

The background of the cover features a network of blue human silhouettes connected by thin lines, set against a light blue gradient. A vertical orange bar is positioned on the left side of the page.

MAYER | BROWN

Asia Employment Law: 2022 Year-End Review

ISSUE 36: 2022 H2

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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: Year-End Review**, an e-publication covering 15 jurisdictions in Asia.

In this thirty-sixth edition, we flag and comment on employment law developments during the second half of 2022 and highlight some of the major legislative, consultative, policy and case law changes to look out for in 2023.

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

We hope you find this edition useful.

With best regards,



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AUSTRALIA

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Legislation passed introducing 10 days' paid family and domestic violence leave for most employees

On 9 November 2022, the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (the Act)* received royal assent.

The Act provides full-time, part-time and casual National System Employees with ten days of paid family and domestic violence leave for each 12-month period. The entitlement takes effect for employees of small businesses (employers with 15 or fewer employees) on 1 August 2023.

Currently, National System Employees are entitled to 5 days' unpaid family and domestic violence leave per 12-month period.

Employees may take family and domestic violence leave if: the employee is experiencing family and domestic violence, they need to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that outside the employee's ordinary hours of work.

Examples of activities that may entitle an employee who is experiencing family and domestic violence to take the paid leave include arranging for the safety of the employee or a close relative (including relocation), attending court hearings, accessing police services, attending counselling and attending appointments with medical, financial or legal professionals.

Extended definition of family and domestic violence

Currently, family and domestic violence is defined as violent, threatening or other abusive behaviour by a close relative of an employee (which includes a member of their immediate family or someone related to the employee according to Aboriginal or Torres Strait islander kinship rules) that seeks to coerce or control the employee and causes them harm or to be fearful. This definition was criticised for being unduly narrow and leaving out common perpetrators of family and domestic violence.

The Act intends to address this deficiency. It extends the definition of family and domestic violence to include conduct engaged in by a former intimate partner of an employee or a member of an employee's household.

Paid leave extends to casual employees

Notably, unlike many forms of paid leave in Australia, the entitlement to paid family and domestic violence will also apply to casual employees. Casual employees will be entitled to be paid for family and domestic violence leave where the period of leave relates to a time during which they would have been rostered.

Extension of paid family and domestic violence leave to all Australian employees

Whilst the vast majority of Australian employees are covered by the federal industrial relations framework, for constitutional reasons, some state public sector employees and between 21% and 36% of employees in Western Australia are not covered. Provided that the International Labour Organisation Convention (No. 190) concerning Violence and Harassment comes into force for Australia before 1 February 2025, the Act will extend an entitlement to paid family and domestic violence leave to all Australian employees, including those not otherwise covered by the federal industrial relations framework, with effect from the date upon which the Convention comes into force.

Pre-existing entitlements under collective bargaining agreements

Many Australian employers already provide paid family and domestic violence leave through enterprise agreements. To accommodate this, the Act contains a mechanism by which employees, employers or unions can apply to the Fair Work Commission to vary such enterprise agreements to bring them into line with the new paid family and domestic violence leave entitlement.

Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)

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Secure Jobs Better Pay Act receives royal assent, enacting major industrial relations changes

On 6 December 2022, the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (SJBPA Act)* received royal assent. It effects a number of important changes to the *Fair Work Act 2009 (Cth) (FW Act)*, especially in relation to multi-employer bargaining.

A high-level summary of the key changes is set out below.

Expanded compulsory multi-employer enterprise bargaining (likely to commence 6 June 2023)

The SJBPA Act significantly expands the scope for employees and unions to bargain for enterprise agreements with multiple employers. Significantly, the Act allows for employee bargaining representatives to apply for two kinds of orders effectively requiring multiple employers to bargain with them for enterprise agreements and allowing employees to take protected industrial action in the context of negotiations for enterprise agreements that will cover multiple employers.

The Act provides for two streams of compulsory multi-employer bargaining: where a 'single-interest employer authorisation' has been made by the Fair Work Commission (FWC) and where a 'supported bargaining authorisation' has been made by the FWC. The Act also introduces a voluntary 'cooperative workplaces' stream. The building and construction and civil construction industries are excluded from all forms of multi-employer bargaining, save for voluntary multi-employer bargaining in respect of 'greenfields agreements'.

Existing provisions relating to the making of single-enterprise agreements are also retained. Indeed, part of the rationale for the new provisions relating to multi-employer agreements appears to be to encourage employers to make single-enterprise agreements with their employees rather than becoming caught up in the complexities of multi-enterprise bargaining.

Changes to industrial action and enterprise bargaining (commence no later than 6 June 2023)

Mandatory conciliations before protected industrial action can be taken

In addition to a number of minor changes relating to protected industrial action under the FW Act, the SJBPA Act introduces a new requirement that parties to enterprise bargaining must participate in a conciliation conference convened by the FWC prior to taking protected industrial action. This conference will be convened after an employee bargaining representative successfully applies for an order asking employees to vote on whether to take protected industrial action.

Enhanced arbitration powers during protracted bargaining

The SJBPA Act provides for a new mechanism for compulsory arbitration of enterprise agreements where bargaining negotiations reach an impasse. Under the new framework, a bargaining representative for an enterprise agreement (other than greenfields agreements) may apply to the FWC for an intractable bargaining 'declaration'.

The FWC may make such a declaration if it is reasonable to do so, negotiations have been ongoing for at least 9 months, the FWC has previously been asked to resolve a dispute regarding bargaining and there is no reasonable prospect of an agreement being reached without the declaration.

Once it makes an intractable bargaining declaration, the FWC may proceed to make an 'intractable bargaining workplace determination', arbitrating the agreement's terms. Alternatively, the FWC may specify a post-declaration negotiating period, after which time the FWC will proceed to arbitrate the agreement's terms.

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Changes to the enterprise bargaining process (commence no later than 6 June 2023)

Approval of enterprise agreements

Currently, the Fair Work Commission cannot approve an enterprise agreement unless it is satisfied that a number of procedural and substantive safeguards relating to the process of making the agreement, and its content, are met. These provisions have been criticised for being unduly restrictive and technical and discouraging participation in the enterprise bargaining system. The SJBPA Act implements a number of changes aimed at relaxing these requirements, including:

- **Relaxing the 'better off overall test':** In determining whether the enterprise agreement leaves employees better off overall as compared to the underlying Modern Award, the FWC must consider the differences between the enterprise agreement and the Award on a 'global' rather than 'line-by-line' basis. In making this assessment, the FWC may only have regard to reasonably foreseeable patterns of work. The FWC must also give 'primary consideration' to any common view held by the employer(s) and registered union bargaining representatives as to whether the agreement leaves employees better off overall. The SJBPA Act contains new provisions allowing for the 'reconsideration' of agreements where employees later engage in other patterns of work or other types of work that were not considered during the FWC's approval of the agreement.
- **Relaxed requirements relating to employee approval of enterprise agreements:** In considering whether covered employees have genuinely agreed to an enterprise agreement, the FWC will have to be satisfied that the employees requested to vote have a 'sufficient interest' in the terms of the agreement and are 'sufficiently representative' of the employees covered by the agreement. The pre-existing requirement that the group of employees covered by the agreement is 'fairly chosen' remains. The prescriptive requirements in relation to the disclosure of copies of the agreement and incorporated material, along with strict rules relating to the timing of this disclosure which govern whether the FWC can be satisfied that the covered employees 'genuinely agreed' to an enterprise agreement have been removed. Rather, the FWC will have regard to a 'statement of principles', which will be promulgated at a future time, in determining whether employees have genuinely agreed to an enterprise agreement.
- **Union veto over votes for multi-employer agreements:** An employer cannot put forward a proposed multi-enterprise agreement for approval by employee vote without the written agreement of relevant union(s). However, the FWC must order (on application by the employer) that a vote be held in circumstances where the relevant union(s) have unreasonably withheld agreement.
- **Distribution of notice of employee representational rights for multi-employer agreements:** The requirement to give a notice of representational rights (NERR) to employees who will be covered by a proposed single-interest employer agreements, supported bargaining agreement or cooperative workplaces agreement has been removed. The requirement to provide a NERR remains in place for single enterprise agreements.

Termination of enterprise agreements after their nominal expiry date

Previously, enterprise agreements which had passed their nominal expiry dates could be terminated by the FWC if it was satisfied that it was not contrary to the public interest and was appropriate to do so. The capacity for employers to 'unilaterally' terminate enterprise agreements on this basis was criticised by unions and the government due to its tactical use (or threatened use) by employers in the context of bargaining for replacement enterprise agreements.

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The SJBPA Act addresses this issue by providing that an enterprise agreement may only be terminated on the basis that it has passed its nominal expiry date on one of the following bases:

- the continued operation of the agreement would be 'unfair' for the employees covered by the agreement; or
- the agreement does not, and is not likely to, cover any employees; or
- the continued operation of the agreement poses a significant threat to the viability of a business carried out by the employer, terminating the agreement would reduce the likelihood of terminations of employment because of redundancy, and the employer has given the FWC a guarantee in respect of employees' termination entitlements (to cover for the event the relevant employees are made redundant subsequent to the termination of the agreement).

Pay secrecy clauses prohibited and employees provided a right to disclose remuneration (commenced 7 December 2022)

The SJBPA Act provides employees with a right to elect to disclose, or not disclose, their remuneration and/or any terms and conditions of their employment "that are reasonably necessary to determine remuneration outcomes" to any other person. Similarly, employees have a workplace right to ask other employees (whether of their own or another employer) for similar information. Adverse action against employees, or prospective employees, due to the use or potential use of this workplace right is unlawful.

The SJBPA Act also contains provisions which render it unlawful for employers to enter into a contract of employment or other written agreement that includes a pay secrecy clause. Pay secrecy clauses in contracts that are made (or in any way varied) on or after 7 December 2022 are of no effect.

Fixed-term contracts limited to 2 years unless an exception applies (commences no later than 7 December 2023)

The SJBPA Act limits the use of fixed term or maximum term contracts for the same role to two consecutive contracts or a maximum period of two years. Entering into such contracts for periods in excess of 2 years will be a contravention of the Fair Work Act. Terms of a contract providing for termination upon the expiry of a period after two years would be of no effect, although the rest of the contract would remain valid and enforceable. This means that the employee concerned would, in effect, become a permanent employee.

There are nine exceptions to this limitation. These include where employees are paid more than the high income threshold (currently \$162,000), are employed to perform a distinct task which involves specialised skills, the employer is reliant on government funding to fund the position and there is no reasonable prospect of that funding being renewed, or the employee is employed to cover a temporary absence or to deal with a period of peak demand.

Employers who offer employees fixed or maximum term contracts will also be required to provide relevant employees with a Fixed Term Contract Information Statement.

Prohibition on sexual harassment included in the FW Act and FWC given power to deal with disputes concerning sexual harassment (commences on a date to be determined, but not later than 8 March 2025)

The SJBPA Act amends the FW Act to include a new requirement that a person shall not sexually harass workers, prospective workers and persons conducting businesses or undertakings. The term 'worker' encompasses contractors, subcontractors and other non-employee workers as well as employees in the conventional sense.

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The amendments also create a new jurisdiction for the FWC regarding 'sexual harassment disputes'. Under this jurisdiction, the FWC may deal with the disputes brought by workers, or a union that is entitled to represent their interests, by mediation or conciliation, and arbitrated by agreement between the parties if mediation or conciliation fails.

Where the parties have agreed that the matter be arbitrated, the FWC will have broad powers to order compensation, direct a respondent to undertake remedial actions, and issue an opinion about the matter.

These provisions sit alongside pre-existing prohibitions relating to sexual harassment contained in Federal and State and Territory anti-discrimination legislation. The SJBPA Act also contains provisions that will prevent a person from making a concurrent application to the courts, or under anti-discrimination laws, concerning a sexual harassment dispute.

Flexible work arrangements and requests to extend parental leave (commences 6 June 2023)

Employees' rights to obtain flexible working arrangements have been strengthened. The SJBPA Act introduces several mandatory steps into the flexible working arrangement request process with which an employer must comply. It also specifies that employees may request flexible working arrangements where they are pregnant.

Significantly, under the changes, employees are able to dispute an employer's refusal of the employee's request by way of arbitration at the Fair Work Commission. This means that there will be an additional layer of scrutiny of employers' refusal of requests for flexible working arrangements.

Other changes

The SJBPA Act also makes a number of other changes, including:

- Abolition of two regulators (the Australian Building and Construction Commission and the Registered Organisations Commission) and the transfer of their functions to the Fair Work Ombudsman and FWC respectively;
- Establishment of a new body named the National Construction Industry Forum;
- Expanding anti-discrimination protections under the FW Act to breast-feeding, gender identity and intersex status;
- Amending the FW Act's objectives, and the Modern Awards Objective to include gender equity and job security. These amendments require the Fair Work Commission to have regard to these objectives when exercising certain functions;
- Expanding the Fair Work Commission's power to make equal remuneration orders;
- Providing for the establishment of expert panels within the FWC who will be responsible for setting minimum wages for the care and community sectors; and
- A scheme allowing for the automatic termination of collective agreements which were created under predecessor legislation to the Fair Work Act, which have continued to operate.

Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth)

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Respect at Work Act imposes positive duty on employers and other organisations to eliminate certain kinds of gendered workplace misconduct and bolsters regulatory powers of the Australian Human Rights Commission

On 12 December 2022, the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (Cth)* (**Respect at Work Act**) received royal assent. The Respect at Work Act implements a number of key

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recommendations from a recent Australian Human Rights Commission report relating to the prevalence of sexual harassment and discrimination in Australian workplaces (**Respect@Work Report**). These changes build on legislation passed in 2021 by the previous Coalition government which implemented some, but not all, of the recommendations made by the Respect@Work Report.

The key changes implemented by the Respect at Work Act are summarised below. With the exception of expanding the Australian Human Rights Commission's functions to include enforcement of employer's duties to eliminate certain kinds of gendered workplace misconduct, the changes made by the Respect at Work Act took effect on 13 December 2022.

Positive duty to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment, victimisation and hostile workplace environments

The Respect@Work Report was critical of Australia's pre-existing statutory framework with respect to gendered workplace misconduct for not requiring employers and organisations to undertake sufficiently pro-active or preventative steps to stop this conduct from occurring. To remedy this concern, the Respect@Work Report recommended imposing a positive duty on employers and certain other organisations to take reasonable and proportionate measures to eliminate sex discrimination, sexual harassment and victimisation.

The Act gives effect to this recommendation by creating a 'positive duty' within the *Sex Discrimination Act 1984* (Cth) (**SDA**) requiring employers or a person conducting a business or undertaking (**PCBU**) to 'take reasonable and proportionate measures to eliminate, as far as possible' sex discrimination, sexual harassment, victimisation, and conduct that is prohibited under new provisions of the SDA relating to 'hostile workplace environments' (discussed below).

The term 'PCBU' is directly adopted from model work health and safety (**WHS**) legislation, and covers a broader range of individuals and entities than 'employer'.

Notably, there is some overlap between the matters that are to be taken into account in determining whether a duty holder has complied with the positive duty and those to be considered when determining what is 'reasonably practicable' in the context of duty-holders' obligations under WHS legislation. As such, in complying with the positive duty, organisations should approach any risk assessment through both a SDA and a WHS legislation lens to ensure that they are complying with both the positive duty that the Respect at Work Act creates, and their general duties under WHS legislation.

New enforcement powers for the Australian Human Rights Commission (commences 13 December 2023)

The Respect at Work Act also creates an enforcement regime for the positive duty, by vesting the Australian Human Rights Commission (**AHRC**) with power to:

- inquire into compliance with the positive duty;
- issue compliance notices if it finds a person is not complying;
- require persons to give information or produce documents;
- accept and enforce undertakings relating to compliance with the positive duty;
- apply to the federal courts for an order to enforce the compliance notice or undertaking. Employers and PCBUs will be entitled to dispute a compliance notice, or apply to the federal courts for review; and
- publish enforceable undertakings on its website.

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An individual would not be able to make a complaint to the AHRC and seek a remedy for a breach of the positive duty. Instead, the compliance function would rest with the AHRC.

In enforcing the positive duty, it would be open to the AHRC to initiate an inquiry concerning compliance with the positive duty if it 'reasonably suspects' that a person is not complying.

The compliance functions and powers the Respect at Work Act confers upon the AHRC will not commence until 13 December 2023.

'Hostile workplace environments': A new cause of action

The Respect at Work Act also amends the SDA to make it unlawful 'to subject another person to a workplace environment that is hostile on the ground of sex'. A 'hostile work environment' is an environment that is 'offensive, intimidating or humiliating [to a person] by reason of 2 or more matters that include the sex or characteristic, whether or not the sex or the characteristic is the dominant or substantial reason', provided 'a reasonable person, having regard to all the circumstances, would have anticipated the possibility of the conduct resulting in the workplace environment being offensive, intimidating or humiliating to a person of the sex of the second person by reason of' the person's sex or characteristic.

Examples of a hostile work environment may include 'displaying obscene or pornographic materials, general sexual banter, or innuendo and offensive jokes'.

Commission inquiries into systemic unlawful discrimination

The Respect at Work Act also enables the AHRC to inquire, on its own motion, 'into any matter that may relate to systemic unlawful discrimination or suspected systemic unlawful discrimination'. 'Unlawful discrimination' is systemic if it 'affects a class or group of person' and 'is continuous, repetitive or forms a pattern.'

Following an inquiry, the AHRC may publish a report in relation to the findings of its inquiry. However, the AHRC must not make an adverse finding about a person unless it has first given them a reasonable opportunity to make an oral or written submission to the AHRC.

Representative proceedings

Under the Respect at Work Act, representative bodies, such as unions, will be able to make representative applications in the federal courts on behalf of people who have experienced certain kinds of behaviour which is unlawful under the SDA. Currently, representative bodies can only initiate representative applications before the AHRC, not the federal courts.

The Respect@Work Report recommended that representative applications could address systemic problems that affect a wide class of person and provide a mechanism for genuine cases to be heard. This recognised the complexities of the court system can be difficult and costly for individuals.

Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022

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Circular on the Work Plan of Vigorously Implementing Work-relief Programmes in Key Construction Projects to Promote the Employment and Increase the Income for Local People

On July 5th, 2022, the General Office of the State Council forwarded the Circular on the Work Plan of Vigorously Implementing Work-relief Programmes in Key Construction Projects to Promote the Employment and Increase the Income for Local People (the "Plan") issued by the National Development and Reform Commission. The Plan specifies that the governmental departments shall promote work-relief programmes in the key construction projects with government investment to help people to obtain local employment and increase their incomes as much as possible, subject to balancing such programmes and the employment contract system in the construction industry. Implementing work-relief programmes in the key construction projects with no government investment is also encouraged to expand employment capacity. Relevant authorities shall work with development and reform departments to list key projects for work-relief programmes at the national level, formulate annual project list by industries, guide the local governments to establish local projects list for work-relief programmes and implement dynamic management.

The Plan also imposes respective requirements on the competent authorities, the competent local governments, the owners of key construction projects, the contractors and the supervisors at various project phases relating to preliminary governmental approval, design, tendering, construction (real-name management and remuneration payment) and inspection upon completion. For example, the competent authorities should include the relevant requirements for absorbing local employment in the approval documents for a construction project; the owner of a key construction project should clarify requirements on work-relief programmes and remuneration payment at the design and tendering stages of such project and specify the relevant obligations and liabilities in the construction service contracts with contractors. Upon the completion of such project, the inspection institution should conduct evaluation on the situation of work-relief programmes with the relevant authorities, the project owner, the contractor and the government at the county level where the project is located, the result of which is an important consideration in the project completion acceptance and the final accounts audit.

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Circular on Accelerating the Implementation of the One-off Job Increase Subsidy Policy

On July 25th, 2022, the General Office of the Ministry of Human Resources and Social Security, the General Office of the Ministry of Education, and the General Office of the Ministry of Finance jointly issued the Circular on Accelerating the Implementation of the One-off Job Increase Subsidy Policy (the "Circular"). The Circular stipulates that with respect to enterprises that recruit, conclude employment contract with and pay the unemployment insurance premiums for at least one month for the graduates of regular higher education institutes who graduated during January 2022 to December 2022, they are entitled to the one-off job increase subsidy with no more than RMB1,500 for each graduate recruited. This policy shall be implemented until the end of December 2022. The Circular also specifies that the employment insurance information relating to and the identification of each graduate can be used by only one enterprise for the one-off job increase subsidy and cannot be re-used. Enterprises cannot benefit from both the one-off job increase subsidy and the one-off employment absorption subsidy.

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Circular on Strengthening Administrative and Judicial Linkage to Protect Equal Employment Rights of Workers Recovered from COVID-19 and Other Workers

On August 10th, 2022, the Ministry of Human Resources and Social Security and the Supreme People's Court jointly issued the Circular on Strengthening Administrative and Judicial Linkage to Protect Equal Employment Rights of Workers Recovered from COVID-19 and Other Workers (the "Circular"). The Circular requires, in accordance with the Labor Law, the Employment Promotion Law, the Law on the Prevention and Treatment of Infectious Disease and the Interim Regulations for the Human Resources Market, employers and human resources service agencies to not discriminate against workers such as those recovered from COVID-19, or refuse to recruit or employ workers such as those recovered from COVID-19 on the grounds such as they have tested positive for COVID-19 nucleic acid, or publish recruitment information containing discriminatory content. Except for the purpose of epidemic prevention and control, employers shall not illegally inquire the COVID-19 nucleic acid test results in violation of the Personal Information Protection Law and other relevant provisions. Where employers discriminate against workers such as those recovered from COVID-19 in employment or illegally inquire the COVID-19 nucleic acid test result without authorization, employees may file a lawsuit to the People's Court in accordance with the law on the ground of infringement of rights of equal employment and personal information. Where human resources service agencies fail to fulfil their obligation to review the legality of the recruitment information posted by employers which contains discriminatory content against workers such as those recovered from COVID-19, they shall be seriously investigated and punished in accordance with the Interim Regulations for the Human Resources Market. In the process of hearing an employment discrimination case, if the People's Court finds that the recruitment information of the employer contains discriminatory content, it may notify the Human Resources and Social Security department of the potential unlawful act, the Human Resources and Social Security department shall promptly verify and report the investigation outcome of the relevant unlawful act to the People's Court.

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

On September 19th, 2022, the General Office of the Ministry of Human Resources and Social Security and three other authorities issued the Circular on Further Implementation of the Policy for Provisional Postponement of Social Security Payments (the "Circular"). The Circular specifies that starting from September 2022, in order to further implement the Circular on Expanding the Implementation Scope of the Policy for Provisional Postponement of Social Security Payments, each provincial-level region and the Xinjiang Production and Construction Corps may, in accordance with the pandemic situation in the region and the status of the social insurance fund, further expand the implementation scope of the policy for provisional postponement of social security payments to include all micro, small, and medium-sized enterprises, individual businesses participating in the social insurance scheme in the form of an entity as well as institutions and various social organizations that participate in the basic old-age insurance for enterprise employees which are severely affected by the pandemic and have difficulties in production and operation in the region. During the period of postponement, enterprises shall continue to fulfil the obligations to withhold and pay individual contributions on behalf of employees in accordance with the law. When the policy for provisional postponement of social security payments expires, enterprises are allowed to make up the deferred social insurance payments by the end of 2023 in a phased or monthly manner with no overdue fine imposed.

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Law of the People's Republic of China on the Protection of the Rights and Interests of Women (Revised in 2022)

On October 30th, 2022, the Standing Committee of the National People's Congress adopted the revised Law of the People's Republic of China on the Protection of the Rights and Interests of Women (the "Law on the Protection of the Rights and Interests of Women (Revised in 2022)"), which came into effect on January 1st, 2023.

The Law on the Protection of the Rights and Interests of Women (Revised in 2022) further specifies the requirements upon the employers in three areas: equal employment for women, prevention of sexual harassment against women, and protection of women's health at work, in particular:

- (1) in the process of recruitment and employment, unless otherwise stipulated by the state, employers shall not limit job candidates to males or stipulate that males are preferred, or set any restriction on marriage or childbirth or make the marital or childbirth status as a condition for recruitment or employment. Employers shall also not further inquire about or investigate the marital or childbirth status of a female job applicant in addition to her basic personal information, or include pregnancy test in the entry physical examination, or conduct other acts of refusing to recruit or employ women on the grounds of gender or raise the standards for recruiting or employing women in a differentiated manner. A fine of up to RMB50,000 may be imposed where the employers severely violate the aforementioned provisions or refuse to make corrections;
- (2) it specifies that employers shall adopt measures to prevent and stop any sexual harassment against women, for instance, formulating rules and regulations, clarifying the organization or person in charge, conducting education and training programmes, adopting necessary safeguard measures, setting up complaint channels, supporting and assisting the victimized female employees in safeguarding rights, and providing psychological counselling. In case where employers fail to take necessary measures to prevent and stop sexual harassment, resulting in infringement of women's rights and interests or adverse social impacts, the directly responsible officers and other persons directly liable may be punished where they refuse to make corrections or the violations are serious;
- (3) employers shall regularly arrange examinations for gynaecological diseases and breast diseases, and arrange other health examinations for women's special needs for female employees; and
- (4) employment contracts or service agreements shall contain special protection clauses for female employees, and collective contracts shall contain content related to gender equality, and the protection of the rights and interests of female employees.

Furthermore, the Law on the Protection of the Rights and Interests of Women (Revised in 2022) stipulates that the prosecutorial authorities may file public interest litigations where the legitimate rights and interests of women are severely infringed upon (for instance, infringements of women's rights and interests in equal employment, employers' failure to take reasonable measures to prevent and stop sexual harassment).

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Opinions of the Supreme People's Court on Providing Judicial Services and Support for Employment Stabilization

On December 26th, 2022, the Supreme People's Court issued the Opinions of the Supreme People's Court on Providing Judicial Services and Support for Employment Stabilization (the "Opinions"). (1) In terms of stabilizing market entities and supporting employment, the Opinions specifies that administrative cases ordering enterprises of supplementary payment of social security can be

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properly handled by extending the period for supplementary payment and taking into account the actual situation of resumption of work and production of enterprises. For employers entitled to provisional postponement of social security payments, the People's Courts shall prudently handle cases where workers claim to terminate employment contracts due to employers' failure to pay social security during the postponement period. For college graduates who could not return to work due to the epidemic and could not be reviewed in a flexible manner during the probation period, the period during which the review is not available, may be excluded in the agreed probation period after negotiation, but employer shall not stipulate a probation period exceeding the statutory maximum in any method. (2) In terms of standardizing the new forms of employment of platform economy such as online delivery, mobile travel and network broadcast, the Opinions stipulates that for employees who have not concluded written employment contracts, the existence of labor relationship between them and the platform enterprises or the labor cooperation entities shall be prudently determined according to the facts surrounding the employment and the degree of labor management. The People's Courts shall take various factors into consideration, such as the degree of autonomy that workers are entitled over their working hours and workload, the degree to which the working process is subject to management or control, whether workers shall comply with relevant work regulations, disciplines, reward and punishment policies, as well as the persistence of the work, and whether workers are able to determine or change the price of the transaction. The People's Court shall support workers' claim that their agreed remuneration cannot be deducted due to delayed work or negative evaluation from consumers as a result of non-subjective factors such as force majeure, acts of courage or emergency assistance by the workers, and obvious unreasonable workload or work intensity. The People's Court shall promote the improvement of the liability sharing mechanism for workers who suffer damages due to the performance of work. Where the algorithmic rules related to employment management do not conform to the rules of daily life experience, or do not consider the observance of traffic rules and other objective factors or fall within other situations contrary to public order and good morals, the People's Court shall support the workers' claims that the aforesaid algorithmic rules are not legally binding or for their claim for compensation, in accordance with applicable laws. (3) The Opinions also stipulates that in addition to reducing remuneration by negotiation in accordance with the law, the People's Court shall support workers' claims for remuneration payment on the normal standard for normal work provided through working from home or other flexible working approaches arranged by employers.

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Hong Kong Authorised Institutions to Implement Phase 1 of the Mandatory Reference Checking Scheme by May 2023

The Hong Kong Monetary Authority published a circular in May 2022 announcing its endorsement of the Mandatory Reference Checking (MRC) Scheme, including the Guidelines issued by the Hong Kong Association of Banks and the DTC Association. The MRC Scheme requires all Authorised Institutions (AIs) to conduct mandatory employment reference checks for specified positions falling within the scope of the MRC Scheme during the recruitment process.

AIs are required to approach former and current employers (limited to AIs) for information relevant to its assessment of the fitness and propriety of a job candidate. The AIs providing the relevant information should make the required disclosure within one month upon receipt of such request.

The MRC Scheme will be implemented in phases. AIs must put in place the necessary internal policies and procedures to implement Phase 1 by 2 May 2023. The positions to be covered in Phase 1 include directors, chief executives, alternative chief executives and managers as defined under the Banking Ordinance (Cap. 155), executive officers and responsible officers for securities, insurance and Mandatory Provident Fund regulated activities.

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Court of First Instance Confirms 'Modern' Judicial Approach to Penalty Clauses in a Hong Kong Employment Case

A penalty clause which requires a party who is in breach of the terms of the contract to provide compensation to the aggrieved party is generally unenforceable. In the case of *Ng Yan Kit Alfred and Another v. Ever Honest Industries Ltd and Another*, the Court confirmed that a two-step approach (instead of the 'genuine pre-estimate of loss' approach) should be adopted in determining whether a clause is unenforceable as a penalty clause.

For more details, see our legal update at the [link](#).

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When are 'Settlement Agreements' Unenforceable?

In the case of *Dock Brian v Pacific Gourmet Holdings Ltd* [2022] HKCFI 444, the Hong Kong Court of First Instance (CFI) heard an appeal from the Labour Tribunal (LT) concerning a purported settlement agreement that the employee entered into on termination of employment. The CFI found that the LT had erred in law by holding that it had no jurisdiction to hear the case on the ground that the dispute concerned a 'settlement agreement'. The case was referred back to the LT for re-consideration and determination.

The CFI clarified the key elements for a valid settlement agreement:

- It must be supported by fresh legal consideration. Mere payment of what was already owed to an employee will not be considered consideration.
- There must be clear terms to settle or waive some other claim. A provision simply to confirm or acknowledge the calculations of the employee's final payment will not suffice.
- The settlement agreement cannot trump the statutory rights and protections in the Employment Ordinance (Cap. 57) (EO). A settlement agreement must be properly drafted and executed in order to 'release' the claims of an employee against an employer.
- Section 70 of the EO prohibits parties from agreeing to reduce or extinguish the statutory rights and benefits conferred upon the employee under the EO. Section 70 applies to the terms of the employment contract; it will not apply to a valid settlement agreement that is properly negotiated at the end of the employment relationship dealing with cessation of employment and post-termination obligations.

For more details, see our legal update at the [link](#).

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'Pro-Female Bias' found to be sex discrimination by Hong Kong District Court

In the case of *Tan, Shaun Zhi Ming v Euromoney Institutional Investor (Jersey) Ltd* [2022] HKDC 622, the District Court (DC) ruled in favour of an employee claiming sex discrimination for having his employment terminated after refusing to apologise to a female co-worker who accused him of sexual harassment.

The employee argued that the employer's decision to terminate was due to a "pro-female bias" and because the sexual harassment accuser was female, the employer was so scared of being accused of not doing enough that it was willing to discard the truth and due process to get rid of the issue as fast as possible.

The DC agreed with the employee – had the employee been a woman, the employer would not have treated the employee in the same way. The DC held that the employer breached the Sex Discrimination Ordinance (Cap. 480) and granted the employee: (1) a declaration that the employer's decision to terminate the employee was based on sex discrimination and is unlawful; (2) damages by way of compensation; and (3) an apology order.

For more details, see our legal update at the [link](#).

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Hong Kong Competition Commission warns of competition concerns over employers' joint negotiation with employee bodies

The Hong Kong Competition Commission published an advisory bulletin (Advisory Bulletin) on 29 August 2022 regarding competition concerns over the sharing of information on employment conditions among employers in the context of joint negotiations.

The Advisory Bulletin addressed the situation where a group of employers jointly negotiate with employee bodies to determine employees' compensation and other employment conditions. While the purpose of joint negotiations may improve employment conditions for employees, the process may involve the sharing of competitively sensitive information regarding employment conditions between employers and may give rise to issues under the Competition Ordinance (Cap. 619) (CO).

Employers are reminded that the CO does apply to the employment context and they need to be careful to comply with the obligations under that Ordinance.

For more details, see our legal update at the [link](#).

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Hong Kong Court of Appeal Confirms Employee on Standby Not Granted Rest Days

In *Breton Jean v 香港丽翔公务航空有限公司 (HK Bellawings Jet Limited)* [2022] HKCA 1736, the Court of Appeal (CA) upheld the District Court (DC) decision in allowing the employee's claim for unpaid and untaken statutory rest days, since days required to be on standby should not be regarded as "rest day" or "day off".

The employee had no regular working hours and was required to work on demand. The employee argued that during his employment he was either on flight duty or standby duty except when he was on annual leave. Hence, he was not granted statutory rest days as required under the Employment Ordinance (EO).

The DC considered that if the employee is truly on rest day, he should be entitled to abstain from working. The employer was held liable for failing to grant more than 120 statutory rest days which was assessed at over HK\$660,000.

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On appeal, the employer argued, among other things, that the DC judge was wrong to adopt notion and related principles of statutory "rest days" under section 2 of the EO. The CA disagreed, holding that while the expression of "day off" in the employment contract need not bear the same meaning as "rest day" in the EO, the meaning of "rest day" in the EO is clearly relevant to construing the meaning of "day off" in the employment contract.

For more details on the CA decision, see our legal update at the [link](#).

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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.

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Implementation of labour codes delayed beyond July 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 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 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 Q2 of 2022 until December 2022:

a. Draft State Rules for Wage Code:

The state of Andhra Pradesh has released the draft state rules under the Wage Code for public comments. The draft state Wage Code rules provide the 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 Mizoram and Andhra Pradesh 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, 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 union territory of Puducherry 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

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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:

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The state governments of Mizoram and Andhra Pradesh have released the state rules under the 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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Notification on conditions for employing women in night shifts in establishments in Haryana

The Government of Haryana has prescribed conditions for exemptions from restrictions on employing women employees in night shifts (i.e., from 7PM to 8AM) by IT/ITEs establishments, banking institutions, three-star or above hotels, hundred percent export-oriented establishments, logistics, and warehousing establishments. The government of Haryana had extended this provision to warehousing and logistics establishments by way of notification dated 17 May 2022. The conditions to be met for grant of exemption are set out below:

- Express prohibition of any form of sexual harassment. Framing rules relating to prohibition of sexual harassment and ensuring compliance with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- Transport facilities equipped with CCTV cameras to be provided to women working at night from their residence and back and security guards (including female security guard). Sufficient security at entry and exit points.
- Proper lighting and CCTV cameras to be installed in the shops/establishments as well as the areas surrounding the shops/establishments where the women employees may move out in necessity in the course of her work.
- Women employees must not be employed in a group of fewer than 10 in a batch and the number of women employees employed in the night shift is not less than 2/3rd of the total strength of the batch.
- Not less than 1/3rd of the strength of supervisors or shift-in-charge or other supervisory staff in the night shift must be women.
- Declaration/consent of women employees must be obtained in writing in advance and a copy of the same shall be forwarded to the Labour Commissioner, Haryana.
- Ensuring compliance with the provisions of the Haryana Shops and Commercial Establishments Act, 1958 especially with provisions relating to working hours and Equal Remuneration Act, 1976 for payment and with all other applicable labour and employment laws.
- If the establishment/management provides boarding and lodging arrangements for the women employees, the same must be maintained exclusively for the women under the control of women wardens or supervisors.

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- Establishment/management must provide for appropriate medical facilities and make available at any time of urgency by providing necessary telephone arrangement. Further, where the number of women employees in a shift is 100 or more in a shift, a separate vehicle must be kept ready to deal with emergency situations.
- The women employees should be allowed to raise issues of sexual harassment to workers in the workers' meeting and other appropriate forums, written or in electronic form or through a complaint box.
- The women employees must be made aware of their rights by prominently notifying the guidelines on the subject of sexual harassment.
- There shall be not less than 12 consecutive hours of rest or gap between the last shifts and the night shift wherever a woman employee is changed from day shift to night shift and so also from night shift to day shift.
- Separate canteen facilities must be provided for women employees if the number of women employees is 50 or more.
- Women employees working in night shifts and regular shifts must have a monthly meeting through their representative with principal employer once in eight weeks as grievance day and the employer shall try to comply all just and reasonable grievances.
- Submission of a half-yearly report by the employer to the Labour Commissioner, Haryana regarding the details of employees engaged during night shifts and must send an immediate report to the Labour Commissioner and local police station if an untoward incident takes place.
- Security Incharge/Management to maintain a Boarding Register/Digitally signed computerized record consisting of the following details - (a) Date, (b) Name of the Model & Manufacturing of the Vehicle, (c) Vehicle Registration No., (d) Name, Address, Phone/Contact No. of the Driver, and (e) Time Pick up of the women employees from the establishment destination.

Further, exemption granted shall be valid for a period of 1 year.

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All establishments permitted to remain open throughout the year in Punjab

The state government permitted all establishments under the Punjab Shops and Commercial Establishments Act, 1958 (**Punjab S&E**) to remain open for 365 days of the year for a further period of 1 year till 31 May 2023, subject to compliance with the conditions prescribed in the notification. The key conditions are:

- Compliance with the provisions relating to weekly holiday, daily and weekly working hours, payment of overtime wages, spread over, rest intervals etc. under the Punjab S&E.
- Adequate safety and security measures to be ensured for employees and visitors if an establishment remains open beyond 10PM on any day.
- New staff to be hired for the extended timings as establishments have been permitted to be open for all days.
- Separate locker, security and rest rooms to be provided at work place to women employees.
- Written consent of the women employees who work after 8PM is required. Adequate safety and security arrangements to be maintained during working hours, and safe travel to home from work to be ensured. Records of consent letters to be maintained.

Further, non-compliance with the prescribed conditions or any provision of the Punjab S&E could lead to cancellation of the exemption after giving a due opportunity of being heard by the competent authority.

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Rights of Persons with Disabilities (Amendment) Rules, 2022 (RPwD Amendment Rules)

Draft RPwD Amendment Rules amends Rule 15 of the Rights of Persons with Disabilities Rules, 2017. It provides for substitution of clause (a) of sub-rule (1) of Rule 15 with the following clause: “ (a) *Standard for public buildings as specified in the Harmonised Guidelines and Standards for Universal Accessibility in India – 2021, issued by the Government of India, Ministry of Housing and Urban Affairs vide letter no. 28012/09/2019-W3, dated the 27th December, 2021, as amended from time to time and made available on https://drive.google.com/file/d/1d4dedBt2cw-JEvY_qqSodQ9ENfOyNfef/view; ”.*

Currently, the clause (a) provides for the Harmonised Guidelines and Space Standards for Barrier Free Built Environment for Persons with Disabilities and Elderly Persons issued by the Ministry of Urban Development in March, 2016. The amendment is to provide for the guidelines issued in December 2021 and a link to the said guidelines.

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Introduction of online portal of Delhi Labour Welfare Board

The Government of Delhi has introduced the portal of Delhi Labour Welfare Board (<https://dlabourwelfareboard.delhi.gov.in/index.php>) with effect from 1st July 2022 for providing services including registration of establishment, online deposit, or submission of contributions from employers and employees, online closure of employer establishment, etc.

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Notification prescribing conditions for availing exemption for employing women during night shifts in factories in Haryana

The state government has issued a notification prescribing the conditions to be met for availing the exemption for employment of women in factories at night (i.e. between the hours of 7PM to 6AM). The key conditions to be met are as follows:

- Ensuring compliance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- Transport facilities equipped with CCTV cameras to be provided to women working at night. Sufficient security at entry and exit points.
- Proper lighting and CCTV cameras to be installed in the factory as well as the areas surrounding the factory where the women employees may move out in necessity in the course of her work.
- Women employees must not be employed in a group of fewer than 10 in a batch and the number of women employees employed in the night shift is not less than 2/3rd of the total strength of the batch.
- Not less than 1/3rd of the strength of supervisors and supervisory staff in the night shift must be women.
- Declaration/consent of women employees must be obtained in writing in advance.
- Ensuring compliance with the provisions of Factories Act, 1948 especially provisions relating to working hours, rest intervals, separate canteen or rest room facility etc., provisions of Equal Remuneration Act, 1976 and all other applicable labour laws.
- Occupier must provide for appropriate medical facilities by engaging a doctor or female nurse during night shift. Further, where the number of women employees in a shift is 100 or more, a separate vehicle must be kept ready to deal with emergency situations.

Further, the notification prescribes a format of the information sheet that must be submitted by the occupier or manager along with the application for exemption for employment of women at night in the factory.

[More...](#) (hindi version)

[More...](#) (circular issued before publication of the notification in the official gazette)

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Notification on conditions for employing women employees during night shifts in shops and commercial establishments in Madhya Pradesh

The state government of Madhya Pradesh has prescribed conditions for employing women employees in night shifts (i.e., between the hours of 9PM to 7AM). The key requirements for employing women employees at night are set out below:

- Compliance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 by the employer.
- Women employees must not be employed in a group of fewer than 10 in a batch and the number of women employees employed in the night shift is not less than 2/3rd of the total strength of the batch.
- Transportation services from and to the residence of women employees employed during night shifts must be provided to the women employees and adequate security must be provided at entry and exit points.
- Not less than 1/3rd of the strength of supervisors and supervisory staff in the night shift must be women.
- Submission of a monthly report to the Labour Officer/Assistant Labour Commissioner regarding the details of employees engaged during night shifts and sending an express report to the Labour Officer/Assistant Labour Commissioner and local police station if an untoward incident takes place.

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The Kerala Shops and Commercial Establishments (Amendment) Rules, 2022 (Kerala S&E Amendment Rules)

The state government with the intent to facilitate ease of doing business has introduced the Kerala S&E Amendment Rules. The key highlights of the Kerala S&E Amendment Rules are set out below:

- There is no longer a requirement to obtain duplicate registration certificate in case of loss/ theft/ destruction of the original registration certificate;
- There is no longer a requirement to submit quarterly returns in Form H.

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Amendment to provisions on registration and renewal of licence under the Uttar Pradesh Dookan Aur Vanijya Adhishthan Niyamawali, 1963 (UP S&E Rules).

Rule 2-A of the UP S&E Rules sets out the procedure for registration and renewal of licence and was amended as follows:

- The registration application must now be made to the Labour Commissioner and registration fees will be a one-time payment based on the maximum number of employees employed during a financial year;
- There is no longer a requirement to renew the registration certificate after 5 years and registration is a one-time event. However, existing registrations (i.e., registrations provided for a period of 5 years) can be renewed once on payment of the revised fees;
- Late fee on application or renewal of the licence has been reduced from 12.5% to 1% of the registration fee.

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Launch of online portal for submitting applications seeking exemptions under Sections 14, 15 and 16 of the Delhi Shops and Establishments Act, 1954.

The Delhi Government has launched an online portal for establishments to submit their applications seeking exemption for the following:

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1. Section 14 - Women to work at night (i.e., between the hours of 9PM to 7AM during summer and between 8PM to 8AM during winter);
2. Section 15 - Changing working hours;
3. Section 16 - Working during weekly off day or national holidays.

The online portal will be accessible from 8 August 2022 through URL [More...](#)

Notification for conditions for employing women employees during night shifts in factories in Himachal Pradesh

The state government of Himachal Pradesh has prescribed conditions for employing women in factories in night shifts (i.e., between the hours of 7PM to 6AM). The notification is valid for a period of 3 years (i.e., until 12 August 2025). The requirements for employing women employees at night are as follows:

- Written consent from the women employees must be obtained in advance.
- Compliance with daily and weekly working hours (i.e., 8 hours and 48 hours respectively).
- The employment of such women employees must not be contrary to the provisions laid down in the Maternity Benefits Act, 1961.
- Transportation services (along with security guards) must be provided to women employees from their residence and back (for the night shift). The occupier/manager of the factory must intimate the proposed arrangement to the concerned regional inspector, affording him a minimum of 7 days for such verification.
- The women employees should be sufficiently supervised during their working hours and during the journey from their residence and back.
- Proper lighting at the establishment, as well as its immediate surroundings must be ensured. Toilets, washrooms and drinking water facilities should be provided near to the workplace.
- Appropriate medical facilities and necessary telephone arrangement for time of urgency must be provided to the women employees. In situations where more than 100 women employees are employed in a night shift, a separate vehicle must be kept on standby in case of emergencies.
- All women employees must have a meeting with their principal employer once in 8 weeks as 'grievance day' and employers must make efforts to resolve reasonable grievances.
- The occupier/manager of the factory must ensure compliance with the Sexual Harassment at Workplace (Prohibition, Prevention and Redressal) Act, 2013.
- Employers must send a fortnightly report to the inspector with details of employees engaged in the night shift and must send an express report to the inspector and local police station if an untoward incident takes place.

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Goa Factories (Sixteenth Amendment) Rules, 2022

The Goa Factories (Sixteenth Amendment) Rules, 2022 amend the Rule 18A of Goa Factories Rules, 1985. The Rule 18A gives the Chief Inspector power to issue directions to shut down a factory or prohibit certain plant operations if there is a risk to human safety or environment pollution. The second proviso to the rule provides that no show cause notice would be issued to the occupier or manager of the factory to explain as to why the directions should not be issued in cases where the activity or the manufacturing process so carried out causes pollution or degradation of the general environment and/or the working conditions in a factory is in such a condition that it involves imminent danger to human life or safety. The amended Rule 18A includes "or where any premises is being used as a factory without obtaining a licence under rule 7 from the Chief Inspector" in the second proviso in addition to the other cases mentioned above.

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Gujarat Building and Other Construction Workers (Regulation of Employment and Conditions of Service) (Amendment) Rules, 2022 (Gujarat BOCW Amendment Rules)

The Gujarat BOCW Amendment Rules amend the time-frame for the issuance of registration certificate under the Gujarat Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2003, from fifteen days to thirty days from the date of application effective from 17th September 2022.

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Jharkhand Shops and Establishment Act (Jharkhand Amendment) Act, 2015 (Jharkhand S&E Amendment Act)

The Jharkhand S&E Amendment Act is enacted to amend the Section 14 of the Jharkhand Shops and Establishment Act, 1953. Section 14 prohibits the employment of young persons and women as an employee or otherwise before 8AM and after 10PM in establishments. The Jharkhand S&E Amendment Act has introduced a proviso to Section 14 to provide that where it is unreasonable to regulate the period of work of a woman employee due to the nature of work carried on or other circumstances, a written order may be issued by the state government to modify/relax the above section for a category of establishment/particular category of establishment. Further, before passing any such order, safety and welfare issues of women employees will be taken into consideration.

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Regional Provident Fund Commissioner (RPFC) to consider applications for withdrawal of prosecution cases related to non-submission of Know your Customer (KYC) documents

The Employees' Provident Fund Organisation (**EPFO**) issued a circular authorising the RPFC to consider applications for withdrawal of prosecution cases for non-submission of KYC documents, subject to the following terms:

- Such applications should be filed by employers before the RPFC/ competent court.
- The employers must have made the necessary compliances and filed the KYC documents for the concerned employees.
- The employers must submit an undertaking stating they would comply with statutory provisions in relation to filing of KYC documents in the future.

The cost of legal and other expenses incurred during the course of such prosecutions would not be demanded from such employers.

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The Manipur Professions, Trades, Callings and Employments Taxation (Amendment) Rules, 2022

The Government of Manipur has notified amendments to various provisions and forms of the Manipur Professions, Trades, Callings and Employments Taxation Rules, 1982, including provisions pertaining to the Certificate of Registration and Enrolment, Deduction at Source and Liability of Enrolled Persons.

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INDIA
**13
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Conditions for employing women employees during night shifts in commercial establishments in Telangana

The state government of Telangana has prescribed conditions for employing women employees in night shifts (i.e., between the hours of 8:30PM to 6AM), which are set out below:

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- Written consent of the women employees must be obtained.
- Transportation services must be provided to the women employees from their residence and back (for the night shift) and sufficient security guards should be provided in night shift vehicles.
- The scheduled route, and the order of pick-ups and drops should be decided by employers, who should ensure that no women employee is picked up first and dropped last by the transportation vehicle at night.
- Personal details (such as mobile numbers, email addresses and addresses) of women employees in the night shift should not be disclosed to unauthorized persons.
- Adequate security measures and amenities such as sufficient security guards, rest rooms, female toilets, and night creches should be provided to women employees during the night shift.
- Women employees must not be employed in a group of fewer than 5 and employment of these women employees in the night shift should be on a rotation basis.
- Employers must comply with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- Women employees would not be permitted to work in night shifts 16 weeks before and after childbirth (of which at least 8 weeks should be prior to their delivery date) and for such additional period, if any, as specified in the medical certificate stating that it is necessary for the health of the woman worker or her child.

A violation of the conditions set out above could result in revocation of the exemption to employ women in night shifts and/or cancellation of the registration certificate of the establishment.

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Rajasthan Factories (Draft Amendment) Rules, 2022

The state government has proposed various amendments to the provisions of the Rajasthan Factories Rules, 1951. The proposed amendments are set out below:

- There will not be a requirement to submit the plan drawn to scale showing in triplicate for the approval of the plans.
- Introduced sub-rule (2) to Rule 4 for automatic generation of registration number upon submission of Form 1 and Form 2. Form 2 shall be deemed incomplete if K.No. of electricity connection is not submitted. The first proviso states that if application for approval of plans and grant of license is not made within 30 days of generation of registration number, the registration number generated shall be deemed to be cancelled and the application for registration would have to be made afresh.
- Further, the second proviso prescribes that a license will not be issued after automatic generation if any violation of any law or the processes carried on in the factory pose imminent danger to life due to explosive or inflammable gas, dust or fumes.
- Bank draft will no longer be accepted as a mode of payment of fee for application of license or renewal license (as the case may be).
- Deletion of Rule 47 which pertains to white washing of urinals and washrooms.
- Form 1 and Form 2 are substituted by the formats prescribed in the notification.

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INDIA

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2022

Circular on restrictions on employment of women in factories in Andhra Pradesh subject to conditions.

The state government of Andhra Pradesh has prescribed conditions for employing women employees in factories in the night shifts (i.e., between the hours of 7PM to 6AM). The requirements for employing women employees at night are set out below:

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- Written consent from the women employees must be obtained in advance.
- The employment of such women employees must not be contrary to the provisions laid down in the Maternity Benefit Act, 1961.
- Transportation services must be provided to the women employees from their residence and back (for the night shift).
- Proper lighting at the establishment must be ensured.
- Basic amenities such as washrooms and drinking water facilities must be provided to the women employees.
- Compliance with the Sexual Harassment at Workplace (Prohibition, Prevention and Redressal) Act, 2013 must be ensured.

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Circular to employers to exercise stricter control and vigil over usage of employees' login credentials while registration on ESIC portal issued by Employees State Insurance Corporation (ESIC).

ESIC has observed that a lot of employees are tagged to a common bank account number. This paves way for misuse of benefits payable to the insured person. It is suspected that some HR/external consultants tasked with employee registration were using this method to misappropriate and siphon funds using employer's login. Such act would attract penalty under the provisions of Indian Penal Code, 1860. Therefore, ESIC has alerted employers to exercise stricter control and vigil over usage of login credentials while registering the employees on ESIC portal to avoid such pitfalls. All employers are requested to ascertain that bank and other details of employees are accurately submitted only on the basis of valid supporting documents into the portal.

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2022

Automatic sanction of registration and license under the Contract Labour (Regulation and Abolition) Act, 1970 (CLRA) in Rajasthan

To facilitate the ease of doing business, the state government has introduced a system of automatic sanction and generation of registration and license under the CLRA.

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2022

Permission for shops and establishments to remain open throughout the year in Puducherry

Shops and establishments employing ten or more employees are permitted to remain open 24 hours for all days of the year, for three years (i.e. until 26 October 2025), subject to the conditions specified in the notification issued by the government of Puducherry. The key conditions prescribed in the notification are:

- Employees to be provided with one holiday in a week on rotation basis. Details of employees to be provided in Form IX and displayed at a conspicuous place in the premises of the establishment.
- Ensuring compliance with provisions of daily and weekly working hours (i.e., 8 hours and 48 hours respectively), rest interval, spread over, payment of wages, payment of overtime and holidays.
- Provision of basic amenities such as washrooms, lockers, etc., to employees.
- Obtaining written consent from women employees for allowing them to work between 08:00PM to 06:00AM.
- Transport facilities to be provided to women employees who work in shifts.
- Ensuring compliance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

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Circular on compliance with the Payment of Bonus Act, 1965 (Circular) issued by Labour Department of Union Territory of Dadra & Nagar Haveli and Daman & Diu

The Circular provides instructions to all industrial establishments and other establishments in the Union Territory of Dadra & Nagar Haveli and Daman & Diu to ensure compliance with the Payment of Bonus Act, 1961. The instructions require the employers to pay bonus to the employees on time and submit annual return immediately after the payment of bonus to employees. Non-compliance would attract penal action.

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Retail enterprises in Andhra Pradesh permitted to remain open throughout the year

Retail enterprises in Andhra Pradesh are now allowed to remain open for all days of the year for a period of five years (i.e., until 31 October 2027). The exemption is subject to compliance with provisions relating to weekly holiday, working hours, overtime, holidays, remittance of statutory provident fund and employee's state insurance contributions etc.

Further, the retail enterprises are allowed to employ women employees at night provided that adequate security and protection measures are taken, and the employers assume responsibility for the safe return of these women employees to their residence. Some other conditions for retail enterprises to remain open on all days are set out below:

- Manpower deployment details must be included in the application for registration of an employer. This application can be submitted online, as per the Integrated Registration Act, 2015.
- Retail enterprises may be open between 6AM-11PM provided that employees work in a maximum of two shifts (with a minimum of 1 hour changeover period) and employers furnish shift-wise employee details, specifying weekly holidays for each employee.
- Part time employment can be offered by retail enterprises; however, the working hours of such part time employees must be expressly stated. The wages of such employees must not be less than the wage rate prescribed under the Minimum Wages Act, 1948. Further, not more than 25% of the workforce of the retail enterprises can be engaged as part time employees.
- Retail enterprises must adhere to the provisions of the Prevention of Child and Adolescent Labour (Prohibition and Regulation) Act 1986.
- Wages and other remuneration should be remitted to the bank accounts of the employees.
- Appointment letters must be furnished to all employees, and a copy must be sent to the Inspector having jurisdiction.
- Records such as wages register, muster roll, etc. are allowed to be maintained online and must be accessible to the Inspector.

[More...](#)

INDIA

02
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2022

Draft notification for amendment of the Tamil Nadu Factories Rules, 1950 (TN Factories Rules)

The government of Tamil Nadu has issued draft notification for the amendment of the TN Factories Rules. Rule 47 pertains to the whitewashing of urinals and washrooms in the factories. The draft amendment provides for omission of the said Rule 47.

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The constitutional validity of the notification dated 22 August 2014 bearing no. G.S.R. 609 (E) amending the Employees' Pension Scheme, 1995, was upheld in judgement passed by Supreme Court (SC)

On 4 November 2022, the SC upheld the constitutional validity of the notification dated 22 August 2014 bearing no. G.S.R. 609 (E) (**2014 Amendment**). The 2014 Amendment sought to bring changes to paragraph 11 of the Employees' Pension Scheme, 1995 (**Pension Scheme**). The key takeaways from this judgement are set out below:

- The SC held that the central government had sufficient authority to modify the Pension Scheme.
- The SC approved the 2014 Amendment insofar as it had fixed the "cut-off" date for the exercise of the fresh option, i.e., within 6 – 12 months (as the case may be) from 1 September 2014.
- The portion of the 2014 Amendment which required employees to make additional contribution at a rate of 1.16% was struck down by the SC. However, the operation of this portion of the judgement has been suspended for a period of 6 months from the date of this judgement so that changes (if any) can be carried out by the legislature by way of amendment to the Pension Scheme or Employee's Provident Fund and Miscellaneous Provisions Act, 1952.
- The SC held that the alteration made to the calculation of 'pensionable salary' from an average of 12 months (preceding the retirement of the employee/their departure from the establishment) to the average of 60 months was valid.

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2022

Draft Notification of Apprenticeship (Amendment) Rules, 2022

The Apprenticeship (Amendment) Rules, 2022 amend the Clause 4(a) in Paragraph I of Schedule V of Apprenticeship Rules, 1992, regarding the stipend to be paid to the apprentice. The aforesaid amendment rules will come into force after the same are published in the official gazette.

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INDIA
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Notification for employers' compliance with Employees' State Insurance Act, 1948 (ESI Act) by the Employees State Insurance Corporation, Haryana

The Regional Office, Haryana, of Employees State Insurance Corporation issued a notification instructing all employers registered through the Ministry of Corporate Affairs Portal (**Portal**) in the state of Haryana to comply with various applicable provisions of the ESI Act, from the date of reaching the threshold limit of employees.

In case the companies registered through the Portal are not falling under the purview of statutory provisions of the ESI Act, they need not comply for the next 6 months or till they reach the threshold of ESIC coverage, whichever is earlier. If a company does not reach the threshold in six months, they have to login to the ESIC website to further extend the 'dormant' mode. If they do not extend their 'dormant' mode, the registration will automatically be activated, and post that, the company must start complying with the ESIC Act.

[More...](#)

INDIA
**02
DEC**
2022

Rates of Labour Welfare Fund Contribution revised in Tamil Nadu

The Government of Tamil Nadu has revised the rate of contribution, under the Tamil Nadu Labour Welfare Fund Rules, 1973, from ten rupees to twenty rupees for employees and twenty rupees to forty rupees for employers, with effect from 2 December 2022.

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Special Economic Zones (Fifth Amendment) Rules, 2022

The government of India has notified the Special Economic Zones (Fifth Amendment) Rules, 2022 which has amended the Rule 43A of the Special Economic Zones Rules, 2006. Rule 43A of the SEZ Rules, 2006 (**SEZ Rules**), which was introduced in July 2022 for streamlining work from home (**WFH**) provisions has now been substituted with a new Rule 43A. The new Rule 43A further relaxes the requirements for opting for WFH and changes the regime from one of 'approval' to 'prior intimation'. Key features of the new Rule 43A are:

1. A unit may now allow all of its employees to WFH without any upper limit. The expression 'employees' would cover all persons: (i) employed on the rolls of the unit, (ii) employed under a direct contract with the unit, or (iii) employed with the unit, where the unit is the principal employer under a contract with another organisation where such persons are expected to report on a day-to-day basis report for work to the unit and the unit administers the control over their attendance. This is in contrast to the erstwhile Rule 43A which, by default, permitted up to 50% of the employees and up to 100% on furnishing *bona fide* reasons.
2. The units intending to extend WFH facility to its employees may do so by intimating the Development Commissioner through an email on or before commencing WFH. The units that were already WFH under the erstwhile Rule 43A and intend to continue under the new Rule 43A shall be required to intimate the Development Commissioner through an email on or before 31 January 2023.
3. While sending the intimation to the Development Commissioner, the unit would not be required to submit a list of employees who are being allowed to WFH. That said, the unit would have to maintain such list internally and would also be required to submit it for verification before the Development Commissioner, whenever required.
4. WFH facility under the new Rule 43A would be valid up to 31 December 2023.
5. The units may provide to its employees duty-free goods, such as laptops, desktops, and other electronic equipment which may be required by employees for WFH. The unit would be required to duly account for such goods in its records and would also be required to ensure that such goods are available for verification, if necessary. The permission to take the duty-free goods out of the unit will be co-terminus with the validity of the WFH facility.

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Amendment to Andhra Pradesh Maternity Benefit Rules, 1966 (AP Maternity Benefit Rules)

The state government amended the AP Maternity Benefit Rules to revise the number of nursing breaks from two to four breaks. Further, the amendment has introduced a new Rule 6A to provide for creche facilities, details of availability of creche to be specified in the appointment letters and displayed at the premises of the establishment, specification of creche facility, forms a woman employee must submit to (i) convey her intention to work from home and (ii) to avail maternity benefit if the employee is a commissioning mother or adopting mother.

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INDONESIA

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Tuberculosis Countermeasures in the Workplace

In consideration of the Government of Indonesia's pledge to eliminate tuberculosis by 2030, on September 22, 2022, the Minister of Manpower issued MOM Regulation No. 13 Year 2022 ("**MOM 13**") to help manage tuberculosis in the workplace.

MOM 13 requires employers to put in place various tuberculosis countermeasures in the workplace. Under the regulation, employers are required to:

1. Create and put in place a policy to manage tuberculosis in the workplace.
2. Provide information to and educate employees about tuberculosis in the workplace.
3. Identify cases of tuberculosis in the workplace.
4. Manage cases of tuberculosis in the workplace.
5. Provide health recovery support to employees who have had tuberculosis.

MOM 13 also provides new rules for the prevention of tuberculosis transmission. Article 6 of MOM 13 requires employers to provide a minimum two-week sick leave to employees in the initial stage of treatment for tuberculosis and/or according to the recommendation of the company doctor or the treating doctor.

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INDONESIA

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Selection Process for Labor Court Ad Hoc Judges

Minister of Manpower Regulation No. 14 Year 2022 regarding Procedures for Proposing and the Administrative Selection of Ad Hoc Judges for the Labor Court ("**MOM 14**") was enacted on October 11, 2022. MOM 14 revokes the previous regulation on this matter, i.e., MOM Regulation No. PER.01/MEN/XII/2004.

Under MOM 14, the Manpower Ministry is required to form a selection committee to verify that candidates for ad hoc judges at the Labor Court fulfil all the administrative requirements, which include:

- general requirements; and
- required documents including recommendations from a labor union or chamber of commerce.

In general, candidates must meet the following requirements:

- Indonesian citizen;
- believe in God;
- loyal to the Indonesian state philosophy, Pancasila, and the 1945 Constitution;
- at least 30 years old;
- in good physical health, as evidenced by a doctor's statement;
- authoritative, honest, fair, and of impeccable character;
- have at least a bachelor's degree; and
- possess at least five years of experience in the field of industrial relations.

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Minimum Wage in 2023

The Indonesian Minister of Manpower ("**MOM**") has issued Regulation No. 18 Year 2022, dated November 17, 2022, regarding the Setting of Minimum Wage for 2023 ("**MOM 18**").

MOM 18 regulates that provincial and regency/city minimum wages for 2023 will be calculated using a formula that considers the variables of economic growth, inflation, and certain indices.

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MOM 18 stipulates that governors shall determine and announce provincial minimum wages for 2023 by November 28, 2022, and regency/city minimum wages no later than December 7, 2022. The regulation caps next year's minimum wage increases at 10 percent.

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2022

JAPAN

There are no significant policy, legal or case developments within the employment space during 2022 H2.

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CONTRIBUTED BY: ANDERSON MŌRI & TOMOTSUNE

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MALAYSIA

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Deferment of the Employment Amendment Act 2022 and the Employment (Amendment of First Schedule) Order 2022

The amendments to the Employment Act 1955 were initially scheduled to take effect on 1st September 2022.

However, the Malaysian government had in August 2022 announced that it would defer its implementation to 1st January 2023. It was reported that the deferment was partly due to the request of employers to be given more time to address issues such as shortage in foreign workers and the ongoing recovery from the effects of the Covid – 19 pandemic.

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E Tū Incorporated & Ors v Carter Holt Harvey LVL Limited [2022] NZEmpC 141

In August 2022, the Employment Court released a judgment relating to an employer's decision to direct employees to take annual leave during the first COVID-19 lockdown in 2020.

Section 18(3) of the Holidays Act 2003 (**Holidays Act**) provides that "*When annual holidays are to be taken by the employee is to be agreed between the employer and the employee*". However, section 19 of the Holidays Act sets out that where an employer and employee are unable to reach agreement under section 18(3), the employer can require the employee to take annual holidays by giving the employee 14 days' notice.

In this case, the employer had directed employees to take annual leave without first trying to reach agreement on annual leave being taken. The employer's position was that the Holidays Act does not impose any specific process obligation on an employer before it reaches an assessment that it is unable to reach agreement under section 18(3) of the Holidays Act. The employer also considered that any assessment may be based on its experience with the workforce, its commercial decision making, and what is practically open to the employer in the time available before it considers that holidays should begin (and any relevant circumstances). The employer also asserted that even if it had engaged with the individual employees and the union, agreement would not have been able to be reached.

The Employment Court observed that:

- Despite the rare and exceptional circumstances of the 2020 lockdown, employee rights and employer obligations had not been suspended;
- The Court did acknowledge that, while a more truncated process for reaching agreement may have been used, that did not mean that, objectively, agreement could not have been reached; and
- The Court did not accept that the employer "*was unable to reach agreement when it made no attempt to do so*" or that the employer "*was, in the circumstances, entitled to exercise management prerogative to require employees to take annual holidays*".

Accordingly, the Court found that the employer had no managerial prerogative to require employees to take annual leave, in the absence of trying to reach agreement. Accordingly, the direction given by the employer was unlawful.

[See the decision here.](#)

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Screen Industry Workers Act 2022

The Screen Industry Workers Bill received Royal Assent on 30 September 2022, and the Screen Industry Workers Act 2022 (**Act**) will come into force on 30 December 2022.

The Act will overturn the Employment Relations (Film Production Work) Amendment Act 2010 (commonly referred to as the Hobbit Law), which was a response to the Supreme Court's decision in *Bryson v Three Foot Six Ltd* [2005] NZSC 34 (where the Court had held that a film production worker on an independent contractor agreement, was in reality an employee). The new Act will remove film production workers from the legal definition of an employee unless they have agreed to a written employment agreement.

Key points of the new Act

The Act will potentially have a significant impact for New Zealand screen industry workplaces, as it provides a new employment framework that:

- clarifies the employment status of people doing screen production work;
- introduces a duty of good faith and mandatory terms for contracting relationships in the screen industry;

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- provides for the incorporation of worker organisations and engager organisations;
- allows for collective bargaining at the occupation and enterprise levels for minimum terms and conditions of work across the screen industry; and
- creates processes for resolving disputes arising from contracting relations or collective bargaining, which include permitting the Employment Relations Authority to fix terms of a collective contract if parties are unable to reach an agreement.

Application of the Act

The Act applies to independent contractors engaged as screen production workers in the areas of computer-generated games, films and programmes in New Zealand. It will not apply to any employees, nor will it apply to contractors who work in a number of screen productions including news and current affairs programmes, talk show programmes, sport programmes or live events.

All new contracts will be required to comply with the Act from 30 December 2022 and a 12-month grace period will be granted for existing contracts.

[See the Act here.](#)

E Tū Incorporated v Rasier Operations BV [2022] NZEmpC 192 EMPC230/2021

The Employment Court's judgment of *E Tū Inc v Rasier Operations BV* considered the position of four drivers (a mix of Uber and Uber Eats drivers) and found that they were employees.

Cases regarding the status of a worker consider the application of section 6 of the Employment Relations Act, which requires a consideration of the "real nature of the relationship" between the parties. The line of case law in this area has looked at this test by assessing the parties' intentions, the degree of control exercised over the worker, the extent to which the worker was integrated into the organisation and the extent to which the worker was in business on their own account.

The Chief Judge stated that the following matters were relevant to assessing the real nature of the relationship in the case:

- the nature of the Uber business and the way it operated in practice;
- the impact of the Uber business model and its operation on the plaintiff drivers;
- who benefitted from the work undertaken by the plaintiff drivers;
- who exercised control over the plaintiff drivers work, the way in which it was conducted and when and how it was conducted;
- any indications of intention, including what can be drawn from the nature, terms and conditions of the documentation between the parties; and
- the extent to which the plaintiff drivers identified as, and were identified by others as, part of the Uber business.

In reaching her decision, the Chief Judge made a number of observations which she considered supported the real nature of the relationship being one of employment, including:

- Uber dictated the contractual terms under which the plaintiff drivers performed the services. They could not use the App unless they agreed to the terms and conditions that Uber had set, and which Uber can, and does, vary. Further, access to the App is non-transferable and the plaintiff drivers were obliged to provide personal services. In addition, Uber decides the cost of each trip and charges that to the customer.

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- While Uber did not expressly direct the plaintiff drivers to work, they were nevertheless subject to very effective direction and control exercised via the rating system, the incentive scheme, prompts, "encouragement", a warning system, the disciplinary system and deactivation. Uber therefore exerted strict control, and effectively managed the way in which and when work was done, through various performance management processes and techniques, and via the tight restrictions placed on communications drivers can have with riders. Every aspect of the plaintiff drivers' movements were closely monitored by Uber via the app and its rating system.
- The plaintiff drivers had no ability to set their own rates or charge more than the amount set by Uber and they exercised no control over the fare for individual trips. The Court found that they had little or no ability to improve their economic position through professional or entrepreneurial skill. Further, the plaintiff drivers attained work via Uber and Uber's brand and it was Uber which connected the customer to the driver rather than the driver. Uber was the only party running a business. It was in charge of marketing, pricing and setting the terms and nature of the service provided to riders, restaurants and eaters. The plaintiff drivers worked for Uber's business, not their own, transporting passengers (and food) for Uber.

This judgment does not have immediate legal effect on any Uber driver other than the four specified drivers who sought declarations from the Court. However, because of the apparent uniformity of Uber's operation, the judgment may have a broader potential impact on other Uber drivers.

[See the decision here.](#)

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Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill

On 01 November 2022, the Education and Workforce Committee (**Select Committee**) unanimously recommended that the Employment Relations (Extended Time for Personal Grievance for Sexual Harassment) Amendment Bill (**Bill**) be passed. This Bill is intended to improve the process by allowing victims of sexual harassment in the workplace adequate time to come to terms with what has happened before coming forward.

Currently, under the Employment Relations Act 2000, an employee has 90 days to raise a personal grievance, which commences on the date on which the action giving rise to the grievance occurred, or came to the notice of the employee. The Bill proposes to extend the time period available to an employee to raise a personal grievance for sexual harassment, from 90 days to 12 months.

The Bill is currently awaiting its third reading and is expected to receive Royal Assent early next year.

[See the Bill here.](#)

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Fair Pay Agreements Act 2022

The Fair Pay Agreements Act 2022 came into force on 1 December 2022. In essence, Fair Pay Agreements (**FPA**s) are a form of industry-wide collective employment agreement. They will sit above, and work alongside, individual and other collective agreements to create a minimum floor of rights for all employees in a particular occupation or industry, whether union members or not.

Some key elements of the FPA system include:

- Setting minimum terms across industries and occupations. By law, FPAs must include certain terms, including the normal hours of work for covered employees, base wage rates, and base leave entitlements.
- FPA bargaining can be initiated by a union where the Chief Executive of the Ministry of Business, Innovation and Employment (**MBIE**) considers that:

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- » A 'representation test' has been met. This test will be met when at least 1,000 employees or 10% of employees within the occupation/industry support the application to initiate bargaining for an FPA, or
- » A 'public interest test' has been met. The test will be met when a prescribed portion of employees who would be within coverage of the proposed FPA receive low pay for their work, and meet one or more of the following criteria:
 - They have little bargaining power in their employment; or
 - They have a lack of pay progression in their employment; or
 - They are not adequately paid (taking into account factors such as working long or unsocial hours, or contractual uncertainty).
- FPAs will bind all employers and employees in the occupation/industry, whether or not they want to be bound by the FPA or they participated in bargaining for the FPA. It will be illegal to contract out of an FPA, even if an employer and an employee both wish to.
- The Employment Relations Authority may fix the terms of an FPA in certain circumstances.

As at 12 December 2022, the Chief Executive of MBIE has received one application to initiate bargaining relating to the "*Hospitality related activities*" industry. This application is currently being reviewed and assessed against legal requirements. The details of this application can be found [here](#).

See the Act [here](#) and the associated Regulations [here](#).

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There are no significant policy, legal or case developments within the employment space during 2022 H2.

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Heightened Safety Period Measures to Address Spate of Workplace Fatalities

1. Starting today, the Ministry of Manpower (MOM) is introducing a slate of new measures to strengthen workplace safety and health (WSH) and improve WSH oversight. These new measures and a state of “Heightened Safety” is needed in view of the concerning rise in workplace fatalities this year. MOM will work together with and support companies in taking greater ownership of WSH during the next six months of “Heightened Safety”, which may be extended if necessary.
2. As of 1 September 2022, the number of workplace fatalities stands at 36 for 2022. This is very close to the 37 fatalities recorded in the whole of 2021. MOM recognises that some sectors are still recovering from the impact of the COVID-19 pandemic and many companies are catching up on delays in projects while others are expanding their operations as the economy reopens. Nevertheless, safety must remain a priority for all employers. Most employers support the call for stronger workplace safety and MOM will enable and support employers to instil a strong safety culture and implement good safety practices. For companies that fall short on safety, MOM will increase the accountability of these companies and their senior management. MOM will implement the following measures to complement ongoing efforts (See Table 1):
 - a. Introduce a six-month “Heightened Safety” period from 1 September 2022 to 28 February 2023 during which:
 - i. If MOM finds serious WSH lapses such as unsafe workplace conditions or poor risk controls following serious or fatal workplace accidents, it may debar companies from employing new foreign employees for up to three months and require Chief Executives to personally account to MOM and take responsibility for rectifications.
 - ii. Companies are required to conduct a mandatory Safety Time-Out (STO) by allocating time to review their safety procedures and complete the Safety Time-Out activities. The length of the STO should be sufficiently long to review risks corresponding to the scale of operations. Companies must conduct the STO between 1 September 2022 and 15 September 2022. Companies will be debarred from employing new foreign employees for one month if found to be non-compliant with the Safety Time-Out.
 - b. Strengthen support for SMEs who need help to improve their WSH practices and processes, through the expansion of StartSAFE: Under the existing StartSAFE programme, small and medium enterprises have access to WSH consultants who can help companies identify WSH risks and implement good WSH practices. The costs of the WSH consultants are fully borne by MOM. More companies are encouraged to apply for StartSAFE as a follow-up to the Safety Time-Out safety reviews.
 - c. Introduce targeted measures for the construction sector from 1 October 2022:
 - i. A new harmonised set of disqualification criteria across all public sector construction tenders to align the evaluation criteria and temporarily disqualify contractors with poor WSH performance from participating in these tenders;
 - ii. A Revised Demerit Point System, where the threshold for issuing demerit points will be lowered. This means that more demerit points will be issued for WSHA breaches and errant companies with consistently poor WSH performance will reach the penalty thresholds more quickly, after which they will be debarred from hiring foreign employees for up to 2 years.

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- d. Set up a Multi-Sectoral Workplace Safety Taskforce, advised by an external experts panel: Comprising representatives from key government agencies, this new taskforce will conduct sectoral deep dives into work practices and industry structures to strengthen safety practices and outcomes. The taskforce will be able to tap on ideas and advice from an external experts panel, comprising industry representatives and WSH consultants. Senior Minister of State for Manpower, Zaqy Mohamad, will chair the Taskforce, more details of which will be revealed in due course. Agencies involved will include the Ministry of National Development, Ministry of Sustainability and the Environment, Ministry of Transport and Ministry of Trade and Industry.
3. MOM urges all employers and supervisors to place the utmost priority on the safety of their workers. All workers must also follow safety procedures, watch out for unsafe workplace practices, and bring them to the attention of supervisors and MOM. MOM understands that as the economy recovers, there will be pressure to meet project timelines, but safety cannot take a backseat. MOM will support companies who seek to strengthen workplace safety, and will not hesitate to take action against companies with serious safety lapses and those found to be at fault for major workplace injuries and deaths.

Table 1: Ongoing Measures for Workplace Safety & Health

Ongoing Measures	Details
Ramped up inspections and stiffer penalties	With effect from 14 Jun 2022, (i) composition fines for infringements found were doubled from \$1,000 to \$2,000 on average, up to a maximum of \$5,000; (ii) companies issued with Stop Work Order (SWO) must engage an external auditor to conduct a thorough review of their WSH management systems before the SWO is lifted; and (iii) companies that have had major injuries are required to engage external auditors to conduct a thorough review of their system of WSH controls, and implement measures to prevent recurrence.
Increasing awareness of whistleblowing channels	Project signboards at construction sites will show a QR code with a link to MOM's feedback webpage, together with MOM's safety hotline. WSH safety hotline and e-feedback shared with migrant workers. Workers and members of the public are encouraged to report unsafe practices on MOM's website. Identities will remain anonymous.
Requiring pre-start assessments	Implement weekly coordination meetings and daily toolbox briefings for companies in the Construction, Manufacturing, Marine, Process and Transport & Storage industries.
Tapping on technology to improve vehicular safety	For an overview of vehicular safety technology and government grant support for SMEs, please visit https://www.mom.gov.sg/workplace-safety-and-health/wsh-technology

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Expanded Foreign Employee Dormitories Act To License 1,600 Dormitories Under Single Regulatory Framework

1. The Ministry of Manpower (MOM) will expand the coverage of the Foreign Employee Dormitories Act (FEDA) from 1 April 2023 to include migrant worker (MW) dormitories¹ with 7 or more beds. Currently, only dormitories with 1,000 or more beds are licensed under FEDA. The

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expansion of FEDA will bring MW dormitories under a single regulatory and enforcement framework, giving MOM regulatory levers to raise their operating standards as well as impose requirements² to manage disease outbreaks.

2. With this change, 1,600 dormitories (total of 439,000 beds) will be licensed under FEDA, compared to 53 dormitories (total of 256,000 beds) now.

Requirements under expanded FEDA

3. Currently, all MW dormitories are subjected to various requirements across different legislation, covering areas such as fire safety, living conditions, sanitary, and public health requirements. Only dormitories with 1,000 beds or more are licensed under FEDA and are subject to additional requirements for public health and safety, and the provision of recreation and commercial facilities for their residents.
4. With the expanded FEDA, the requirements for MW dormitories will be consolidated under a single regulatory framework. Dormitories will fall under four licence classes³ depending on their size. A set of essential living requirements (e.g. minimum space per resident, maximum room occupancy, cleanliness and ventilation) will be applied to all dormitories; larger dormitories will be subject to more stringent requirements on dormitory management, resident welfare and safety and health.
5. Dormitories with 1,000 beds or more will not see any change in requirements from today. Dormitories with 7 to 999 beds will be subject to new requirements in the areas such as reporting requirements, traffic management, and contingency plans for public health outbreaks.

Implementation Timeline

6. Existing dormitories with 1,000 beds or more can continue to operate normally as they are already licenced under FEDA. New dormitories which intend to begin operations on or after 1 April 2023 must apply for a full FEDA licence, which will be valid for three years.
7. Existing dormitories with 7 to 999 beds, as well as new dormitories that intend to begin operations before 1 April 2023, must apply for a provisional FEDA licence from January 2023. The provisional FEDA licence which is valid for up to two years, will be issued through a simplified application process to onboard existing operators seamlessly. MOM will organise briefings for the dormitory operators, conduct checks, and support dormitory operators to meet the FEDA requirements.

FOOTNOTE

1. These include Purpose-Built Dormitories, Quick Build Dormitories, Factory Converted Dormitories, Construction Temporary Quarters and Temporary Occupation Licence Quarters and other converted dormitories such as non-government organisation shelters and employment agencies' boarding houses.
2. Such requirements include standing up additional isolation facility capacity and putting in place additional infection prevention and control measures, e.g. use of personal protection equipment and a higher cleaning frequency.
3. The four licence classes are Class 1 (7 to 99 beds), Class 2 (100 to 299 beds), Class 3 (300 to 999 beds), Class 4 (1,000 beds or more).

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All migrant domestic workers to have one rest day a month that cannot be compensated away

1. From 1 January 2023, all employers must provide their migrant domestic workers (MDWs)¹ at least one rest day a month that cannot be compensated away². This is part of the measures announced by the Ministry of Manpower (MOM) last year to allow MDWs to rest and recharge from work, as well as form networks of support outside the household. MOM has also developed a guide to support employers and MDWs in initiating early conversations on the rest day arrangements, and to help

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employers plan for alternative arrangements for the household, if required.

Rest day arrangements must be mutually agreed upon

2. MDWs and employers should come to a mutual agreement on the rest day arrangements. Arrangements for the monthly rest day can be implemented flexibly to suit the needs of both employer and MDW. For example:
 - i. The rest day can be taken as one full day or over two half-days. It can also be taken on any day of the week.
 - ii. The MDW may choose to spend her rest day at home.
 - iii. The rest day can be deferred by up to one calendar month. This means that, should both parties agree to defer the rest day in that month, the MDW should take her rest day by the end of the subsequent month.
3. To support MDWs and employers, MOM has developed a guide which can help employers and MDWs discuss and agree on how the mandatory rest day will be taken. The guide also includes suggested rest day activities that MDWs can consider, and alternative care options that employers may tap on for their household's needs. MOM urges employers, particularly those whose households have caregiving needs, to start conversations with their MDWs early and plan for alternative arrangements if required.
4. MOM reminds employers to update their MDW's rest day information via the MDW eServices portal. Employers who require further information or advice on the rest day arrangement may call MOM's hotline at 6438 5122.

FOOTNOTE

1. This will be a mandatory requirement under the Employment of Foreign Manpower (Work Passes) Regulations. It will apply to all new and existing MDWs in Singapore.
2. This is on top of the current requirements for employers to provide a weekly rest day for their MDWs with the option for compensation in lieu of a rest day, if the MDW agrees to work on her rest day. The new requirement from January 2023 is that at least one rest day a month must always be provided, and neither party can ask to drop this requirement in favour of compensation.

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New Preventive Care Framework for Migrant Workers' Health Literacy and Chronic Conditions Management

1. The Ministry of Manpower (MOM) has developed a new preventive health framework named Project MOCCA (Management of Oral and Chronic Conditions and Ailments) to enhance the care of chronic and oral disease among migrant workers (MWs). This complements other initiatives in the primary healthcare system in building a strong support ecosystem that will care for MWs' healthcare needs. Some 300,000 MWs stand to benefit from Project MOCCA.

Preventive Care Framework With Three Key Thrusts

2. The new framework will strengthen the self-management of chronic conditions and health literacy among MWs, by enabling earlier detection and better disease management efforts at primary care touchpoints. This is aligned with the Ministry of Health's efforts to promote healthier living in Singapore. A healthier migrant workforce will also reduce medical costs in the long run. The Primary Care Plan (PCP) covers early detection of chronic diseases and related follow-up primary care by the Anchor Operators of the Medical Centres for Migrant Workers, so no additional costs from employers are needed.
3. The framework is anchored on three key thrusts which will be implemented together with Anchor Operators and various community partners, over the next two years:

Thrust 1: Address knowledge gaps and inculcate healthier practices:

- To promote adoption of healthier lifestyles among MWs, MOM will use an omni-channel approach to step up educational efforts to raise health literacy. MOM launched a one-stop **Health Library** for MWs to access

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materials on chronic and infectious diseases, oral and mental health diseases, and nutrition in their native languages. This will be reinforced by roadshows to equip MWs with knowledge on preventing chronic, oral and infectious diseases. For example, MOM piloted a basic dental education and awareness programme with the National University of Singapore to educate 200 migrant workers on the importance of good oral health and good oral hygiene habits. These complement ongoing events that are organised by Non-Governmental Organisations and community partners. MOM will also continue to disseminate educational advisories and resources in MWs' native languages.

Thrust 2: Detect and manage risk factors

- To allow for early detection of chronic diseases and timely intervention, MWs enrolled on the PCP and who are aged 40 years and above, as well as those with pre-existing risk factors such as family history, can undergo an annual basic screening for cardiovascular risk factors. Those identified with a chronic condition will receive timely medical care and be monitored under their enrolled Anchor Operator. As part of the overall health intervention, Anchor Operators will also educate MWs on understanding and managing their chronic conditions through self-care tips and healthy lifestyle habits.
- MOM will also build the capabilities of Anchor Operators to design and deliver healthcare interventions for unhealthy lifestyle habits. As a start, MOM will focus on alcohol or tobacco usage, as their prolonged usage have an adverse impact to health such as increased risk to various forms of cancer and cardiovascular diseases.

Thrust 3: Treat and control disease progression

- While most MWs with chronic conditions will be managed within the primary care touch points, some MWs may develop complex chronic health conditions or complications over time. Hence, to provide continued medical support and optimise disease control, MOM will implement referral pathways between anchor operators and tertiary healthcare institutions, and work with healthcare teams for post-discharge case management.

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Government Accepts Recommendations by the Advisory Committee on Platform Workers to Strengthen Protections for Platform Workers

1. The Government accepts all 12 recommendations by the Advisory Committee on Platform Workers (refer to Annex A). More information on the recommendations can be found in the Advisory Committee's report at <https://www.mom.gov.sg/pwac-report>.
2. The Advisory Committee on Platform Workers was convened in September 2021 to look into strengthening protections for Platform Workers in three areas of concern:
 - a. Ensuring adequate financial protection in case of work injury
 - b. Improving housing and retirement adequacy
 - c. Enhancing representation
3. The Committee consulted extensively during its course of work. Next, the Government will continue to work with Platform Workers and Platform Companies to implement the recommendations in a progressive manner from the later part of 2024 at the earliest. Changes to legislation will need to be made. The Government will also exercise flexibility and adjust the implementation timeline if needed, depending on the economic situation.

ANNEX A

Summary of Recommendations by the Advisory Committee on Platform Workers

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Coverage of Recommendations

1. Platform Workers should not be classified as employees.
2. Require Platform Companies that exert a significant level of management control over Platform Workers to provide them with certain basic protections.

Ensuring Adequate Financial Protection for Platform Workers in case of Work Injury

3. Require Platform Companies to provide the same scope and level of work injury compensation as employees' entitlement under the Work Injury Compensation Act (WICA).
4. Require Platform Company that the Platform Worker was working for at the point of injury to be responsible for compensation, based on the Platform Worker's total earnings from the platform sector in which the injury was sustained.
5. Determine sector-specific definitions of when a Platform Worker is considered "at work".
6. Retain the strengths of the current WICA regime, including the provision of work injury compensation insurance through the existing open and competitive insurance market.

Improving Housing and Retirement Adequacy of Platform Workers

7. Align CPF contribution rates of Platform Companies and Platform Workers with that of employers and employees respectively; required for Platform Workers who are aged below 30 in the first year of implementation.
8. Allow older cohorts of Platform Workers who are aged 30 and above in the first year of implementation to opt in to the full CPF contribution regime.
9. Require Platform Companies to collect Platform Workers' CPF contributions to help workers make timely contributions.
10. Phase in the increased CPF contributions over five years, unless major economic disruption warrants a longer timeline. To ease the impact, the Government may wish to consider providing support for Platform Workers and the form this should take.

Enhancing Representation for Platform Workers

11. Give Platform Workers the right to seek formal representation through a new representation framework designed for Platform Workers.
12. Set up a Tripartite Workgroup on Representation for Platform Workers (TWG) to co-create the new representation framework.

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Launch of the Manpower for Strategic Economic Priorities (M-SEP) scheme to support firms' expansion plans

1. The Ministry of Trade and Industry (MTI), together with the Ministry of Manpower (MOM) and participating economic agencies, has launched the Manpower for Strategic Economic Priorities (M-SEP) scheme.
2. The M-SEP scheme was first announced by Minister for Manpower and Second Minister for Trade and Industry Dr Tan See Leng, in his MOM Committee of Supply 2022 speech on 4 March 2022. The scheme complements the changes that MOM is making to Singapore's work pass framework, by supporting the growth of businesses that contribute to Singapore's strategic economic priorities through ambitious investment, innovation, or internationalisation activities.
3. Designed to support firms that are needle-movers for Singapore's economic priorities and competitiveness, M-SEP scheme will help these firms seize opportunities to grow in Singapore successfully, while securing jobs and training opportunities for Singaporeans in the process.
4. The scheme gives qualifying firms the flexibility to temporarily hire S Pass

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and Work Permit holders above the prevailing Dependency Ratio Ceiling (DRC) and S Pass sub-DRC. To qualify, firms must also commit to employ and/or train locals. Eligible firms can obtain additional S Pass and Work Permit quotas of up to 5% above their base workforce headcount, subject to a cap of 50 workers per firm. Such additional flexibilities accorded under the M-SEP scheme will last for 2 years upon enrolment, and may be renewed thereafter, subject to meeting renewal conditions.

5. To qualify for the scheme, firms must satisfy both of the following conditions:
 - a. Condition 1 - Participate in programmes or activities in line with one of the following key economic priorities:
 - a. Investments which support Singapore's hub strategy
 - b. Innovation or Research & Development (R&D)
 - c. Internationalisation
 - b. Condition 2 - Commit to hiring and/or training locals.
6. To be eligible for M-SEP renewal, firms will also have to show that they have met both commitments by the end of the M-SEP support period. Firms will also have to maintain their local workforce share during this period. Those that fail to do so will be suspended from M-SEP scheme for 2 years.
7. The M-SEP scheme signals Singapore's commitment to remain open and connected, and the Government's continued support for businesses to amplify economic growth and the creation of more good jobs for Singaporeans. Applications are now open. More details can be found on MOM's [website](#).

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COVID-19 Recovery Grant Extended To 31 December 2023

1. The Ministry of Social and Family Development (MSF) will extend the application period for the COVID-19 Recovery Grant (CRG) until 31 December 2023. This will provide continued support to individuals, whose financial and employment circumstances are affected by the current economic climate.

CRG application period extended until 31 December 2023

2. CRG was introduced on 18 January 2021 to provide financial assistance to lower to middle-income employees and self-employed persons (SEPs) who experience involuntary job loss, no-pay leave (NPL) or significant income loss for at least three consecutive months. The CRG is part of a suite of measures introduced by the Government during the COVID-19 pandemic. As of 6 November 2022, MSF has supported around 31,000 individuals through the CRG and disbursed about \$75 million in total.
3. While Singapore has transitioned to living with COVID-19, there are individuals whose financial and employment circumstances are still affected by the pandemic. Macroeconomic uncertainties, like recessionary fears in Europe and the United States, continue to weigh on the economy. Individuals impacted by job loss, NPL or income loss may hence face greater difficulties in coping financially. Therefore, MSF has decided to extend the CRG application period by another year, until 31 December 2023, to continue providing support for affected workers.

Adjustments to CRG income criteria, job search requirement and valid economic activity period

4. To provide targeted support to those with greater need and made more effort to improve their employment circumstances, some of the CRG eligibility criteria will be revised from 1 January 2023 onwards. The key adjustments are in the areas of income eligibility criteria, job search requirement and updated period for valid economic activity.

No changes to remaining CRG eligibility criteria

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5. There is no change to the amount of financial support provided in each tranche of CRG, which is as follows:
- (A) Up to \$700 per month for three months to employees who are:
- Unemployed due to retrenchment or involuntary contract termination; or
 - Placed on involuntary NPL for at least three consecutive months.
- (B) Up to \$500 per month for three months to:
- Employees who are facing salary loss for at least three consecutive months, with an average overall loss of at least 50%; or
 - SEPs who are facing NTI loss for at least three consecutive months, with an average overall loss of at least 50% at the point of application, compared to their average monthly NTI in 2021 or 2022.
6. Eligible individuals will continue to be able to receive up to three tranches of support under CRG. Those who receive a third tranche of CRG will also be able to receive further assistance with their job search from NTUC's Employment and Employability Institute (e2i) and Workforce Singapore (WSG), as per the current practice.

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SOUTH
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2022

Amendment to the Enforcement Decree of the Employment Insurance Act

In order to protect various types of employment, the government has gradually expanded the coverage of employment insurance step by step, and since July 1, 2022, the government has additionally applied employment insurance to service providers such as IT software engineers, children's school bus drivers, tourist interpreter guides, golf course caddies, and cargo owners (distribution and delivery engineers, parcel delivery drivers, and transport owners for specific items).

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SOUTH
KOREA
**1
JUL**
2022

Amendment to the Enforcement Decree of the Act on the Collection, etc. of Insurance Premiums for Employment Insurance and Industrial Accident Compensation Insurance

During the process of overcoming the COVID-19 crisis, the financial conditions of the employment insurance fund have become difficult, due to increase in spending such as job search benefits, and as one of the measures to restore the financial soundness of the fund, the premium rate for unemployment benefits has been raised by 0.2% since July 1, 2022.

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SOUTH
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**1
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2022

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

Workers in special employment types, to whom the Industrial Accident Insurance Act has been newly applied from July 1, 2022, can receive industrial accident compensation in the event of an occupational accident, and employers who receive labor from the workers in special employment types must report such fact to the Korea Workers' Compensation and Welfare Service by August 15, 2022. Under the Industrial Accident Insurance Act, those who are deemed as special employment types include distribution and delivery engineers, parcel delivery drivers, and transport owners for specific items.

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SOUTH
KOREA
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JUL**
2022

Amendment to the Enforcement Decree of the Employee Retirement Benefit Security Act

From July 12, 2022, the pre-designated management system (i.e. default option) will be introduced to the defined contribution retirement pension system (i.e. DC system) and the individual retirement pension system (i.e. IRP system). The pre-designated management system is a system that is commonly referred to as a "default option", which allows reserves to be automatically operated in a pre-determined management method if workers do not decide on specific financial products to manage their retirement pension reserves.

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SOUTH
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Amendment to the Enforcement Decree of the Act on the Employment, etc. of Foreign Workers

Prior to the Amendment, employers that unilaterally terminated employment relationship before foreign worker's entry to Korea after obtaining employment permit were subject to restrictions in employment of foreign workers unless there were unavoidable circumstances (e.g., closure or conversion of business) for such termination. However, given the increasing number of such cases due to non-operation of airlines, the Amendment has created an exception under which employers could terminate employment of foreign workers without being subject to such employment restrictions.

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SOUTH
KOREA**11
DEC**
2022**Amendment of the Act on the Promotion of Employee Participation and Cooperation ("Act") and its Enforcement Decree**

Under the Act, businesses with 30 or more full-time workers must set up a labor-management council ("LMC") to promote workers' welfare and improve productivity.

The LMC is a key organization for cooperative and productive labor-management relations, but (i) matters related to the election process of employee members of the LMC were previously set forth under the Enforcement Decree of the Act, and (ii) the election process did not require majority vote from the employees. The Amendment, which was enacted on June 10, 2022 and became effective as of December 11, 2022, strengthened the grounds for LMC's representation of the workforce by making the following changes:

- Matters related to election of employee members of the LMC (direct, secret, anonymous vote) under Article 3 of the Enforcement Decree of the Act was included in Article 6 of the Act.
- In cases where there is no union comprised of majority of employees, majority of employees must participate in the election of employee members of the LMC.
- Election of Employees' Member Voters (indirect voting method) also requires a direct, secret, and anonymous vote by a majority of employees.
- Removal of the requirement set forth in the Presidential Decree to obtain recommendations from 10 or more employees to register as a candidate for an employee member of the LMC.

[More...](#)SOUTH
KOREA**11
DEC**
2022**Amendment to the Act on the Employment, etc. of Foreign Workers ("Foreign Workers Act")**

In the past, employers who were punished for violating the Foreign Workers Act were restricted from hiring foreign workers. However, many opinions were raised to highlight that it was difficult to improve the working environment of foreign workers because there were no provisions restricting employers who violate the Occupational Safety and Health Act ("OSHA") from employing foreign workers. Accordingly, the OSHA was amended to restrict employers, who cause the death of foreign workers in violation of the OSHA, from hiring foreign workers. As a result, employers using foreign workers are more encouraged to take more caution in managing working environment of foreign workers.

In addition, the amendment included provisions related to the designation and revocation of employment training institutions for foreign workers in the Foreign Workers Act (as such matters were previously included in the notification issued by the Ministry of Employment and Labor). Prior to the amendment, matters related to such designation and revocation were subject to decisions by the Minister of Employment and Labor. However, with the amendment, such matters are now set forth under the law (i.e., less subject to changes).

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SRI LANKA

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2022

Cabinet approves amendment to laws on night work for women and the same will be introduced by way of amendment to the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954

The prevailing Sri Lankan legal framework permits women to work during night hours only in limited circumstances. These restrictions are to be partially altered and the same has received cabinet approval on 8th August 2022. The changes will be reflected by way of amendments to the Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of 1954, where women over the age of 18 will be permitted to work before 6.00 am or after 6.00 pm if they are employed in IT-based businesses, knowledge and business process outsourcing organisations, offices that conduct accounts, administrative and technical work of business organisations located abroad, allowing them flexibility to be able to work according to the employer's time if the same was required.

Principal enactments

Principal enactments are the Shop and Office Employees (Regulation of Employment and Remuneration) Act 1954 and the Employment of Women, Young Persons, and Children Act 1956 and the Shop and Office Employees (Regulation of Employment and Remuneration Amendment Act No 32 of 1984.

[More...](#)

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SRI LANKA

**16
SEP**
2022

Industrial Disputes (Amendment) Act, No. 24 of 2022

The Industrial Disputes Act of 1956 ("principal enactment") deals with the prevention, investigation and settlement of industrial disputes.

The amendment makes changes to who can act on behalf or party, under section 46 (representation and appearance)

Section 46 (Chapter 131) of the principal enactment is amended by the repeal of subsections (1), (2) and (3) thereof, and the substitution of the following subsections dealing with representation and appearance:–

"(1) Any party to any proceeding under this Act taken by or before any authorized officer, arbitrator, industrial court or labour tribunal or the Commissioner may, act through an Attorney-at-law or a representative of the party.

(2) For the purposes of this Act, a representative of a party shall–

- where the party is a trade union, or consists of two or more trade unions, be a person to represent such union or each such union;*
- where the party consists partly of any trade union or unions and partly of employers or workmen who are not members of any such union, be a person to represent such union or of each such union and a prescribed number of persons nominated in accordance with regulations by such employers or workmen; and*
- where the party consists of employers or workmen, be a prescribed number of persons nominated by such employers or workmen."*

[New Enactment](#)

[Principal Enactment](#)

SRI LANKA

**16
SEP**
2022

Termination Of Employment Of Workmen (Special Provisions) (Amendment) Act, No. 23 of 2022

This Act amends the Termination of Employment of Workmen (Special Provisions) Act, No. 45 Of 1971 ("principal enactment").

[Continued on Next Page](#)

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SRI LANKA

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SEP**

2022

In summary, the principal enactment is amended by increasing fines imposed on employers for various offences, for example:

- failing to comply with a decision made by the Commissioner of Labour to grant or refuse his approval of an application filed by the employer to terminate the scheduled employment of an employee;
- failing to comply with any order made by the Commissioner of Labour for reinstatement and back wages of an employee who had been terminated by the employer;
- failing to comply with any order made by the Commissioner of Labour; and
- failing to comply with an order for compensation or gratuity to an employee that had been terminated in consequence of closure by his employer of any trade, industry or business.

The principal enactment is also amended by introducing provisions for employers dissatisfied with an order of the Magistrates Court to file a revision application to the High Court and for employers dissatisfied with an order of the Commissioner-General under section 6 or 6A to file a writ application to the Court of Appeal. For each application, employers must furnish security by depositing such sum of money in an interest bearing account maintained by the Commissioner-General.

New Enactment

Principal Enactment

SRI LANKA

**16
SEP**

2022

Industrial Disputes (Amendment) Act No. 22 of 2022 ("principal enactment")

The principal enactment is amended by introducing provisions for the employer to furnish a security for application to the Court of Appeal or Supreme Court when appealing an order of a High Court or order of an arbitrator in the industrial court.

The principal enactment is also amended for the employer to furnish a security for submitting a revision application to the High Court when appealing an order of a Magistrates Court on any written complaint made by the Labour Commissioner-General under section 136B of the Code of Criminal Procedure Act, No. 15 of 1979.

New Enactment

Principal Enactment

SRI LANKA

**11
OCT**

2022

Bill to amend the Inland Revenue Act, No. 24 of 2017

A Bill to amend the Inland Revenue Act, No. 24 of 2017 (IRA) has been gazetted and issued on 11 October 2022. The changes proposed in the Bill to amend the IRA will be effective once the Bill is passed in Parliament (and any effective dates mentioned thereon).

See below for some of the main provisions which may be relevant in terms of employment income:

Income Tax rates applicable on the taxable income of a resident or non-resident individual for the Year of Assessment (Y/A) 2022/23

- a. Taxable income for the first 6 months period of the Y/A commencing from 1 April 2022 (1/4/2022 -30/09/2022)

Taxable Income (Rupees)	Tax payable
First 1,500,000	6%
Next 1,500,000	12%
Balance	18%

- b. Taxable income for the second 6 months period of the Y/A commencing from 1 April 2022 (1/10/2022 -31/03/2023)

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Taxable Income (Rupees)	Tax payable
First 250,000	6%
Next 250,000	12%
Next 250,000	18%
Next 250,000	24%
Next 250,000	30%
Balance	36%

Tax rate applicable on the taxable income of a resident or non-resident individual for any Y/A commencing from 1 April 2023 (i.e. Y/A 2023/24)

Taxable Income (Rupees)	Tax payable
First 500,000	6%
Next 500,000	12%
Next 500,000	18%
Next 500,000	24%
Next 500,000	30%
Balance	36%

Advance Personal Income Tax (APIT)

- APIT on employment income as specified by the Commissioner General of Inland Revenue will be applicable in relation to all employees (irrespective of the consent given by the employee for the deduction).
- The persons who are not required to file the income tax return has been broadened by including individuals whose taxable income for a year of assessment exclusively include the income from employment where the employer has deducted APIT.
- The list of exclusions from the individual's gains and profits from an employment will be broadened by excluding any retirement payments, where the contribution has already been considered for income tax purposes by the employee.

Withholding tax on service payments

The following withholding tax rates applicable on service fee payments will be effective from the date of the commencement of the Act:

1. Payment of service fee or an insurance premium with a source in Sri Lanka to a non-resident – withholding at the rate of 14% (final tax).
2. Payment of service fee exceeding Rs.100,000 per month to a resident individual (who is not an employee of the payer) for the following purposes – withholding at the rate of 5%:
 - a. Service fee for teaching, lecturing, examining, invigilating or supervising an examination;
 - b. Service fee as a commission or brokerage to a resident insurance, sales or canvassing agent; [
 - c. Service fee for services provided by an individual in the capacity of an independent service provider such as doctor, engineer, accountant, lawyer, software developer, researcher, academic or any individual service provider as may be prescribed by regulation.

Advance Income Tax (AIT) Mandatory AIT deductions will be applicable on the payment of dividend, interest, discount, charge, natural resource payment, rent, royalty or premium which has a source in Sri Lanka at specified rates from the date of the commencement of the Amendment Act.

Guidelines/circulars/notices

It should be noted that the following existing guidelines/circulars/notices based on the existing provisions in the IRA, will remain effective until the new

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2022

LOOKING BACK

SRI LANKA

11
OCT

2022

versions are issued, which will be done in stages after the Bill is enacted:http://www.ird.gov.lk/en/Lists/Latest%20News%20%20Notices/Attachments/458/PN_IT_2022-01_13102022_E.pdf

1. Advance Personal Income Tax (APIT) tables (applicable with effect from 01.04.2020)
2. Circular to Withholding Agents dated May 19, 2020 (Circular No. SEC/2020/04)
3. Circular to Banks and Financial Institution dated June 08, 2020 (Circular No. SEC/2020/03 (Revised))
4. Guideline for Employees Trust Fund (ETF), All provident Funds and All Employers to retain amounts in lieu of income tax of employees from once-and-for-all payments (terminal benefits) dated February 18, 2020 (Circular No. SEC/2020/02)
5. Notice to the Licensed Commercial Banks and Authorized Dealers Engaged in Outward Remittances and the Persons who make Outward Remittances dated May 24, 2021 - Requirement of Tax Clearance Certificates for Outward Remittances (PN/TC/2021)

Principle enactment
New Bill

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CONTRIBUTED BY:

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2022

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TAIWAN
**14
SEP**
2022

The Ministry of Labor announces the adjustment of the minimum wage, effective January 1, 2023.

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-2-Zi-1110077619
Issue date: September 14, 2022

The minimum wage is now adjusted to be:

- NT\$26,400 per month; and
- NT\$176 per hour

[More...](#)

TAIWAN
**28
OCT**
2022

Interpretation of the Labor Standards Act regarding labor-management meeting approvals

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-3-Zi-1110140959
Issue date: October 28, 2022

Effective immediately, the Ministry of Labor issued its interpretations regarding the labor-management meeting approval requirement in Articles 30, 30-1, 32, 34 and 36 of the Labor Standards Act. For employers with three or fewer employees and no union, "approval by the labor-management meeting" as stipulated in those statutory provisions is deemed achieved when each employee approves the relevant change in labor terms and conditions.

[More...](#)

TAIWAN
**15
NOV**
2022

The Labor Occupational Accident Insurance and Protection Act prevails over the Labor Standards Act with regards to taking relevant leaves as a result of an occupational accident.

Issued by: The Ministry of Labor
Ref. No.: Lao-Dong-Tiao-3-Zi-1110141047
Issue date: November 15, 2022

When an employer fails to provide relevant leaves to an employee who suffered an occupational accident, while the employer may be penalized pursuant to both the Labor Occupational Accident Insurance and Protection Act and the Labor Standards Act, given the principle that the specific rule prevails over the general rule, in the context of an occupational accident, the rules regarding "occupational sick leave" in the Labor Occupational Accident Insurance and Protection Act shall prevail over the general "ordinary sick leave" rules in the Labor Standards Act.

[More...](#)

CONTRIBUTED BY:

理慈

Lee, Tsai & Partners

2022

LOOKING BACK

THAILAND

01
OCT

2022

Notification of the National Wage Committee on Minimum Wage Rate No. 11

The minimum wage has been increased to THB 328–354 per day (USD 9.01–9.72)—an increase of approximately 5% from the previous range of THB 313–336 per day. Minimum wage varies depending on the province.

[More...](#)

THAILAND

01
OCT

2022

Ministerial Regulation Prescribing the Rate of Contributions to the Social Security Fund B.E. 2565 (2022)

The government, employers, and insurers shall pay contribution to the Social Security Fund according to the contribution rates stated in this Ministerial Regulation. From 1 October 2022 to 31 December 2022, the contribution rates shall be as specified in List A in the Ministerial Regulation. From 1 January 2023 onwards, the contribution rates shall be as specified in List B in the Ministerial Regulation.

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CONTRIBUTED BY: **Tilleke & Gibbins**

2022

VIETNAM

There are no significant policy, legal or case developments within the employment space during 2022 H2.

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