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Asia Pacific Employment & Compensation Quarterly Update

Quarter 2: 2022

Introduction

Our Asia Pacific Employment & Compensation Team is pleased to provide you with our second quarterly update for 2022, highlighting key employment law changes across the Asia Pacific region.

Please feel free to visit our **Workforce Redesign** and **FutureWorks** sites designed to guide global employers on how to future-proof your workforce and to stay competitive in innovating and revolutionizing your working practices.

Please also see our **Asia Pacific Employment & Compensation webinars** and **Solutions for a Connected World** sites for our integrated solutions to help you to successfully renew and reinvent so you can own the future.

To view our latest alerts on legal developments affecting employers globally, please visit our **InsightPlus** page where you can filter across various practice areas and topics including **I,D&E** and **Workforce Redesign**.

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Secret video recording amounts to serious misconduct

IN BRIEF

On 31 March 2022, the Fair Work Commission held that an employee's secret recording of a Zoom meeting was a valid reason for dismissal and justified a finding of serious misconduct. The recorded meeting involved a disciplinary meeting between the employee, her manager and an HR manager. The employee's daughter, with the employee's agreement, secretly recorded the meeting on her phone.

The commission stated the following:

- "… unless there is a justification, the secret recording of conversations in the workplace is highly inappropriate, irrespective of whether it constitutes an offence in the relevant jurisdiction."
- "[The employee's] collusion in the secret recording … amounted to serious misconduct. It was contrary to her duty of good faith to [the employer]. No persuasive reason was offered to justify the recording. It was unfair to the other participants in the meeting. It was not reasonably necessary to protect any valid interest. This conduct warranted dismissal without notice."

Case information: *Barbara Roman v Mercy Hospitals Victoria Ltd [2022] FWC 711* (31 March 2022)

Recommended action

Managers and HR personnel should be aware of the potential for recordings of virtual meetings.

Employees should be warned that meetings cannot be recorded and that any breach could result in disciplinary conduct, including summary dismissal.

Unreasonable additional hours, notwithstanding contractual hours and lack of complaint

IN BRIEF

On 6 May 2022, the federal court ruled that a meat-processing worker had been required to work unreasonable additional hours in breach of one of the National Employment Standards (NES) in the Fair Work Act 2009 (Cth) ("**FW Act**").

The worker was hired after arriving from Ghana a few weeks earlier. His contract stated that his ordinary hours were 50 hours per week and made no reference to hours under a Modern Award or the NES. The worker was not provided with a Fair Work Information Statement, as required under the FW Act.

The court noted that the contract could not displace the NES — "the only circumstances in which the FW Act sanctions work by an employee in excess of 38 hours is if the additional hours are reasonable" — and the hours cannot be reasonable simply because the contract states that they are the ordinary hours.

The FW Act provides for factors to consider in determining the reasonableness of the hours. These were dealt with by the court, with the most relevant being:

- There was a health and safety risk, as the employee was fatigued while responsible for wielding sharp knives and conducting heavy lifting.
- The employee was entitled to overtime under the award, but the employer was not compliant with award payments.
- While the employee did not contest the additional hours, this was unsurprising given his recent arrival in Australia and lack of the Fair Work Information Statement, and so lack of awareness of labor laws and industrial relations.
- There was nothing in the employee's role or level of responsibility that suggested a need for additional hours (e.g., managerial, supervisory or other additional responsibilities).
- The number of additional hours represented an additional 31.5% on top of a normal working week.
- The employee was obliged to work 12 additional hours every week. The hours deprived the employee of a two-day break from work every week and started at the "unsocial" time of 2:00 a.m.

Case information: *Australasian Meat Industry Employees Union v Dick Stone Pty Ltd* [2022] FCA 512 (6 May 2022)

Recommended action

For information only. The case is a timely reminder that contractual terms or an employee's acquiescence cannot overrule the NES. Employers must be mindful of compensating employees for additional hours worked, taking into account the requirements of any applicable modern award or enterprise agreement.

Victorian government funds pilot scheme for casual workers' sick leave

IN BRIEF

The Victorian government has committed almost AUD 250 million to fund a two-year pilot scheme giving paid sick leave to casual and contract workers in selected industries, while not revealing how it will be funded in the longer-term. While the banking industry is not included, the scheme may foreshadow subsequent, broader schemes of a similar nature.

The funding was included in the Victorian state budget after being foreshadowed in late 2020 at the height of the pandemic and confirmed in March this year.

The scheme is forecast to give more than 150,000 workers access to five days per year of paid leave at the national minimum wage.

Recommended action

For information only.

Transport Workers Union and DoorDash sign agreement for gig workers

IN BRIEF

On 10 May 2022, the Transport Workers Union (TWU) and DoorDash signed an agreement incorporating six core principles into their relationship:

1. Workers should not be prohibited from accessing appropriate work rights and entitlements.
2. Workers must have transparency.
3. Workers must have the opportunity to contribute to a collective voice.
4. Workers must have access to dispute resolution processes.
5. Appropriate resources should be allocated to ensuring industry standards are established and maintained, and to driver education and training.
6. A three-stage approach towards achieving regulation of the on-demand transport industry.

The agreement follows a failed attempt by rival Menulog to create a new award tailored to drivers, with the Fair Work Commission instead finding that the Road Transport Distribution Award already covered the workers. See the Fair Work Commission decision here.

Recommended action

For information only.

Fair Work Commission supports 10 days' paid family and domestic violence leave

IN BRIEF

On 16 May 2022, the Fair Work Commission delivered a provisional view that modern awards should be varied to enhance employees' entitlement to family and domestic violence ("**FDV**") leave. The current entitlement under the National Employment Standards (NES) and most modern awards is five days' unpaid FDV leave per year. The proposed new entitlement is to 10 days' paid FDV leave per year. Further details are as follows:

1. Full time employees and part-time employees on a pro rata basis should be entitled to 10 days' paid FDV leave per year.
2. The entitlement to 10 days' paid FDV leave per year should accrue progressively across the year in the same way as personal/carer's leave accrues under the NES.
3. The entitlement should accumulate from year to year, but be subject to a "cap" whereby the total accrual does not exceed 10 days at any given time.
4. The FDV leave entitlement should be accessible in advance of an entitlement to such leave accruing, by agreement between an employer and employee.
5. The FDV leave entitlement should operate on the basis that it is paid at the employee's "base rate of pay."
6. The definition of "family and domestic violence" should be in the same terms as the current definition (and not extend to FDV perpetrated by a member of the employee's household who is not related to the employee).
7. In all other relevant respects, the model FDV leave term should reflect the terms of the current entitlement to take unpaid FDV leave under the NES.

The new federal government has committed to introduce legislation to implement the reform into the NES during the sitting period commencing 26 July 2022. In light of this, the Fair Work Commission has not provided any further directions.

Should the proposed entitlement form part of the NES, it would be available to both award-covered and award-free employees.

Recommended action

Watch for developments.

Coles to offer staff 10 days' paid gender affirmation leave

IN BRIEF

Transgender and gender-diverse staff of supermarket chain Coles will be entitled to up to 10 days of paid gender affirmation leave. Coles Chief Legal and Safety Officer and Chair of the company's Pride Steering Committee David Brewster said Coles knew of at least 900 team members who identify as transgender or gender-diverse.

The leave is available to all permanent full-time and part-time staff who choose to undergo gender affirmation surgery to change their physical and sexual characteristics to better align with their identity. Casual employees will have access to unpaid gender affirmation leave.

Recommended action

For information only.

Change of federal government

IN BRIEF

The Australian Labor Party won Australia's federal election on 21 May 2022 for the first time in almost 10 years. During its election campaign, the Labor Party indicated that it would push for a rise in the minimum wage by 5.1% (note the minimum wage is set independently by the Fair Work Commission, not by the government itself). The Fair Work Commission handed down its annual minimum wage decision in June 2022 (see below).

See our contemporaneous article here.

Recommended action

Watch for developments.

Nearly AUD 1.8 million awarded in compensation for general protections claim

IN BRIEF

The federal court has found that Hawkesbury Race Club Limited took adverse action against a manager by withholding payments of her entitlements (commissions, annual leave and long service leave) because she made a complaint regarding the lack of payment and treatment by the chief executive officer.

The awards were as follows:

- AUD 1,770,510 compensation
- AUD 24,233 for breach of contract
- AUD 160,650 as penalties for the adverse action and failure to pay entitlements
- AUD 300,000 in costs

In the previous liability ruling, the federal court noted that the chief executive officer's conduct against the manager caused "a very serious psychiatric illness that may never be cured or ameliorated to any significant degree."

Recommended action

Conduct regular training on bullying and harassment.

Ensure appropriate complaint handling procedures are in place.

Western Australia removes broad-based vaccination mandate

IN BRIEF

Effective from 10 June 2022, Western Australia's mandatory vaccination policy will be updated in line with health advice and will only apply to workforce handling the most vulnerable to protect them from severe disease.

This means workers in the following sectors must be triple-vaccinated to be able to enter their work premises:

- Healthcare and health support workers in hospitals and primary healthcare settings
- Workers in residential aged care
- Workers in residential disability settings

The vaccine requirements in place on other workforces will be removed from this date.

Recommended action

Review risk assessments to consider whether a mandatory vaccination policy is a reasonable work health and safety measure, notwithstanding the lack of public health orders.

Fair Work Commission approves 5.2% increase to national minimum wage

IN BRIEF

On 15 June 2022, the Fair Work Commission approved a 5.2% (AUD 40) rise to the national minimum wage. This brings the national minimum wage to AUD 812.60 per week or AUD 21.38 per hour. Award minimum wages were increased by 4.6% (subject to a minimum increase of AUD 40 per week).

The panel decided to provide a proportionately higher increase to low-paid employees, noting that the present circumstances (including high inflation and low real wage growth) warranted an approach that affords a greater level of support to the low-paid, while seeking to constrain inflationary pressures.

In effect, the impact on modern awards is as follows:

- Modern award minimum wage rates above AUD 869.60 per week will receive a 4.6% adjustment.
- Modern award wage rates below AUD 869.60 per week will be adjusted by AUD 40 per week.

The changes are effective from the first full pay period after 1 July.

Recommended action

Ensure payroll is adjusted for award or minimum wage covered employees.

Ensure any employees expressed to be paid above award rates (including, e.g., for annualized salaries) are still ahead of the award rates.

Victoria removes broad-based vaccination mandate

IN BRIEF

Effective 11:59 pm on Friday, 24 June 2022, Victoria lifted the public health order requiring general workers to work from home, unless double-vaccinated or medically exempt. The changes also significantly limited the definition of "specified workers" (so that only employees who work as custodial workers, disability workers or emergency service workers are considered "specified workers" who must be vaccinated).

Employers will still be able to set their own workplace conditions.

Recommended action

Review risk assessments to consider whether a mandatory vaccination policy is a reasonable work health and safety measure, notwithstanding the lack of public health orders.

PEOPLE'S REPUBLIC OF CHINA

Measures to prevent social insurance fraud formally implemented

IN BRIEF

The Measures for Administrative Supervision of Social Insurance Funds ("**Measures**") were formally implemented on 18 March 2022. The Measures aim to strengthen administrative supervision of social insurance funds to investigate and prevent acts that harm the social insurance system, such as creating fake employment relationships to fraudulently obtain social insurance benefits. The most relevant parts of the Measures for employers operating in China are the following:

The Measures list several types of conduct that would be considered fraudulent obtainment of social insurance benefits, including but not limited to: (i) faking social insurance eligibility or belatedly making missed premium payments in a way that violates regulations, through means such as fabricating personal information or employment relationships, forging, tampering with or stealing another persons' identity papers that can serve as proof of identity, providing fake supporting documents, etc.; and (ii) fraudulently obtaining occupational injury insurance benefits by carrying out assessment procedures for an occupational injury or one's ability to work based on a fake report of an occupational injury accident or on supporting documents that have been forged or tampered with, or by providing a fake conclusion that an occupational injury was sustained or a fake conclusion as to the assessment of the ability to work.

Based on the above, if an insured person who does not work for a given company causes their social insurance premiums to be paid by that company on their behalf, or if an employee works in a place other than the employer's and a third party in that place is instructed to pay the employee's social insurance premiums on the employer's behalf, then this situation could potentially be determined to be a case of fraudulently obtaining social insurance benefits. Currently, it is common practice for companies who have employees based in cities without a local registered office to make social insurance contributions through third-party payroll agencies, though some cities are starting to crack down on such arrangements; the Measures are a potential sign that such crackdowns may become more widespread in the future.

Likewise, if an enterprise provides an untruthful supporting document or makes a false statement for an employee in the course of determination of an occupational injury, and such untruthful conduct causes the employee to receive occupational injury benefits, then the enterprise will likewise be deemed to have fraudulently obtained social insurance benefits.

The Measures and the Social Insurance Law provide that entities and individuals that fraudulently obtain social insurance benefits should not only return the benefits obtained but they will also receive a fine (of between two and five times the amount of the benefits) from the administrative authority in charge of social insurance. According to separate administrative measures, fined enterprises could also find themselves on the list of persons with bad social credit in the social insurance area, which would have a significant impact on their reputation and image.

If the circumstances are serious and the fraudulently obtained amount is relatively large, the enterprise and individual(s) involved will be treated as criminal offenders, as is shown by judgments issued in a number of regions and cities around the country. For example, there was a case in Beijing involving the belated payment of missed old-age insurance premiums under a sham employment relationship. The fraudulently obtained amount of old-age insurance benefits was in excess of RMB 170,000. The Beijing Second Intermediate People's Court convicted the business operator that had organized the insurance fraud of criminal fraud and sentenced him to five years' imprisonment and a fine of RMB 5,000.

Please see our full client alert here.

Recommended action

As to whether payments on the employer's behalf of the social insurance premiums of employees working in another location could be deemed to be social insurance fraud and thus violate the Measures, companies may need to wait and see how local social insurance authorities interpret and apply the Measures in practice. As noted above, some cities, such as Beijing and Hangzhou, have already started prohibiting such arrangements.

New guidelines issued on handling of employment dispute arbitration and litigation

IN BRIEF

The Ministry of Human Resources and Social Insurance and the Supreme People's Court jointly issued the Opinion (1) on Issues Concerning the Linking of Employment Dispute Arbitration and Litigation ("**Opinion**") on 21 February 2022. The Opinion implements a new system that provides for a consistent scope of acceptance of cases, unified criteria and effective linkage of procedures for arbitration and litigation. Some of the highlights of the Opinion are as follows:

1. Compensation claims against employees are acceptable

Previously, arbitration commissions in different regions had no consistent understanding as to whether to accept jurisdiction over compensation-related claims against employees. The Opinion makes it clear that if an employer holds an employee liable for compensating for the loss it has suffered due to the employee's illegal termination of the employment contract or the agreed-upon confidentiality obligation or non-compete requirements, the arbitration commission should accept the case according to law. This clearly provides a channel for an employer to pursue claims against employees.

2. Effective linking up of mediation, arbitration and litigation procedures

i. If the parties reach a mediation agreement under the auspices of a mediation organization, they may apply for an examination by an arbitration commission or seek judicial confirmation. If the arbitration commission does not accept the application for an examination of the mediation agreement or if it does not confirm the mediation agreement, the employee may, under certain circumstances, directly institute an action. This will help reduce sources of disputes and increase the rate of performance of mediation agreements.

ii. Based on the 2017 Rules for the Handling of Employment-Related Arbitration Cases, the Opinion provides further details concerning the specific matters subject to final arbitration awards. In particular, it specifies that the labor compensation that can be claimed includes the employee's salary for the provision of normal labor during the statutory standard working hours, salary or sick leave salary during paid suspension of work and one month's pay in lieu of notice by the employer. Cases that are simple and involve small amounts will be finally decided on at the arbitration stage. On the other hand, if the matter decided on in an award involves confirmation of an employment relationship, the arbitration commission should render a non-final award (which can then be challenged in court).

3. Examination of evidence during arbitration and litigation stages

If the party bearing the burden of proof submits evidence during the litigation proceedings that was not submitted during the arbitration proceedings, this party should explain the reason for doing so. During litigation proceedings, the court will not support a party's denial of a fact that the party admitted to during the arbitration proceedings, unless the other party consents to this denial or the fact was admitted due to coercion or a material misunderstanding of the circumstances.

Therefore, employers should pay close attention to the submission and cross-examination of evidence during the arbitration proceedings, as any admission of evidence during arbitration will likely be referred back to during any later litigation proceedings.

4. Unification of criteria for application of the law

The Opinion clarifies the criteria for application of the law in common employment disputes, including the following points:

i. If an employer terminates an employment contract because the employee committed fraud by violating the principle of good faith and providing false personal information (e.g., academic certificates, résumé, etc.) in connection with the conclusion of the contract, the arbitration commission or the People's Court should not support the employee's claim for severance or compensation.

ii. If an employer delays the execution of a written employment contract by one year or longer after employment commences and the employee claims double salary for the period more than one year after employment commences, the arbitration commission or the People's Court should not support such claim (rather, the law only provides that the employee should be deemed to be on an open-term contract in such circumstance; the double salary penalty should only apply to the period from the second month of employment to the one year anniversary without a written employment contract).

New guidelines issued on handling of employment dispute arbitration and litigation

iii. If an employer and an employee agreed on a non-compete period and economic compensation, and the employee claims termination of the non-compete restrictions because, due to a reason attributable to the employer, the employee was not paid economic compensation for three months after the employment contract was terminated or ended, the arbitration commission or the People's Court should support such claim.

Please see our full client alert here.

Recommended action

For information only.

Shanghai's human resources and social security authority issues measures on employment issues arising during the pandemic

IN BRIEF

On 27 March, the Shanghai Municipal Bureau of Human Resources and Social Insurance issued Several Policy Measures for Full Anti-Pandemic Support for Shanghai's Human Resources and Social Insurance Sector ("**Shanghai Measures**"), which consist of 16 articles aimed at providing employment-related assistance and guidance to enterprises affected by the pandemic. The following provisions are the most noteworthy to employers:

- **Salaries of infected employees** — The Shanghai Measures specify that if employees are unable to provide normal labor because of quarantine measures imposed by a medical institution or the government against COVID-19 patients, carriers, suspected cases and close contacts, etc., their employers should pay them for normal labor while they are quarantined. If employees need to continue to suspend their work after the conclusion of quarantine for reasons of medical treatment, their employers should pay sick leave wages applicable to employees who are in their medical treatment period. If the employer otherwise needs to suspend work or operations, or employees are otherwise unable to come to work due to control measures imposed by the government, the enterprise and the employees should make best efforts to resolve the salary and other such issues through consultations, depending on varying circumstances.
- **Continuation of the policy of phased reduction of unemployment insurance and occupational injury insurance rates** — Specifically, the unemployment insurance premium percentage paid by the employer and the individual employee are both 0.5% and the base premium rate for occupational injury insurance as stipulated by the state for the industry concerned is reduced by 20%.
- **Support for employee sharing** — The Shanghai Measures encourage enterprises in similar industries to swap employees in similar positions to mutually fill vacancies.
- **Time limits for determining occupational injuries and assessing the ability to work** — According to the Shanghai Measures, if the impact of the pandemic prevents an entity from timely applying for the determination of an occupational injury or determination of the ability to work, the time for which the impact of the pandemic persists may be deducted from the application time limit.

Please see our full client alert here.

Recommended action

Enterprises should ensure that the salaries of their infected employees and other employees are paid according to law during the pandemic control period.

Shenzhen passes regulations encouraging non-litigious dispute resolution mechanisms

IN BRIEF

The Regulations of the Shenzhen Special Economic Zone on Diversified Resolution of Conflicts and Disputes ("**Regulations**") were adopted by Shenzhen on 28 March 2022 and became effective on 1 May 2022. Prior to their release, several opinions had been issued at the national level, such as the Opinion on Strengthening the Control of Litigation Sources by Promoting Diversified Resolution of Conflicts and Disputes, the Implementing Opinion on Intensifying the Development of a One-Stop, Diversified Dispute Resolution Mechanism in People's Courts To Promote the Elimination of Conflict and Dispute Sources, etc., encouraging the various regions to explore diversified dispute resolution mechanisms in light of the local circumstances. Some regions (e.g., Xiamen municipality and Jiangsu province) have issued relevant local regulations exploring local mechanisms for the resolution of conflicts.

The following provisions of the Regulations are worth noting:

The Regulations emphasize the development of employment-dispute mediation organizations and encourage qualified enterprises to establish employment-dispute mediation committees and to provide such committees with office conditions and funding necessary for them to do their work. The Regulations also encourage industrial zones, commercial zones, trade associations and chambers of commerce to establish employment-dispute mediation organizations for their particular zones or trades. The Regulations also require human resources departments to regularly compile statistics on the establishment of employment-dispute mediation committees by enterprises.

The Regulations specify that employment-dispute arbitration institutions should encourage the disputing parties to settle their dispute through mediation. They stress that non-litigious resolution concepts such as mediation should be implemented throughout the course of the employment dispute. In addition, the Regulations expressly grant employment-dispute arbitration institutions the flexibility to handle their cases in various ways such as written hearings, online hearings, etc.

The Regulations provide for a recording mechanism for the facts that are not in dispute. Subject to the consent of the parties, the undisputed facts confirmed by the parties during the mediation stage as well as their addresses for service, the assessment reports and the expert opinions could serve as evidence during the arbitration or litigation proceedings.

Please see our full client alert here.

Recommended action

We recommend that enterprises keep an eye open for the issuance of relevant accompanying implementing policies, as this might affect how employment disputes are handled in Shenzhen in the future.

Jiangsu High People's Court publishes top 10 typical employment dispute cases of 2021

IN BRIEF

Recently, the Jiangsu province High People's Court selected and publicized 10 employment dispute cases from 2021 to provide guidance to lower courts in the province. All are final judgments from courts around the province. Some of the key takeaway points are provided below:

- If an employee fails to truthfully inform the employer of their itinerary while pandemic control measures are in place, the company may terminate the employee for breach of disciplinary rules, acting in bad faith or violation of the national pandemic control policies, even if the employee's conduct had no material consequences for the epidemic control measures. However, to play it safe, we still recommend that companies formulate, improve and lawfully adopt their rules and regulations to reduce the termination risks.
- If a dispute between a company and one of its employees involves a conflict between different provisions of the rules and regulations formulated by the company, and the employee relies on the rule that is favorable to the employee, this claim should be supported by the court. Therefore, we recommend that companies formulate their rules and regulations carefully to avoid conflicting terms.
- Even if a livestreamer has signed a cooperation agreement (rather than an employment contract) with a platform, the livestreamer and the platform could still be deemed to be in an employment relationship if their actual relationship clearly is one of personal and economic subordination. Therefore, we recommend that, in practice, companies adopt a management model that is lawful, reasonable and in line with their own development requirements, based on the different management models and features.
- If a company pays for an employee's specialized training or provides them with specialized technical training, it may sign an agreement with the employee to stipulate the service term and the requirement that if the employee leaves before the expiration of that term, they must repay the prorated portion of the specialized technical training expenses. However, ordinary day-to-day operational training and training provided before the employee takes up their post is not "specialized technical training" as mentioned above.

Please see our full client alert here.

Recommended action

For information only.

Tianjin case shows that seeking criminal enforcement of trade secret theft is getting easier

IN BRIEF

Recently, the Tianjin Intellectual Property Court tried a criminal case involving an employee's infringement of his employer's trade secrets. Its judgment has drawn much attention in the Chinese media.

The defendant, surnamed Zhao, worked in the sales department of a foreign-invested company in China. During his time with the company, he stored many of its documents on a mobile hard drive provided by it. No authorization for such storage had been given. After leaving the company, he took the drive with the documents with him. Previously, the company had taken steps to protect its trade secrets, such as the execution of employment contracts, issuance of employee manuals, sending of emails, displaying of reminders during computer start-up, etc. Ultimately, the court held that the employee had infringed the company's trade secrets and sentenced him to 10 months' imprisonment and a fine of RMB 60,000.

In the past, the most difficult thing to prove in criminal cases involving an employee's infringement of their employer's trade secrets was often the amount of loss that the employee had caused the employer to suffer, or the fact that the employee's illegal income from the infringement was high enough to open a criminal case, i.e., at least RMB 300,000. As a result, many trade secret infringement cases that only involved the obtaining of such secrets could not be treated as criminal offenses. To a certain extent, this situation diminished the law's deterrent effect in terms of employees' criminal liability for infringement of their employers' trade secrets.

This difficulty was eased on 14 September 2020, when the Supreme People's Court and the Supreme People's Procuratorate issued the Interpretation (3) of Several Issues in the Specific Application of the Law in Criminal Cases of Infringement of Intellectual Property Rights. The judicial interpretation provides expressly that "if a trade secret of the rights holder was obtained by improper means but has not been disclosed, used or licensed, the amount of loss may be determined based on a reasonable license fee for the trade secret." Zhao's case was the first in China (since the issuance of the judicial interpretation) where the amount of loss suffered by the holder of rights in the trade secret was determined based on a reasonable license fee and where the defendant was successfully convicted and penalized accordingly.

Please see our full client alert here.

Recommended action

For information. The case also serves as a reminder for employers to take necessary steps to protect their own trade secrets. Their inclusion of provisions on confidentiality obligations, data security, etc., in their employment contracts, confidentiality agreements and employee manuals, and their provision of relevant training, emailing of security reminders and displaying of reminders during computer start-up, etc., are recognized as valid protection measures.

Guangdong province court issues first equal opportunity case judgment in favor of pregnant employee

IN BRIEF

Guangdong province's first equal employment rights case was recently concluded. The worker, who had been fired on account of her pregnancy, claimed lost salary for the period of pregnancy and for the unused maternity leave as well as compensation for mental distress. The claims were supported by the court, which confirmed that her dismissal because of her pregnancy constituted discriminatory treatment.

The plaintiff in the case, surnamed Fan, joined Company A in 2019. One month later, she discovered that she was pregnant. The day she informed the company of the news, she was told she did not need to come in anymore. The next day she was barred from entering the workplace. In March of the same year, she applied to the Zhuhai Employment Dispute Arbitration Institute for arbitration, claiming payment of the salary shortfall, overtime pay, double salary for failure to sign an employment contract and double severance for illegal termination of the employment contract. The parties reached a settlement agreement in July, with Company A agreeing to pay a settlement amount of RMB 6,000. Fan suffered a miscarriage during the arbitration period.

Fan subsequently initiated an equal employment rights suit against Company A. The court of first instance, namely the Zhuhai Xiangzhou District Court, supported her claims, holding that Company A's summary dismissal of Fan upon learning of her pregnancy constituted an infringement of her equal employment rights. In its judgment, the court ordered Company A to apologize to Fan in writing and to pay her RMB 2,064 in lost salary during the pregnancy period, RMB 1,875 in lost salary for her unused maternity leave and RMB 10,000 in compensation for mental distress. Being dissatisfied with the judgment, Company A filed an appeal. After more than two years, Company A recently withdrew its appeal and the first instance judgment was executed.

Please see our full client alert here.

Recommended action

When settling employment disputes with employees, companies should carefully structure any settlement agreements to ensure potential civil claims, such as discrimination claims, are also covered.

Guidance provided on employment disputes relating to pandemic control measures

IN BRIEF

Recently, cases handled by the Jilin Provincial High People's Court related to employment issues arising during the pandemic have been reported on in the national media, as a way to provide guidance to employers and employees about how such issues should be handled.

1. Salary reductions due to the pandemic are subject to conditions

Due to the impact of the pandemic, an automotive parts and components company in Jilin issued a Salary Settlement Plan for Contract Workers During the Pandemic in early 2020. The plan stated that during the pandemic, the company would pay its employees 70% of their regular salary. However, the company had not reached agreement with its employees on the salary plan. In March and April 2020, a company employee surnamed Qi was only paid 70% of his salary, pursuant to the plan, even though he had a full attendance record. Due to the cut, Qi terminated his employment contract with the company and demanded economic compensation for the company's failure to pay his salary in full.

The company argued that it had legal grounds to reduce employee salaries, claiming that the Notice of the General Office of the Ministry of Human Resources and Social Security on Duly Handling Employment Relationship Issues During the COVID-19 Pandemic Control Measures ("**Pandemic Notice**") permitted enterprises facing production or operational difficulties due to the pandemic to pay their employees' salaries at lower rates.

The court ruled that the Pandemic Notice provisions are only aimed at enterprises that face production or operational difficulties due to the pandemic and have suspended work or production. According to the employee's WeChat records with the company's general manager, which the employee provided during the proceedings, the general manager acknowledged that he had required the employee to put in the full amount of work during March and April 2020 and that he had promised that the employee would be paid his full salary. This shows that the company had not suspended work or production due to the pandemic during the period concerned. Furthermore, the company failed to provide evidence of operational difficulties that prevented it from paying its employees during the period. Based on the foregoing, the court ruled in favor of the employee.

2. Violation of the company's pandemic control measures does not necessarily constitute a serious disciplinary offense

Due to the pandemic control measures, a real estate management company in Jilin required the security staff to strictly enforce the access measures and only permit registered vehicles to enter the area managed by it. One day in February 2020, an owner of real estate in the area arrived in his car and asked to enter so he could return home. Following his repeated requests to be let through, and given that the cars behind him were unable to enter, a security staff member surnamed Zhao took pity on him and allowed him to pass. Upon discovering what had transpired, the person in charge of the company dismissed Zhao for having violated the company's management regulations. Zhao took the company to court, claiming economic compensation for the company's termination of his employment contract.

During the trial, the court ascertained that Zhao had indeed violated the company's management regulations by permitting an outside vehicle to enter the area on Zhao's own authority and that he had done so while pandemic control measures were in place. However, as his conduct did not constitute a serious disciplinary offense under the company's rules and regulations and had not led to serious consequences, there had been no sufficient legal basis for the company's termination of Zhao's contract. Accordingly, the court ordered the company to pay Zhao economic compensation in the amount of RMB 10,000.

Please see our full client alert here.

Recommended action

Companies should carefully consider local court practice on this issue before implementing a salary reduction. In addition, employers should consider revising and improving their rules and regulations and should strictly regulate how they deal with disciplinary offenses relating to violations of pandemic control measures.

HONG KONG

Abolition of the offsetting arrangement under the Mandatory Provident Fund and other occupational retirement schemes by introducing the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022

IN BRIEF

The Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022 ("**Bill**") was passed by the Legislative Council on 9 June 2022. The existing offsetting arrangement under the Mandatory Provident Fund (MPF) whereby the employers may offset the statutory long service payment (LSP) or severance payment (SP) against benefits derived from the employers' contributions to the MPF scheme will be abolished. Kindly note that the Bill has not brought any changes to the eligibility, the rate and the maximum payment of SP or LSP.

The offsetting arrangement is expected to be completely abolished in 2025 following the full implementation of the eMPF Platform, which is being developed by the MPF Authority. Meanwhile, the government has rolled out transitional plans to help employers adapt to the forthcoming changes.

Please see our full client alert here.

Recommended action

Employers should ensure compliance with the new regime. Employers are also encouraged to communicate proactively with their employees to avoid any misunderstanding.

Introduction of the Employment (Amendment) Ordinance 2022 which clarifies the ambiguity of employee's benefits and employer's rights in relation to COVID-19 preventive measures

IN BRIEF

The Employment (Amendment) Ordinance 2022 ("**Amendment Ordinance**"), which amends the Employment Ordinance to cater for the management of the employment relationship in response to COVID-19 preventive measures was gazetted on 17 June 2022.

Among other things, the Amendment Ordinance provides that:

i. dismissing an employee because of their failure to provide proof of vaccination in compliance with the employer's "legitimate vaccination request" in writing (details of what amounts to a "legitimate" request are set out in the Amendment Ordinance) will not be deemed as an unreasonable dismissal; and

ii. if an employee is absent from work to observe an order which restricts a person's movements under Cap. 599 (such as an isolation or quarantine order) under the Prevention and Control of Disease Ordinance (Cap. 599) the employee will be deemed as being on a sickness day(s). If the relevant conditions stipulated under the Amendment Ordinance are fulfilled, the employee will be entitled to sickness allowance pursuant to the rules contained therein. The employee's absence from work due to their compliance with a Cap. 599 order (e.g., isolation or quarantine order) is not a valid reason for dismissal or variation of the employment contract. (Note that the Amendment Ordinance does not cover the compulsory quarantine imposed on persons arriving in Hong Kong.)

Further details can be found here.

Recommended action

Employers should familiarize themselves with these changes.

"Territory-wide Representative Survey on Sexual Harassment in Hong Kong 2021" issued by the Equal Opportunities Commission

IN BRIEF

The Equal Opportunities Commission (EOC) issued a report entitled "Territory-wide Representative Survey on Sexual Harassment in Hong Kong 2021" ("**Report**") in May this year. Among other things, the Report looks at public awareness of sexual harassment, the prevalence of online and workplace sexual harassment and the impact of sexual harassment. It also sets out recommendations to redress workplace harassment.

Employers are strongly encouraged to (i) develop a clear anti-sexual harassment policy; (ii) put in place an effective system to handle complaints; (iii) take disciplinary or appropriate action if a claim of sexual harassment is established; (iv) implement improvement measures in a timely manner; and (v) provide regular training to employees.

A link to the survey can be found here.

Recommended action

Employers should follow the guidelines set out in the Report to foster a safe working environment for all staff.

Partial enforcement of the amended Child and Family Care Leave Act (effective 1 April 2022)

IN BRIEF

In June 2021, the Child and Family Care Leave Act (CFCLA) was amended to deter employees from leaving their job due to childbirth, childcare or family care, and to enable both men and women to balance work and childcare by introducing the measures below. The effective date of each measure is different, as indicated below:

i. Establishing a framework for flexible childcare leave immediately after the birth of a child to encourage male employees to take childcare leave (effective 1 October 2022)

ii. (a) Establishing an employment environment that makes it easier to take childcare leave and (b) obligating employers to take measures to inform employees of the relevant systems and confirm the intentions of individual employees who have informed the company of their or their spouse's pregnancy or childbirth (effective 1 April)

iii. Allowing childcare leave to be taken in up to two installments (effective 1 October 2022)

iv. Obligating employers to publish the amount of childcare leave taken by their employees (effective 1 April 2023)

v. Easing requirements for employees with fixed-term employment to take childcare and family care leave (effective 1 April)

More details on the amendments effective 1 April:

1. How to establish an employment environment that makes it easier to take childcare leave

   Employers can choose at least one method from several options set forth by the Ministry of Health, Labour and Welfare on how to develop a better working environment, such as establishing consultation desks or providing training.

2. How to inform employees of the relevant systems and how to confirm their intention to take leave for employees who have informed the company of their or their spouse's pregnancy or childbirth

   Employers should explain the new leave system to employees and provide a contact point (e.g., HR) in writing or by having an interview, if appropriate. Fax or email is also acceptable if requested by an employee.

3. Easing requirements for employees with fixed-term employment to take childcare and family care leave

   Before the amendment, one of the requirements for fixed-term employees to take childcare leave or family care leave was that they must have been employed for at least one year. As of 1 April, however, this requirement ceased to have effect.

Recommended action

Employers need to confirm and, if necessary, update the relevant provisions of their work rules and establish internal mechanisms in connection with ii, (a) and (b) above.

The amended Act on the Promotion of Female Participation and Career Advancement in the Workplace (effective 1 April 2022)

IN BRIEF

Effective 1 April 2022, the requirements under the amended Act on the Promotion of Female Participation and Career Advancement in the Workplace (APFPCA) are applicable to companies with more than 100 regular employees. These employers need to take action to comply with the amended APFPCA.

The APFPCA was enacted to create an environment to assist female career advancement. The amended APFPCA obliges employers with more than 100 regular employees to (i) formulate and file action plans for the promotion of female employees; and (ii) publish information on the activities of female employees at the company.

Details:

1. Formulation and filing of action plan

   Employers with more than 100 regular employees should take the following steps:

   Step 1: Ascertain the status of the activities of the company's female employees and analyze the issues they are facing.

   Step 2: Based on Step 1, formulate and publicize an action plan within the company and to the general public to improve gender equality containing concrete objectives and measures, including (a) the period of the action, (b) one or more numerical targets, (c) details of the measures and (d) the implementation period for the measures.

   Step 3: File a form stating that the action plan has been enacted with the relevant Prefectural Labor Bureau.

   Step 4: Periodically inspect and evaluate the status of the numerical targets and the status of the implementation of measures based on the action plan.

2. Publication of information on the activities of female employees at the company

   Employers with more than 100 regular employees must choose at least one item listed under the APFPCA regarding the status of the activities of female employees at the company and publish them in a manner allowing others such as job seekers to easily access them. These items include the percentage of female employees in the entire workforce, the percentage of female employees in managerial positions, differences in the average number of consecutive years of service of male and female employees, the percentage of employees taking childcare leave by gender, and the percentage of employees taking paid leave, etc.

Recommended action

Applicable employers should be aware of these changes.

The amended Labour Measures Comprehensive Promotion Act (the so-called Power Harassment Prevention Act) applicable to small and medium-sized companies in addition to large companies (effective 1 April 2022)

IN BRIEF

The application of the amended Labour Measures Comprehensive Promotion Act (LMCPA) has been extended to small and medium-sized companies ("**SMCs**") in addition to companies with more than 300 regular employees as of 1 April 2022.

"Power harassment" is a form of harassment typically by someone in a position of power. The six power harassment categories are defined as (i) physical abuse, (ii) mental abuse, (iii) exclusion from certain gatherings, (iv) excessive work demands, (v) insufficient work demands and (vi) invasion of privacy.

The amended LMCPA came into effect June 2020 and started to apply to SMCs from April 2022. This means that SMCs are also obliged to prevent and take measures against power harassment. Specifically, the law requires employers to clarify their policies, promptly respond to allegations, protect privacy and prohibit disadvantageous treatment of those alleging harassment. No penalties are stipulated.

Below are the definitions of SMCs:

Type of business	Capital	or	Number of employees on an ongoing basis
Retail business	JPY 50 million or less	or	No more than 50
Service business	JPY 50 million or less	or	No more than 100
Wholesale business	JPY 100 million or less	or	No more than 100
Others	JPY 300 million or less	or	No more than 300

Recommended action

Employers should update their anti-harassment policies to expressly state that power harassment is prohibited and link the breach of anti-harassment policy to internal disciplinary provisions.

Employers should also provide training to employees so that employees understand the new policies and rules, and establish a point of contact in the company to handle internal allegations/complaints of harassment in the workplace.

Amendments to the Whistleblower Protection Act

IN BRIEF

The amended Whistleblower Protection Act came into effect on 1 June 2022.

The amendment requires companies with more than 300 employees to establish a system necessary to respond appropriately to whistleblowing and to designate persons in charge of handling whistleblowing.

For small and medium-sized enterprises with 300 or less employees, this rule is stipulated as an "obligation to make sincere efforts". This obligation to make sincere efforts has no legally binding force and small and medium-sized enterprises are not subject to penalties for non-compliance.

These are the main measures that companies with more than 300 employees must take (not an exhaustive list):

1. Establishment of an internal point of contact ("**POC**")
   - The companies should establish an internal POC to respond to whistleblowing and specify persons and departments in charge of receiving whistleblowing reports from the POC, conducting investigations and taking necessary measures to handle the reported issue.
2. A system to protect whistleblowers
   - To prevent disadvantageous treatment against whistleblowers, the companies should take necessary measures including disciplinary action for disadvantageous treatment. The companies should also establish an internal system to ensure that information related to whistleblowing is notshared by anyone beyond the necessary scope.
3. Measures to ensure the effective function of the system
   - The companies should (a) provide training to employees, directors and retirees on the amended act and the internal whistleblowing system, (b) notify a whistleblower of the remedial measures implemented to address to the reported incidents, and (c) maintain whistleblowing records.

Recommended action

Companies with more than 300 employees should establish an internal system to respond to whistleblowing.

MALAYSIA

Increase in minimum wage rates

IN BRIEF

Following the Minimum Wages Order 2022, which was gazetted on 27 April 2022, the monthly minimum wage was increased to MYR 1,500 on 1 May 2022 (regardless of whether the employee works in a city council area). The minimum monthly wage rate in Malaysia was previously set at MYR 1,200 (for employees working in a city council area) and MYR 1,100 (for employees working in areas other than a city council area).

Other changes introduced under the Minimum Wages Order 2022 include the following:

- An increase in the minimum hourly wage rate to MYR 7.21 per hour, from MYR 5.29 per hour
- Employers with less than five employees are exempted from applying the new minimum wage rates until 1 January 2023, unless the employer carries out a "professional activity." The definition of a "professional activity" is as per the Malaysia Standard Classification of Occupations (MASCO), published by the Ministry of Human Resources. This includes engineers, lawyers, surveyors and medical practitioners.

Recommended action

Employers should note the new minimum wage applicable in Malaysia and ensure compliance.

Employee's statutory Employees' Provident Fund contribution rate to increase to 11% from July 2022

IN BRIEF

The Ministry of Finance's previous initiative to reduce the rate of an employee's EPF contribution from 11% to 9% to increase employees' take-home pay as a result of the pandemic and the financial impact of prolonged lockdowns on the general public is due to end at the end of June 2022. Subject to further announcement, this would mean that from July 2022, the statutory contribution rate for an employee below the age of 60 will return to 11%.

Recommended action

Employers should take note of the revised employees' contribution rate from July 2022.

Amendments to the Employment Act

IN BRIEF

On 10 May 2022, the Employment (Amendment) Act 2022 ("**Employment Amendment Act**") was gazetted to introduce the new amendments to the Employment Act. The amendments are primarily driven by Malaysia's commitments to comply with international labor standards and practices as required under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Some of the key amendments to the Employment Amendment Act are as follows:

1. A reduction in the limit on regular weekly working hours from 48 to 45 hours
2. Increase in maternity leave from 60 days to 98 days
3. Introduction of seven days' paternity leave for married male employees
4. A restriction against the termination of pregnant employees or employees suffering from an illness arising from pregnancy, except on the grounds of misconduct, willful breach of a condition of the employment contract or closure of the employer's business
5. Conferring of powers on the director general of labor to inquire and decide on any dispute relating to discrimination in employment
6. Imposition of more stringent requirements to hire foreign EA employees
7. Requirement for employers to conspicuously exhibit a notice to raise awareness of sexual harassment in the workplace
8. According the right to an employee to request a flexible working arrangement
9. Introduction of a new offence of forced labor

On 26 August 2022, the Minister of Human Resources announced a delay to the implementation date for the amendments to the Employment Act. The amendments were originally anticipated to take effect on 1 September 2022 but this has reportedly been deferred to 1 January 2023. (Note – the 1 January 2023 date has not been officially gazetted, so until then, it may be subject to change.)

Once effective, the Employment Act will apply to all employees, except for certain identified sections of the Employment Act (relating to termination benefits, overtime payments, payment for work done on rest days / public holidays, collectively, "Identified Sections"). The Identified Sections will apply only to employees who earn (i) wages of RM 4,000 or less; or (ii) are engaged in specific blue collar occupations. Therefore, for white collar workers earning more than RM 4,000 a month, they will not be entitled to the benefits under the Identified Sections.

Please see our client alerts here and here.

Recommended action

Employers should be mindful of the amendments to be introduced under the Employment Amendment Act and be aware of the categories/scope of employees to be covered by the amendments.

SINGAPORE

Ministry of Manpower to introduce a new immigration framework to assess Employment Pass applications

IN BRIEF

The Employment Pass (EP) is the most common work pass for foreign professionals working in Singapore. The published eligibility criteria for the EP have been for some time only the foreign employee's salary and qualifications. The Ministry of Manpower (MOM) did not publish further guidance on the eligibility criteria for the EP, which can be confusing to employers and foreign employees when they are faced with a rejected EP application.

However, MOM announced on 4 March 2022 that it will introduce the Complementarity Assessment Framework (COMPASS), which is a points-based system to assess EP applications that will take effect from September 2023. COMPASS gives more color to the eligibility criteria that MOM takes into consideration when assessing EP applications. We elaborate on this below.

Through COMPASS, MOM intends to achieve the following goals:

- Bring into Singapore a higher quality foreign workforce with specialized skills, networks and expertise to complement our local workforce.
- Support employers that invest in reskilling their workers and transferring capabilities to build a strong Singaporean core.
- Ensure diversity in the foreign workforce in Singapore that draws the best from all around the world.
- Drive productivity growth while relying on foreign labor at a sustainable level.

COMPASS will provide a framework to score a new EP application on four foundational criteria, generally requiring each application to aggregate a minimum of 40 points, based on both the foreign candidate's and the employer's attributes. Applicants that initially fail to meet this minimum may nonetheless qualify for bonus points under two more candidate and employer criteria that warrant special attention.

The foundational criteria to take into consideration are: (i) the candidate's salary, (ii) the candidate's qualifications, (iii) the employer's nationality diversity and whether the candidate improves it, and (iv) the employer's support for local employment compared to their industry peers.

The two bonus criteria to consider are: (i) whether Singapore has sufficient local employees possessing the candidate's skills, and (ii) whether the employer meets specific strategic economic assessment criteria.

Aligned with exemptions to the current Fair Consideration Framework for job advertisements, a foreign EP candidate is exempt from COMPASS if they meet any of the following conditions:

- Earn at least SGD 20,000 fixed monthly salary
- Are applying as an overseas intra-corporate transferee under the World Trade Organization's General Agreement on Trade in Services or an applicable Free Trade Agreement
- Are filling a role for one month or less

Recommended action

Employers should take note of the changes to the immigration framework and timeline for implementation to ensure that they have sufficient time to train HR team members on the new requirements.

Updates to an employer's obligations when conducting investigations

IN BRIEF

The Appellate Division of the Singapore High Court (SGHC(A)) in the case *of Dong Wei v Shell Trading (Pte) Ltd and another* [2022] SGHC(A) 8 recently reminded employers that they should treat employees with dignity and respect when conducting employee investigations. This was on appeal from the Singapore High Court (SGHC) decision in *Dong Wei v Shell Eastern Trading (Pte) Ltd and another [2021]* SGHC 123.

Shell Trading (Pte) Ltd ("**Shell**") received allegations from third parties that an employee, Dong Wei, was placing himself in a position of conflict of interest. Shell formed an investigation committee and gave Dong Wei a notification letter informing him that his employment would be suspended with pay pending the outcome of the investigation. This notification letter also stated that Shell would inform him of the outcome of the investigation in due course. Ultimately, Shell terminated Dong Wei's employment without cause and paid him salary in lieu of the notice period. Shell never made it known to Dong Wei that the investigator reached a conclusion in respect of the allegations.

Dong Wei then commenced proceedings against Shell in the SGHC initially for, among other matters, a breach of the implied term of mutual trust and confidence under his employment agreement with Shell. The SGHC stated that Singapore law recognizes the implied term of mutual trust and confidence in all employment agreements unless the parties exclude this or modify it. In the context of employee investigations, this implied term requires the employer to do the following:

- Clearly inform the employee of the charges levelled against them and provide them with the opportunity to rectify any problems or clarify any misunderstandings.
- Ensure that the investigation is not a "hatchet job" where the outcome is predetermined against the employee or is so unfair as to destroy the basis of any expected continuation of the employment relationship.
- Rely on credible sources of information when deciding whether to suspend employees.

However, on appeal, the SGHC(A) disagreed with the SGHC and stated that Singapore law on the implied term of mutual trust and confidence is still unsettled, and it remains to be decided by the Singapore Court of Appeal, which is the apex court in Singapore, when the appropriate case comes along.

That said, even though the law on the implied term of mutual trust and confidence remains unsettled, the SGHC(A) reminded employers that employment is a "two-way" relationship and employers must treat employees with dignity and respect even when parting ways. This includes being more transparent with employees in relation to the outcome of investigations.

Recommended action

Employers should be mindful of this case when conducting employee investigations.

TAIWAN

Foreigners are allowed to engage in mid-level technical work under the latest Regulations on the Permission and Administration of the Employment of Foreign Workers.

IN BRIEF

1. From 30 April 2022, foreigners can engage in mid-level technical work provided that the following requirements are satisfied:
   - The foreigner has worked in Taiwan for at least six years, or they are an international student who has obtained an associate degree or higher in Taiwan.
   - The work that the foreigner will engage in is manufacturing, construction, agriculture (limited to outreach agriculture, orchids, mushrooms and vegetables), marine fishing or caretaker work.
   - The salary level must meet the following statutory standards:
     i. For an industrial worker, the salary must be no less than NTD 33,000 per month or NTD 500,000 per year.
     ii. For social welfare workers, the salary must be no less than NTD 24,000 per month. For institution caretakers, the salary must be no less than NTD 29,000 per month.
   - The foreigner must satisfy the following statutory technical requirements:
     i. An industrial worker must obtain professional licenses, complete training programs or pass the relevant performance tests.
     ii. The requirement above may be waived if the worker's monthly salary exceeds NTD 35,000.
     iii. Social welfare workers must pass a language proficiency test and must complete a 20-hour training program.
2. The employer must apply for the work permit for the foreign worker. Each work permit is valid for up to three years and may be extended when it expires.

Recommended action

For information only.

The Ministry of Labor has announced the primary focus industries of labor inspections in 2023.

IN BRIEF

On 21 June 2021, the Ministry of Labor announced the "2023 Annual Labor Inspection Policy" ("**Policy**"). The significant adjustments in the Policy are as follows:

1. Business units that operate "carcinogenic," "mutagenic" or "reproductive toxic" chemicals will be subjected to relevant project supervision and inspections.
2. In light of a recent occupational incident during movie filming, the labor inspection authority will implement a safety inspection of the film production industry.
3. To strengthen occupational safety at night, a night-work hazard prevention inspection of workplaces will be implemented.
4. To protect the safety of food delivery workers, the labor inspection authority will implement a disaster prevention inspection of the food delivery industry.
5. Considering the risks of large structure demolition operations, the labor authority will add the large structure demolition industry to the precision inspection category.

Recommended action

If a company's relevant industry has been announced as a primary focus industry for labor inspection, we suggest that the company regularly reviews its labor compliance status to ensure full compliance.

THAILAND

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

IN BRIEF

As part of the measures to help ease the impact of the rise of fuel prices, on 29 March 2022, the Cabinet approved in principle the reduction of the contribution rate to the Social Security Fund (SSF).

Previously, the monthly contribution rates of employers and employees to the SSF were reduced to 2.5% to alleviate the burden for both employers and employees due to the pandemic. The rate then went back to the original rate of 5% on 1 December 2021.

Once the regulations are issued, this new measure will reduce the monthly contribution rates of employers and employees from 5% to 1% of the wage applicable for the three-month period from May until July 2022, with the intention of helping to reduce the cost of living for employees and costs for employers through the SSF system. The relevant government agencies have been tasked with preparing for the issuance of regulations to implement the above measure as soon as possible.

Please see our client alert here.

Recommended action

The matter is still subject to the completion of the required formalities. Employers must submit the reduced contribution rates to the SSF once implemented.

Human rights due diligence: recent global trends

IN BRIEF

In this article, we will take an in-depth look at recent international human rights due diligence ("**HRDD**") trends.

International legal frameworks for HRDD work as guidelines that companies may use to set out their internal practices on a voluntary basis. A number of countries have already introduced new rules on conducting HRDD. Although many HRDD rules are still voluntary at the national level, movements to achieve sustainable and responsible corporate practices in connection with human rights are becoming more visible.

Recommended action

Take the above into consideration when considering this issue in practice.

Improving equality in the workplace: gender pay gap

IN BRIEF

Employers all over the world are being increasingly challenged to adopt measures to ensure inclusivity and equity in the workplace, against the backdrop of societal changes and movements on discriminatory gaps, with the gender pay gap being one of the more prominent areas. Please see our newsletter here.

Companies in numerous economic sectors are finding themselves fighting their employees' claims for damages on the grounds of gender discrimination. Globally, we have witnessed high-profile judgments favoring female employees who have claimed pay discrimination. Evidence in those cases has revealed that female employees were in fact paid less than their male colleagues, and were thus awarded damages.

Recommended action

Take the above into consideration when considering this issue in practice.

Human rights due diligence: Thailand

IN BRIEF

In our previous article (link), we discussed international human rights due diligence (“**HRDD**”) trends, essential elements in the "S" of the ESG (environment, social and governance) movement. In this article, we will take a closer look at HRDD trends in Thailand and what the implications might be for business operators in Thailand. Please see our newsletter here.

Under the Thai Constitution, human rights are fundamental and observable in government-level policy, which provides protection, safety and good occupational health for workers. Thailand's Labour Protection Act prescribes a minimum standard for workers as the main piece of legislation for labor protection. There is also a specific legal framework on maritime labor, which has been effective since 2015, in accordance with the Maritime Labour Convention 2006 of the International Labour Organization (**ILO**), to ensure that the maritime-related workforce is treated fairly.

In addition, the Thai government, in cooperation with the United Nations Development Programme (UNDP), has published the first National Action Plan on Business and Human Rights (2019-2022) (NAP), which primarily focuses on improving and addressing urgent and important human rights issues caused by business activities. The NAP includes the following four core areas:

1. Labor
2. Community, land, natural resources and the environment
3. Human rights defenders
4. Cross-border investment and multinational enterprises

According to the UNDP, Thailand is the first country in Asia to have a standalone plan on business and human rights.

Recommended action

Take the above into consideration when considering this issue in practice.

New safety measure requirements on chemical management for factory operators

IN BRIEF

Because of a recent accident caused by improper management of chemicals in a factory, the Ministry of Industry has imposed new obligations for managing chemicals and reporting chemical quantities by its Notification on Safety Measures of Chemicals in Factory B.E. 2565 (2022) ("**Notification**") to strengthen chemical safety guidelines for factories. Please see our client alert here.

Under the Notification, several additional requirements are imposed on the business operators of type-3 factories in relation to reporting, labelling, documentation, worker training and other practical obligations on safety measures. We have highlighted some of the key requirements below.

- **Reporting obligations**

  Annual reporting to the Department of Industrial Works about the hazardous chemicals, i.e., reporting chemical substances or mixtures with hazards that can be categorized by referring to the Global Harmonized System of Classification and Labelling of Chemicals (GHS) is required if any hazardous chemical has been stored or used in the amount of one ton or more during the past year.

- **Labelling obligations**

  Factory operators are required to provide a label or a chemical safety recommendation in Thai on the container of the chemical with reference to the GHS.

- **Documentation obligations**

  Several written documents must be provided at the working site. These include a Safety Data Sheet (SDS) of each chemical in Thai, an operation manual for work related to hazardous chemicals and a countermeasure plan for an emergency regarding hazardous chemicals.

- **Training obligations**

  Among other things, factory operators must arrange training for workers in relation to, hazardous chemical management, work safety and how to handle emergencies.

Most of the above obligations will become effective on 23 October 2022, except for the obligations on labelling and SDS documentation, which have been granted a one- to two-year grace period.

Failure to comply with the Notification may subject factory operators to fines of up to THB 200,000, depending on the nature of the violation.

Recommended action

Take the above into consideration when considering this issue in practice.

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