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Briefing

Freshfields 2019 Asia Employment Law Bulletin

Welcome to the 2019 edition of our Asia Employment Law Bulletin. As always, we have set out to highlight those areas in various key Asian jurisdictions where key legal changes to the employment law landscape were made in the past year and where we expect changes to be made in the coming year.

There are, as usual, a number of common themes underscoring the key developments to employment laws across the region. One of the common themes is increased access to justice and this has happened in a number of different ways across different jurisdictions, including through the streamlining of procedures to bring employment claims to court, increased efficiency in handling employment issues or disputes or, more simply, moving certain employment-related procedures or applications (which previously had to be made in person) online.

Another theme we see across the region is the acknowledgment that technological advancements mean that employees can now work anywhere and not just in the office. Coupled with the recognition that the new generation of workers tend to prize flexibility much more than previous generations, countries like the Philippines and Japan have begun to put in place legislation dealing with working remotely.

On the other hand, countries like Cambodia, Singapore and Thailand have seen legislative developments which increase employee rights and entitlements in a number of different ways. Many of the changes will have a substantive impact on how companies currently run their businesses in the region.

As you read through this bulletin, one thing that will be clear (albeit an obvious point to those of you based in the region) is that each country in Asia is vastly different in terms of its legal (and political) system and agenda, so companies operating in the region must be careful not to adopt a “one size fits all” approach in the way it addresses employment issues. We hope that our discussion of the developments in the past year, as well as anticipated developments for the year ahead, will help you navigate the region’s evolving employment laws.

Please do pick up the phone to your usual contacts or get in touch if you would like to discuss any of the issues covered in more detail.

Australia

In 2018, the traditional distinction between employees and contractors was challenged in Australia. The continued blurring of this distinction is likely to be a major challenge for employers in Australia (and likely in other jurisdictions) in 2019, particularly as the "gig economy" continues to grow and businesses

adapt to new ways of working.

The gig economy is dominated by companies such as Uber, Airtasker and AirBnB - all platforms which allow individuals to “freelance” through generally short term engagements with end users. The intention of gig economy operators is for workers to be engaged as independent contractors - independent of both the platform operator and also the end user. However, a decision of Australia's Fair Work Commission indicates that gig economy workers may qualify as employees. This has significant implications for both gig economy operators and possibly end users.

In *Klooger v Foodora Australia Pty Ltd [2018] FWC 6836*, Mr Klooger, a delivery rider for online food delivery company Foodora made an application for an unfair dismissal remedy, a remedy which is only available to workers who qualify as "employees" under the Fair Work Act 2009 (Cth). Foodora objected and claimed that the worker was a contractor and accordingly was not protected by the unfair dismissal provisions of the Fair Work Act.

In Australia, there is no definitive test for determining whether a worker is a contractor or an employee. In considering the issue, the Courts will take into account a number of different factors, for example, the terms and terminology of the contract, the ability to subcontract (contractors usually can subcontract while employees cannot) and the degree of control the company has over the worker.

In *Klooger*, the worker had devised an arrangement whereby he subcontracted deliveries to other individuals. Despite there being evidence in this case which, in the past, would have strongly suggested that Mr Klooger was a contractor, the Fair Work Commission held that Mr Klooger was an employee for the purpose of the Fair Work Act and that he had been unfairly dismissed. Foodora was ordered to pay Mr Klooger $15,559.00 (about US$11,100) in compensation.freq

Given the present size and projected growth of the gig economy, there will be significant ramifications for companies which may not have previously considered themselves "employers". Companies operating models similar to Foodora's will be required to revise exactly how workers are engaged to ensure that they are not breaching minimum entitlements owed to workers who were previously considered contractors but may now qualify as "employees".

The ramifications of the decision in *Klooger* will not stop at typical gig economy companies. The decision signals a potential shift in the Fair Work Commission's approach in determining whether a worker is a contractor or an employee. As observed by the Fair Work Commission in *Klooger*, the emergence of contractor and employee issues in the gig economy has cast a spotlight on the issue of sham contracting (which is prohibited in Australia), an issue which is likely to now be subject to further scrutiny by Australian regulators and the Fair Work Commission.

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Cambodia

In 2018, we saw some substantive developments to the employment law regime which generally increases the benefits afforded to employees.

Seniority payment

In particular, the Law on Amendments to the 1997 Labour Law dated 26 June 2018 introduced significant changes to employee compensation.

The indemnity for dismissal, which is a termination compensation payable to employees working under permanent contracts (i.e. contracts with no fixed term), has been replaced with a “seniority payment”. Previously, an indemnity for dismissal was payable only upon the termination of a permanent contract

by an employer, except in the event of serious misconduct committed by an employee.

From January 2019 onwards, seniority pay equivalent to 15 days of wages and fringe benefits per year must be paid every six months to employees. In the event that the employment contract is terminated by an employer in accordance with the Labour Law, the employee is entitled to the remaining seniority payment, except in the event of serious misconduct or resignation.

This amendment also has retrospective effect - employees who were employed prior to 2019 will also be entitled to back pay of the seniority payment. The amount of the back pay is, however, capped at a maximum of 6 months of the average base wage in each relevant year of employment up to 31 December 2018.

Frequency of payment of wages

There have also been changes to how frequently employees have to be paid. From January 2019 onwards, all enterprises governed under the Cambodian Labour Law must pay wages to employees twice per month as follows:

- First Payment: 50% of base wages for that month in the second week of the month; and
- Second Payment: the remaining base wages, fringe benefits and other allowances for that month in the fourth week of the month.

This requirement will give rise to major changes to the payroll processes of the hiring entities, which have traditionally been made monthly.

Minimum wage

The Law on Minimum Wage was promulgated on 6 July 2018 and now guarantees a minimum wage for employees covered by the provisions of the Labour Law. A tripartite National Council on Minimum Wage (the ***NCMW***), comprised of the government, employer representatives and employee representatives, will be established to study, research and provide recommendations on the determination of minimum wages and other benefits for persons covered by the Labour Law.

Subject to the discretion of the NCMW, key factors in determining the minimum wage include social considerations (such as inflation rates and living expenses); and (2) economic considerations (such as productivity, competition, job market status and profitability of a particular industry). The discussions on minimum wages by the NCMW must be undertaken annually (unless decided otherwise by the NCMW) and in accordance with the procedures set out in this new law. From the perspective of economic and employment policy, implementation of the minimum wage could be prioritized based on economic activity, industry sector or region. To date, no minimum wage has been set for any sector other than the textile, garment and footwear manufacturing sectors.

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China

Strengthened regulations on social insurance contribution

Since 1 January 2019, the tax authorities have taken over from the social insurance institutions the responsibility to collect social insurance contributions throughout China. It was confirmed by the Ministry of Human Resources and Social Security in September 2018 that all the existing social insurance policies remain unchanged notwithstanding that the responsibility for collection now lies with the tax authorities. However, this gesture was interpreted by the general public as a substantive step to ensure that companies fully comply with the social insurance requirements. In China, employers are required to make social insurance contributions at a prescribed rate on employees' salaries. In practice,

however, it is not uncommon to base the contribution on the local minimum wage as opposed to an employees' actual monthly salary, which is often much higher than the local minimum wage. This practice was possible in large due to the social insurance institutions having no direct access to information regarding employees' wages. The tax authorities, on the other hand, will have access to this information based on the tax returns declared by the employer, so the current practice of underpaying social insurance contributions will likely be eliminated.

In addition, the Ministry of Human Resources and Social Security issued a draft of administrative measures seeking for comments on the social insurance blacklist system. According to this draft, if an employer is in severe breach of social insurance regulations, it will be put on the blacklist and be restricted when participating in government procurement, tendering and biding, applying for a production license, financing, receiving tax incentives, etc. These joint measures will no doubt put pressure on employers to comply with social insurance contributions in the future.

Enhanced protection against sexual harassment

In China, cases of sexual harassment, including in the workplace, have allegedly long been swept under the carpet in part due to the lack of enforcement and judicial support. This may, however, change very soon.

In September 2018, a draft of Several Sections of the Civil Code (the ***Draft***) was released by the National People's Congress of China for public comments. Among other important changes, we see remarkable progress in terms of increasing the protection against sexual harassment in China's civil law regime. The Draft defines sexual harassment as "sexual advances against other's will by languages or actions or utilizing the subordination relationship". This is particularly important as it is the first time in history where sexual harassment is defined in a national law. This definition also extends the protection to men - the existing law only considers sexual harassment against women. The Draft places additional responsibilities on employers to take reasonable measures for prevention, internal reporting and settlement of sexual harassment cases in the workplace. The Civil Code is expected to be finalised and enacted in 2020.

Judicial practice is moving in tandem with this legislative development. The Supreme People's Court announced in December that civil dispute over sexual harassment may be a standalone cause of action in its current tort dispute filing system, which is likely to encourage people to file sexual harassment case in a straightforward way, instead of under the cloak of other causes of actions (such as infringement of right of privacy or reputation). This is a clear signal that the courts are now beginning to recognise the special nature of sexual harassment cases which are distinct from other civil disputes.

In the year ahead, we expect to see more claims of sexual harassment being filed and more court decisions that find in favour of the victims. It is therefore imperative for companies operating in China to establish a robust policy on workplace behavior and ensure that appropriate training on such policy is rolled out to all employees.

Hong Kong

2018 saw the tabling of a number of reforms and initiatives in Hong Kong which continue the recent trend of a slow, incremental move towards increased employee protections in what is otherwise a largely employer friendly jurisdiction.

Increased maternity and paternity leave

The Employment (Amendment) Bill 2018 which increases statutory paternity leave from three to five days was gazetted on 2 November 2018 and took effect on 18 January 2019. The Government also

proposes to increase statutory maternity leave from 10 weeks to 14 weeks, which will bring Hong Kong in line with International Labour Standards. While the increase in the period of statutory maternity leave was implemented among civil servants with immediate effect in October 2018, it is expected that a bill extending statutory maternity leave in other sectors will only be introduced in late 2019.

Proposed amendments to discrimination laws

On 30 November 2018 legislation seeking to enhance protection against discrimination and harassment was gazetted. The Discrimination Legislation (Miscellaneous Amendments) Bill 2018 if enacted would, among other things, extend protections against discrimination on the grounds of breastfeeding and extend protections for service providers against disability and racial harassment by customers. The First Reading of the Bill and the commencement of Second Reading Debate took place on 12 December 2018. If enacted, the Bill is hoped to make it easier for breastfeeding women to return to work and encourage more women to remain in the workforce following a period of maternity leave.

Abolition of the MPF offset

Following the summary included in our 2018 Bulletin, the Government now proposes to abolish by 2024 the offsetting arrangement in relation to Mandatory Provident Fund (the ***MPF***) in an attempt to improve retirement protection for Hong Kong employees. The offset mechanism currently allows employers to offset an employee's entitlement to a severance or long service payment on termination against the contributions that the employer has made to that employee's MPF. In order to mitigate the financial impact of the new arrangement, the Government intends to provide certain subsidies to small and medium size enterprises.

Increased labour tribunal powers to make compulsory reinstatement or reengagement orders

Finally, further to the summary included in our 2018 Bulletin, the Employment (Amendment) Ordinance 2018, which empowers the Labour Tribunals to order compulsory reinstatement or reengagement of an employee in the event of an unreasonable and unlawful termination where it is reasonably practicable to do so, was passed by the Legislative Council on 17 May 2018 and gazetted on 25 May 2018. Where an employer does not comply with the terms of such an order, an employer will be required to make a payment to the employee of up to HKD 72,500 (in addition to the compensation and termination payments usually paid to an employee following a termination event). Further, where an employer fails to make such a payment, the employer may be subject to criminal liability and be required to pay a fine of HKD 350,000 and may also face a three years' jail sentence. It can be expected that this legal obligation to make an additional payment to employees where a reinstatement or reengagement order is made but not complied with and the potential for criminal liability for employers will be leveraged by employees in termination negotiations, with termination payments therefore likely to generally increase to reflect this new risk for employers.

Employers should be aware of the above impending changes and where necessary, review and update their internal policies, including those relating to maternity and paternity leave and termination arrangements.

India

Whilst there have been no substantive changes to India's somewhat outdated labour law regime, significant progress has been made to the way in which employers can utilise technology to comply with certain employment obligations.

The Government recently adopted a series of e-governance initiatives under the "Digital India"

campaign. One of the most significant initiatives has been the development and evolution of the "*Shram Suvidha Portal*" (which roughly translates to "the Portal for Ease of Labour Law Compliance").

This portal is intended to act as a single point of contact between employers and regulatory agencies.

Whilst the portal was launched in 2014, it only recently started gaining traction after certain legislative amendments were made. For instance, it is now mandatory for employers to apply for registration under certain labour laws through this portal. This is a major shift from the previous position where employers would have to approach separate authorities for registration under different statutes. An employer can now also use the portal for filing a unified return for up to 8 central labour laws. Further, employers registered with different agencies are being identified uniquely by allotment of a unique Labour Identity Number (***LIN***) through the portal. It is envisaged that the LIN will gradually subsume multiple registration numbers presently being issued separately by different labour enforcement agencies. The portal has made it significantly easier for employers to comply with various employment obligations.

The Employees' Provident Fund Organisation which administers the Employee Provident Fund (a statutory social security and pension fund) also recently launched online functionalities called the Pensioners' Portal and Unified Members Portal. These portals provide employees access to a number of pension related services. These services have also been made available to employees through a mobile application.

These e-governance measures are a welcome step towards making India's labour law framework more inclusive by simplifying compliance procedures through the use of technology.

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Indonesia

In Indonesia, many of the changes made to the employment law regime were of an administrative nature with the aim of facilitating and streamlining certain processes. The increasing use of technology has meant that many of the procedures, which previously had to be carried out in person at the Indonesian Employment Ministry (the ***EM***) office, are now online.

Mandatory employment reports

The EM has established a number of online systems for a range of bureaucratic processes, including for submitting mandatory employment reports and obtaining work permits for expatriate employees. These systems are intended to facilitate compliance with the employment regulatory scheme. Since then, companies have increasingly been taking advantage of these systems in the past year.

At the end of 2017, the EM introduced an online system for the reporting of employment conditions. Employers must report in writing to the EM upon establishing, operating, moving or dissolving an employing company. Reports must specify the company's identity, the employment relationship types, and the available employee protections and employment opportunities. If the employer fails to so report, the employer may be fined up to IDR1 million (about US$70) or, in the case of a director of the employing company, face up to three months' imprisonment.

Now, in practice, an employer must report more details than were required to be reported previously. Such additional details include employee wages, working hours and benefits, and the number of employees. While this system requires that more details be reported, it otherwise simplifies the reporting process by removing the need for employers (or their representatives) to physically attend the EM offices.

Work permits for expatriate employees

There have also been updates on work permits for expatriates. In principle, a company that employs an expatriate must obtain a work permit from the EM. Before the government issued a new regulation on work permits, an employer had to obtain an Expatriate Work Permit (*Izin Mempekerjakan Tenaga Kerja Asing*, ***IMTA***) for each of its expatriate employees. Further, before applying for an IMTA, an employer had to obtain the EM's approval of the employer's Expatriate Employee Utilisation Plan (*Rencana Penggunaan Tenaga Kerja Asing*, ***RPTKA***).

If an employer does not have a work permit for each of its expatriate employees, the employer may be fined between IDR100 million (about US$7,000) and IDR400 million (about US$28,000), or, in the case of a director of the employing company, face up to four years' imprisonment.

The government recently issued the President Regulation 20 of 2018 on the Utilisation of Expatriate Employees (***PR 20/2018***) and EM Regulation 10 of 2018 on the Procedures for the Utilisation of Expatriate Employees (***MoMR 10/2018***). These regulations provide that an RPTKA will be sufficient for the purposes of an employer obtaining a work permit for each of its expatriate employees. Employers are therefore no longer obligated to obtain IMTAs and may instead rely on RPTKAs only.

This new process, which can be completed through the Expatriate Employees Web Portal, should significantly shorten the time it takes for employers to on-board expatriate employees and, consistent with the new Employment Reporting Web Portal, reduce the need the EM offices.

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Japan

As mentioned in our 2018 Bulletin, the Acton Work-Style Reform (the ***Act***) was finally established in June 2018 and will come into effect on 1 April 2019. The Act will impose an upper limit on the amount of overtime which companies can require employees to work. A new white collar exemption will also be introduced for the first time. The exemption will only apply to employees employed in specific jobs (e.g. traders, research analysts, etc.) and are paid at least JPY10.75M (about US$98,000) per annum. All regulations relating to working hours and the payment of overtime will not apply to exempted employees.

As part of the recognition that advancements in technology is changing the way in which employees can work, the government also is also promoting "Tele-Work". Tele-Work provides that employees may work flexibly from home or at satellite offices near their home or client. This development will hopefully address work-life balance issues that often plague the Japanese workforce.

Practically speaking, however, it will be challenging for employers to manage employees' working hours if they do not work on premise. Ideally, employers should track the working hours of its employees (especially non-exempt employees) by objective means such as through a "clock-in/clock out" system or monitoring PC log-in/log-out records. If these are not practical options, employers may need to rely on self-reporting by employees. If an employer relies on a self-reporting system, it should periodically conduct sample checks to test the accuracy and reliability of the self-reporting.

A new law will also come into effect as of 1 April 2020. Under this new law, employers may not treat non-regular employees (such as part-time employees, employees on fixed term contracts, etc.) less favourably in terms of pay and benefits against regular employees, unless the difference in treatment can be considered "reasonable". The government has issued detailed guidelines on what is "reasonable" and what is not.

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Malaysia

Malaysia has seen a change in government after slightly more than 60 years when the opposition government swept into power in May 2018. With this change came the inevitable change in the leadership of all the relevant ministries in government.

Minimum wage

With respect to employment law, there have been relatively few changes. The new government did make a promise to revise the minimum wage levels and effective from 1 January 2019, the minimum wage was raised from RM1,000 (about US$242) to RM1,100 (about US$265) per month across the whole of Malaysia. Previously there was a difference in the level of minimum wage levels between West (Peninsular Malaysia) and East Malaysia, but this has now been standardised.

Greater efficiency of the Industrial Court

The past year has also seen greater efficiency by the Industrial Court, the tribunal that hears claims relating to unjust dismissals.

Claims relating to unjust dismissals are first put through a statutory process of conciliation at the Industrial Relations Department, where an officer will attempt to help the parties reach a mutually-accepted settlement. If this attempt at conciliation fails, the Minister of Human Resources will determine if the case should be referred to the Industrial Court. There is no automatic right for employees to file an unjust dismissal claim directly with the Industrial Court.

In the past, this process of conciliation and reference by the Minister may take up to a year or more before a case is finally referred to the Industrial Court. This was difficult for both the employee and employer. Whilst an unemployed employee would have to wait more than a year for the case to even see the light of day in the Courts, employers sometimes faced the problem where relevant witnesses (who could substantiate the grounds of termination) may have left employment and were no longer willing to testify. This then led to employers being unable to produce relevant evidence in Court in support of their case. There was also the enhanced liability for the employer in that the Industrial Court was at liberty to award arrears of wages of up to 24 months in the event that the unjust dismissal claim succeeded. This threshold was easily reached given that a case being heard to completion at the Industrial Court would inevitably take more than 2 years.

In the past year, however, we have seen the Industrial Court operate with greater efficiency, with referrals now being made within 3 to 6 months. The Industrial Court itself has an internal target to complete cases referred to it quickly and we have seen cases being resolved or heard to completion within 12 to 18 months. A number of highly experienced retired Industrial Court chairpersons were also brought back to hear older cases to help clear the backlog built up over the years.

As the Ministry of Human Resources continues to press on with initiatives to make the Industrial Court more efficient and accessible, it is no longer a case of “terminate today and worry about it later”. Employers should ensure that at the point of termination, evidence in support be properly compiled and maintained, and this ought to be coupled with a mindset and state of readiness to face the Courts.

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Philippines

An interesting development in the Philippines is the recognition that technological developments have allowed people to work virtually anywhere so long as they have a computer and internet connection, which has led to the approval of the Telecommuting Act.

In the Philippines, employees are subject to normal working hours not exceeding 8 hours a day, 6 days per week. However, it appears that the new generation of workers now have a different approach to work place productivity – generally speaking, they tend to prize work life balance and flexibility over pure remuneration and are seemingly less interested in working conventional "office hours".

On average, a Filipino employee only stays with a company for one to two years. The general sentiment is that worsening traffic conditions have also contributed to the problem as employees are unwilling to travel long distances for work because of the disproportionate amount of time they spend commuting to and from their workplace.

The Philippine government have responded proactively to these changes. Acknowledging that technology and innovation have reinvented ways in which employees can work, the Telecommuting Act was recently approved and is now awaiting the signature of President Rodrigo Duterte before it finally becomes effective.

The Telecommuting Act promotes "telecommuting" or the substitution of computers or telecommunication technologies for the employees' commute to work. Under this work arrangement, employees would be able to work flexibly from home or in another suitable place, as long as they have a computer with internet connection.

Under the Telecommuting Act, an employer may put in place a telecommuting arrangement based on mutual agreement with the employees. The terms and conditions of such an arrangement may not be less than the minimum labour standards set by law. More importantly, the Telecommuting Act ensures that employees who telecommute are treated the same as those employees working on the employer's premises.

The general public is optimistic that the Telecommuting Act will go some way to address the challenges employers face in recruiting and retaining talent in the workplace by putting in place a framework whereby employees can work more flexibly without fear that they will suffer from detrimental treatment. It is also hoped that, by allowing employees to work more flexibly, their overall productivity, performance and general job satisfaction will improve.

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Singapore

Technology, and legal tech in particular, is increasingly front of mind in the Singapore legal ecosystem, as the Ministry of Law, the Judiciary, and law firms all look to continue to seamlessly integrate technology into legal practice here. This was evident from all the speeches at the recent Opening of the Legal Year 2019, with Singapore's Chief Justice highlighting that imminent paradigm shifts to legal practice are unavoidable, and that the judiciary was ramping up its efforts to harness data and artificial intelligence as tools to transform the judicial process.

Technology is swiftly reshaping employment law practice as well, with parties before the Employment Claims Tribunals (***ECT***) now being able to file claims and other documents (and even negotiate and have disputes mediated) online through the Community Justice and Tribunals System (***CJTS***) from 7

January 2019. With these changes, parties in employment cases will now potentially be able commence and amicably resolve their disputes without needing to even set foot in the Courts.

In line with ever-increasing access to justice for individuals, upcoming legislative changes this year will likewise also substantively enhance employees' rights and benefits, and facilitate the swift resolution of labour disputes. In April 2019, Singapore's Employment Act will undergo major amendments to afford greater statutory benefits to all professionals, managers, and executives (***PMEs***) regardless of salary levels (as opposed to only those earning S$4,500 (about US$3310) or less monthly - as is presently the case). Wrongful dismissal rights and recourses will also be enhanced, with the ECT also having jurisdiction to hear such claims from April 2019. The recommendations of a Tripartite Workgroup to address gig economy workers and freelancers have also been accepted in-principle by the Singapore Government, so we expect to see further developments in this space for 2019.

In light of the substantial expansion of employee rights in Singapore and with technology continuing to change and shape the legal landscape, employers are advised to put themselves on the right foot by reviewing relevant employment contracts and policies and understanding the additional statutory and contractual rights that employees will be entitled to in Singapore come April this year.

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Taiwan

Changes to the labour dispute resolution

A key development in Taiwan in respect of employment law has been to increase the efficiency and fairness of resolution of labour disputes.

The Legislative Yuan approved the Labour Procedure Act (the ***LPA***) on 9 November 2018, and it is expected to take effect one year later subject to formal announcement by the Judicial Yuan. The provisions of the LPA address three major areas of labour disputes: mediation proceedings, litigation proceedings and provisional remedies proceedings. Several of the key features of the LPA are as follows:

- **Establish specialised labour tribunals and mediation committees:** Every court shall set up a specialised tribunal or unit to handle labour disputes, with judges and mediators equipped with expertise and experience in labour law.
- **Include cooperative education in the scope of labour matters:** In addition to the traditional scope of labour disputes relating to labour laws, collective bargaining agreements, work rules, resolutions of labour-management conferences, labour contracts, etc., disputes arising from cooperative education have now been added to the scope of labour matters covered under the LPA as well.
- **Reduce the barriers to litigation and provisional remedies for employee:**The LPA enhances access to justice for employees by removing some of the barriers to justice:
    - the right to appear with an assistant during a court session;
    - the right to be temporarily exempted from two-thirds of the court fees; and
    - the right to request the employer to produce and prepare certain documents. In addition, based on the view that the employer typically has more capability to produce evidence, the LPA now shifts part of the burden of proof in labour proceedings to the employer.

      Furthermore, if an employee is required to pay security into court in accordance with the LPA, the amount of the security payment is capped at no more than one-tenth of the amount of the claim. If the employee can show such payment would seriously affect his or her livelihood, the court may alleviate the employee from this requirement.

- **Speed up labour proceedings:** The LPA establishes a general principle that mediation proceedings shall be concluded in three oral-argument sessions within three months, and litigation proceedings shall be concluded in one oral-argument session.

Expansion of online services for labour insurance benefits

Since 2011, the Bureau of Labour Insurance of Taiwan (the ***BOLI***) has allowed employees to submit online applications for labour insurance benefits as an alternative to traditional paper submissions, including applications for maternity benefits, old-age benefits, survivor benefits and early reemployment incentives. However, parental leave allowances were previously excluded from the online application service due to the certain application documents being required to be certified and submitted in paper form, leading to complaints about the inconvenience and unreasonable treatment of parental leave applicants.

As a result, beginning in 12 November 2018, applicants for parental leave allowances are now able to submit all of the required application documents online. Applicants can also apply through their employer if their employer has already registered with the online service of the BOLI.

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Thailand

The National Economic and Social Development Council, the main policy arm of the Thai government, recently commented that the high cost of severance pay given to employees in Thailand is a financial burden on the business sector, which echoed the comments raised by the World Economic Forum. It was therefore somewhat surprising that the Thai National Legislative Assembly approved in December 2018 an amendment to the Labour Protection Act, which will, once again, increase the benefits and protections extended to employees in Thailand. The Labour Protection Act (No. 7) is awaiting Royal assent and is expected to become effective in the next few months.

The changes introduced by the Revised Labour Protection Act include:

- **Increased cap on severance:** the existing law limits the maximum amount of severance to 300 days for employees having worked for 10 years or more, but the Revised Labour Protection Act will increase the limit to 400 days where an employee has been employed for 20 years or more. For an employee who has for 10 years or more but less than 20 years, severance pay remains at 300 days;
- **New "personal leave":** the existing law provides that "personal (or personal business) leave" shall be prescribed in the employer's work rules (with or without pay) as the employer considers appropriate, the Revised Labour Protection Act provides that employees shall be entitled to at least 3 days of paid personal leave per year (in addition to annual leave and public holidays, where the number of public holidays may be at least 13 days per year);
- **Increased maternity leave:** maternity leave will be extended from the current 90 days, which includes holidays during the leave period and does not include leave days taken for antenatal care or prenatal examinations, to 98 days, and the Revised Labour Protection Act will also allow leave days taken for antenatal care or prenatal examinations to be included as maternity leave;
- **Increased interest rate on unpaid sums:** wages and any other sums which the employer may be required to pay under the Revised Labour Protection Act but which have not been paid will accrue interest 15% per annum, whereas under the existing law only unpaid wages, overtime pay, holiday pay and severance pay had accrued interest at 15% per annum with other amounts accruing interest at 7.5% per annum; and
- **Right to reject relocation:** an employee may reject relocation of his or her place of employment if such relocation would have a significant impact on his or her normal life or family

and upon notice thereof his or her employment shall be deemed terminated on the date of the relocation. In such case, the employee shall be entitled to receive, within seven days from the date of termination, special severance pay. If an employer disagrees with the employee's reasons for not relocating, the employer may submit a petition to the Labour Welfare Committee, who will decide on the employee's entitlement.

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Vietnam

Draft Labour Code

A draft of the new Labour Code was released by the Ministry of Labour, Invalids and Social Affairs in September 2018. Some interesting changes introduced in this draft version include:

- **Increase in overtime payment rates:** For normal working days, the overtime payment rate is 150% of normal wages for the first overtime hour and 200% of normal wages for subsequent overtime hours. On weekends, the overtime payment rate is 200% of normal wages for the first two overtime hours and 300% of normal wages for subsequent overtime hours. If an employee is required to work on a statutory holiday or during paid leave, the overtime payment will be 300% of normal wages for the first two overtime hours and 400% of normal wages for subsequent overtime hours. While the rates in respect of the first overtime hour/hours remain the same compared to the current regulations, the newly proposed concept of "subsequent overtime hours" and relevant increased rates may have considerable effect on industries heavily linked with overtime work, such as textiles and garments.
- **Retirement age increased:** Under the proposed changes, men will be able to retire at age 62 (currently 60) and women will be able to retire at age 60 (currently 55), subject to certain conditions.
- **Employees can unilaterally terminate the employment without reason:** Under the proposed changes, employees working under any type of employment contract (i.e. seasonal, fixed term employment contracts, etc.) will have the right to unilaterally terminate such contract without reason, subject to prior notice being given by the employee. Currently, only employees working under permanent employment contracts have this right.

This draft version will still be subject to further review by the Government and then the National Assembly before being adopted, which is projected to be in late 2019.

Minimum Wage

A new regional minimum wage has also been applied in Vietnam from 1 January 2019. The average increase is approximately 5%. As an indication, the monthly minimum wage in Region I which generally covers almost all urban districts of Hanoi and Ho Chi Minh City has increased from approx. US$170 to approx. US$180 per month. The applicable figures for Regions II, III and IV will be about US$160, US$140 and US$126 respectively.

The regional minimum wage is applicable to unskilled employees working under normal working conditions (exclusive of additional allowances or benefits provided to employees by reason of, for example, harsh/toxic working conditions, night shift or overtime). For skilled employees (which generally means employees who have at least completed vocational training), the minimum salary must be at least 7% above the regional minimum wage.

Self-review on compliance with employment law

In addition, according to a new circular which came into effect on 1 January 2019, employers have the obligation to conduct a self-review on its compliance with employment law at least once a year. The review should focus on periodical reports, recruitment and training, execution and implementation of employment contracts, salary payment, performance of occupational safety and health activities, handling of labour-related disputes and complaints and compulsory social insurances contribution payment.

Employers may be asked to submit the results of the self-review through an online system to the relevant State authorities.

Compulsory social insurance for foreign employees

Lastly, the Government issued a Decree 143 which requires employers to, from 1 December 2018 onwards, make contributions to compulsory social insurance equivalent to 3.5% of their foreign employees' wages. From 1 January 2022, the employer's compulsory social insurance contributions in respect of their foreign employees will be increased from 3.5% to 17.5% while the relevant foreign employees will also be subject to compulsory social insurance contributions of 8% of their salary.

The above requirements are applicable to foreigners working in Vietnam under a work permit (generally those working in Vietnam for three months or longer) or practising certificate (such as foreign lawyers) and have employment contracts with employers in Vietnam.





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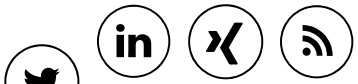

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