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中国动态：双语版 亚洲雇佣法：2023年中回顾

第三十七期：2023年上半年度

Asia Employment Law: 2023 Mid-Year Review

ISSUE 37: 2023 H1

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引言 Introduction

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

为协助阁下获取最新法律动态，孖士打(Mayer Brown)发布电子期刊[亚洲雇佣法：年中回顾](#)，内容涵盖亚洲14个司法辖区，并将每半年更新。

在第三十七期中，我们将回顾并评点2023年上半年度雇佣法发展情况，同时列出一些2023年下半年立法、咨询、政策及判例法方面的预期重大变革。

孖士打与亚洲地区10家律师事务所长期开展跨境合作，与对方律师建立了密切的工作关系，本刊正是这一努力的结果。

我们衷心希望本刊对阁下有所助益。

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

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

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

This publication is a result of ongoing cross-border collaboration between 10 law firms across Asia with whose lawyers Mayer Brown has had the pleasure of working with closely for many years.

We hope you find this edition useful.

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《消除工作场所性骚扰制度（参考文本）》

2023年3月8日，人力资源社会保障部、国家卫生健康委员会、最高人民法院、全国总工会、中国企业联合会/中国企业家协会、全国工商联发布了《消除工作场所性骚扰制度（参考文本）》，旨在指导用人单位完善消除工作场所性骚扰制度，也为检察机关开展妇女权益保障公益诉讼提供参考。

尽管《消除工作场所性骚扰制度（参考文本）》仅是指导用人单位的操作指南，其分别对性骚扰定义及主要表现行为、用人单位的公开承诺、宣传培训、职工举报投诉、用人单位的调查处置、工会参与监督等主要内容予以规定。其中，性骚扰是指“违反他人意愿，以语言、表情、动作、文字、图像、视频、语音、链接或其他任何方式使他人产生与性有关联想的不适感的行为，无论行为实施者是否具有骚扰或其他任何不当目的或意图。”；而工作场所内禁止的行为包括但不限于：“（1）以不受欢迎的语言挑逗、讲黄色笑话、向他人讲述个人性经历、不受欢迎的称呼等；（2）故意触碰、碰撞、亲吻他人敏感部位，不适宜地展示身体隐私部位或在他人周围对自己做涉性的接触或抚摸；（3）以信息方式给对方发送或直接展示色情、挑逗文字、图片、语音、视频等，如微信、短信、邮件等；（4）在工作场所周围布置淫秽图片、广告等，使对方感到难堪；（5）以跟踪、骚扰信息、寄送物品等方式持续对他人表达、传递含性暗示的内容；（6）其他性骚扰行为。”

此外，该参考文本还指导用人单位对举报投诉人和调查处置工作予以保密，要求注意保护个人隐私权，通过采取调整工作岗位等措施，避免对受害者造成二次伤害。

[更多...](#)

System for Eliminating Sexual Harassment in Workplace (Model Text)

On March 8th, 2023, the Ministry of Human Resources and Social Security, the National Health Care Commission, the Supreme People's Procuratorate, the All-China Federation of Trade Unions, the China Enterprise Confederation/China Entrepreneur Association, and the All-China Federation of Industry and Commerce jointly issued the *System for Eliminating Sexual Harassment in Workplace (Model Text)*, aiming to guide employers in improving the system for eliminating workplace sexual harassment and providing reference for prosecutorial authorities to safeguard women's right through public interest litigation.

Although the *System for Eliminating Sexual Harassment in Workplace (Model Text)* is only a guideline for employers, it provides for the definition of sexual harassment and its main forms, the employer's commitment, publicity and training, employee reporting and complaints, the employer's investigation and handling, and union participation and supervision. Notably, sexual harassment is defined as "a conduct that, against the will of another person, uses words, expressions, gestures, text, images, video, voice, links, or any other means to cause another person discomfort by sex-related associations, regardless of whether the perpetrator of the conduct has a harassment purpose or intent or any other improper purpose or intent." The prohibited behaviors in the workplace include, but are not limited to, "(1) teasing with unwelcome language, telling dirty jokes, telling personal sexual experiences to others, unwelcome name calling, etc.; (2) intentional touching, bumping, or kissing sensitive parts of others, inappropriately displaying private body parts, or sexually touching or fondling oneself in the vicinity of others; (3) sending or displaying pornographic or provocative texts, pictures, voice or videos to others by means of messages such as WeChat, SMS, email, etc.; (4) displaying obscene pictures or advertisements around the workplace to embarrass others; (5) persistently expressing or transmitting content with sexual implications to others through stalking, harassing messages, sending items, etc.; (6) other sexual harassment behaviors.

Meanwhile, such model text also guides employers to keep confidential the identity of the reporting complainant and the investigation and handling, to pay attention to the protection of personal privacy rights, and to avoid causing secondary harm to victims by taking measures such as adjusting job positions.

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《工作场所女职工特殊劳动保护制度（参考文本）》

2023年3月8日，人力资源社会保障部、国家卫生健康委员会、最高人民检察院、全国总工会、中国企业联合会/中国企业家协会、全国工商联发布了《工作场所女职工特殊劳动保护制度（参考文本）》，旨在指导用人单位完善工作场所女职工特殊劳动保护，保障广大女职工合法权益，促进女职工身心健康，也为检察机关开展妇女权益保障公益诉讼提供参考。

尽管《工作场所女职工特殊劳动保护制度（参考文本）》仅是指导用人单位的操作指南，其对工作场所女职工劳动就业保护、工资福利保护、生育保护、职业安全健康保护等方面均进行了一一列举。

[更多...](#)

Special Labor Protection System for Female Employees in Workplace (Model Text)

On March 8th, 2023, the Ministry of Human Resources and Social Security, the National Health Care Commission, the Supreme People's Procuratorate, the All-China Federation of Trade Unions, the China Enterprise Confederation/China Entrepreneur Association, and the All-China Federation of Industry and Commerce jointly issued the *Special Labor Protection System for Female Employees in Workplace (Model Text)*, aiming to guide employers in improving the special labor protection system for female employees in the workplace, protecting the legal rights and interests of female employees, promoting their physical and mental health, and also providing a reference for prosecutorial authorities to safeguard women's rights through public interest litigation.

Although the *Special Labor Protection System for Female Employees in Workplace (Model Text)* is only a guideline for employers, it detailly lists the protection of female employees in terms of labor employment, salary and welfare protection, maternity protection, occupational safety and health protection, etc.

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《关于阶段性降低失业保险、工伤保险费率有关问题的通知》

2023年3月29日，人力资源社会保障部、财政部、国家税务总局印发《关于阶段性降低失业保险、工伤保险费率有关问题的通知》，旨在进一步减轻企业负担，增强企业活力，促进就业稳定。

《关于阶段性降低失业保险、工伤保险费率有关问题的通知》明确阶段性降低失业保险、工伤保险费率政策延长实施至2024年底，具体包括：

1. 失业保险费率继续阶段性降低至1%，在省（区、市）行政区域内，单位及个人的费率应当统一，个人费率不得超过单位费率。
2. 工伤保险费率继续按照《国务院办公厅关于印发降低社会保险费率综合方案的通知》（国办发〔2019〕13号）所载的实施条件，阶段性降低一定比例。

[更多...](#)

Circular on Issues Relating to Phased Reduction of Unemployment Insurance and Work Injury Insurance Rates

On March 29th, 2023, the Ministry of Human Resources and Social Security, the Ministry of Finance, and the State Taxation Administration jointly issued the *Circular on Issues Relating to Phased Reduction of Unemployment Insurance and Work Injury Insurance Rates*, aiming to further alleviate the burden on enterprises, enhance their vitality, and promote employment stability.

The *Circular on Issues Relating to Phased Reduction of Unemployment Insurance and Work Injury Insurance Rates* specifies that the policy of phased reduction of unemployment insurance rates and work injury insurance rates will be extended until the end of 2024, including:

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1. The unemployment insurance rate will continue to be phased reduced to 1%. Within the administrative areas of provinces (autonomous regions and municipalities), the rates for employers and individuals should be unified, and the individual rate should not exceed the employer rate.
2. The work injury insurance rate will continue to be phased reduced by a certain percentage in accordance with the implementation conditions listed in the *Circular of the General Office of the State Council of the People's Republic of China on the Issuance of a Comprehensive Plan for Reducing Social Insurance Rates* (Guo Ban Fa [2019] No. 13).

[More...](#)

《消除工作场所童工和加强工作场所未成年工特殊劳动保护制度（参考文本）》

2023年6月2日，人力资源社会保障部、国家卫生健康委员会、国务院妇女儿童工作委员会办公室、全国总工会、中国企业联合会/中国企业家协会、全国工商联发布了《消除工作场所童工和加强工作场所未成年工特殊劳动保护制度（参考文本）》，旨在指导用人单位完善消除工作场所童工和加强工作场所未成年工特殊劳动保护制度，以及在用人单位与未成年工签订劳动合同时参考。

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System for Eliminating Child Labor in Workplace and Enhancing Special Labor Protection for Minor Workers in Workplace (Model Text)

On June 2nd, 2023, the Ministry of Human Resources and Social Security, the National Health Care Commission, the Office of the National Working Committee on Children and Women under the State Council, the All-China Federation of Trade Unions, the China Enterprise Confederation/China Entrepreneur Association, and the All-China Federation of Industry and Commerce jointly issued the *System for Eliminating Child Labor in Workplace and Enhancing Special Labor Protection for Minor Workers in Workplace (Model Text)*, aiming to guide employers in improving the system for eliminating child labor and enhancing special labor protection for minor workers in the workplace, as well as providing a reference for employers when signing labor contracts with minor workers.

[More...](#)

《关于延续实施一次性扩岗补助政策有关工作的通知》

2023年6月25日，为促进高校毕业生等青年就业，人力资源和社会保障部、教育部、财政部发布《关于延续实施一次性扩岗补助政策有关工作的通知》，旨在发挥失业保险助企扩岗作用，鼓励企业积极吸纳大学生等青年就业。

《关于延续实施一次性扩岗补助政策有关工作的通知》延续实施一次性扩岗补助政策至2023年12月底，具体包括：

1. 对招用2023届及离校两年内未就业普通高校毕业生、登记失业的16—24岁青年，签订劳动合同并为其缴纳失业、工伤、职工养老保险费1个月以上的企业，可按每招用1人不超过1500元的标准发放一次性扩岗补助。
2. 1名上述人员的就业参保信息和身份只能由一户企业用于享受一次性扩岗补助，不能重复使用。企业不能重复享受一次性扩岗补助和一次性吸纳就业补贴政策。

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

On June 25th, 2023, in order to promote employment among college graduates and other young people, the Ministry of Human Resources and Social Security, the Ministry of Education, and the Ministry of Finance jointly

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issued the *Circular on Continuation of the Implementation of the One-off Job Increase Subsidy Policy*, aimed at leveraging the role of unemployment insurance in assisting enterprises in expanding employment, and encouraging enterprises to actively hire college graduates and other young people.

The Circular on Continuation of the Implementation of the One-off Job Increase Subsidy Policy extends the implementation of the one-off job increase subsidy policy until the end of December 2023, including:

1. For enterprises that recruit, conclude employment contract with and pay the unemployment, work injury and employee pension insurance premiums for at least one month for the graduates of regular higher education institutes who have not been employed within two years after graduation and those graduated in 2023 and the youths aged 16-24 who are registered as unemployed, they are entitled to the one-off job increase subsidy with no more than RMB1,500 for each person recruited.
2. The employment insurance information and the identification of each person aforementioned can be used by only one enterprise for the one-off job increase subsidy and cannot be re-used. Enterprises can only benefit from either the one-off job increase subsidy or the one-off employment absorption subsidy.

[More...](#)

《人力资源服务机构管理规定》

2023年6月29日，人力资源社会保障部发布了《人力资源服务机构管理规定》，适用于在我国境内从事人力资源服务活动的人力资源服务机构，将自2023年8月1日起施行。

该规定对人力资源服务机构的许可备案、服务规范、监督管理及法律责任作出全面规定，特别是：

1. 人力资源服务机构对其发布的求职招聘信息，应当标注有效期限或者及时更新。
2. 人力资源服务机构开展人力资源供求信息收集和发布的，应当建立健全信息发布审查和投诉处理机制，确保发布的人力资源供求信息真实、合法、有效。
3. 人力资源服务机构发现用人单位、与其合作的人力资源服务机构存在虚假招聘等违法活动的，应当保存有关记录，暂停或者终止提供有关服务，并向有关部门报告。
4. 人力资源服务机构应当建立个人信息保护、个人信息安全监测预警等机制，不得泄露、篡改、损毁或者非法出售、非法向他人提供所收集的个人信息，并采取必要措施防范盗取个人信息等违法行为。
5. 经营性人力资源服务机构不得向个人收取明示服务项目以外的服务费用，不得以各种名目诱导、强迫个人参与贷款、入股、集资等活动。

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Administrative Provisions on Human Resources Service Agencies

On June 29th, 2023, the Ministry of Human Resources and Social Security issued the *Administrative Provisions on Human Resources Service Agencies*, which applies to human resources service agencies engaging in human resources services within the territory of China, and will come into effect on August 1st, 2023.

It provides comprehensive provisions on matters in relation to the licensing and filing, service standards, supervision and management, and legal responsibilities of human resources service agencies, in particular:

1. A human resources service agency shall indicate the validity period of job postings published by it or update job postings published by it in a timely manner.
2. A human resources service agency that collects and releases any supply and demand information on human resources shall establish a sound

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- information release review and complaint mechanism to ensure that information released is true, lawful, and effective.
3. When a human resources service agency finds that any employer or any human resources service agency with which it cooperates engaged in illegal activities, such as false recruitment, it shall keep relevant records, suspend or terminate the provision of relevant services, and report the same to the relevant authorities.
 4. A human resources service agency shall establish various mechanisms such as personal information protection, personal information security monitoring and early warning, and shall not disclose, tamper with, destroy, or illegally sell or provide to others any personal information collected, and shall take necessary measures to prevent illegal acts such as identity theft.
 5. A commercial human resources service agency shall not charge individuals for service items other than those expressly stated, and shall not induce or force individuals to participate in activities such as loans, shareholding, and fundraising under any pretexts.

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This section was prepared with the assistance of Meng Bo Law Office, a PRC law firm based in Shanghai, with which Mayer Brown has a close working relationship.

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律师通告: 以往的成功案例并不能保证取得相同的结果。

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