

Taiwan

Introduction

In the Republic of China (Taiwan), all employees – except for those working in government administrative organisations, educational institutions, and the military sector – can form unions. Nevertheless, until recently the Taiwanese labour force rarely exercised this right to unionize. In the wake of the democratic reforms of the relatively recent past, however, Taiwan’s employees have become increasingly assertive in the employment sphere and, as a result, unionization has gained steadily.

Two laws in Taiwan, the Union Act and the Law Governing Collective Bargaining Agreements (LGCBA), govern and prescribe the right to form trade unions. The Union Act was promulgated in 1929 and was amended most recently in 1975. Since then, this law has not been updated to reflect the many different voices emanating from both employees and employers. The LGCBA, first passed in 1932, was amended on December 14, 2007 (“the Amendment”), but the effective date of the Amendment is pending announcement by the Executive Yuan. Both laws differ from the Labour Standards Law, which sets forth the minimum standards employers must follow to protect employees’ rights and interests.

The Union Act recognizes two kinds of unions (industrial and craft unions), while the Amendment recognizes four separate types of unions in Taiwan. These latter include: (1) unions formed by employees working in the same industry at the same area or factory; (2) unions formed by employees of the same occupation that are not necessarily in the same area or factory; (3) unions formed by employees with the same professional skills; and (4) unions formed by employees of the same occupation and the same professional skills. All of these employee organisations are considered trade unions, as opposed to Works Council organisations.

Employee representation by Works Councils was still a novel concept in Taiwan when a government-owned telecommunications company was to be privatised several years ago. Despite employee lobbying to adopt the concept of Works Councils, however, no rules or practice has been realised to date.

Trade Unions

The General Role Of The Trade Union

The main functions of trade unions in Taiwan are to: (1) negotiate employment terms and conditions with the employer (Article 20 of Union Act); (2) close collective bargaining agreements with either an individual employer or an employers' association (Article 6 of Amendment); and (3) summon a general meeting and vote for strike (Article 26 of Union Act).

Like the unions of many other countries, trade unions in Taiwan generally also play an important role in lobbying. In fact, the government of Taiwan will usually obtain the informal consent of the unions before enacting or amending employment law provisions.

Constitution Of The Trade Union

According to Taiwan's Union Act, employees in the same municipal administrative area or factory can only form one union. Likewise, employees who have the same occupation and who work in the same area are limited to one union (Article 8 of the Union Act). Notwithstanding, some powerful unions have succeeded in establishing multiple branch unions in cities or localities in the same area. In addition, it is not necessary for a trade union to be expressly recognised before entering into collective bargaining negotiations, although a branch union is not permitted to enter into collective bargaining negotiations with an employer where the local branch is located.

The Rights, Functions And Protection Of Union Representatives And Members

The Union Act grants union representatives the right to represent their unions for any and all of its contact with third parties. In addition, a trade union representative can examine his or her union's bookkeeping, as well as investigate its business as established according to the by-laws. Moreover, because Taiwan's courts do not specifically limit the qualifications of agents who represent litigating parties in civil lawsuits (including termination of employment, claims for payment of overtime worked, claims for payment of severance or pension benefits, etc.), union representatives may represent trade union members in employment lawsuit proceedings.

The Union Act prohibits employers from unfairly disadvantaging an employee because of his or her union office (Article 35, Paragraph 1 of the Union Act). In addition, union representatives are entitled to duty leave up to but not exceeding 50 hours per month. To perform his or her union duties, the managing union representative may request this official leave of absence in half day or full day increments (Article 35, Paragraph 2 of the Union Act).

Collective Bargaining Agreement

The Amendment provides specific guidance on who may be authorized to sign a collective bargaining agreement and what the collective bargaining agreement should include. The Amendment also establishes the binding force of collective bargaining agreements and prescribes penalties for violations of this law.

Contracting Parties

The employer and the employees' union are the parties qualified to enter into a collective bargaining agreement. The union shall be a union of an enterprise or an industrial union that consists of at least one-half of the total people employed (Paragraph 3, Article 2).

Persons who represent the union in contract negotiations should either be appointed pursuant to the union's articles of association or by a resolution passed at the union members' general meeting or at the representatives' meeting. Furthermore, the appointment should be made in writing and by over one-half of the union members. (Paragraph 1, Article 8)

Entry into a collective bargaining agreement will be deemed effective when ratified by more than one-half of the members present at either a union members' meeting or member representative meeting where two-third of the total voting members are present. Alternatively, a collective bargaining agreement can be approved in writing by over three-fourth the members, provided that all members have been notified of the entry of such collective bargaining agreement. When this latter approval procedure is used, the agreement will take effect retroactively (Article 9).

Contents Of Collective Bargaining Agreements

Collective bargaining agreements may specify matters regarding employee wages, employment termination, retirement, and union interference with the operations of an enterprise (Paragraph 1, Article 12). For employees who are not union

members, employers are prohibited from applying or altering employment conditions or benefits in a manner that does not conform to the conditions specified in a collective bargaining agreement (Article 13). An employer may only employ workers who are union members if a collective bargaining agreement provides so (Article 14).

Where an employer is party to a collective bargaining agreement, or is a member of an employers' association that has entered into a collective bargaining agreement, the provisions of the agreement automatically become part of the employment contracts between the employer and its union member employees. Individual employment agreements with terms that deviate from the working conditions set forth in the collective bargaining agreement become invalid unless it can be shown that such terms are not, in fact, expressly prohibited by the collective bargaining agreements or are otherwise in favour of the employee(s) concerned (Article 19).

Duration Of Collective Bargaining Agreements

Collective bargaining agreements may have one of three terms: fixed, non-fixed, and project-based. A fixed-term collective bargaining agreement is one whose term shall not exceed three years (Article 28). Under a non-fixed collective bargaining agreement, either party may terminate the agreement one year after it is entered into (Paragraph 1, Article 27). For project-based collective bargaining agreements, the term shall not exceed three years (Article 29).

In practice, companies may consider longer fixed-term collective bargaining agreements. The longer agreements provide more stability in dealing with employees and unions. However, if the term of the agreement is lengthy and material changes in economic conditions occur, either party may ask for revision or termination of the agreement (Article 31).

Providing Documents For Negotiation

When a union requests to enter into collective bargaining agreement negotiations, the employer must respond within 60 days of the request and is obligated to provide information required for the negotiation (Paragraph 1, Article 6). Employers that fail to comply with this regulation will be subject to a penalty ranging from NT\$100,000 to NT\$500,000, provided that the employer's non-compliance is confirmed by a decision in accordance with the Settlement of Labour Dispute Act. Additional penalties may be imposed where the employer repeats or continues its non-compliance (Article 32).

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