



Newsletter

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China reaffirms its prohibition on gender discrimination in employment recruiting

On 21 February 2019, the Ministry of Human Resources and Social Security, along with eight other government authorities, jointly issued the *Circular on Further Regulating Recruitment Practices to Promote Female Employment* to further clarify China's prohibition on gender discrimination during the employment recruitment process and to promote equal employment for women.

The circular stipulates that in recruitment planning, job advertisements and job interviews, employers and HR service agencies may not: (i) impose restrictions on a candidate's gender or prioritize candidates based on gender; (ii) refuse to hire women based on their gender; (iii) ask questions about a female candidate's marital and parental status; (iv) include a pregnancy test as part of the on-boarding health examination; or (v) impose childbirth restrictions as a condition of employment.

Employers that publish recruitment information with gender discriminatory content may be fined an amount ranging from CNY 10,000 to CNY 50,000 (approximately USD 1,500 to USD 7,500) if the employer refuses to rectify the violation. The fine will also be recorded on the employer's credit record.

Employers that have a gender discrimination complaint lodged against them could face a government inspection. If the employer refuses to cooperate with the government's interview or refuses to rectify the discriminatory behavior after the interview, the government will publicize the employer's discriminatory conduct in the media.

The circular also encourages employers to provide job skills training for female employees who return to work after giving birth. And it directs the labor inspection authorities to strengthen law enforcement against violations of labor protections in relation to female employees during their pregnancy, childbirth and nursing periods.

Key take-away points:

China is attempting to address inequality in the workplace and the growing pay gap. According to a survey by an online recruiter, the average salary for Chinese working women is 21.7% lower than the average salary for Chinese working men. This gap has widened by 8.7% since 2017. Measures like the circular may be part of the government's attempt to eliminate gender discrimination in employment and to narrow the portion of the pay gap that can be attributed to inequality in job opportunities.

Courts are already starting to note the circular. In March, a judge in the Shanghai No. 2 Intermediate People's Court explicitly made reference to the circular in public comments about a case before the court, where an employer fired an employee for breaking a promise made during recruitment not to get married or pregnant. The judge noted that a termination on this





ground would be illegal since employers should not be asking about or recruiting based on this information in any case.

To protect themselves from being penalized under rules designed to promote employment equality, employers should carefully review their recruitment information and advertisements for discriminatory content and remove it if found. Furthermore, employers must refrain from asking female candidates about marital and parental status during the recruitment process. That information can be collected after the female employee is on board as necessary for reasonable purposes, such as emergency contact information or benefits purposes.

Mainland China and Hong Kong sign Arrangement on Reciprocal Enforcement of Court Judgments

On 18 January 2019, the PRC Supreme People's Court and the Government of the Hong Kong Special Administrative Region signed an *Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region* ("**Arrangement**"). The Arrangement will only come into effect after the PRC Supreme People's Court promulgates a judicial interpretation of the Arrangement and the Hong Kong government completes relevant procedures, and both sides announce the date the Arrangement will commence. A full explanation of the new Arrangement, which supersedes an earlier arrangement between the two governments from 2006, can be found [here](#).

From the employment law perspective, the most interesting development is that rulings on employment disputes are not explicitly excluded from coverage under the Arrangement (as they were under the 2006 arrangement). The Arrangement even clearly states that rulings of the Hong Kong Labor Tribunal can be recognized and enforced directly by mainland courts, without the need to re-litigate the dispute in the mainland. On the other hand, while decisions of a PRC appeals court (i.e., a second instance court) or a decision of a first instance court that cannot or can no longer be appealed may be recognized and enforced by Hong Kong courts, decisions of a PRC employment dispute arbitration commission are not covered. In the PRC, generally all employment disputes must first go to an employment dispute arbitration commission, and then if either party is dissatisfied with the arbitration ruling, they may bring a claim to the court of first instance, and after that appeal to a court of second instance.

Although the Arrangement specifies that monetary and non-monetary judgments may be recognized and enforced by the courts in the other jurisdiction, the Arrangement explicitly excludes interim relief and preservation orders from being covered.

Key take-away points:

The Arrangement may make it easier for companies to take action, such as for breaches of non-compete restrictions, against employees or ex-employees who move from Hong Kong to mainland China or vice versa. However, preliminary injunctive orders in one jurisdiction would not be recognized by the courts in the other jurisdiction, so the enforcement tools at



a company's disposal would still be somewhat limited in this type of cross-border situation.

China to reduce social insurance burden on employers

In March, China released new social insurance policies, and foreshadowed others to come, which will reduce social insurance burdens on employers.

The policies will:

- 1. Reduce pension contributions by employers:** On 24 March 2019, the Ministry of Finance announced that starting from 1 May 2019, China will reduce the employer contribution to pension insurance from 20% to 16%. The minister speaking on behalf of the Ministry of Finance further indicated that China would also at some point continue with the recent reductions in employer contributions to unemployment insurance and work injury insurance and would also provide more social insurance contribution subsidies to employers in labor-intensive industries.
- 2. Integrate maternity insurance and medical insurance:** On 6 March 2019, the State Council issued the *Opinions on Promoting the Integration of Maternity Insurance and Medical Insurance*, effective the same date. According to the opinions and comments from the National Health Care Security Administration to clarify the opinions, maternity insurance and medical insurance will remain separate social insurances but will be paid together into one fund. The opinions directly state that the purpose of the insurance fund integration is to reduce the employer burden from making the contributions separately. Local governments are required to integrate the funds by the end of 2019.

Key take-away points:

These policies and accompanying ministerial statements reveal the Chinese government's commitment to reducing the social insurance burden on employers, likely due to concerns about a slowing economy. Employers should review these newly issued policies and any forthcoming national and local policies to ensure they are making the correct social insurance contributions.

Change in rest day arrangement for 1 May Labor Day holiday

On 22 March 2019, the State Council issued a *Notice on the Adjustment of the Labor Day Holiday Arrangement for 2019*, which adjusted days that employees would have off as part of the 1 May Labor Day holiday. Originally, under the holiday arrangement for 2019 issued late last year, there was only one day off from work, namely the public holiday on 1 May (a Wednesday). However, in the latest notice, in order to give employees a longer consecutive period of time off, employees would be provided the 2nd and 3rd of May (Thursday and Friday) as rest days, and would instead work on 28 April (a Saturday) and 5 May (a Sunday).

This notice is directed at government institutions, and the switching of the rest day arrangement around the public holiday is **not** mandatory for private



companies. However, in practice, many private companies will likely follow the rest day arrangement as announced by the State Council.

New emergency response obligations announced by State Council

On 17 February 2019, the State Council issued the *Regulations on Emergency Response to Production Safety Incidents*, effective 1 April 2019. The emergency response regulations impose new emergency response obligations on governments and production operation companies; the scope of the term "production operation companies" is unclear and potentially could apply to most companies. The persons-in-charge of production operation companies are now responsible for all emergency responses for production safety incidents.

According to the emergency response regulations, all production operation companies must establish an emergency response plan. The emergency response plan must comply with applicable laws, regulations and standards and be published to the company's employees.

In addition, certain production operation companies must report their emergency response plans to the government. Companies required to report are those that:

- produce, operate, store or transport combustibles, explosives or hazardous chemicals
- operate metal smelting, mining, urban transportation or building construction activities
- operate hotels, shopping malls, entertainment venues, etc.

Production operation companies that are required to report their emergency response plans to the government have additional obligations. Those companies must:

1. **Conduct emergency response drills:** The company must organize an emergency response drill at least once every six months.
2. **Establish an emergency response team:** The company must establish an emergency response team, train the team, equip the team with necessary equipment, and inform the government of the establishment of the emergency response team.
3. **Prepare emergency response equipment and materials:** The company must equip itself with necessary emergency response devices, equipment and materials and conduct regular maintenance on them.
4. **Establish an emergency response duty system:** The company must establish an emergency response duty system and ensure emergency response personnel are on always on duty.
5. **Respond to production safety incidents immediately:** The company must implement the emergency response plan immediately when a



production safety incident occurs, including reporting the incident to the government in accordance with relevant laws and regulations.

The emergency response regulations also provide legal consequences for violating these emergency response obligations. Those legal consequences include orders to rectify the violation and administrative fines of up to CNY 50,000.

Key take-away points:

The emergency response regulations outline obligations for production operation companies and their persons-in-charge with respect to emergency responses for production safety incidents. Production operation companies should review the emergency response regulations and take necessary actions to comply with it.

Shandong Province promotes sex neutral hiring practices and workplace protections for female employees

Recently, Shandong Province issued new local regulations on sex neutral hiring practices and workplace protections for female employees. The regulations became effective 1 March 2019 and supersede measures from 1991 on the same subject. The Shandong regulations are part of the continuing trend among local governments to strengthen sex neutral hiring practices and workplace protections for female employees.

In accordance with national law, employers cannot restrict hiring, refuse to hire or set higher job qualification standards for female employees.

The regulations also provide workplace protections based on marital status and childbirth planning. Specifically, an employer cannot reduce a female employee's salary and benefits, restrict the female employee's promotion or unilaterally terminate the female employee due to the female employee's marital status or childbirth planning. The regulations further clarify that female employees are entitled to an extra 60 days of maternity leave in addition to the 98 days of statutory maternity leave if the employee gives birth in compliance with the law. Male employees are entitled to 7 days of paternity leave.

In addition to the labor protections provided to female employees during their pregnancy and nursing periods, the regulations also add protections for female employees preparing for pregnancy (e.g., taking certain medicines to increase the chances of pregnancy) and during the perimenopause period. According to the regulations, employers should extend any workplace protections that would normally be granted during pregnancy (such as avoiding exposure to occupational hazards) to a female employee preparing for pregnancy if the employee requests those protections. For a female employee struggling with current job duties due to symptoms from Perimenopausal Syndrome, the employer should reasonably adjust the employee's position upon request from the employee. The Shandong Justice Bureau has informally confirmed that the employer is responsible for requesting the adjustment during perimenopause and that the employee may bring a labor arbitration action against an employer who refuses a reasonable adjustment request.



Key take-away points:

Local governments in China are enhancing sex neutral hiring practices and workplace protections for female employees. Employers should monitor these developments and update their policies, procedures and employment contracts as necessary to protect their female employees in accordance with local laws and regulations. To properly protect female employees with Perimenopausal Syndrome, employers should pay attention to any official implementing opinions from the local labor authorities or courts.

Shenzhen offers government subsidies to attract high-end financial talent

On 24 December 2018, the Shenzhen government issued the *Notice on Supporting the Development of Financial Talents*, effective 6 January 2019. According to the notice, the Shenzhen government will provide incentives to attract high-end financial talent. This notice, along with various other incentives announced by provincial and local authorities (see the following article), is part of the national government's "Greater Bay Area" initiative, where the ultimate goal is to make various cities in Guangdong Province, together with Hong Kong and Macau, into a global economic and technology center.

The notice's incentives include the following government subsidized programs:

- **Training cost subsidies.** For those who have been recommended by financial institutions or the Shenzhen government to be a part of the annual "100 High-end Financial Talent" program, the Shenzhen government will provide a training subsidy of up to CNY 50,000 per person per year.
- **Internship subsidies.** The Shenzhen government will provide 1,000 qualified interns from famous universities around the world each with a lump sum subsidy between CNY 2,000 and CNY 5,000.
- **International exchange subsidies.** The Shenzhen government will select 100 local Shenzhen high-end financial talents per year for an international exchange program in New York, London, Hong Kong, Singapore and other major financial centers. Those selected will be granted a subsidy of up to CNY 100,000 per person.
- **Financial certificate subsidies.** For qualified employees who pass recognized financial tests (such as CFA, FRM, ASA, FCAA and ACCA) and obtain relevant financial certificates, the government will reimburse the employer for paying the employee's test fee of up to CNY 50,000 per person.

Key take-away points:

These subsidies aim to help Shenzhen compete to attract high-end financial talent to settle in Shenzhen. Financial institutions and other companies in financial industries can make full use of these subsidies, though considering the relatively low amounts, it is unclear how much impact this will have on its own. More importantly, this notice shows that local governments in the Greater Bay Area are already taking steps to implement the *Outline*



Development Plan for the Guangdong-Hong Kong-Macau Greater Bay Area, which was issued mid-February and is a key initiative of China's national government.

Guangdong Province loosens hiring restrictions to attract Hong Kong and Macao talent

On 15 February 2019, the Guangdong Province government issued the *Circular on Implementing Several Measures to Support the Deepening of Reform and Innovation in Pilot Free Trade Zones (PFTZ)*. The circular directs the provincial human resources and social security bureau to issue several pilot measures to implement key reforms. Among these reforms, the circular will allow more Hong Kong and Macao professionals, such as certified accountants, architects, planning and patent agents, to practice in the PFTZ, upon registering with the relevant authorities. This is another local government measure to promote the Greater Bay Initiative and to help integrate the economies of Hong Kong and Macau with Guangdong Province.

Other key reforms that will be implemented include:

- allowing dispatch employees to engage in temporary work in R&D positions
- decentralizing the approval authority from the provincial level to the PFTZ level for establishing Sino-foreign joint ventures and wholly foreign-owned employment placement agencies in the PFTZ
- formulating a management system and implementing rules to better manage the work-study program for foreign students in the PFTZ
- allowing uncertified medical personnel in medical institutions to provide disease prevention services using traditional Chinese medicine

Finally, the circular directs PFTZ authorities to understand and support the policy role played by project-based employment contracts that end upon the completion of a certain job and fixed short-term employment contracts used during peak production seasons. These flexible contracts are important to PFTZ manufacturing enterprises being able to attract the talent needed to complete these project-based and short-term operations.

Key take-away points:

The Guangdong circular will provide employers in the PFTZ with more flexibility in hiring, most importantly, when hiring professionals from Hong Kong and Macau. However, as the circular is high level guidance, additional implementing rules will need to be issued by various PFTZ authorities to fully implement the circular. In anticipation of the hiring opportunities those implementing rules will create, employers in the PFTZ should review their current operations and prepare to quickly take advantage of the more flexible hiring rules once the implementing rules are issued.



Shanghai's prosecutor office declines to prosecute employer who repays delayed wages

On 17 January 2019, the Supreme People's Procuratorate (basically the prosecutor's office) published four model cases on judicial protections for the legal rights and interests of private companies. One case focused on employer liability for evading wage payments. In that case, the Yangpu District Procuratorate in Shanghai declined to prosecute an employer who paid delayed wages to employees before the procuratorate filed criminal charges against the employer.

The employer was a private company controlled by a sole individual shareholder. The employer delayed wage payments of CNY 500,000 to 12 employees for over a year. Although the local labor bureau and labor arbitration commission ordered the employer to pay the delayed wages, the employer still refused.

The local public security bureau arrested the individual owner and submitted the case to the Yangpu District Procuratorate for prosecution against the company and the owner. After the procuratorate explained to the owner the legal penalties for the delayed wages and the possible mitigation or exemption from those penalties if the delayed wages were paid before criminal charges were filed, the owner paid the employees the full amount owed. After which, the procuratorate declined to prosecute the company and the owner.

Key take-away points:

Employers are subject to criminal prosecution for refusing to pay wages above certain amounts for certain periods of time. As this case shows, the procuratorate can reduce criminal penalties or even decline to prosecute if the employer pays the delayed wages to employees before the procuratorate files charges. Nevertheless, no employer should expect the procuratorate to be so generous. Once delayed wage payments meet the threshold for criminal conduct, the procuratorate can decide to fully prosecute the employer regardless of whether the employer later makes the payments. Therefore, employers should ensure full and timely wage payments to all employees and maintain payroll records for two years as required by statutory record-keeping requirements.

Beijing court extends employment for employee who suffers work injury after mutual termination

The Beijing Haidian District People's Court and the Beijing No. 1 People's Court reportedly confirmed an employee's continuous employment with an employer beyond the mutual termination date as a result of a work injury suffered by the employee after accepting immediate mutual termination but before completing all handover work. The employer was ordered to pay the employee CNY 96,000 in back salary for six months of work injury leave during the extended employment period.

The employee agreed to mutual termination with immediate effect and to complete handover work within six days. However, the employee was injured in a traffic accident on the second day following the termination date while traveling to the company's premises for handover matters. The employer



refused to apply for work injury certification for the employee by arguing that the employment relationship had terminated before the injury occurred. In response, the employee filed a work injury claim with the labor bureau. The labor bureau ruled for the employee and certified the employee's work injury. Once the work injury was certified, the employer was thereby required to pay salary during the employee's work injury leave.

The employer appealed the labor bureau decision and asked the court to revoke the work injury certification. Both courts upheld the labor bureau decision that the employee's injury while traveling to work to conduct handover matters was a work injury; thus, the courts ruled that the employment relationship should be extended to the end of the work injury leave period.

Key take-away points:

Courts normally seek to protect employees who suffer work injuries, including by extending the employment relationship where possible. Employers should therefore try to complete all work handover procedures prior to the termination date of employment where possible.

Beijing's express delivery industry signs its first industry-based collective agreement

In February 2019, the first collective agreement in the express delivery industry was signed in Beijing by the Beijing Express Delivery Industry Joint Labor Union and the Beijing Express Delivery Industry Association to secure statutorily required labor protections and working conditions for workers in the express delivery industry. Under PRC labor law, an industry-based collective agreement signed between the labor union and industry association representatives is binding on all employers and employees in the industry where the agreement was signed. Therefore, this new collective agreement binds all employers operating in and all employees working in the express delivery industry in Beijing.

The *Special Labor Protection Collective Agreement of 2019 for the Beijing Express Delivery Industry* focuses on labor protections and working conditions in three areas.

First, enterprises and enterprise trade unions should strengthen work safety training.

Second, employers should provide safe working conditions and necessary worker safety equipment according to national regulations. As part of providing safe working conditions, employers should take measures to protect workers from extreme heat and cold. To protect workers from extreme weather conditions, employers should also consider any enterprise trade union suggestions about when to reduce working hours or to suspend work for outdoor workers during extreme weather.

Third, employers should provide special protections for female workers and improve the working environment. For improving the working environment, if possible, employers should equip worker dormitories and work areas with amenities to allow employees to live and work more comfortably. Those amenities include drinking fountains, microwave ovens, shower facilities, etc.



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Honourable Mention: In-house Community Employment Firm of the Year (China) – *Asian-MENA Counsel Representing Corporate Asia & Middle East Survey, 2014*

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Key take-away points:

Overall, based on the content of the express delivery industry agreement as reported, the collective agreement does not impose any new obligations on employers beyond those that are already required by law. Employers are already legally obliged to provide work safety training, labor protection supplies and special protections for female employees, and to solicit and consider comments from the company's union on matters directly impacting essential employee rights, such as amending working hours. The collective agreement does not call for enhancing these standards beyond the statutory minimums, nor does it give the union the ability to veto or block employer decisions after consulting with the union. Furthermore, any provisions in the collective agreement that specifically mention providing employees with extra benefits, such as comfortable dormitories and work stations, are not compulsory.

Therefore, while this agreement has been exalted in the press for representing a major step forward in the protection of precarious workers' rights, in substance the impact of this agreement may be limited.

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