.** The government has promised that it will consult with employers, unions and States and Territories in relation to creating portable entitlements schemes on an industry-by-industry basis in relation to issues such as long service leave, annual leave and sick pay.

Workplace gender equality

The ALP also campaigned on a suite of policies aimed at increasing workplace gender equality and workplace safety for women. Among other things, this is reflected in commitments to:

- **Impose a positive duty on employers to eliminate sexual harassment, sex discrimination and victimisation.** In 2021, the Australian Human Rights Commission released a comprehensive report on workplace sexual harassment entitled Respect@Work. The incoming Government has committed to implementing the Report's recommendations in full – the previous Government having committed to implement them only in part. In particular, it has committed to introducing a positive duty on employers to take 'reasonable and proportionate measures' to eliminate sexual harassment, sex discrimination and victimisation.
- **Prohibit pay secrecy clauses.** The ALP has committed to legislation to prohibit employers from including clauses in contracts of employment that prohibit employees from disclosing their remuneration. It has also said that it will legislate to protect employees from adverse action if they choose to disclose, or not to disclose, their pay. The policy is intended to address concerns that pay secrecy clauses are a constraint on employees bargaining for pay increases and reflect evidence that the gender pay gap is less pronounced in sectors where pay rates are transparent.
- **Make gender pay equity an objective of workplace relations legislation and increasing the power of the Fair Work Commission (FWC) to increase wages in low-paid, female-dominated industries.** This is intended to ensure that the *Fair Work Act 2009* is interpreted and applied by courts and tribunals in a manner that is likely to give effect to gender pay equity. Additionally, the ALP promised to strengthen the FWC's powers to order pay increases for workers in low-paid female-dominated industries, such as aged and disability care.

Other projected reforms

In Australia, the national minimum wage is set by the Fair Work Commission in an annual wage review. As one of its first actions, the new Government made a submission to the Commission's current minimum wage review arguing for a minimum wage increase for workers on the minimum wage that ensured they did not suffer a real wage cut.

The Government has committed to abolishing two somewhat controversial regulatory bodies – the Australian Building and Construction Commissioner and the Registered Organisations Commission - which it perceives to be unfriendly towards unions. The functions of both bodies will presumably be redistributed (possibly in modified form) to other parts of the Federal bureaucracy.

The Government is also committed to and to imposing criminal penalties on employers who engage in 'wage theft'.

Finally, the ALP has announced that it will convene an Employment Summit in September 2022. The goal of the Summit will be to bring employers and unions together to collaborate on policy proposals to improve Australia's enterprise bargaining system and security of work. It is anticipated that employer representatives will argue for a relaxation of the approval requirements for enterprise bargaining agreements, whilst Unions are likely to seek to Focus on the kinds of security of work that were noted earlier.

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Corrs insights, 'Federal Election 2022'
Australian Labor Party National Platform 2021

Important: action likely required

Good to know: follow developments

Note changes: no action required

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CONTRIBUTED BY:

CORRS CHAMBERS WESTGARTH

LOOKING BACK

CHINA
13 MAY 2022

Circular on Temporarily Implementing the Policy for Postponement of Enterprise Social Security Payments in Hard-hit Sectors

On May 13, 2022, the General Office of the Ministry of Human Resources and Social Security ("MOHRSS") and the General Office of the State Taxation Administration ("STA") issued the Circular on Temporarily Implementing the Policy for Postponement of Enterprise Social Security Payments in Hard-hit Sectors (the "Circular"). The Circular applies to the part of social security payments to be assumed by enterprises in such sectors as catering, retail, tourism, civil aviation, and road, water and rail transportation. Individual businesses and other entities in the aforesaid sectors that have employees and pay their social security contributions as an entity shall be subject to the postponement policy governing enterprises. The Circular specifies that payments of the basic old-age insurance for enterprise employees for the terms ranging from April to June 2022 may be postponed; unemployment insurance payments and work-related injury insurance payments for the terms ranging from April 2022 to March 2023 may be postponed. During the postponement period, enterprises may apply for postponement for different terms. According to the Circular, enterprises shall pay the postponed unemployment insurance and work-related injury insurance contributions within one month upon expiry of the postponement period, and the postponed basic old-age insurance contributions shall be fully paid by the end of 2022, before which no overdue fine will be imposed, and the taxation authority will promptly remind the enterprises of the supplemental payment.

More...

CHINA
01 JUN 2022

Circular on Expanding the Implementation Scope of the Policy for Provisional Postponement of Social Security Payments

On June 1, 2022, the Ministry of Human Resources and Social Security ("MOHRSS") and three other authorities jointly released the Circular on Expanding the Implementation Scope of the Policy for Provisional Postponement of Social Security Payments (the "Circular"). The Circular specifies that the implementation of the policy for provisional postponement of basic old-age insurance for enterprise employees, unemployment insurance payments and work-related injury insurance payments for five hard-hit sectors (namely, catering, retail, tourism, civil aviation, and road, water, and rail transportation) will be further expanded to cover 17 hard-hit sectors, including auto manufacturing and general equipment manufacturing. Stranded enterprises in the aforesaid sectors may apply for deferral of the part of social security payments to be assumed by enterprises; the postponement period for basic old-age insurance will last till the end of 2022 while the postponement period for unemployment insurance payments and work-related injury insurance payments shall not exceed one year. The postponement period for basic old-age insurance for the original five hard-hit sectors will be extended to the end of this year correspondingly. For all micro, small, and medium-sized enterprises as well as individual businesses participating in the social insurance scheme in the form of an entity in areas severely affected by Covid-19 pandemic, which have difficulties in production and operation, the postponement of the part of the three social security payments to be assumed by enterprises will be extended to the end of 2022.

More...

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

Important: action likely required

Good to know: follow developments

Note changes: no action required

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HONG KONG 17 FEB 2022

Is Using the Term "Gweilo" Discriminatory in the Hong Kong Workplace?

The Cantonese slang "gweilo", which translates to "white devil" or "white ghost", has been widely used in Hong Kong to describe (generally) a foreigner. In the recent case of *Francis William Haden v Leighton Contractors (Asia) Limited* [2022] HKDC 152, the Hong Kong District Court considered (among other things) whether the use of the expression "gweilo" and "foreigner" at work was race discrimination, and if the employee's race was the reason for the termination of his employment with the respondent company. Although the employee's claim in this case did not succeed based on his specific set of circumstances, the case provides important lessons and reminders for employers so as to minimise claims for race discrimination in the workplace.

For more details, see our legal update at the link.

More...

HONG KONG 23 FEB 2022

Terminating Student's University Course Not Disability Discrimination, Hong Kong Court Rules

In *C v The Chinese University of Hong Kong* [2022] HKDC 77, the Hong Kong District Court (Court) dismissed claims of unlawful disability discrimination based on a university's discontinuance of a disabled student's studies. Although this case relates to a claim in the education field, the judgment provides important lessons for employers.

For more details, see our legal update at the link.

More...

HONG KONG 29 APR 2022

Hong Kong Government Launched New Round of Employment Support Scheme

The Hong Kong government launched a new round of Employment Support Scheme (2022 ESS) which aims to support eligible employees by providing three months of wage subsidies to their employers from May 2022 to July 2022, The 2022 ESS is expected to benefit approximately 1.1 million to 1.3 million employees.

See our legal update at the link for the key features of the 2022 ESS.

More...

HONG KONG 29 APR 2022

Hong Kong Court Confirms Deferred Shares Claim Outside the Exclusive Jurisdiction of the Labour Tribunal and Stays Proceedings in Favour of Arbitration

In *Mak v LA* [2022] HKCFI 285, the Court of First Instance (CFI) granted an application to stay proceedings that had been transferred from the Labour Tribunal in favour of arbitration. The application was taken out by the employer, LA, who argued that by virtue of an arbitration agreement, the employee's case at court should be stayed under s.20 of the Arbitration Ordinance (AO), and referred to an arbitral tribunal.

The CFI also confirmed that since the employee claimed for a mandatory order for redemption of the vested and unvested deferred shares and for payment of the realised amount, it was not a claim for a sum of money, and therefore fell outside the exclusive jurisdiction of the Labour Tribunal. This is because the value of shares (deferred or otherwise) is not fixed until they are actually redeemed, and so the sum of money is yet to be determined.

For more details, see our legal update at the link.

More...

HONG KONG 20 MAY

Hong Kong Court Confirms Senior Employee Owes Fiduciary Duties to Employer

In *HMM (Hong Kong) Ltd v Ma Chun Kit* [2022] HKCFI 1153, the Court of First

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HONG KONG
20 MAY 2022

Instance (CFI) held that a senior employee who was not a company director may still owe fiduciary duties to their employer, depending on their job role and functions. Few types of employment relationship will give rise to fiduciary duties. However, some do depending on the employee's role, duties and functions.

Where an employee is entrusted with more important or sensitive job responsibilities an employer will want the employee to discharge fiduciary duties. For these roles, it will help the Court's assessment of whether the employee owes fiduciary duties as well as manage the employee's expectations if those duties are set out in the contract of employment. This may include setting out in the contract of employment the following obligations:

- not to put themselves in a position where they or anybody else's interest might conflict with the duties owed by them to the employer,
- to act in the best interest of the employer,
- not to be engaged in or concerned with any other business of the employer, and
- not to profit from their position.

If these duties are set out, even where the court does not find that the employee owes fiduciary duties, the employer may still be able to point to a breach of express contractual duties.

For more details, see our legal update at the link.

More...

HONG KONG
10 JUN 2022

Hong Kong Finally Passes Bill Abolishing "Offsetting Mechanism" of the Mandatory Provident Fund Scheme

After years of discussion, the Hong Kong Legislative Council finally passed the Employment & Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022 (Bill) on 9 June 2022 that will eventually abolish the statutory right of an employer to reduce its long service pay or severance pay (LSP/SSP) payable to an employee by drawing on its contributions to the mandatory provident fund scheme (MPF Scheme). See our legal update at link for a summary of the removal of the offsetting arrangement.

While the long-awaited law has been passed, it is envisaged that it will not come into effect until 2025 at the earliest. The removal of the offsetting arrangement will not have retrospective effect. In the meantime, the Hong Kong government has also announced it will press ahead with other arrangements in relation to the abolition of the MPF offsetting mechanism. The government has pledged HK$33.2 billion to help employers bear the increased operational costs by way of a subsidy scheme, over a period of 25 years. See our legal update at link for the details of the proposed subsidy scheme.

The government will also introduce a new bill called the 'Designated Savings Accounts for Severance Payment and Long Service Payment Bill' in the next legislative session, of which the objective is to impose requirements on employers to set up savings accounts for their contingent LSP/SSP obligations. We will provide an update on the new bill when more details are available.

More...
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HONG KONG
17 JUN 2022

Hong Kong Legislative Council Approves Amendments to Employment Ordinance to Address COVID-19 Measures

The Hong Kong Legislative Council passed the Employment (Amendment) Bill 2022 (Bill), which was introduced to address employment-related issues arising from the implementation of anti-epidemic measures.

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LOOKING BACK

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The Bill was gazetted on 17 June 2022 and is now in force, bringing into law the following amendments:

1. Failing to comply with a legitimate vaccination request will be a "valid reason" for dismissal or variation of contract;
2. Failure to attend work due to compliance with a Cap 599 requirement – which is a requirement under the Prevention and Control of Disease Regulation (Cap 599A) or Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap 599J) – will not be a "valid reason" for dismissal or variation of contract; and
3. The definition of "sickness day" in the Employment Ordinance is expanded to include a day on which an employee is absent from work by reason of the employee's compliance with a Cap 599 requirement.

The amendments will not have retrospective effect. See our legal update at the link for details of the amendments.

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CONTRIBUTED BY: MAYER | BROWN

INDIA

WAGE CODE
05 OCT
01, 10,26 NOV
2021
27 JAN
28 FEB
28 DEC
2022

IR CODE
05 OCT
30 NOV
30 DEC
2021
11,20 APR
28 DEC
2022

OSH CODE
08 NOV
30 DEC
2021
28 JAN
21 MAR
04,08 11, 20 APR
28 DEC
2022

SS CODE
27 OCT
02,13 16 NOV
2021

Implementation of labour codes delayed beyond June 2022

The four labour codes i.e. Code on Wages, 2019 (**Wage Code**), Industrial Relations Code, 2020 (**IR Code**), Code on Social Security, 2020 (**SS Code**) and Occupational Health, Safety and Working Conditions Code, 2020 (**OSH Code**) (together '**Labour Codes**') were passed by the Parliament and were granted Presidential assent in September 2020. The Labour Codes were originally expected to come into effect from 1 April 2021. However, the implementation of the Labour Codes has been deferred for the time being.

In recent months, the Central Government and a few more state governments have framed draft rules under the Labour Codes. The draft rules provide for a window of 30 to 45 days from the date of publication of their publication for submitting the public/stakeholder comments. The relevant state government or Central Government (as the case may be) will review the comments received by various stakeholders, assess the scope for making changes/revisions to the rules, and thereafter publish the final rules under the Labour Codes. The finalized rules, once published, will subsume the respective central and state rules under the subsumed laws. Set out below is a summary of the states that have released their draft rules after Q1 of 2021 until June 2022:

a. Draft State Rules for Wage Code:

The state governments of Assam, Mizoram, Goa, Telangana, Sikkim, Tamil Nadu and union territories of Delhi, Chandigarh and Andaman & Nicobar, have released the draft state rules under the Wage Code for public comments. The draft state Wage Code rules provide manner of calculating and paying minimum wages, working conditions i.e. working hours, overtime, leave, etc., salary deductions and recovery of excess deductions, setting up a state advisory board, timely payment of wages, claims and dues, maintenance and filing of specific forms, registers and records. Further, the state government of Gujarat released the final state rules under the Wage Code after the public comments were considered by the state government.

b. Draft State Rules for IR Code:

The state governments of Telangana, Assam, Kerala, Tamil Nadu and union territories of Chandigarh and Ladakh have released the state rules under the IR Code for public comments. The draft state IR Code rules provide for procedural rules regarding constitution of works committee, trade unions, standing orders, notice of change, mechanism of resolution of trade disputes, strikes and lock-outs, lay-off, retrenchment and closure, and remittances to the worker-reskilling fund (a newly introduced contribution which an employer is required to make to in case of retrenchment or termination), etc. Further, the state government of Gujarat released the final state rules under the IR Code after the public comments were considered by the state government.

c. Draft State Rules for OSH Code:

The state government of Bihar, Telangana, Gujarat, Himachal Pradesh, Assam, Tamil Nadu, Karnataka, Tripura and union territories of Chandigarh and Ladakh has released the state rules under the OSH Code for public comments. The draft state rules on OSH Code provide for rules on, among other things, constitution of an advisory committee, specific committee on health and safety, working conditions, special provisions for employment of women, contract labour and inter-state migrant workers, social security fund, standard of health and safety in use of equipment and conducting industrial processes, maintenance of statutory documents, offences, and penalties for non-compliance, etc.

d. Draft State Rules for SS Code:

The state governments of Assam, Himachal Pradesh, Gujarat, Telangana, Chandigarh, Kerala, Karnataka and union territories of Delhi, Chandigarh, Andaman & Nicobar and Puducherry have released the state rules under the

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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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SS Code for public comments. The draft state SS Code rules provide for rules regarding setting up of social security boards/organizations, composition of Employee Insurance Courts (for disputes regarding employees' state insurance claims), manner of making an application to receive gratuity payments, social security for building and other construction workers, relevant authorities and compliances under the SS Code, manner of compounding offences, etc.

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11 12 13 14 15 16 17 18 19 20
21 22 23 24 25 26 27 28 29 30
31 32 33 34 35 36

INDIA

13 JAN

2022

The Bihar Professional Tax (Amendment) Rules, 2021 (Bihar PT Amendment Rules)

The state government of Bihar has amended the Bihar Professional Taxes Rules, 2011 framed under the Bihar Tax on Professions, Trades, Callings and Employments Act, 2011. The key highlights of the Bihar PT Amendment Rules are:

- If there is a change is name of employer/assessee, or date of liability, he/she shall within fifteen days make an electronic application for issuance of an amended certificate of registration or enrolment.
- However, if the change results in a change of permanent account number (PAN), tax deduction or collection account number, jurisdiction of the circle, name and style, and goods and service tax (GST) identification number, then the employer/assessee must apply for a fresh registration.
- Further, an employer/assessee seeking cancellation of a certificate of registration/enrolment must apply online within thirty days of the occurrence of event warranting the cancellation.

More...

INDIA

02 FEB

2022

The Contract Labour (Regulation and Abolition) Himachal Pradesh Amendment Act, 2020

The state government of Himachal Pradesh has increased the applicability threshold of the Contract Labour (Regulation and Abolition) Act, 1970 (**CLRA**) with effect from 09 July 2020.

In Himachal Pradesh, the CLRA is now applicable to (1) to every establishment in which 30 or more workmen are or were employed on any day of the preceding 12 months as contract labour; and (2) every contractor who employs, or employed on any day of the preceding 12 months, 30 or more workmen.

More...

INDIA

11 FEB

2022

Conditions for employing of women workers in factories at night in Jharkhand

The state government of Jharkhand has declared working conditions for employing women workers in factories under the Factories Act, 1948. The key highlights of this notification are:

- no woman worker shall be allowed to work between 10.00 PM to 5.00 AM and any woman permitted to work between 7.00 PM to 10.00 PM and 5.00 AM to 6.00 AM shall be provided meals, adequate security and transportation for pick up and drop by the employer.
- no woman shall be allowed to work more than 9 hours on any working day and 48 hours in a week.
- no woman shall be terminated, or no disciplinary proceedings will be initiated against her, if she refuses to work during 7.00 PM to 10.00 PM and 5.00 AM to 6.00 AM.

Continued on Next Page

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

LOOKING BACK

INDIA
11 FEB 2022

- the employer shall take measures to prevent and redress incidents of sexual harassment in the workplace.
- not less than 5 women workers shall be employed in one batch.
- female wardens to be appointed for supervision and welfare.
- The total of women supervisory staff shall not be less than one-third of the total supervisory staff.

More...

INDIA
17 FEB 2022

The Haryana State Employment of Local Candidates Act, 2020

The Supreme Court of India set aside Punjab and Haryana High Court's stay order on the Haryana State Employment of Local Candidates Act, 2020 which halted the implementation of the Haryana State Employment of Local Candidates Act, 2020.

The Supreme Court has directed the Punjab and Haryana high court to expedite the proceedings to decide on the validity of the law within four weeks. It has also directed the state government not to take any coercive action against companies that do not comply with the law that mandates seventy five percent reservation for the state's residents in jobs paying less than thirty thousand a month.

However, the writ petition is still pending before the Punjab and Haryana high court.

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More...

INDIA
03 MAR 2022

Exemption Notification under the Punjab Shops and Commercial Establishment Act, 1958 (PS&E Act)

The state government of Punjab has issued a notification whereby exemption from the provisions pertaining to prohibition of employment of women at night under the PS&E Act would now be granted to shops and establishments on a case by case basis. Such exemption will be subject to fulfilment of certain conditions such as compliance with working hours, overtime, prevention of sexual harassment at workplace laws and provision of adequate security and transportation facilities to women employees.

More...

INDIA
08 MAR 2022

Exemption to restaurants and eating houses from daily working hours under the Madhya Pradesh Shops and Establishments Act, 1958 (MP S&E Act)

Restaurants and eating houses have been exempted from the provisions on daily working hours (9 hours per day) under the MP S&E Act provided the employees are provided with a weekly day off and do not work for more than 48 hours in a week.

More...

INDIA
08 MAR 2022

Amendments to the Andhra Pradesh Factories Rules, 1950 (AP Factories Rules)

The state government of Andhra Pradesh has amended the AP Factories Rules to facilitate ease of doing business and reduce compliance. The employers can now submit application for plans, registrations, licenses and annual returns online through single helpdesk portal.

More...

INDIA
17 MAR 2022

The Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) (Amendment) Act, 2022 (MS&E Amendment Act)

The MS&E Amendment Act has introduced a new section 36-A which requires every establishment registered under the Maharashtra Shops & Establishments

Continued on Next Page

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

LOOKING BACK

INDIA
17 MAR 2022

(Regulation of Employment and Conditions of Service) Act, 2017 (**Act**) to put up a name board in another language provided that lettering in Marathi language shall be written at the beginning of the name board and the font size of the letters in Marathi language shall not be smaller than the font size of the letters in any other language.

Further, the employee's Aadhaar Number is no longer required to be specified in the identity card issued by the employer under the MS&E Act.

More...

INDIA
24 MAR 2022

Declaration of services in the Transport (other than railways) for the carriage of passengers or goods, by land or water as Public Utility Services under the Industrial Disputes Act, 1947 (ID Act)

The central government has declared services in the Transport (other than railways) for the carriage of passengers or goods, by land or water covered under item 1 of the First Schedule of the ID Act to be a Public Utility Service for the purposes of the Act, for a period of six months, with effect from 24 March 2022.

More...

INDIA
30 MAR 2022

Amendment to the Tamil Nadu Shops and Establishments Rules, 1948 framed under the Tamil Nadu Shops and Establishments Act, 1947

The state government of Tamil Nadu has amended the Tamil Nadu Shops and Establishments Rules, 1948. The amendment now permits the employers to maintain certain statutory registers electronically or manually. Further, it has omitted compliances towards maintaining certain statutory registers (such as register of fines, deductions for damages or loss and advances, wages, advances, and registers of employment). The amendment has also introduced forms for maintaining a register of persons employed, employment, wages, and leave and social security benefits to be maintained by the employer.

More...

INDIA
08 APR 2022

Introduction of new slab rates under the Gujarat Panchayats, Municipalities, Municipal Corporations and State Tax on Professions, Traders, Callings and Employments Act, 1976 (Gujarat PT Act)

The notification prescribes that salary and wage earners, whose monthly salary or wages exceeds INR 12,000 per month, would be liable to pay INR 200 per month as professional tax under the Gujarat PT Act.

More...

INDIA
13 APR 2022

Resumption of crèche facilities for factories in the state of Karnataka

The state government of Karnataka has issued a circular regarding resumption of crèche facilities for factories which were halted due to the outbreak of the pandemic.

More...

INDIA
22 APR 2022

Notification under Payment of Bonus Act, 1965 (PB Act) by the state government of West Bengal

The state government of West Bengal has notified that the employers shall pay bonus/ex-gratia to its employees before 29 September 2022. In case of Muslim employees the payment of the bonus shall be made before Id-Ul-Fitre of 2022.

More...

LOOKING BACK

INDIA
27 APR 2022

Final withdrawal of Provident Fund for International Workers

The Employees Provident Fund Organisation has issued a circular clarifying that International Workers from countries with which India does not have a social security agreement, who have attained the age of 58 years and are not in employment of an establishment covered under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (**EPF Act**) are eligible for full withdrawal of their provident fund accumulations as per the provisions of the EPF Act.

More...

INDIA
05 MAY 2022

The Goa Shops and Establishments (Amendment) Act, 2021 (Goa S&E Amendment Act)

The state government of Goa has amended the Goa Shops and Establishments Act, 1973 with effect from 2 May 2022. The key highlights of the Goa S&E Amendment Act are set out below:

- Female employees cannot be required or allowed to work in any shop or establishment between the hours of 7.00 PM to 6.00 AM However, subject to certain conditions (relating to safety and transportation) and obtaining the written consent of the female employee, they can be required to work between 7.00 PM to 6.00 AM.
- Employees whose average monthly wages exceeds INR 24,000 are now exempted from the applicability of the existing S&E law.
- The threshold for the monetary fine for contravention of the provisions of the Goa S&E law have been substantially increased and these would now range from INR 500 to INR 30,000 depending on the nature of the offence. Prior to the amendment, the monetary fine ranged from INR 100 to INR 2000.
- Offences can be compounded up to 75% of the maximum monetary fine of the offence.

More...
More...

INDIA
17 MAY 2022

The Punjab Shops and Commercial Establishments (Haryana Amendment) Rules, 2022

The state government of Haryana has amended the rules framed under the P S&E as applicable to the state of Haryana. Logistics and warehousing establishments can now engage female employees in night shift after obtaining exemption from the state government.

More...

INDIA
27 MAY 2022

Notification on exemption from restrictions on employment of women workers in factories in Uttar Pradesh

The state government of Uttar Pradesh has exempted factories from restrictions on employment of women at night subject to following conditions:

- Written consent of women workers is obtained;
- No woman shall be dismissed if she refuses to work between 7.00 PM to 6.00AM;
- Provision of food to the women workers is made by the employer;
- Adequate security, supervision and transportation to women workers;
- Provision of basic amenities such as washrooms, changing rooms, toilets etc.;
- Compliance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is ensured by the employer; and
- Not less than 4 women workers shall be allowed to work at night.

More...

LOOKING BACK

INDIA

02 JUN 2022

The Tamil Nadu Shops and Establishment Act, 1947 (TN S&E)

The state government of Tamil Nadu has issued a notification permitting all shops and establishments employing 10 or more persons to remain open for 24×7 on all days of the year, for a period of three years with effect from 5 June 2022. The exemption is subject to compliance with provisions on working hours, overtime, holidays, prevention of sexual harassment at workplace laws and provision of basic amenities such as washrooms, rest rooms etc. to employees. Further, establishments are allowed to employ women employees at night provided their written consent is obtained and adequate security and protection measures are taken.

More...

CONTRIBUTED BY: TRILEGAL

LOOKING BACK

INDONESIA
26 APR 2022

Payment of Old-Age Benefits

The Minister of Manpower issued MOM Regulation No. 4 Year 2022 regarding Procedures and Requirements for the Payment of Old-Age Social Security Benefits ("**MOM No. 4**") on April 26, 2022.

MOM No. 4 regulates that old-age social security benefits are to be paid in cash when the participant reaches retirement age, no longer has an employment relationship, passes away, or suffers a permanent disability.

Under MOM No. 4, the wording "no longer has an employment relationship" means the participant has resigned, is terminated, or has left Indonesia permanently.

MOM No. 4 revokes two previous regulations on the same topic, namely MOM No. 19 Year 2015 and MOM Regulation No. 2 Year 2022.

More...

INDONESIA
20 MAY 2022

Accreditation of Job Training Institutes

On May 20, 2022, the Minister of Manpower ("**MOM**") issued MOM Regulation No. 5 Year 2022 regarding the Accreditation of Job Training Institutes ("**MOM No. 5**"). MOM No. 5 revokes MOM Regulation No. 34 Year 2016 regarding the same.

MOM No. 5 is a new implementing regulation for Article 16 of Law No. 13 Year 2003 regarding Manpower, as amended. It regulates eight different standards to be met by job training institutes to secure accreditation, namely:

1. Work competence;
2. Job training programs;
3. Training materials;
4. Job training assessment;
5. Instructors and training personnel;
6. Facilities and infrastructure;
7. Governance; and
8. Financial management.

More...

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: SSEK Indonesian Legal Consultants

LOOKING BACK

JAPAN
01 APR 2022

Partial Enforcement of 2021 Amendment to *Childcare and Family Care Leave Act*

The 2021 Amendment to the *Childcare and Family Care Leave Act* was partially enforced, including its relaxation of the requirements to take childcare leave and family care leave for fixed-term employees, and its imposition of an obligation on employers to take measures to improve the employment environment to encourage employees to take childcare leave.

More...

JAPAN
01 APR 2022

Enforcement of 2020 amendment to the *Act on the Protection of Personal Information*

The 2020 amendment to the *Act on the Protection of Personal Information* came into effect. Companies may be required to update their privacy policy and take other required measures depending on the circumstances under which they use personal information.

More...

JAPAN
01 APR 2022

Full enforcement of Amended Act containing measures to protect against "Power Harassment"

The *Labor Measures Comprehensive Promotion Act*, which imposes an obligation to implement employment management measures to protect employees against power harassment, became applicable to Small and Medium-sized enterprises. (This obligation has already been effective among Large-sized enterprises since 1 June 2020.)

More...

JAPAN
01 JUN 2022

Enforcement of 2020 Amendment to the *Whistleblower Protection Act*

2020 Amendment to the *Whistleblower Protection Act* came into effect. Under this amended law, employers must implement the necessary framework to appropriately respond to whistleblowing disclosures. Also, a person engaged in responding to whistleblowing disclosures shall be obliged to keep the confidentiality of any information obtained in his/her role as the person responding to a disclosure that enables the identification of the whistleblower, breaches of which rule will be penalized by way of criminal sanctions.

More...

CONTRIBUTED BY: ANDERSON MŌRI & TOMOTSUNE

The Anti-Sexual Harassment Bill 2021

The Anti-Sexual Harassment Bill 2021 ("**The Bill**") has been tabled in the Dewan Rakyat for its first reading. The Bill has four primary objectives:

a. to establish a tribunal to hear sexual harassment complaints and claims;
b. to provide for a right of redress for any person who has been sexually harassed;
c. to promote awareness of sexual harassment; and
d. to provide for relevant matters.

The following table provides a summary of the Bill's main features:

Definition	The proposed definition of "sexual harassment" in the Bill includes the following elements: • Any unwanted conduct of a sexual nature. • The conduct can be in any form. This includes conduct which is: » verbal; » non-verbal; » visual; » gestural; or » physical. • The conduct must be directed at a person. • Reasonably offensive or humiliating/threat to his well-being.
Administrator of Anti-Sexual Harassment	The Bill will introduce an office of the Administrator of Anti-Sexual Harassment ("Administrator"), whose functions and powers will include formulating policy, issuing guidelines, promoting activities, and administering any other subject relating to sexual harassment prevention or awareness.
Establishment and sittings of the Tribunal	The Bill will establish Tribunal for Anti-Sexual Harassment ("Tribunal") whose members are to be appointed by the Minister of Women, Family and Community Development. The Tribunal will be composed of three sets of groups of people: 1. A President and Deputy President who are current members of the Judicial and Legal Service; 2. Five or more members who are past or current office-holders in the Judicial and Legal Service, or advocates and solicitors of at least 7 years' standing; and 3. Five or more members who have knowledge of or practical experience in sexual harassment matters. The President shall determine the composition of each sitting of the Tribunal, which will be a three-member panel consisting of: a. The President or Deputy President, or any one of the members appointed under Item 2 above, as Chairperson. b. Any other two members appointed under Item 3 above. Further, the Bill also proposes that there must be at least one woman in each sitting.
Jurisdiction of the Tribunal	Under the Bill, the Tribunal shall have jurisdiction to hear and consider any complaint of sexual harassment brought by any individual. The Bill also states that if a sexual harassment complaint is made with the Tribunal, the matters raised in such complaint may not be the subject of any court proceedings between the same parties unless — *Continued on Next Page*

Jurisdiction of the Tribunal	1. the court proceedings were commenced before the complaint was lodged with the Tribunal (even in this scenario, the issues in dispute shall not be the subject of proceedings before the Tribunal between the same parties unless the claim of sexual harassment before the court is withdrawn or struck out); 2. the complaint involves any conduct constituting a crime under any written law; or 3. the complaint before the Tribunal has been withdrawn or struck out.
Awards and Orders	The Bill requires the Tribunal to make its award within sixty (60) days from the first hearing date before the Tribunal. The Tribunal has the power to issue any one or more of the following orders: a. an order for the offender to apologise to the complainant in writing; b. if the complaint involves an act of sexual harassment committed in public, an order for the offender to publish an apology to the complainant; c. an order for the offender to pay compensation not exceeding MYR 250,000 for any loss or damage suffered by the complainant; and d. an order requiring the parties to attend any programme deemed necessary by the Tribunal Failure to comply with a Tribunal award within thirty (30) days is an offence under the Bill. The following penalties may be imposed for such an offence:

Where compensation / damages is awarded:	A fine which is two times the damages / compensation awarded; or
	Imprisonment for a term not exceeding two years; or
	Both of the above
Where no compensation / damages is awarded:	A fine not exceeding MYR 10,000; or
	Imprisonment for a term of two years; or
	Both of the above

	The Tribunal's awards are final and binding on the parties, as the Bill proposes that a tribunal award is deemed to be a Court order.
No Public Hearings and No Repre-sentation	Hearings before the Tribunal will not be open to the public, and only parties to the Tribunal proceedings are allowed to attend. Furthermore, under the Bill, parties to the proceedings are not allowed to be represented by an advocate and solicitor. However, an exception lies where one of the parties to the proceedings is a minor or is mentally disabled. In such circumstance, the said minor / mentally disabled person has the right to be represented by a guardian ad litem (for children) or a next friend (for persons mentally disabled). Where a party is represented by a guardian ad litem or next friend, the Tribunal may set requirements to ensure that the other unrepresented party is not substantially disadvantaged.

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MALAYSIA

16 MAR

2022

The Occupational Safety and Health (Amendment) Act 2022

The Occupational Safety and Health (Amendment) Act 2022 ["**Amended Act**"] was recently gazetted on 16 March 2022 and will come into force on a date to be determined by the Minister of Human Resources by notification in the Gazette. The Amended Act will bring about several significant changes to the existing Occupational Safety and Health Act of 1994 ("OSHA 1994"), which is summarised below for reference: -

Non applicability

Under the Amended Act, the OSHA 1994 will no longer apply to the following individuals:

i. Employers of domestic servants;
ii. Person employed as a domestic servants;
iii. Armed forces; and
iv. Person who work on board ships governed under inter alia the Merchant Shipping Ordinance 1952

Broadens the applicability of the OSHA 1994

The scope of the applicability of OSHA 1994 is extended to all "**places of work**" across Malaysia, including those in public services and statutory authorities. In these circumstances, based on OSHA 1994, "place of work" is defined as "*premises where persons work or premises used for the storage of plant or substance" and "premises" includes "any land or building*".

As "place of work" appears that it would also entail those who are required to work from home, all employers (who *falls under the purview of the Amended Act*) will have to take a pragmatic approach and ensure a safe and secure working environment for employees who works from home.

Employee's right to remove him/herself from imminent danger at the workplace

An employee is now allowed the right to remove him/herself from his/her place of work or danger, in the event that: -

i. there is a reasonable justification to believe that there exists an imminent danger at his/her place of work; and
ii. the employer does not take any action to remedy this imminent danger even after being informed by the employee or his/her representative of the same.

The term "*imminent danger*" refers to a serious risk of death or serious body injury to any person that is caused by any plant, substance, condition, activity, process, practice, procedure or place of work hazard. In this respect, any employee who removes him/herself from this danger shall be protected from any undue consequences and shall not be discriminated against.

New duties & responsibilites for employers / principals

a. **Duty to develop and implement procedures to deal with emergencies**
Employers / self-employed persons and principals must now develop and implement procedures for dealing with emergencies that may occur while its employees are at work.

b. **Obligation on the principals to ensure safety of contractor / subcontractor / employees employed by the contract or subcontractor**
The Amended Act imposes a duty on principals to take such measures to ensure, so far as practicable, the safety and health of (a) any contractor engaged by the principal; (b) any subcontractor or indirect subcontractor; and (c) any employee employed by such contractor or subcontractor.
The aforementioned duties are imposed on the principal **only when** the contractor, subcontractor, or employee is working under the principal's directions as to the manner in which the work is carried out.

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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In this respect, "Principal" refers to "*any person who in the course of or for the purposes of his trade, business, profession or undertaking contracts with a contractor for the execution by or under the contractor of the whole or any part of any work undertaken by the principal*".

Additionally, the Amended Act provides examples of measures that a principal is required to include: -

i. the provision and maintenance of plant and systems of work that are safe;
ii. making arrangements, including allocating sufficient time, budget, and other resources, to ensure, so far as practicable the safety and absence of risks to health in connection with construction work activities, use or operation, handling, storage or transport of plant and substances;
iii. the provision of information, instruction, training and supervision necessary to ensure the safety and health of persons at work;
iv. with regards to any place of work under the principal's control, the maintenance of the place of work in a safe and risk-free condition, as well as the provision and maintenance of safe and risk-free means of access to and egress from it;
v. the provision and maintenance of a safe working environment; and
vi. the development and implementation of processes for dealing with emergencies that may occur while the individuals are at work.

c. <u>Duty to conduct and implement risk assessments</u>

All employers / self-employed person and principals are now required to conduct and implement "risk assessments" in relation to safety and health risk posed to any person who may be affected by his/her undertaking at the workplace. Furthermore, if the risk assessment reveals that risk control is required to eliminate or reduce the safety and health risk, the employer, self-employed person, or principal must put such control in place. "Risk assessment" refers to the process of analysing the risks to safety and health posed by hazards at work and identifying the required risk-control strategies.

Higher penalties

Fines are now increased from a fine of RM50,000.00 to RM500,000.00 in the event the employer / principal breaches any of its duties and obligations under the OSHA 1994 (including new duties as discussed in this table).

Appointment of occupational safety and health coordinator

An employer who employs five or more employees at the workplace for places of work that are not included in any class or description of place of work as published in the Gazette, is now required to appoint one of its employees to act as an occupational safety and health coordinator ("OSH Coordinator"). The role of the OSH Coordinator is to coordinate occupational safety and health issues at the workplace, and the penalty for contravention of the requirement to appoint an OSH Coordinator is a fine not exceeding RM50,000.00 or imprisonment for a term not exceeding six months or both.

Directors and office bearers jointly and severally liable

Under the Amended Act, the director or specified office bearers may be charged severally or jointly in the same suit as the Company and may be guilty of the same offence and liable to the relevant penalties.

Notwithstanding the foregoing, the Amended Act further provides the avenues available for the director or the officer to avoid such liability in the event that he/she is able to prove the following:

i. the offence was committed without his/her knowledge; and
ii. the offence was committed without his/her consent or connivance and that all reasonable precautions and due diligence had been implemented to prevent the commission of the offence.

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Further, a person who is liable for the acts or omissions of: (a) his employee in the course of his employment; (b) his agent when acting on behalf of that person; or (c) the employee of that person's agent when acting in the course of his employment by the person's agent or otherwise on behalf of the person's agent acting on behalf of that person will face the same punishment or penalty as the aforementioned person's employee, agent, or employee of the agent.

Inspection of plant and certificate of fitness

Under the Amended Act, the Minister may grant a licence to any individual to inspect any plant prescribed by the Minister and issue a certificate of fitness in respect of the plant inspected.

Notification of occupation of place of work, installation and inspection of plant

Under the Amended Act, anyone who occupies or uses any premises as a place of work or engages in any activity in a place of work as prescribed by the Minister is obligated to give the officer notice containing such particulars to enable enforcement to be carried out proactively. Furthermore, no person shall operate, cause, or permit any prescribed plant to be operated unless the plant has a valid certificate of fitness issued by an officer or licenced person. An occupier also may apply to the Director General for approval of a particular inspection scheme for certain classes of plant.

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The Employment (Amendment) Act 2022

The Employment (Amendment) Act 2022 ["**Amended Act**"] was recently gazetted on 26 April 2022, which encapsulates significant changes to several provisions in the Employment Act 1955 ("EA 1955") and will take effect on 1 September 2022 by way of a Ministry Order (according to a recent announcement from the Minister of Human Resources).

In addition, the upcoming Ministry Order will also include an amendment to the First Schedule of the EA 1955 clarifying and specifying the scope and/or applicability of the Amended Act (note: the existing EA 1955 only covers those who earn RM2,000.00 a month and/or perform/supervise manual labor). We have tabulated herein the significant changes brought by the Amended Act: -

Paternity leave

Married male employees under the purview of the EA 1955 would now be entitled to paternity leave of 7 consecutive days for each child born, up to a total of 5 children (regardless of the number of spouses).

Maternity leave

- Maternity leave extended from 60 to 98 days.
- In the event, a female employee (who is entitled to maternity leave) requests to commence work within the maternity leave period, she has to be certified to be fit to resume work by a registered medical practitioner

Interestingly, the Amended Act also also deletes the provisions of the EA 1955 which extend maternity leave to all employees regardless of the wages earned. The absence of such provisions indicates that the Amended Bill's "extended" maternity rights will apply explicitly only to employees covered by the EA 1955.

Restriction of termination of pregnant employees

It is **illegal** to terminate a female employee who is pregnant or is ill as a result of her pregnancy, with the exception of dismissal for willful breach of the employment contract, misconduct, and closure of the employer's business.

Protection Against Discrimination

The Director General of Labor ("**DG**") is now empowered to consider disputes relating to employment discrimination, and non-compliance of the employer with such orders of the DG in this regard would be an offence upon conviction.

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Sexual Harassment

Employers are now required to put up a notice to promote awareness on sexual harassment in a conspicuous location at all times at the workplace.

Flexible Working Arrangement

Employees can now apply for a flexible working arrangement (i.e. an arrangement to vary the hours of work, days of work, or place of work).

The application must be in writing (and in the form and manner as may be determine by the DG), and the employer must approve or reject it within 60 days.

Maximum Weekly Working Hours

The maximum weekly working hours for the employees under the purview of EA 1955 would be reduced from 48 to 45 hours.

Apprenticeship

Apprentice contracts must be for a period of at least six months but not more than two years.

Calculation of wages

The Amended Act provides the following formula for employers to compute wages for work done for a period of less than a full month:

$$\frac{\text{Monthly wages}}{\text{Number of days of the wage period}} \times \text{Number of days in the eligible wage period}$$

Employment of foreign employees

Under the new amendment, all foreign employees who fall under the purview of the 1st Schedule of the EA 1955 need to be registered and follow the requirements prescribed by the DG.

Labour Contractors to have Contract in Writing with the Principals

Contractors of labor are required to have a written contract.

Hospitalization Leave

Employees who are sick and require hospitalisation but are unable to be hospitalised (such as those who test positive for COVID-19) and should be isolated in the hospital but are not required to do so by the Government vide a Home Surveillance Order, will now be considered to be on hospitalisation leave.

Forced Labour

An employer who threatens, deceives or forces an employee to do any work, and prevents him from moving beyond the place or area where such work is done, commits an offence of forced labour.

Financial Penalties

A higher penalty for offences under the EA 1955, with maximum fine penalties raised from RM10,000 to RM50,000. The existing punishment of a fine, which was previously set at RM50,000, will be doubled to RM100,000.

Court Order for Payment due to Employees

If an employer is convicted of an offence under the Act, the Court of a First-Class Magistrate ("FCM") has the authority to require the employer to make any payment that is due to an employee. If the said employer consistently fails to make these payments, the FCM may issue a warrant to levy the employer's property for such payments, either through distress and sale of property or through a fine imposed under the Criminal Procedure Code.

Presumption of an employment relationship

A presumption is now introduced that in any proceeding for an offence under the Act and in the absence of a written contract of service concerning any

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category of employee under the First Schedule of the Act, the following criteria would apply in determining whether or not an individual is an employee of an employer:-

1. Where his manner of work is subject to the control or direction of another person/employer;
2. Where his hours of work are subject to the control or direction of another person/employer;
3. Where he is provided with tools, materials or equipment by another person/employer to execute work;
4. Where his work constitutes an integral part of another person's /employer's business;
5. Where his work is performed solely for the benefit of another person/ employer; or
6. Where payment is made to him in return for work done by him to that person/employer at regular intervals and such payment constitutes the majority of his income.

However, it remains unclear whether independent contractors (such as Gig workers) would now be subject to the Act's purview and automatically considered as "employees".

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The Minimum Wages Order 2022

According to the Minimum Wages Order 2022 (MWO 2022), the minimum wage nationwide has been increased and will take effect in two phases, as described below:

1. **Category 1**;

   From **1 May 2022**, the minimum wages in Malaysia for

   a. employees employed by an employer who employs five employees or more; and
   b. those employed by an employer who carries out professional activities as defined by the Malaysian Standard Classification of Occupations ("MASCO") irrespective of the number of employees employed

   will increase to RM1,500 per month from the current minimum monthly wage of RM1,200 (for places of employment within a City Council or Municipal Council area) and RM1,100 (for places of employment within a City Council or Municipal Council area).

2. **Category 2;**

   Whilst for an employee who is employed by an employer who employs less than five employees (other than those employed by a MASCO employer), they will continue to earn a minimum monthly wage of RM1,200 (for places of employment within a City Council or Municipal Council area) and RM1,100 (for places of employment within a City Council or Municipal Council area) until 31 December 2022. Employees in this category will only see a raise in their minimum monthly wage to RM1,500 on **1 January 2023**.

In this regard, non-compliance with the MWO 2022 is an offence under the National Wages Consultative Council Act 2011, where a convicted employer may be liable to a fine of not more than RM10,000 for each employee who is not paid the new minimum wage.

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CONTRIBUTED BY: Shearn Delamore &co

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Yardley v Minister for Workplace Relations and Safety [2022] NZHC 291

The High Court's judgment of in *Yardley v Minister for Workplace Relations and Safety*, held that the Government's requirement for New Zealand Police and Defence Force workers to be vaccinated under the COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021 (Specified Work Order) was unlawful because it was an unjustified limit on the right to refuse medical treatment and the right to manifest religious beliefs under the New Zealand Bill of Rights Act 1990.

The relevant Order at issue was the COVID-19 Public Health Response (Specified Work Vaccinations) Order 2021 (**Order**). The stated purpose of the Order was not to prevent the spread of Covid-19, but to ensure the continuity of public services, and to promote public confidence in those services.

The High Court ruled that the Crown had not sufficiently demonstrated that in the current context of Covid-19, requiring mandatory vaccinations would meet the purpose of the Order being ensuring continuity of services and promote public confidence. Cooke J said:

- There was no evidence that the mandate would have increased vaccination rates any differently to those achieved under internal Police or Defence Force policy.
- There was no evidence that vaccination significantly reduces the risk of transmission of Covid-19 in the Omicron variant, and therefore the relatively small number of unvaccinated individuals would make no difference to the risk of widespread transmission throughout the services.
- While vaccination does provide protection from serious illness, there was no evidence that the remaining protective effect would significantly contribute to maintaining the continuity of the services.
- Health advice tendered to Cabinet indicated that further mandates were not required to restrict the spread of Covid-19.

The Court was therefore not satisfied that continuity of the services was materially advanced by the Order. When weighed against the significant impact on individuals, which included permanent loss of job and income, the Order had an unjustifiably disproportionate effect.

In addition, there were alternative lawful measures available to the Government which would have minimised the impact on individuals. This included using existing internal policies to deal with unvaccinated staff on an individual, risk-based basis.

The Court noted that in using the mandate, no consideration was given to redeployment or suspension of employees, and termination was the only option utilised for a breach. Actions which infringe upon protected rights can only do so in a way which is the minimum required to implement the desired public policy outcome. Because options other than termination are available, this was therefore said to be a breach of the requirements under the New Zealand Bill of Rights Act.

See the decision here...
Simpson Grierson's commentary here...
More Simpson Grierson's commentary here...

NEW ZEALAND
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Courage v Attorney General & ORS [2022] NZEmpC 77

The Employment Court has recently upheld a claim that three former residents of the Gloriavale Christian Community (**Community**) were employees from the age of six years old. All three of the former residents were born into the Community and when they left, sought a declaration that they had been employees when performing work for the Community. The Community denied that the plaintiffs were employees and claimed that any work carried out was performed on a voluntary basis, or as part of the plaintiffs' education.

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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The plaintiffs also claimed that the Labour Inspector breached their statutory duties. This aspect of the claim centred on a previous report of the Labour Inspector, concluding that people working in the Community were volunteers.

In determining that the plaintiffs were employees from the age of six, the Court held that:

- The plaintiffs were selected for particular jobs by the leadership group and attended specified workplaces at times determined by them.
- Work undertaken was under the direction and control of the leadership group, for the duration required by them and for the benefit of the Community's businesses.
- Work environments were often of an industrial and/or hazardous nature, at the strict direction and control of those in charge of business operations.
- The plaintiffs were permitted to take a holiday every year and have time off work if they were sick.
- The plaintiffs did not attend school during their alleged 'work-experience' year.
- Rewards were exchanged for work. The plaintiffs were provided with food, the necessities of life and the ability to participate in the community.
- From 16 years onwards, the plaintiffs were paid money at a rate that was close to minimum wage. That compensation was paid into a bank account the plaintiffs had no access to, which was then transferred to the Community's shared account.
- The plaintiffs were required to record their hours of work in a timesheet but were prohibited from recording any more than eight hours per day, striking a resemblance to a usual working day.

The Court reserved its position in relation to a declaration of the employer(s) within the Community's structure.

See the decision here...

NEW ZEALAND **01 APR** 2022

Minimum Wage Order 2022

The Minimum Wage Order 2022 came into force on 1 April 2022, and made a number of increases to the adult minimum wage rate, the minimum starting-out wage rate, and the minimum training wage rate.

The new minimum wage rates are as follows:

- Minimum wage rate (adult): $21.20 per hour
- Minimum wage rate (starting out): $16.96 per hour
- Minimum wage rate (training): $16.96 per hour

See the Order here...

NEW ZEALAND **05 APR** 2022

Fair Pay Agreements Bill

The Fair Pay Agreements Bill was introduced to Parliament on 29 March 2022, and has been foreshadowed by the Minister for Workplace Relations and Safety as having the potential to bring about the biggest change to workplace laws since the Employment Contracts Act was introduced. The Bill proposes a system to allow employer and unions within a sector to bargain for minimum terms and conditions for all employees in a specific industry or occupation. The proposed system is similar to the Modern Award system currently used in Australia, and is expected to commence shortly after the proposed Bill has passed (which is anticipated to be at the end of 2022).

Some of the key elements of the Bill include:

- The Bill allows any eligible union to initiate bargaining for a Fair Pay Agreement (**FPA**) if it meets either a representation test of at least 1,000 employees or 10% of the employees in proposed coverage, or a public interest test based on specified criteria such as low pay, little bargaining power, or lack of pay progression. The Chief Executive of the Ministry of

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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Business, Innovation and Employment (**MBIE**) must approve such initiation (and may invite public submissions when deciding whether to approve an application to initiate bargaining).

- Under the Bill, bargaining will take place between bargaining parties representing employees and employers. Employee bargaining parties will be eligible unions. Employer bargaining parties will be eligible employer associations (approved by the Chief Executive of MBIE), and could also include certain specified public sector employers who are allowed to participate directly in bargaining. If one side is unrepresented (or becomes unrepresented during bargaining), default parties will step into bargaining. The Bill provides for these default parties to be specified in separate regulations, stating that those regulations must specify an employer default bargaining party that represents employers and is the most representative organisation of employers in New Zealand. Once specified, that organisation will be legally required to act as the employer bargaining party in circumstances where a default party is needed.
- The Bill sets out a general obligation of good faith, which is based on similar obligations in the Employment Relations Act 2000. It outlines specific good faith obligations between parties within the same bargaining side (for example, between 2 bargaining parties), and also between the employee bargaining side and the employer bargaining side.
- The Bill provides for a dispute resolution process based on the Employment Relations Act 2000. Parties may access mediation and support services under the Bill. If parties cannot resolve their dispute using those services, a bargaining party may apply to the Employment Relations Authority for a determination. In addition, if parties cannot reach agreement during bargaining and specified criteria are met (for example, exhausting all other reasonable alternatives) or if ratification of a fair pay agreement has failed twice, a bargaining side may apply to the Authority to fix the terms of the FPA through a determination.

The Bill is currently at the Select Committee stage. Simpson Grierson recently undertook a survey that sought feedback from its clients on the Bill, and such feedback was utilised to make a submission to the Select Committee. The overwhelming majority of employers that Simpson Grierson surveyed (90% of those surveyed) were opposed to, or undecided about, the Bill.

See the Bill here...
See Simpson Grierson's commentary here...
More Simpson Grierson's commentary here...

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Protected Disclosures (Protection of Whistleblowers) Act 2022

The Protected Disclosures (Protection of Whistleblowers) Act will come into force on 1 July 2022, replacing the Protected Disclosures Act 2000. The Act aims to facilitate the disclosure and timely investigation of serious wrongdoing in or by an organisation and to protect the people who make disclosures about serious wrongdoing.

The main amendments are aimed at strengthening the protections available to whistleblowers in New Zealand. The key changes include:

- Providing detailed guidance for a receiver of a protected disclosure, and how they should respond (i.e. by acknowledging receipt, considering the disclosure and whether it warrants investigation, checking whether the disclosure has been made elsewhere, dealing with the matter, and informing the discloser regarding what the receiver has done or is doing to deal with the matter). This is guidance only, and there is no legal obligation on organisations to comply with it;
- Enabling a discloser to make a disclosure directly to an appropriate authority at any time. (Currently this is only possible if a disclosure is

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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about the head of an organisation or if there is urgency or exceptional circumstances);

- Extending the definition of "serious wrongdoing" (which is a requirement for a disclosure of information to come within the scope of the Act), to include:
  - » oppressive, unlawfully discriminatory or grossly negligent conduct (or gross mismanagement) by a public sector employee or any person acting or purporting to act on behalf of a public sector organisation or the Government; and
  - » a serious risk to the health and safety of any individual (which arguably will cover disclosures regarding bullying and harassment);
- Requiring public sector organisations to have appropriate internal procedures which, amongst other things, sets out a process that is consistent with the detailed guidance under the Act for a receiver of a protected disclosure (as set out above). Public sector organisations are also required to publish widely (and republish at regular intervals), information about the existence of the internal procedures and how to use them; and
- Providing that the release of any information which may identify the discloser (subject to limited exceptions) is an interference with the privacy of an individual for the purposes of the Privacy Act 2020, regardless of whether the release of such information has any impact, or the potential to impact, on the discloser.

See the Act here...
See Simpson Grierson's commentary here...

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Department of Labor and Employment (DOLE) Department Order No. 2022-011

Guidelines in the Accreditation of Agents and Appointment of Employer's Authorized Representatives for filing of Alien Employment Permit (AEP) Applications and Related Documents

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DOLE Labor Advisory No. 09, Series of 2022

Annual Establishment Report on Wages

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Wage Order No. NCR -23

Providing for a minimum wage increase in the National Capital Region

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Inter-Agency Task Force on Emerging Infectious Diseases Resolution

Guidelines on the Nationwide Implementation of Alert Level System for Covid 19 Response as of June 4, 2022

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PHILIPPINES
08 JUN 2022

DOLE Labor Advisory No. 14, Series of 2022

Payment of Wages for the Regular Holiday on June 12, 2022 in Commemoration of the Philippine Independence Day

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

SINGAPORE
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Businesses may proceed with larger work-related events after notifying authorities

From 3 Jan 2022, we (The Ministry of Manpower) will allow larger Work-Related Events (WREs) of between 51 and 1,000 participants, subject to the following conditions:

1. The event is mask-on only. In particular, there must be no consumption of meals or beverages.
2. Participants are predominantly static (seated or standing in a fixed position).
3. Participants are subjected to vaccination-differentiated Safe Management Measures.
4. Participants maintain at least one metre safe distance between one another and must be in zones of up to 100 persons per zone, with two metres between zones.

Organisers of such larger WREs need only notify the authorities via an online form found here: https://go.gov.sg/submit-wre-mice

This change will give businesses more flexibility to organise WREs, such as an employee townhall or awards ceremony. The authorities will perform spot-checks for such WREs and enforcement actions will be taken against businesses who flout the rules.

Approval for MICE events is required:

MICE events such as large-scale meetings, conferences, trade shows and exhibitions where more interactions between participants are expected will continue to require approval from MTI before they can proceed as per existing requirement. Businesses can use the same form to apply for approval to hold MICE events (https://go.gov.sg/submit-wre-mice). To help organisers assess if their intended event is a MICE event or a large WRE, the online form will contain a series of guiding questions.

More information can be found at https://go.gov.sg/smm

WREs with ≤ 50 participants:

i. Not required to notify or seek approval from the authorities
ii. Participants must maintain at least one-metre safe distance between one another.
iii. Meals should not be the main feature of the event, i.e. they should only be served if incidental to the workplace event.
iv. The food must be served individually with the participants seated while consuming. Participants should minimise the time that they are unmasked while eating.
v. WREs held at third-party venues will also be subject to any additional premises owners' safe management policies.

WREs with 51 – 1,000 participants:

i. The event organiser must notify the authorities before the event, to facilitate enforcement checks by the authorities (https://go.gov.sg/submit-wre-mice)
ii. Participants must maintain at least one-metre safe distance between one another. Participants must be in zones of up to 100 persons per zone, with two metres between zones.
iii. There must be no mask-off activities during the event, such as the consumption of food and beverage.
iv. The event must be static, with participants predominantly seated or standing in a fixed position (e.g. meetings, conferences).
v. All participants must be subject to Vaccination-Differentiated Safe Management Measures, i.e., every participant must be fully vaccinated,

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recovered from COVID-19 within the past 180 days, or medically ineligible for vaccines under the National Vaccination Programme.

Safe Management Measures for MICE events with 51 - 1,000 participants

i. The event organiser must submit an application for MTI's approval (https://go.gov.sg/submit-wre-mice). Event Organizers may only proceed with the MICE event upon MTI's written approval.
ii. All MICE events SMMs must be adhered to, including maintaining at least one-metre safe distance between one another. Participants must be in zones of up to 100 persons per zone, with two metres between zones.
iii. Meals must not be the main feature of the event. When F&B is served, participants must be at least one metre apart and the number of participants in each group for meals must not exceed five. Participants must remain at the same table where a meal is consumed throughout the meal duration.
iv. All participants must be subject to Vaccination-Differentiated Safe Management Measures; i.e., every participants must be fully vaccinated, recovered from COVID-19 within the past 180 days, or medically ineligible for vaccines under the National Vaccination Programme.

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Waste Management Workers to benefit from new progressive wage model recommendations

The Government has accepted the Tripartite Cluster for Waste Management (TCWM) recommendations to:

a. Outline clear career progression pathways within the Waste Collection and Materials Recovery sub-sectors as part of the new Waste Management Progressive Wage Model (PWM);
b. Stipulate mandatory Workforce Skills Qualification (WSQ) training requirements across all job roles;
c. Set a six-year schedule of sustained PWM wage increases from 2023 to 2028, with initial PWM wage levels taking effect from 1 July 2023; and
d. Introduce a mandatory annual PWM bonus for eligible workers from January 2024.

The TCWM's recommendations will ensure significant and sustainable wage growth, as well as clear training and career progression pathways, to benefit up to 3,000 resident waste management workers.

Career Progression Pathways for Waste Collection and Materials Recovery Sub-sectors

As part of the TCWM's deliberations, separate career ladders are proposed for the Waste Collection and Materials Recovery sub-sectors. The Government accepts both career ladders, which will provide workers with clear pathways to higher wages, better skills, and increased job responsibilities.

Increased Productivity through Mandatory WSQ Training Requirements

The Government also accepts the TCWM's recommendations to upskill workers through setting mandatory training requirements. The training requirements will provide waste management workers with the knowledge and skills to carry out their work safely and efficiently. Under the new recommendations, entry-level workers will need to obtain a minimum of two WSQ training modules, with higher number of WSQ modules for higher-level job roles. Waste management firms are recommended to ensure that their workers attain the training requirements by 1 Jul 2023.

Six-Year Schedule of Sustained Wage Increases

The Government accepts the six-year schedule of sustained PWM wages, which will take effect from 1 July 2023, with a review scheduled for 2025.

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With the recommended PWM wage schedule, the monthly baseline wage of an entry-level waste collection crew worker is expected to increase from $2,210 in 2023 to $3,260 in 2028. This translates to a growth rate of 48% over the six-year period, and is consistent with the guidance by the Tripartite Workgroup on Lower-Wage Workers (TWG-LWW) to ensure our lower-wage workers have meaningful and sustained wage growth to gain ground with the median worker.

Mandatory Annual PWM Bonus

The Government also accepts TCWM's recommendations to implement a mandatory annual PWM bonus for eligible waste management workers from January 2024. This will enable employers to better attract and retain waste management workers and complement their efforts to invest in their workers' training to enhance productivity.

Continued Effort to Uplift Wages and Well-Being of Lower-Wage Workers

The TCWM recommendations build on the work of the TWG-LWW, and signal the tripartite partners' resolve to further uplift the wages and well-being of our lower-wage workers. Waste management workers provide essential services that keep Singapore clean. It is vital that we continue to support the waste management industry in creating a more skilled and productive workforce, with more attractive careers for its workers.

The Tripartite Cluster for Waste Management Report is available online at www.ntuc.org.sg/tripartiteguidelines

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Removal of entry approval requirements for certain eligible Long-Term Pass Holders (LTPH)

With effect from 21 February 2022, 2359 hours (Singapore Time), the entry approval requirement will be removed for all fully vaccinated LTPHs except work permit holders ("eligible pass holders").

Eligible pass holders entering on Vaccinated Travel Lanes (VTLs) will not need to apply for a Vaccinated Travel Pass (VTP). Eligible pass holders entering via non-VTL channels (e.g., Work Pass Holder General Lane, Student's Pass Holder Lane) also do not need to apply for an Entry Approval but will have to adhere to the prevailing immigration entry requirements and health protocols.

All eligible pass holders must produce their Long-Term pass/in-principle approval letter and proof of vaccination status/exemption for entry to Singapore. Pass holders will need to adhere to the prevailing immigration entry requirements and border health measures in Singapore, including testing and Stay-Home Notice (SHN) requirements.

Work permit holders should continue to obtain a VTP if entering via VTL (excluding work permit holders in the Construction, Marine Shipyard and Process sectors (CMP) and other dormitory bound work permit holders); or an entry approval under non-VTL channels (Work Pass Holder General Lane via Safe Travel Office or MOM's entry approval for CMP workers). This is to ensure work permit holders enter Singapore in a safe and calibrated manner given their larger numbers.

A summary of changes to entry approval requirements for arrivals from 21 Feb 2022, 2359 hours can be found in the appended table on the stated website. Details on entry requirements and health protocols under VTL and non-VTL SafeTravel Lanes can be found on the SafeTravel website (link in the stated website).

All travellers must continue to submit a health and travel declaration via the SG Arrival Card (SGAC) e-Service prior to their arrival. They will be required to provide their health status and recent travel history, as well as personal particulars and contact details.

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Supporting industry transformation in The Construction and Process sectors

The significant and repeated disruptions to manpower inflows for the Construction and Process sectors over the past two years of the pandemic has reaffirmed the need for the sectors to press on with productivity improvements to become more manpower-lean. This will render Construction and Process firms more resilient against future disruptions.

To this end, the Ministry of Manpower (MOM), Building and Construction Authority (BCA), Economic Development Board (EDB) and Enterprise Singapore (ESG) will make the following policy changes for the Construction and Process sectors, to support this transformation and incentivise firms to hire higher-skilled foreign workers:

a. Reduce the DRC from 1:7 (i.e. 1 local employee to 7 WPH or S Pass holders) to 1:5 (i.e. 1 local employee to 5 WPHs or S Pass holders);
b. Phase out the MYE framework;
c. Revise the levy structure for WPHs (refer to the Annex on the stated website for new levy structure).

Firms will be given time to adjust. These changes will take effect from 1 Jan 2024. In addition, firms that exceed the DRC of 1:5 on 1 Jan 2024 will be allowed to retain their incumbent WPHs and S Pass holders until the work passes expire. However, these firms will not be able to renew, or apply for new WPHs or S Pass holders, until they bring their firm's workforce within the DRC of 1:5.

Firms can continue to apply for and use their MYE quotas up to 31 Dec 2023. Project contracts that have already been awarded or had tender calling date on or before 18 Feb 2022 will be allowed to use their MYE quotas up to 31 Dec 2024 or their project completion date, whichever is earlier.

Support to help firms transform and hire locals

Firms in the Construction and Process sectors are encouraged to tap on various Government initiatives to transform their businesses and hire locals. The aims and details of such initiatives include:

<u>Supporting business transformation</u>

- Enterprise Development Grant (EDG), which provides customised support to help firms upgrade their business capabilities, innovate or venture overseas.
- Productivity Solutions Grant (PSG), which provides co-funding (capped at $30,000) to support costs of adopting pre-approved digital solutions for local Small and Medium Enterprises (SMEs).

<u>Helping firms build up the local talent pipeline</u>

- Career Conversion Programmes (CCP), which offer up to 90% funding support for salary and training costs for firms to hire mid-career jobseekers and equip them with the necessary skills to take on jobs.
- Jobs Growth Incentive (JGI), which provides salary support for firms looking to hire new local mature workers who have not been employed for at least six months, persons with disabilities, and ex-offenders.
- iBuildSG Scholarship and Sponsorship Programme, which offers scholarships/sponsorships jointly with firms in the Construction sector to high-calibre students intending to pursue Built Environment courses at Institutes of Higher Learning.

The Government will continue to collaborate with the Construction and Process sectors to achieve their transformation objectives, including building up long-term capabilities to improve productivity and enhance their manpower resilience.

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Mandatory Primary Care Plan to cover outpatient costs For CMP Or dormitory-residing work Permit and S Pass holders

From 1 April 2022, employers will be required to purchase a Primary Care Plan (PCP) as part of work pass requirements for Work Permit and S Pass holders who live in dormitories, or who work in the Construction, Marine Shipyard and Process (CMP) sectors. The PCP will cover most of the MWs' primary care needs for a fixed cost and give employers and MWs greater peace of mind.

As part of the new primary healthcare system, most of the primary care needs of MWs will be covered under the PCP. This includes the medical examination for work pass application or renewal, unlimited acute or chronic medical consultations and treatments, 24/7 telemedicine services, annual basic health screening, and scheduled conveyance to and from dormitories and MOM medical centres within each geographical sector. MWs may also seek care at any designated General Practitioner clinic in partnership with the Anchor Operators (please see Annex A in the stated website for details).

With effect from 1 April 2022, employers of eligible newly arrived MWs, or of existing MWs who renew their work passes or change employers, must purchase the PCP before the new work passes can be issued. All eligible existing MWs must have a valid PCP by 31 March 2023 even if their work passes are due for renewal after that date.

Employers of eligible MWs are required to purchase the PCP with the Anchor Operator that manages the geographical sector their MWs live in. Prices range from $108 to $138 per MW per year, which can be paid through regular monthly instalments. These standardised costs protect employers from accumulating large primary care bills annually.

MWs covered under the PCP co-pay a fixed medical treatment fee at $5 for each visit at any MOM medical centre, or $2 for each telemedicine session. Co-payment by migrant workers helps to instil personal responsibility for their own health. For MWs not covered under the PCP, the amount to be co-paid can be mutually agreed via the employment contract or collective agreement and is capped by law at 1% of the MWs' fixed monthly salary for each outpatient visit, or $5, whichever is higher.

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02 MAR 2022

MOM to defer 6-monthly medical examination for migrant domestic workers and non-domestic female work permit holders

To ease the patient load and pressure faced by healthcare providers, especially GP clinics and polyclinics, the Ministry of Manpower (MOM) will defer the six-monthly medical examination (6ME) for Migrant Domestic Workers (MDWs) and other female Work Permit holders (WPHs).

Employers who received 6ME notices dated January and February 2022 for their MDWs and female WPHs, but have not sent their workers for the 6ME, will now have a longer period - until 30 April 2022 - to do so. Employers whose workers are due to receive their 6ME notices in March and April 2022 will be notified of the new 6ME date by post and e-mail from end-April instead.

Should employers need to send their workers to the clinics for the 6ME at this time, they will not be turned away. However, the government strongly encourages employers to defer the visit unless there is a need for medical attention.

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Enhanced medical Insurance coverage to better protect employers

To better protect employers from having to bear large unexpected medical bills incurred by their migrant workers, the Ministry of Manpower (MOM) will

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enhance the coverage of the mandatory medical insurance (MI) for Work Permit (including Migrant Domestic Workers) and S Pass holders. The new requirements will come into effect by end 2022 and will apply to all new Work Permit and S Pass applications and renewals. More details will be shared in due course.

The MI enhanced coverage will comprise the following features:

a. Introduction of a co-payment element for employers and insurers for amounts above $15,000, up to an annual claim limit of at least $60,000. Employers will continue to be fully insured (first dollar coverage) for the medical expenses of their Work Permits and S Pass holders up to $15,000. While this ensures protection for the bulk of workers' medical bills, there remains an average of over 1,000 employers per year who face bills that are larger than $15,000. With higher coverage, insurers will also co-pay 75% for amounts above $15,000, up to an annual claim limit of at least $60,000. The increased annual claim limit will cover more than 99% of Work Permit and S Pass holders' inpatient and day surgery bills.

b. Standardisation of allowable exclusion clauses. This provides employers and workers with greater clarity on their coverage and the types of claims they are eligible for. The list of allowable exclusions can be found in Annex B.

c. Introduction of age-differentiated premiums. Insurers who sell MI products will have to offer differentiated premiums for those age 50 and below, and those who are above 50 years old. This is to keep premiums affordable as the large majority of our migrant workforce are aged 50 years and below.

d. Requirement for insurers to reimburse hospitals directly upon the admissibility of the claim. Employers will not need to pay for their workers' hospital bills upfront before seeking reimbursement from their insurers. This will help free up cashflow for households and businesses, especially for employers who may be cash-strapped.

With the enhanced MI coverage, employers will be better supported in managing the financial risks of larger medical bills. The enhancements have also been carefully calibrated to balance the sustainability of coverage against longer-term cost of premiums. As many insurers have expressed interest to offer MI products with the enhanced coverage, we expect the MI premiums to be competitively priced. MOM will monitor the insurance premium to ensure that it remains affordable for employers, and work in partnership with insurance associations to ensure smooth implementation of the enhanced MI model.

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Streamlining of entry requirements for vaccinated New Work Permit Holders in the Construction, Marine Shipyard and Process (CMP) Sectors

With effect from 13 Mar 2022, the entry requirements for vaccinated new Work Permit holders (WPHs) with in-principle approval (IPA) in the Construction, Marine Shipyard and Process (CMP) sectors will be streamlined.

First, the industry-led process will be streamlined into a shorter two-day pre-departure preparatory programme (PDPP) in the source country from 13 Mar 2022. This is followed by a three-day Stay-Home Notice and onboarding at the Ministry of Manpower (MOM)'s Onboard centres upon arrival in Singapore, which is the current requirement. This approach retains some of the existing health protocols (e.g., pre-departure testing) under the industry-led process, which succeeded in reducing imported cases even during surges in COVID-19 cases at source countries. The duration of the PDPP may be adjusted, depending on the global COVID-19 situation. For instance, it could be lengthened if new COVID-19 variants of concern (that require tighter border

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measures) emerge. The PDPP is intended to be the main channel for new CMP WPHs going forward and will enhance the resilience of the CMP sectors.

Second, from 1 May 2022, each vaccinated new CMP WPH holding an IPA will enter through only one specified lane:

- New CMP WPHs will be required to undergo the PDPP process where available at their source countries. The PDPP will be available in Bangladesh, India and Myanmar from 13 Mar 2022.
- New CMP WPHs entering from source countries where PDPP is not available, will continue to enter Singapore via the Work Pass Holder General Lane where they will be subjected to prevailing border measures and complete an onboarding programme where applicable upon arrival.

All existing CMP WPHs holding issued work permits will continue to enter Singapore via the Work Pass Holder General Lane. Entry approvals under this lane will be prioritised for them.

In the interim from 13 Mar to 30 Apr 2022, vaccinated new CMP WPHs holding IPAs from source countries where PDPP is available, can enter via either the PDPP or the Work Pass General Lane. Applications to enter via the PDPP lane will be open from 13 March 2022 through PDPP partners.

This streamlined process will help the CMP sectors accelerate the entry of necessary workers for ongoing projects, alleviate the labour shortage that the sectors have faced over the past year, while building greater resilience in their workforce.

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Extension of support measures for businesses in the Construction, Marine Shipyard and Process sectors

The Government is extending support measures for companies in the Construction, Marine Shipyard and Process (CMP) sectors in view of the continued manpower shortages and elevated business costs arising from COVID-19.

Extension of Foreign Worker Levy (FWL) rebate for CMP Work Permit Holders (WPH)

The FWL rebate was introduced in 2020 to help businesses retain their enterprise capabilities amidst challenges caused by the pandemic. It was due to expire in end-March 2022. The Government will now extend the FWL rebate for CMP WPHs for another three months, at $250 per month for April and May 2022, and $200 for June 2022.

The lower FWL rebate for June 2022 reflects the improving manpower inflow for the CMP sectors, with manpower costs expected to moderate accordingly. The Government will continue to monitor the situation before deciding closer to June 2022 whether an extension of the rebate is necessary. As the FWL rebate is meant to be a temporary support, firms are encouraged to press on with longer-term productivity improvements to be more manpower-lean and resilient against future manpower disruptions.

Extension of COTMA Part 10A for the Construction sector

Apart from the FWL rebate, the Government has supported the Built Environment (BE) sector with other measures, including financial assistance through the $1.36 billion construction support package, manpower support and legislative relief through the COVID-19 (Temporary Measures) Act ("COTMA"). This is to ensure that no single segment of the BE value chain bears a disproportionate share of the burden due to COVID-19.

The prescribed period for COTMA Part 10A was originally extended till 31 March 2022. COTMA Part 10A allows contractors to seek a determination from an Assessor to adjust the contract sum to address the increase in foreign manpower salary costs, i.e., Construction WPHs' salaries, due to COVID-19.

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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The relief period under COTMA Part 10A will now be further extended for an additional three months, till 30 June 2022. This will complement the extension of the FWL rebate for the same duration and provide additional assurance to firms in the BE sector. Further details on the process under COTMA Part 10A can be found at http://go.gov.sg/cotma10a.

The COTMA relief provided to the BE sector is meant to be time-limited. As the sector continues to recover and Singapore shifts towards living with COVID-19, firms will need to partner one another even more closely to ensure business sustainability and longer-term resilience of the BE sector.

Removal of Period of Employment (POE) requirement for Man-Year Entitlement (MYE)-waiver

In August 2021, the Government removed the minimum POE requirement of three years and two years for Construction and Process WPHs respectively, arriving from Non-Traditional Sources (NTS)1 and the People's Republic of China (PRC), to qualify for the MYE-waiver2. This measure was to help support the inflow and retention of workers and is due to expire in March 2022.

The Government will now make the removal of the minimum POE requirement permanent. This is also in line with the dismantling of the MYE framework from 1 Jan 2024. Going forward, all incoming or renewal NTS and PRC WPHs will no longer need to meet the minimum POE requirement to qualify for the MYE-waiver.

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Employment agencies to provide refund option for service fees if domestic worker is terminated early

From 1 June 2022, employment agencies (EAs) must provide employers with a refund option of at least 50% of the service fees paid by the employer if the migrant domestic worker's (MDW) employment was terminated within the first six months of her employment. This measure encourages EAs to take stronger ownership in achieving a good match between MDWs and employers.

The refund option will apply for up to three MDWs that the EA places with that same employer. The termination of employment must be within the first six months of employment. The employer could request for a replacement MDW instead of a refund, if this is an option offered by the EA.

EAs will not be required to provide a refund if:

a. There was no matching service provided by the EA – i.e., the EA was engaged by the employer solely to perform administrative work required to hire the MDW;
b. The employer breaches any employment laws or commits any offence against the MDW; or
c. The MDW was hired as a caregiver, and the caregiving need no longer exists (e.g., the person being cared for has passed away or has moved to alternative care).

Employers who are seeking a refund will need to inform their EA before the MDW's employment is terminated. This would allow the EA to speak to both the MDW and the employer so as to understand the reason(s) for termination. With this understanding, the EA would then be able to provide better matches.

More details on the refund policy can be found on MOM's website.

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Removal of Entry Approval Requirement for All Work Permit Holders and Launch of Onboard Booking System

From 1 May 2022, fully vaccinated non-Malaysian Work Permit holders (WPHs) holding an In-Principle Approval (IPA) in the Construction, Marine Shipyard

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and Process (CMP) sectors no longer need to apply for entry approvals to come into Singapore. With this, all fully vaccinated work pass holders and their dependants no longer require an entry approval to enter Singapore. This is in line with the easing of border measures, as the local COVID-19 situation stabilises.

As is already the case, these WPHs holding an IPA must continue to be onboarded at the Ministry of Manpower's (MOM) Onboard centres upon their arrival. Employers whose WPHs are required to undergo the Onboard programme must ensure that they have booked a slot at the Onboard centre through a new booking system from 1 May 2022.

Launch of New Onboard Booking System:

Employers of all non-Malaysian WPHs in the CMP sectors holding IPAs are required to use the new Onboard Booking system to secure onboarding slots before their WPHs arrive in Singapore. This requirement will also be extended to WPHs from Mainland China, Hong Kong, Macau and Taiwan from 1 May 2022 as well. This simplifies the entry processes through a convenient one-stop service for such employers.

Employers must ensure that their WPHs are fully vaccinated and:

a. Undergo the two-day Pre-Departure Preparatory Programme (PDPP) in countries where the PDPP is available3, before entering Singapore;
b. Report to the Onboard centre immediately upon arrival to complete the residential onboarding programme, including the Settling-In-Programme (SIP), for up to 4 days.

Pre-Departure Preparatory Programme (PDPP) requirement

As previously announced on 6 March 2022, vaccinated WPHs in the CMP sectors holding an IPA can only enter Singapore through a single-entry lane from 1 May 2022. These workers must undergo a two-day PDPP if it is available in their source countries (details can be found in the Annex, assessable on the stated website). This will ensure that worker inflows in the CMP sectors will remain resilient. BCA, MOM, and EDB will continue to review the PDPP to ensure it remains relevant as the global situation evolves. More details of the PDPP and the list of PDPP providers can be found here.

Consequences of Non-Compliance

Action will be taken against those who fail to adhere to the PDPP and onboarding requirements. Employers are urged to take proactive actions to ensure their WPHs comply with these requirements to avoid disruptions to work pass transactions or having their security bond forfeited.

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Revised Entry Requirements for Construction, Marine Shipyard and Process (CMP) Sectors Work Permit Holders (WPHs)

Since March 2022, the entry requirements for CMP WPHs have been progressively eased. Currently, vaccinated new CMP WPHs holding an In-Principle Approval (IPA) are required to undergo a 2-day Pre-Departure Preparatory Programme (PDPP) if they are entering from countries where the PDPP is available.

Further Easing of the Entry Requirements for CMP WPHs from 1 Jul 2022

In line with the general easing of COVID-19 measures in Singapore, we will be phasing out the mandatory PDPP requirement from 1 July 2022. However, to maintain resiliency for the CMP sectors, existing PDPP providers will put in place Business Continuity Plans (BCP) for the PDPP regime in the event that the PDPP is reinstated (e.g. public health risks due to the emergence of new variants of concern).

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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Notwithstanding the phasing out of PDPP requirements, all non-Malaysian male WPHs from the CMP sectors holding an IPA will still be required to undergo the residential onboarding programme at the MOM's Onboard Centres upon their arrival in Singapore. Employers whose WPHs are required to undergo the Onboard programme must ensure that they have booked a slot at the Onboard Centre through the Onboard Booking System before their arrival in Singapore.

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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CONTRIBUTED BY: PK Wong & Nair.

LOOKING BACK

SOUTH KOREA
01 JAN 2022

Amendment to the Employment Insurance Act

"Quick service drivers and chauffeurs," who provide labor based on the labor supply platform, have been added to the job category subject to the unemployment insurance.The labor supply platform operator's obligations to report the insured status of the labor provider and withhold insurance premiums for the labor provider will become effective on January 1, 2022.

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SOUTH KOREA
01 JAN 2022

Amendment to the Enforcement Decree of the Employment Insurance Act

In order to promote the use and participation of childcare leave for all parents with infants and children, who are seeking to secure childcare time, if parents use childcare leave simultaneously or in succession until the child reaches 12 months of age, the parent can receive increased compensation for the first three months of childcare leave (80% → 100% of ordinary wage).

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SOUTH KOREA
01 JAN 2022

Amendment to the Enforcement Decree of the Industrial Accident Compensation Insurance Act

The Korea Workers' Compensation and Welfare Service can require the party that was the employer at the time of the occupational accident to prepare and submit a plan for reinstatement of workers suffered from occupational accidents.

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SOUTH KOREA
27 JAN 2022

Enactment of the Serious Accidents Punishment Act

The Serious Accident Punishment Act was enacted and became effective as of January 27, 2022 in order to prevent serious accidents and to protect the lives and bodies of citizens and workers by stipulating the punishment, etc. of business owners, persons in charge of management, public officials, and corporations that have caused accidents by breaching the duty to take measures for safety and health in the course of operating business, workplaces, public use facilities, or public transportation, or handling raw materials or products harmful to the human body.

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SOUTH KOREA
14 APR 2022

Amendment to the Employee Retirement Benefit Security Act

INTRODUCTION OF THE RETIREMENT PENSION FUND SYSTEM FOR SMALL AND MEDIUM SIZED ENTERPRISES ("SMES")

In order to support the introduction of the retirement pension plan for SMEs (with 30 or less full-time employees) which are facing difficulties introducing the retirement pension plan, the Korea Workers' Compensation and Welfare Service can now operate the SME retirement pension fund plan. For reasonable operation of the system and deliberation/resolution of key issues, the Small and Medium Business Retirement Pension Fund Operation Committee, comprised of labor, management, government and experts, was established at the Korea Workers' Compensation and Welfare Service, and the government is allowed to subsidize part of the contributions or expenses by the employer and subscriber for operation of the fund system within the budget. Economies of scale achieved via professional asset management and funding is expected to strengthen and guarantee retirement income of workers at SMEs.

COMPOSITION OF THE FUND RESERVE MANAGEMENT COMMITTEE

Businesses with more than 300 workplaces must (i) prepare funds reserve management plan for the defined benefit retirement pension plan (DB), which includes the purpose and method of operating reserves, the setting of the target return rate, and the evaluation of operational performance, and (ii)

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Important: action likely required

Good to know: follow developments

Note changes: no action required

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form a reserve management committee to review such plan. In addition, the National Pension Service has established a penal regulation (administrative fine of KRW 10 million) on retirement pension trustees who violate the duty to notify whether the minimum reserves under the defined benefit retirement pension plan (DB) are satisfied and employers who fail to resolve the shortfall. The stable and reasonable operation of the reserves is expected to further enhance protection of employees' entitlement to receive retirement benefits.

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STRENGTHENED TRAINING FOR SUBSCRIBERS TO RETIREMENT PENSION, ETC.

Employers can now delegate education for pension plan subscribers to not only retirement pension service providers but also specialized educational institutions. Moreover, employee's rights are to be further strengthened through the Presidential Decree which will prescribe specific criteria and procedures for cases when the retirement pension provider presents the operation method to its subscribers.

MANDATORY TRANSFER OF STATUTORY SEVERANCE PAY INTO INDIVIDUAL RETIREMENT PLAN ("IRP") ACCOUNTS

Previously, only retirement benefits for employees who had subscribed to retirement pension schemes (Defined Benefit or Defined Contribution) were legally required to be paid into their IRP accounts. However, as of April 14, 2022, statutory severance pay must also be deposited into the employees' IRP accounts and paid on a pre-tax basis without withholding income tax.

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Amendment to the Equal Employment Opportunity and Work-family Balance Assistance Act

On May 19, 2022, the Labor Relations Commission (the "LRC") implemented a corrective system for gender discrimination in employment, violation of the obligation to take appropriate measures against victims of sexual harassment in the workplace and unfavorable treatment.

The correction system was introduced in order to ensure that discriminated workers receive practical remedies. Specifically, the corrective system imposes penalties on employers for gender discrimination in employment and corrective measures such as discontinuance of discriminatory treatment, improvement of working conditions of discriminated workers, and payment of proper compensation.

Pursuant to the amended Equal Employment Opportunity and Work-Family Balance Assistance Act, employees may file a petition for correction with one of the 13 Regional Labor Relations Commissions if: (i) the employee experienced gender discrimination in employment, (ii) the employer did not take appropriate measures against the victim of sexual harassment in the workplace, or (iii) the employer engaged in unfavorable treatment against victims of sexual harassment in the workplace. Upon receipt of an application for correction, the LRC will convene the Discrimination Correction Committee within 60 days; if discrimination is recognized, a corrective order will be issued to the employer.

The LRC's decision can be appealed to the National Labor Relations Commission within ten days from the date on which the relevant party is served with the LRC's written decision. If a corrective order is finalized, the local labor office will check the implementation status; employers who fail to comply with the finalized corrective order without a justifiable reason will be subject to a fine of up to KRW 100 million.

Meanwhile, the Minister of Employment and Labor may order an employer to correct gender discrimination in employment pursuant to the amended Equal Employment Opportunity and Work-Family Balance Assistance Act. If the

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19 MAY 2022

employer refuses to comply with such order, the Minister may notify the LRC to initiate the hearing process.

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CONTRIBUTED BY: KIM & CHANG

TAIWAN 05 JAN 2022

No entitlement to menstruation leave under Article 14 of the Act for Gender Equality in Employment for post-op transsexual men

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-4-Zi-1100131646
Issue date: January 5, 2022

Based on the Ministry of Health and Welfare's official letter on December 15, 2021 that post-op transsexual men who are living as women do not undergo menstruation due to the lack of childbearing organs, they are not entitled to the 1-day monthly menstrual leave that genetic female employees receive under Article 14 of the Act for Gender Equality in Employment.

TAIWAN 12 JAN 2022

Amendment of the Act for Gender Equality in Employment for extending pregnancy checkup leave and providing for "accompanying pregnancy checkup leave" for spouses; both parents can choose to take parental leave without payment or family care leave simultaneously

Issued by: The President's Office
Ref. No.: Hua-Zhong-1-Yi-Zi-11100001911
Issue date: January 12, 2022

Per the policies to increase preventive pregnancy checkups to 14 and the increase from 5 to 7 days of pregnancy checkup leave, as well as the promotion of spouses to accompany the employee at pregnancy checkup sessions, the previous term "paternity leave" in the Act for Gender Equality in Employment is changed to "pregnancy checkup accompaniment and paternity leave", and the duration is also increased to 7 days maximum. The wages for the additional two days of pregnancy checkup leave and "pregnancy checkup accompaniment and paternity leave" may be subsidized by the central competent authority unless other laws and regulations have already stipulated more than five days of pregnancy checkup leave and "pregnancy checkup accompaniment and paternity leave" at regular wages (Article 15 of the Act for Gender Equality in Employment).

Other amendments include changes to Article 19 of the Act for Gender Equality in Employment for child care for employers with less than 30 employees in the form of an one-hour reduction of daily working hours, and the deletion of Article 22 of the Act for Gender Equality in Employment, which previously required a spouse to be employed and a proper cause provided to be entitled to parental leave without payment and family care leave.

TAIWAN 12 JAN 2022

Amendment of Article 19-2 of the Employment Insurance Act

Issued by: The President's Office
Ref. No.: Hua-Zhong-1-Yi-Zi-11100001921
Issue date: January 12, 2022

To promote the joint care of children by both parents, Article 19-2, Paragraph 3 of the Employment Insurance Act is deleted to allow both parents to simultaneously apply and receive financial stipends for parental leave without payment.

TAIWAN 18 JAN 2022

Amendment of the Enforcement Rules for the Act for Gender Equality in Employment regarding the timing of pregnancy checkup accompaniment and paternity leaves

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-4-Zi-1110140034
Issue date: January 18, 2022

In addition to taking leave to accompany a pregnant spouse for pregnancy checkup sessions under Article 15, Paragraph 5 of the Act for Gender Equality

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TAIWAN
18 JAN 2022

in Employment, an employee taking pregnancy checkup accompaniment and paternity leave to accompany a pregnant spouse giving birth should be taken within a combined 15-day period before and after the date of birth of the child.

Other amendments include excluding "occupational hazard labor insurance" from the social insurance programs according to Article 16, Paragraph 2 of the Act for Gender Equality in Employment that the employee taking parental leave without payment is entitled to remain enrolled in.

TAIWAN
18 JAN 2022

Regarding the appropriate units for pregnancy checkup accompaniment and paternity leave

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-4-Zi-1110140008
Issue date: January 18, 2022

An employee requesting to take pregnancy checkup accompaniment and paternity leave to accompany a pregnant spouse on pregnancy checkups or child birth shall take them in "half-day" or "hourly" units, to which the employer may not refuse. Once the choice between "half-day" or "hourly" units is made, the employee may not later change to the other unit.

TAIWAN
14 MAR 2022

Regarding an employer's timely payment of wages

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-2-Zi-1110140080
Issue date: March 14, 2022

An employer's failure to timely pay wages shall constitute a violation of Article 22, Paragraph 2 of the Labor Standards Act even if the payment is made up at a later time. In addition, the date of a regular wage payment shall be clearly stipulated and be at least once a month, or it would constitute a violation of Article 23, Paragraph 1 of the same.

TAIWAN
21 APR 2022

Personal presence in taking pregnancy checkup accompaniment and paternity leave depends on circumstances

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-4-Zi-1110140341
Issue date: April 21, 2022

In the case of pregnancy checkup sessions which include ultrasonic and other physical checkups, if the employee is not personally present to accompany the pregnant spouse, the employee should not be entitled to such leave. However, in the case of a pregnant spouse giving birth, given the many ways the employee may be "accompanying" the pregnant spouse, the employee may still be entitled to paternity leave even if the employee is unable to personally present due to being placed under quarantine pursuant to the current pandemic policies.

TAIWAN
01 MAY 2022

The Occupational Hazard Insurance and Protection Act has entered into effect on May 1, 2022

Issued by: The Executive Yuan
Ref. No.: Yuan-Tai-Lao-Zi-1100021449
Issue date: July 19, 2021

The Occupational Hazard Insurance and Protection Act that was promulgated on April 30, 2021 entered into effect on May 1, 2022. A primary focus is to greatly expand the scope of employees covered by the occupational hazard insurance policy. All employees, regardless of the size of the employer, are enrolled as soon as they start work; even if the employer failed to proceed with the enrolment process for the new employee, they are nevertheless entitled to insurance benefits in the event of an occupational hazard incident. Depending on the type of employment, the enrolment may take multiple forms: compulsory protection, voluntary enrolment or special enrolment.

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LOOKING BACK

TAIWAN
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In addition, the statute increases the overall protections provided to employees, including increased wage tiers for insurance purposes, increased insurance benefits for illnesses and injuries, and annuities for individuals disabled as a result of occupational hazard incidents, etc.

Finally, an Occupational Hazard Prevention and Reconstruction Center is established to assist employers in implementing the relevant preventive measures against occupational hazards, to provide increased physical checks for employees engaged in certain hazardous work, and to provide injured employees with follow-up physical examinations and other types of assistance to assist them to return to the workplace.

TAIWAN
05 MAY 2022

Employers may not refuse to provide attendance bonuses for employees who applied for ordinary sick leave due to quarantine and treatment as a result of COVID-19 infection

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-2-Zi-1110140434
Issue date: May 5, 2022

For an employee who has been infected with COVID-19 and is either notified to stay at home by the relevant competent health authority or receiving treatment at a designated location or hospital, if the employee has applied for ordinary sick leave for the period of quarantine and treatment pursuant to Article 43 of the Labor Standards Act and Article 4 of the Regulations for Leave-Taking of Workers, the employer may not refuse to provide attendance bonuses as a result of the absence.

TAIWAN
05 MAY 2022

The ordinary sick leave taken by an employee undergoing COVID-19 infection treatment shall be counted as hospitalized sick leave days.

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-3-Zi-1110140411
Issue date: May 5, 2022

The ordinary sick leave taken by an employee for staying at home or receiving treatment at a designated location due to a COVID-19 infection shall be counted as "hospitalized sick leave" under Article 4, Paragraph 1 of the Regulations for Leave-Taking of Workers.

CONTRIBUTED BY: 理慈 Lee, Tsai & Partners

LOOKING BACK

THAILAND
29 MAR 2022

Thailand - New relief measure for the Social Security Fund approved by the Cabinet

To ease some of the impacts of the rise in fuel prices, the Cabinet approved the reduction of the contribution rate to the Social Security Fund ("**SSF**") on 29 March 2022.

During the COVID-19 pandemic, the monthly contribution rates to the SSF, for both employees and employers, had been reduced to 2.5%. However, as the situation surrounding the pandemic improved, on 1 December 2021, the rate was brought back up to the original rate of 5%.

Once this new measure, that has been approved by the Cabinet, comes into force, the monthly contribution rates of employees and employers will be reduced to 1% of wage applicable for three months, starting from May until July 2022.

THAILAND
01 JUN 2022

Thailand's Personal Data Protection Act comes into force

On 1 June 2022, Thailand's Personal Data Protection Act ("**PDPA**") enters into force, after previous delays resulting from the COVID-19 pandemic.

More...
More...
More..

CONTRIBUTED BY: Tilleke & Gibbins

VIETNAM

There are no significant policy, legal or case developments within the employment space during 2022 H1.

Important: action likely required

Good to know: follow developments

Note changes: no action required

Looking Back

Looking Forward

CONTRIBUTED BY: MAYER | BROWN

AUSTRALIA

CORRS CHAMBERS WESTGARTH

John Tuck
CORRS CHAMBERS WESTGARTH
Level 25, 567 Collins Street
Melbourne VIC 3000, Australia
T: +61 3 9672 3257
F: +61 3 9672 3010
E : john.tuck@corrs.com.au

CHINA

競天公誠律師事務所 JINGTIAN & GONGCHENG

Youping Deng
JINGTIAN & GONGCHENG
34/F, Tower 3, China Central Place, 77 Jianguo Road,
Beijing 100025, China
T: +86 10 5809 1033
F: +86 10 5809 1100
E: deng.youping@jingtian.com

MAYER | BROWN

Andy Yeo
MAYER BROWN SHANGHAI REPRESENTATIVE OFFICE (HONG KONG)
Suite 2305, Tower II, Plaza 66
1266 Nan Jing Road West
Shanghai 200040, China
T: +86 21 6032 0266
E: andy.yeo@mayerbrown.com

HONG KONG

MAYER | BROWN

Duncan Abate
T: +852 2843 2203
F: +852 2103 5066
E: duncan.abate
@mayerbrown.com

Hong Tran
T: +852 2843 4233
F: +852 2103 5070
E: hong.tran
@mayerbrown.com

Jennifer Tam
T: +852 2843 2230
F: +852 2103 5076
E: jennifer.tam
@mayerbrown.com

MAYER BROWN
16th - 19th Floors, Prince's Building,10 Chater Road , Central, Hong Kong

INDIA

TRILEGAL

Swarnima
TRILEGAL
The Residency, 7th Floor
133/1 Residency Road, Bangalore – 560 025,
India
T: +91 80 4343 4622
E: swarnima@trilegal.com

INDONESIA

SSEK
Indonesian Legal Consultants

Syahdan Z. Aziz
SSEK LEGAL CONSULTANTS
14th Floor, Mayapada Tower I
Jl. Jend. Sudirman Kav.28
Jakarta 12920, Indonesia
T: +62 21 521 2038
F: +62 21 521 2039
E: syahdanaziz@ssek.com

JAPAN

ANDERSON MŌRI & TOMOTSUNE

Nobuhito Sawasaki
ANDERSON MORI & TOMOTSUNE
Akasaka K-Tower, 2-7, Motoakasaka
1-chome
Minato-ku, Tokyo 107-0051, Japan
T: +81 3 6888 1102
F: +81 3 6888 3102
E: nobuhito.sawasaki@amt-law.com

MALAYSIA

Shearn Delamore &co

Sivabalah Nadarajah
SHEARN DELAMORE & CO.
7th Floor, Wisma Hamzah-Kwong Hing
No. 1 Leboh Ampang 50100,
Kuala Lumpur, Malaysia
T: +603 2076 2866
F: +603 2026 4506
E: sivabalah@shearndelamore.com

Wong Kian Jun
SHEARN DELAMORE & CO.
7th Floor, Wisma Hamzah-Kwong Hing
No. 1 Leboh Ampang 50100,
Kuala Lumpur, Malaysia
T: +603 2027 2654
F: +603 2078 5625
E: wongkj@shearndelamore.com

NEW ZEALAND

Simpson Grierson

Phillipa Muir
SIMPSON GRIERSON
Level 27, Lumley Centre,
88 Shortland Street, Private Bay
92518, Auckland 1141, New Zealand
T: +64 09 977 5071
F: +64 09 977 5083
E: phillipa.muir@simpsongrierson.com

PHILIPPINES

ROMULO
ROMULO MABANTA BUENAVENTURA SAYOC & DE LOS ANGELES

Enriquito J. Mendoza
ROMULO MABANTA BUENAVENTURA SAYOC
& DE LOS ANGELES
21st Floor, Philamlife Tower, 8767 Paseo de Roxas
Makati City 1226, Philippines
T: +632 555 9555
F: +632 810 3110
E: enriquito.mendoza@romulo.com

SINGAPORE

PK Wong &Nair.

Jennifer Chih
PK WONG & NAIR LLC
2 Shenton Way
#16-02, SGX Centre 1
Singapore 068804
T: +65 6827 5555
F: +65 6827 5550, +65 6827 5560
E: jennifer.chih@pkwongnair.com

SOUTH KOREA

KIM & CHANG

C.W. Hyun
KIM & CHANG
Seyang Building, 223 Naeja-dong,
Jongno-gu
Seoul 110-720, Korea
T: +822 3703 1114
F: +822 737 9091
E: cwhyun@kimchang.com

Hoin LEE
KIM & CHANG
Seyang Building, 223 Naeja-dong,
Jongno-gu
Seoul 110-720, Korea
T: +822 3703 1682
F: +822 737 9091
E: hoin.lee@kimchang.com

TAIWAN

理慈 Lee, Tsai & Partners

Chung Teh Lee
LEE, TSAI & PARTNERS
9F, 218 Tun Hwa S. Road, Sec. 2
Taipei 106, Taiwan, R.O.C.
T: +886 2 2378 5780
F: +886 2 2378 5781
E: ctlee@leetsai.com

Elizabeth Pai
LEE, TSAI & PARTNERS
9F, 218 Tun Hwa S. Road, Sec. 2
Taipei 106, Taiwan, R.O.C.
T: +886 2 7745 3583
F: +886 2 2378 5781
E: elizabethpai@leetsai.com

THAILAND

Tilleke & Gibbins

Pimvimol (June) Vipamaneerut
TILLEKE & GIBBINS
Supalai Grand Tower, 26th Floor, 1011
Rama 3 Road, Chongnonsi, Yannawa,
Bangkok, Thailand 10120
T: +66 2056 5588
E: june.v@tilleke.com

VIETNAM

MAYER | BROWN

David Harrison
MAYER BROWN (VIETNAM)
Suite 1705-1707, 17/F, Saigon Tower
29 Le Duan Street, District 1, Ho Chi Minh City, Vietnam
T: +84 28 3513 0310
F: +84 28 3822 8864
E: david.harrison@mayerbrown.com

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