



# Asia Pacific Employment & Compensation Quarterly Update

## Quarter 1: 2021

### Introduction

Our Asia Pacific Employment & Compensation Team is pleased to provide you with our first quarterly update for 2021 highlighting key employment law changes across the Asia Pacific region.

Please feel free to visit our [Building a New Workforce Reality](#) 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 and Compensation Webinar site](#) and the [Resilience, Recovery & Renewal: A Podcast Series](#) for our latest webinars and podcasts in the region.

Best wishes for the Year 2021.



Stay safe,

Michael Michalandos

Head of Employment & Compensation Group, Asia Pacific



AUSTRALIA



PRC



HONG KONG



JAPAN



MALAYSIA



PHILIPPINES



SINGAPORE



THAILAND



VIETNAM





# AUSTRALIA

## Increase in minimum wage for final group of awards

### IN BRIEF

- The Fair Work Commission announced a 1.75% increase to minimum wages, to start on three different dates for different groups of awards.
- The final group of awards commenced on 1 February 2021, which includes the Hospitality Industry (General) Award and the Retail Industry Award (see the full list [here](#)).
- For anyone not covered by an award or an agreement, the new National Minimum Wage is AUD 753.80 per week or AUD 19.84 per hour. This applies from the first full pay period starting on or after 1 July 2020.

### Recommended action

Ensure payments have been updated accordingly.

## Update to modern awards

### IN BRIEF

- The Fair Work Commission has issued updated modern awards for part of group three, which commenced operation on 1 February 2021.
- See the updated awards [here](#).

### Recommended action

Review arrangements for award-covered employees to ensure they are compliant with the amendments.

## End of JobKeeper wage subsidy

### IN BRIEF

- The JobKeeper Payment scheme concluded on 28 March 2021.
- Monthly business declarations for JobKeeper Fortnights in March need to be completed by 14 April 2021 to receive final JobKeeper payments.

### Recommended action

For those businesses in receipt of JobKeeper, ensure declarations are submitted by the due date.

## Commencement of Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021

### IN BRIEF

- The *Fair Work Act 2009* ("Act") was amended to update workplace rights and obligations for casual employees. The changes came into effect on 26 March 2021.
- The amendments introduce the following:
  - a) Casual Employment Information Statement (link [here](#)), which must be provided to casual employees upon commencement of employment
  - b) Definition of "casual employment"
  - c) Pathway for casual employees to move to full-time or part-time (permanent) employment
  - d) A safeguard against double-dipping for misclassified employees seeking back-pay of entitlements
- The changes were made, in part, in response to recent court decisions that had enabled employees who had been "misclassified" as casual employees to recover entitlements owing to permanent employees (such as leave entitlements), without regard to any casual loading that had been paid to them (see previous updates on *WorkPac Pty Ltd v Skene* [2018] FCAFC 131 and *WorkPac Pty Ltd v Rossato* [2020] FCAFC 84).
- The changes to the Act now ensure that whether an employee is a casual employee is to be assessed based on the initial offer of employment.
- See the Fair Work Commission's explanation of the changes [here](#).

### Recommended action

- Review existing contracts to ensure that they satisfy the definition of a "casual employee." Under such new definition, a person is considered a casual employee under the following circumstances:
  - a) An offer of employment made by the employer to the person is made on the basis that the employer makes no firm advance commitment to continuing and indefinite work according to an agreed pattern of work for the person.
  - b) The person accepts the offer on that basis.
  - c) The person is an employee as a result of that acceptance.
- Review on-boarding processes to ensure that casuals receive the Casual Employment Information Statement (link [here](#)).
- Keep clear documentation of casual commencement date and hours worked to enable future review of the need to offer casual conversion. Subject to limited exceptions, an employer must offer a casual employee the option to convert to full-time or part-time (permanent) under the following circumstances:
  - d) The employee has worked for the employer for 12 months.
  - e) The employee has worked a regular pattern of hours for at least the last six of those months on an ongoing basis.
  - f) The employee could continue working those hours (without significant adjustment) as a permanent employee.

## Extension of Schedule X - unpaid pandemic leave and annual leave flexibility for awards

### IN BRIEF

- In response to the coronavirus pandemic, the Fair Work Commission inserted a temporary Schedule X into 99 modern awards. The Schedule provides two weeks of unpaid pandemic leave and the ability to take twice as much annual leave at half their normal pay if their employer agreed.
- The Schedule was due to expire on 29 March 2021, but this has been extended to 31 December 2021 for some awards.

### Recommended action

Use this [list](#) to assess whether the Schedule continues to apply to your industry.



# PEOPLE'S REPUBLIC OF CHINA

## The State Council emphasizes that local governments should not conduct centralized settlement of historical social insurance premium arrears on their own

### IN BRIEF

As mentioned in our last Quarterly Update, according to various government notices, local tax authorities will assume responsibility for collecting social insurance contributions in many cities (e.g., Beijing).

At a State Council executive meeting presided over by Premier Li Keqiang on 20 January 2021, it was reiterated that local government departments should not conduct centralized settlement of historical premium arrears on their own and should not increase companies'— especially small to midsize companies'— costs for the transfer of responsibility for collecting social insurance premiums. It was also emphasized during the meeting that the government should collect mandatory tax and premiums in an orderly manner to minimize the burden on companies and citizens, and that all provinces should maintain the current collection method for social insurance premiums for 2021.

### Recommended action

For information only. However, as tax authorities take over the collection (and sometimes verification) of social security contributions, companies may be exposed to higher compliance risks in the event of underpayment of social security contributions for employees.

## MOHRSS prohibits sexual discrimination and other discriminatory content in online recruitment

### IN BRIEF

- The Ministry of Human Resource and Social Security (MOHRSS) recently issued the Administrative Provisions on Online Recruitment Services ("Provisions"), with effect from 1 March 2021.
- The Provisions highlight the following:
  - i. Online recruitment information, including the basic information of the employer, the number of employees to be recruited, recruitment requirements, employment type, job description, working conditions, work location, and basic labor remuneration, provided by an employer to a human resource service agency shall not contain discriminatory content, such as ethnicity, race, sex and religious belief.
  - ii. Due to business needs, where a human resource service agency engaged in online recruitment services does need to provide an overseas institution with personal information and important data collected and generated in its operations within the territory of China, it shall comply with relevant laws and administrative regulations of China.

### Recommended action

Employers should be aware of these Provisions and ensure compliance in their recruitment processes.

## The Intermediate People's Court in Shenzhen issues a report on overview of labor disputes in Shenzhen in the past 15 years (from 2005 to 2020)

### IN BRIEF

- The Shenzhen court report highlights the following points regarding labor disputes in Shenzhen:
  - i. Employees prefer to resort to lawsuits after termination of employment as opposed to during the employment relationship.
  - ii. Compared to employers, employees have a higher chance of success in labor disputes.
  - iii. Courts take a cautious position when assessing whether or not to support employees' claims for reinstatement of employment. The chance of success for employees in this respect is not very high.
  - iv. Courts generally balance the interests of employers and employees in disputes regarding non-competition.
  - v. Courts regularly issue guiding opinions in order to apply a consistent standard for all labor cases.
- Employers in Shenzhen are advised to keep such guiding opinions in mind.

### Recommended action

For information only.

## Occupational disease diagnosis and appraisal management measures recently amended

### IN BRIEF

By way of background, these measures concern the rules on diagnosis and appraisal of occupational disease. One of the main changes that came into force on 4 January 2021, is that if there is no evidence to rebut the inevitable connection between the occupational disease hazard and the employee's clinical manifestations, the illness should be diagnosed as an occupational disease. This change will therefore likely increase the chance of occupational disease diagnosis in the future, as the burden of establishing causation of the occupational disease would otherwise be high. In addition, another key change is that the occupational disease diagnosis agency should make a diagnosis conclusion within 30 days from the date of receipt of the complete materials for the occupational disease diagnosis.

### Recommended action

Employers, particularly those with employees working in high-risk environments, should be aware of these changes.

## MOHRSS announces the latest government policy on unemployment and work injury insurance contribution rates

### IN BRIEF

- At a 26 January 2021 news conference, an official of the Ministry of Human Resources and Social Security of China (MOHRSS) announced the latest government policy on unemployment and work injury insurance contribution rates.
- By way of background, starting from 1 January 2017, the total combined unemployment insurance contribution rate for the employer and the employee has been temporarily reduced to 1% in order to further reduce the burden on employers. In 2018, the MOHRSS and the Ministry of Finance jointly issued a notice to temporarily reduce employer contributions to the work injury insurance scheme. The temporary reduction policy has been extended for a few times since its introduction.
- According to the MOHRSS official, the current policy on temporary reduction in the unemployment and work injury insurance contribution rates will once again be extended until 30 April 2022.

### Recommended action

For information only.

### Compensation levels for work injuries and occupational diseases to increase from 15 April 2021

#### IN BRIEF

The Labour Department announced on 19 March 2021 that effective 15 April 2021, the levels of compensation will increase for employees injured at work or suffering from prescribed occupational diseases under the Employees' Compensation Ordinance (ECO) or family members of deceased employees, persons suffering from pneumoconiosis or mesothelioma or family members of persons who die as a result of these diseases, and persons suffering from occupational deafness.

The levels of 18 compensation items will be increased, ranging from 2.68% to 18% under the ECO, the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (PMCO), and the Occupational Deafness (Compensation) Ordinance (ODCO).

Under the established mechanism, the levels of compensation under the ECO, the PMCO and the ODCO are adjusted every two years where appropriate.

#### Recommended action

Employers may wish to discuss the change in the levels of compensation with their employees' compensation insurance providers.

### Legal protection of breastfeeding women from harassment to take effect on 19 June 2021

#### IN BRIEF

The Sex Discrimination (Amendment) Bill was passed by the Legislative Council on 17 March 2021, which seeks to amend the Sex Discrimination Ordinance to make it unlawful for a person to harass a breastfeeding woman.

This legal protection against breastfeeding harassment, together with that against breastfeeding discrimination, will come into force on 19 June 2021.

#### Recommended action

Employers should provide training to HR, managers and other employees to ensure that they are aware of these new changes. Employers may also consider updating their equal opportunities / anti-discrimination / anti-harassment policies to reflect these new changes.



## Proposed increase of statutory holidays from 12 to 17 days by 2030

### IN BRIEF

The Employment (Amendment) Bill 2021 was gazetted on 5 March 2021.

The bill seeks to amend the Employment Ordinance (EO) by adding five statutory holidays to the existing 12, progressively from 2022 to 2030. The additional five days to be added are as follows:

- Birthday of the Buddha, being the eighth day of the fourth lunar month (starting from 1 January 2022)
- First weekday after Christmas Day (starting from 1 January 2024)
- Easter Monday (starting from 1 January 2026)
- Good Friday (starting from 1 January 2028)
- The day following Good Friday (starting from 1 January 2030)

This increase in the number of statutory holidays from 12 to 17 brings the total number of statutory holidays in line with the general holidays under the General Holidays Ordinance. Currently, only certain employers, such as banks, educational establishments, public offices and government departments are required to grant general holidays to their employees, although many international employers in Hong Kong do so. There is no requirement to pay for general holidays although in practice many employers do make payment for such leave days.

### Recommended action

Once the relevant days above become statutory holidays, employers will need to comply with the provisions set out in the EO governing statutory holidays in respect of such days. For example, all employees, regardless of length of service, are entitled to take statutory holidays. Employees who have been continuously employed for at least three months immediately preceding the relevant statutory holiday are entitled to be paid for the statutory holiday in accordance with the formula set out in the EO. The EO also sets out specific rules on substitution of statutory holidays and payment in lieu of statutory holidays.

The first reading of the bill took place on 17 March 2021.

Employers should be aware of this development and may need to make amendments to applicable leave policies in due course.

## Statutory minimum wage remains at HKD 37.50

### IN BRIEF

The Executive Council advised and the Chief Executive ordered the acceptance of the recommendation of the Minimum Wage Commission on maintaining the prevailing statutory minimum wage rate at HKD 37.50 per hour.

The Minimum Wage Commission will submit its next biennial recommendation report by 31 October 2022.

### Recommended action

For information only

## The Employees' Compensation (Amendment) Bill 2021 was published in the gazette

### IN BRIEF

The Employees' Compensation (Amendment) Bill 2021 expands the Employees' Compensation Ordinance (ECO) to provide that an accident that happens to an employee when the employee is travelling between the employee's place of residence and place of work within the period specified in an extreme conditions announcement is deemed to arise out of and in the course of the employee's employment.

This will grant employees protection where an extreme conditions announcement has been made (by the Chief Secretary for Administration declaring the existence of extreme conditions that have arisen from a super typhoon or other natural disaster of a substantial scale) during the period (including any extended period) specified in the announcement. In other words, under the amendment bill, employees may still be covered by the ECO if, for example, a typhoon signal is lowered but an extreme conditions announcement is in place.

The first reading of the amendment bill by the Legislative Council was held on 24 February 2021.

At present, commuters are entitled to compensation for accidents only when either a No. 8 typhoon signal or higher, or a red or black rainstorm warning, is in force.

### Recommended action

Employers should take note of any changes required in relation to their adverse weather conditions policies.

## Standby time may not qualify as statutory rest days

### IN BRIEF

In *Breton Jean v 香港麗翔公務航空有限公司 (HK Bellawings Jet Limited)* [2021] HKDC 46 (22 January 2021), the employee, who was a pilot, was required to work on demand and perform standby duty as necessary. When the employee was designated to standby duty, he would be on call and had to be accessible through his work phone. The employee was not informed of his roster or his rest periods.

The employee was later summarily dismissed for unauthorized absence, as the employer could not reach him by his work phone.

The employee sued his employer for his statutory rest day pay. He also claimed that the employer wrongfully terminated him. The court allowed his statutory rest day pay claim but dismissed his claim for wrongful termination.

As regards statutory rest day pay, the court dismissed the employer's claim that there was an unwritten understanding that any non-flight days would be counted as rest days under the Employment Ordinance (EO). As for the time the employee spends on standby duty, it would not constitute rest days either, as the employee had to be accessible through his work phone and to work on demand. The court found that if the employee was truly taking rest day, he should have been entitled to abstain from working.

As regards the wrongful termination claim, the court found that the employee never asserted that he was absent due to his rest day entitlements. He was therefore being unreachable by the employer without a valid reason. His unauthorized absence justified the summary dismissal.

### Recommended action

Employers should note that under the EO, employees employed under a continuous contract are entitled to no less than one rest day every seven days.

Employers should clearly specify the applicable rest day in the employment contract and ensure that their employees are entitled to abstain from working for 24 hours on the designated statutory rest day.

## Legally mandated employment rate for persons with disabilities increased from 1 March

### IN BRIEF

- With effect from 1 March 2021, the disability quota for employers in the private sector increased from 2.2% to 2.3%. This means that employers in the private sector must hire disabled employees in a number constituting 2.3% of the employer's workforce.
- Accordingly, the number of eligible employers who must hire at least one disabled person has been expanded to employers with 43.5 (with an employee working reduced hours counted as half) or more employees (previously it was 45.5 or more). "Persons with a disability" includes physically handicapped persons, mentally handicapped persons, and persons with a developmental disorder.
- Employers who employ 100 or more employees that have failed to achieve the legally mandated disability quota must pay a contribution of JPY 50,000 per month for each disabled person whom the employer would have needed to employ in order to satisfy the quota. The legally mandated number of disabled employees is calculated by multiplying all employees by the quota percentage rate. The rate was 2.2% from April 2020 to February 2021, and was increased to 2.3% from March 2021 (the contribution amount is calculated through April to March every year).

### Recommended action

Employers must report to the Public Employment Security Office (commonly referred to as "Hello Work") the employment status of persons with disabilities as of 1 June every year. Employers who fail to meet the required disabled employee quota percentage may also be provided with administrative guidance, including an instruction to prepare a two-year employment plan. If the employer still fails to comply despite the administrative guidance, the employer's breach and name may be made public. On the other hand, employers who hire disabled employees at a number in excess of the legally mandated disability quota may be eligible to receive adjustment payments and incentive payments. In addition, for the purpose of promoting and maintaining the employment of persons with disabilities, employers are encouraged to appoint a person who reports on the employment status of disabled persons to the Minister of Health, Labour and Welfare, and who serves as a liaison between the government and the company in the event that an order or recommendation is received.

## Employers encouraged to employ workers up to age 70

### IN BRIEF

Employers are encouraged to employ workers up to age 70 from 1 April 2021. The Japanese government is pushing for such measures because it is projected that 1 in 3 people in Japan will be 65 or older by 2025. Although this amended law is not mandatory, it provides businesses with five options in retaining employees through the age of 70:

- Raising the retirement age
- Removing the retirement age
- Allowing employees to continue working past retirement age
- Outsourcing to retirees with start-ups
- Assigning retirees to their own or entrusted/invested institutions' philanthropic projects

The current legal retirement age is 60. However, employers are required to take action to sustain employment of employees aged 60 to 65. Therefore, the target age group of this amendment is workers aged over 65 to 70.

Since these measures are not mandatory, employers may choose the relevant measures and select the employees to whom the measures shall apply. However, in order to prevent employers from selecting target employees arbitrarily, the measures should be determined by discussion with the major labor union or the representative of the majority of the employees.

A significant change from the current situation is that employers may permit employees to work at institutions outside of their group companies (employees aged 60 to 65 must, however, still be employed within the organization). In addition, under the new measures, contract outsourcing with the relevant employees is permitted, that is, under a freelancing arrangement or outsourcing the employee to an outside vendor. However, note that when employers adopt such measures, they are required to formulate a detailed plan, which should include the amounts paid to the individual and the frequency of contract renewals, etc. Moreover, employers must obtain the agreement from the majority labor union or the representative of the majority of the workers since the employees will no longer be protected by labor law in such cases.

### Recommended action

According to a survey conducted by the Ministry of Health, Labour and Welfare in June 2020, the percentage of businesses that have their own systems in place allowing workers to continue working after the age of 65 was 34% for small and medium business (approximately less than 300 workers), and 28.2% for large businesses. However, even with such systems in place, not all organizations permit employees to continue working after the age of 65.

Watch for developments.

## Reduction in statutory rate of employees' contribution to the Employees Provident Fund (EPF) for the year 2021

### IN BRIEF

The Employees Provident Fund (Amendment of Third Schedule) (No. 2) Order 2020 was gazetted on 30 December 2020, and will be in effect from 1 January 2021 to 31 December 2021.

Pursuant to the Employees Provident Fund (Amendment of Third Schedule) (No. 2) Order 2020, the Third Schedule of the Employees Provident Fund Act ("EPF Act") was amended to reduce the minimum statutory EPF contribution rate (employee's portion) for employees below the age of 60, from 11% to 9% for the year 2021.

This is in line with the Malaysian government's announcement of the national budget on 6 November 2020 ("Budget Announcement") and its efforts to mitigate the financial impact of the COVID-19 pandemic on the Malaysian economy and EPF members. With effect from 1 January 2021 to 31 December 2021, for employees below the age of 60, employers will be required to automatically deduct the employees' EPF contribution from their wages according to the new statutory rate of 9%, save for those who elect to maintain their contribution rate at 11% ("Exempted Employees") by submitting a "Notice to Contribute More than the Statutory Rate" in Form KWSP 17A (Khas 2021) ("Form").

Please note that the employers' minimum statutory EPF contribution rate will remain the same for the year 2021.

### Recommended action

An employer who receives the Form from their Exempted Employees will be required to maintain the Exempted Employees' contribution rate at 11%, submit a copy of the Form to the EPF, and keep a copy of the Form for the employer's own record.

## Amendment to statutory rate of transfer of EPF contribution to EPF account of lawful wife/wives

### IN BRIEF

The Employees' Provident Fund (Amendment of Eighth Schedule) (No. 2) Order 2020 ("EPF Order") was gazetted on 24 December 2020, and will be in effect from 1 January 2021 to 31 December 2021.

Under the EPF Act, a male EPF member may choose to transfer a portion of his monthly EPF contribution to the EPF account of his lawful wife/wives at the rate of 2% of his 11% (monthly wages) contribution. However, pursuant to the EPF Order, the transfer rate has been amended to 2% of his 9% (monthly wages) contribution for the year 2021.

This amendment is in line with the reduction in the minimum statutory EPF contribution rate for employees below the age of 60, from 11% to 9% for the year 2021, as discussed above.

### Recommended action

Employers to note.

## Coming into operation of amendments to the Industrial Relations Act (IRA)

### IN BRIEF

On 21 December 2020, Notice PU(B) 695/2020 was gazetted to appoint 1 January 2021 as the date of coming into operation of certain provisions of the Industrial Relations (Amendment) Act 2020, which introduces amendments to the IRA. The amendments that have come into effect include, but are not limited to, the following:

- a) Removal of the discretion of the Minister of Human Resources ("Minister") to refer unfair dismissal complaints to the Industrial Court (IC)
- b) Employees and employers may appoint anyone to represent them during the conciliation meeting at the Industrial Relations Department, with the prior approval of the Director General of Industrial Relations, and subject to certain prescribed exemptions
- c) New procedures to determine whether recognition should be accorded to a trade union
- d) Minister to be granted rights to stop a strike or lock-out in the event that it lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the population
- e) New right of appeal against an IC award to the High Court within 14 days from the date of receipt of the award
- f) Additional powers given to the IC (e.g., power to impose interest of up to 8% per annum on monetary awards, amongst others)
- g) Increase in the scope of collective bargaining
- h) Increase of penalties for contravention of the IRA (e.g., non-compliance with an IC award or collective agreement, among others)

Other amendments to the IRA that have yet to come into effect include, but are not limited to, the following:

- a) New procedures to determine which trade union shall have sole bargaining rights to represent employees
- b) The elimination of the requirement to determine competence of trade union when deciding whether recognition should be accorded
- c) Disputes arising from a deadlock or refusal to collectively bargain can only be referred to the IC with the parties' consent, subject to prescribed exemptions

It remains unclear as to when the remaining amendments will come into effect.

### Recommended action

Employers to note.

## Amendment of the EPF withdrawal rules

### IN BRIEF

The Employees Provident Fund (Amendment) (No. 3) Rules 2020 was gazetted on 29 December 2020, and came into effect on 1 January 2021; whereas the Employees Provident Fund (Amendment) Rules 2021 was gazetted on 25 February 2021, and came into effect on 26 February 2021.

During the Budget Announcement, the Malaysian government announced that it would allow eligible EPF members to withdraw from their EPF savings in Account 1 to increase their income for the purposes of survival during the COVID-19 pandemic ("EPF Withdrawal"). Thereafter, the Employees Provident Fund (Amendment) (No. 3) Rules 2020 and Employees Provident Fund (Amendment) Rules 2021 were gazetted to set out the terms of the EPF Withdrawal. They are, among others, as follows:

- a) Eligible EPF members must submit their EPF Withdrawal applications to the EPF Board from 1 January 2021 to 30 June 2021 (or any other period as may be determined by the EPF Board), and not more than once during that period.
- b) If the EPF Board is satisfied with the EPF Withdrawal application by an eligible EPF member, the EPF Board will determine the amount that may be withdrawn from the member's Account 1, based on the total savings available therein. In this regard, it is important to take note of the following:
  - i. For EPF members with MYR 100,000 or below in their Account 1, they may withdraw any amount up to MYR 10,000, so long as the withdrawal in the first month does not exceed MYR 5,000.
  - ii. For EPF members with more than MYR 100,000 in their Account 1, they may withdraw: (i) up to 10% of their savings; or (ii) up to MYR 60,000, whichever is lower, so long as the withdrawal in the first month does not exceed MYR 10,000.
  - iii. EPF members may only withdraw from their Account 1 once a month, for six months from the date of approval of their EPF Withdrawal application.
  - iv. The amount withdrawn for the second to fifth months shall not be less than MYR 1,000, whereas the amount withdrawn for the sixth month shall not be less than MYR 50.

EPF members must have at all times at least MYR 150 in savings in their Account 1 during the six-month period for the EPF Withdrawal.

### Recommended action

Employers to note.



## Amendments to the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 ("Housing Standards Act")

### IN BRIEF

- The Emergency (Employees' Minimum Standards of Housing, Accommodations and Amenities) (Amendment) Ordinance 2021 ("Ordinance") was promulgated and came into effect on 26 February 2021.
- By way of background, the Housing Standards Act prescribes the housing obligations of an employer who provides accommodations to employees protected under the Act, along with the minimum standards that must be complied with in respect of such accommodation.
- The Ordinance introduced changes to the Housing Standards Act, which include but are not limited to the following:
  - The extension of the application of the Housing Standards Act to the states of Sabah and Sarawak (collectively, East Malaysia), in addition to West Malaysia and the Federal Territory of Labuan
  - The broadening of the definition of 'employee' under the Housing Standards Act to include employees in East Malaysia who fall within the ambit of the Labour Ordinances of Sabah and Sarawak, in addition to employees in West Malaysia who fall within the ambit of the Employment Act
  - The broadening of the definition of 'accommodation' under the Housing Standards Act to include centralized accommodation, in addition to any permanent or temporary building or structure, including any house, hut, shed or roofed enclosure used for the purpose of human habitation
  - The grant of power to the Minister to prescribe any class of employees that must be provided with accommodation by their employer under the Housing Standards Act
  - The grant of power to the Director General of Labour (DGL) to:
    - require an employer or centralized accommodation provider to bear the costs incurred in complying with the directions issued by the DGL under the Housing Standards Act
    - direct an employer or centralized accommodation provider to replace, alter or repair the accommodation or its amenities ("Works") for compliance with the minimum standards prescribed by the Housing Standards Act, and to bear the costs of such Works
    - if necessary for the safety and well-being of the employees, direct an employer to provide the employees with temporary accommodation during the undertaking of Works in such manner to be determined by the DGL, and to bear the costs incurred in complying with such direction

### Recommended action

Employers to note.

## Introduction of requirement to provide accommodation to foreign workers

### IN BRIEF

- The Employees' Minimum Standards of Housing, Accommodations and Amenities (Employees Required to be Provided with Accommodations) Regulations 2021 ("Regulations") was promulgated and came into effect on 25 February 2021.
- The Regulations introduce a new requirement for employers to provide accommodation to foreign workers (i.e., holders of a Visit Pass (Temporary Employment), excluding domestic helpers) during their period of employment in Malaysia.

### Recommended action

Employers of foreign workers to note.

## InExpansion in scope of industries covered under the Pembangunan Sumber Manusia Berhad Act 2001 ("HRDF Act")

### IN BRIEF

- The Pembangunan Sumber Manusia Berhad (Amendment of First Schedule) Order 2021 ("HRDF Order") was promulgated on 26 February 2021, and came into operation on 1 March 2021.
- By way of background, the HRDF Act requires employers with 10 or more employees in industries prescribed by the First Schedule of the Act to contribute to a centrally-administrated human resource development fund (HRDF), which may be used by employers to obtain reimbursement for costs of training programs conducted for the purposes of upskilling their employees. Employers in the prescribed industries with five to nine employees can make voluntary contributions to the HRDF.
- The industries prescribed by the First Schedule of the HRDF Act are as follows:
  - Manufacturing sector
  - Mining and quarrying sector
  - Services sector, which includes services in the following industries:

- Hotels
- Freight forwarding
- Energy
- Railway transport services
- Research and development
- Gas, steam and air-conditioning supply
- Production of motion picture, video and television program, sound recording and music publishing
- Health support services
- Driving school
- Air transport
- Shipping
- Training
- Direct selling
- Warehousing services
- Water treatment and supply
- Information services
- Franchising
- Veterinary services
- Tourism enterprise
- Postal or courier
- Higher education
- Port services
- Security services
- Sewerage
- Event management services
- Sale and repair of motor vehicles
- Hypermarket, supermarket and departmental store services
- Telecommunication
- Computer services
- Commercial land transport
- Engineering support and maintenance services
- Private hospital services
- Waste management and material recovery services
- Early childhood education
- Private broadcasting services
- Food and beverage services

- Pursuant to the HRDF Order, the categories of industries prescribed in the First Schedule of the HRDF Act have been redefined and expanded, as follows:
  - Agriculture and farming
  - Manufacturing and production
  - Real estate
  - Tourism and recreation
  - Oil
  - Management and remediation of solid, liquid and gaseous state
  - Storage
  - Communication and multimedia
  - Investment
  - Research and development
  - Medical and health facilities
  - Household goods and services
  - Livestock and fisheries
  - Trading, business and wholesale
  - Culture, arts and entertainment
  - Service
  - Gas and steam
  - Automotive
  - Delivery
  - Broadcasting and film
  - Co-operative societies
  - Science and technicality
  - Social welfare
  - Sports
  - Forestry and logging
  - Construction
  - Fashion and clothing
  - Franchise
  - Water
  - Transportation
  - Food and beverages
  - Banking and finance
  - Professional
  - Administration and support service
  - Administration of organization membership
  - Energy and natural resources
  - Mining and quarrying
  - Supply
  - Cosmetics
  - Electricity
  - Sewerage
  - Repair and maintenance
  - Information system
  - Insurance and takaful
  - Science and technology
  - Education
  - Small and medium enterprises
  - Personal services
  
- Further, pursuant to the HRDF Order, a new provision has been included in the First Schedule of the HRDF Act to permit employers who fall outside of the scope of industries prescribed by the First Schedule to make voluntary contributions to the HRDF as well, so long as: (i) they have five or more but less than 500,000 employees; (ii) they are a non-governmental organization; and (iii) they carry out an activity in respect of any of the following:
  - Labor union
  - Religious organization
  - Political organization
  - Nursing care facilities, including nursing home for elderly persons, persons with disabilities, orphans, chemicals abusers, or any welfare services
  - Social work without lodging

## Recommended action

Employers whose nature of business is covered under the amended First Schedule of the HRDF Act, will be required to register with the HRDF and to effect contributions to the HRDF at a rate of 1% of the monthly wages of each employee within their employ.

## Employers in prescribed industries exempted from the requirement to make HRDF contributions from 1 March 2021 to 31 May 2021

### IN BRIEF

- The Pembangunan Sumber Manusia Berhad (Exemption of Levy) Order 2021 ("Exemption Order") was promulgated on 26 February 2021, and will be in effect from 1 March 2021 to 31 May 2021 ("Exemption Period").
- The Exemption Order prescribes that employers in the following industries will be exempt from effecting the HRDF contributions during the Exemption Period:
  - Agricultural and farming
  - Construction
  - Cultural, arts and entertainment
  - Recreation
  - Banking and finance
  - Professional services
  - Education
  - Wholesale
  - Personal services
  - Livestock and fisheries
  - Trading and business
  - Fashion and clothing
  - Services
  - Insurance and takaful
  - Science and technology
  - Social welfare
  - Household goods and services
  - Forestry
  - Real estate
  - Cosmetics
  - Automotive
  - Investment
  - Administration and support services
  - Administration of organization membership
  - Sports

## Recommended action

Employers to note.



# PHILIPPINES

## Department of Labor and Employment (DOLE) issues guidelines streamlining the processes for the issuance of permit to operate and certificate of electrical inspection for new power generation, transmission and distribution projects

### IN BRIEF

On 3 March 2021, DOLE issued Department Order No. 223, Series of 2021. It provides the guidelines for the issuance of a permit to operate (PTO) and certificate of electrical inspection (CEI) for new power generation, transmission and distribution projects in the Philippines, pursuant to Republic Act No. 11234, otherwise known as the "Energy Virtual One-Stop Shop (EVOSS) Act." This issuance applies to the following applications of employers, principals, contractors and subcontractors engaged or desiring to engage in power generation, distribution and transmission projects: (a) clearing of technical plans; (b) conduct of Technical Safety Inspection; (c) new application, renewal or issuance of the PTO and CEI.

### Recommended action

Covered persons engaged in power generation, distribution and transmission projects should ensure compliance with all the documentary requirements listed in this issuance, as only complete applications shall be received and accepted by the DOLE as duly filed.

## Philippine Health Insurance Corporation (PhilHealth) issues advisory on the granting of immediate eligibility to members

### IN BRIEF

On 15 February 2021, PhilHealth issued Advisory No. 004, Series of 2021, which reiterates that all Filipinos, even those without sufficient contributions, shall be granted immediate eligibility or automatic entitlement to all PhilHealth benefit packages under the National Health Insurance Program. This advisory clarifies that the failure to pay premiums shall not prevent the enjoyment of any program benefits. However, employers and self-employed direct contributors shall be required to pay all missed contributions with an interest rate, compounded monthly, of at least 3% for employers and not exceeding 1.5% for self-earning professional practitioners and migrant workers.

### Recommended action

All Filipinos, even those without sufficient contributions, shall be granted "immediate eligibility" or automatic entitlement to all PhilHealth benefit packages under the National Health Insurance Program. Persons who have not yet enrolled with PhilHealth are encouraged to register with the nearest Local Health Insurance Office or PhilHealth Express. Those who are already registered are requested to regularly update their personal records and pay their premium contributions at any Local Health Insurance Office or accredited collecting agents.

## **DOLE issues revised guidelines on the implementation of the social amelioration and welfare program for workers in the biofuel industry utilizing molasses as feedstock**

### **IN BRIEF**

On 15 January 2021, DOLE issued Department Order No. 222, Series of 2021, which provides the revised guidelines on the implementation of the social amelioration and welfare program for workers in the biofuel industry utilizing molasses as feedstock. This issuance aims to promote productive and gainful livelihood opportunities for bioethanol workers, including their dependents, to ensure equitable access of bioethanol workers to productive resources and social protection coverage, and to capacitate and enhance the skills of bioethanol workers and their qualified dependents through trainings and vocational college educational assistance.

### **Recommended action**

Covered persons should be aware of the mechanics and necessary documentary requirements for the availment and implementation of this program. However, managerial-level employees should take heed that they are excluded by the guidelines from availing of the Social Amelioration and Welfare Program of the DOLE.

## **DOLE issues revised rules and regulations for the issuance of employment permits to foreign nationals**

### **IN BRIEF**

On 6 January 2021, the DOLE issued Department Order No. 221, Series of 2021, which provides the revised rules and regulations for the issuance of employment permits to foreign nationals and emphasizes the need to regulate the employment of foreign nationals to safeguard the interest of Filipino workers. The order reiterates that all foreign nationals who intend to engage in gainful employment in the Philippines are required to apply for an Alien Employment Permit. The issuance aims to promote the preferential use of Filipino labor, domestic materials and locally produced goods, and to adopt the necessary measures to help make them competitive. Additionally, the order seeks to establish and maintain a registration and/or work permit system for foreign nationals intending to engage in gainful employment in the Philippines.

### **Recommended action**

Employers intending to hire foreign nationals are reminded to secure all the relevant permits.

## Dependant's Pass holders to apply for work pass instead of Letter of Consent to work

### IN BRIEF

On 3 March 2021, the Ministry of Manpower announced that effective 1 May 2021, Dependant's Pass (DP) holders who wish to work in Singapore will need to apply for a relevant work pass, such as an Employment Pass, S Pass or Work Permit, instead of a Letter of Consent (LOC). Existing DP holders with LOC will be allowed to continue working until the LOC expires. However, employers will have to apply for the appropriate work pass for their employees if they wish to continue employing them after the existing LOC expires.

### Recommended action

Employers who currently employ foreign employees on LOCs should consider if the foreign employees qualify for a work pass. An employer intending to apply for a work pass for a foreign employee is strongly encouraged to commence with the work pass application early as the processing time may take up to six weeks.

## Extension to the qualifying window for the Jobs Growth Incentive

### IN BRIEF

On 16 February 2021, the Singapore government announced that it will extend the qualifying window for the Jobs Growth Incentive (JGI) by seven months and enhance support for employers. JGI was introduced in August 2020 to encourage employers to prioritize hiring of local jobseekers. Eligible employers received wage support of up to 12 months for each new local hired between September 2020 and February 2021.

With this extension, eligible companies that hire locals between March 2021 and September 2021 will receive wage support, as follows:

- a. For non-mature locals (under 40), up to 12 months based on 25% of the first SGD 5,000 of gross monthly income, from the month of hire
- b. For mature workers (aged 40 and above), persons with disabilities and ex-offenders, up to 18 months (12 months previously) based on 50% of the first SGD 6,000 (SGD 5,000 previously) of gross monthly income. Eligible companies that had hired such locals between September 2020 and February 2021 will enjoy the enhanced support from March 2021.

### Recommended action

For information only.



## Reduction of manufacturing sector's S Pass sub-Dependency Ratio Ceiling ("sub-DRC")

### IN BRIEF

On 16 February 2021, the Singapore government announced that to sustain the momentum for restructuring and to strengthen manpower resilience, the S Pass sub-DRC in manufacturing will be reduced. The Ministry of Manpower will be reducing the S Pass sub-DRC for the manufacturing sector in two steps:

- a. Before 1 January 2022, S Pass sub-DRC will remain at 20%.
- b. Between 1 January 2022 and 31 December 2022 (both dates inclusive), S Pass sub-DRC will be reduced to 18%, and employers will not be able to hire or renew their S Passes until they come within the new sub-DRC of 18%.
- c. From 1 January 2023, S Pass sub-DRC will be reduced to 15%, and employers will not be able to hire or renew their S Passes until they come within the new sub-DRC of 15%.

To minimize business disruptions, the MOM will allow employers to retain excess S Pass holders until the expiry of their work passes. Firms that require more help transitioning to the new S Pass sub-DRC can apply for transitional manpower support under the Lean Enterprise Development Scheme.

### Recommended action

Employers in the manufacturing sector who currently employ S Pass holders should be mindful of the changes in quota requirements. Employers should consider hiring more locals to ensure that there is sufficient quota to continue employing the S Pass holders or to reduce the number of S Pass holders.

## Singapore High Court in *Wong Sun Boon v Fuji Xerox Singapore Pte Ltd* [2021] SGHC 24, reiterates the applicable principles in determining what constitutes "gross default or wilful misconduct" under an employment contract

### IN BRIEF

For there to be "gross default or misconduct," there must be conduct so serious that it constitutes a "repudiatory breach," i.e., a breach that is so serious that it would justify the employer in terminating the employee's employment. In determining whether the employee's conduct constitutes a "repudiatory breach," the court will proceed to apply the following principles:

- a. The court will first examine if there has been a renunciation of the contract by the employee or an express term in the contract that allows the employer to terminate the contract for the said misconduct.
- b. In the absence of the conditions above, the court will then proceed to examine if the term breached was a "condition" of the contract, i.e., a term that is so important (as determined by the intention of the parties) that the innocent party would be entitled to terminate the contract regardless of the consequences of the breach.
- c. Where the term breached was not a "condition" of the contract, the last step will be to examine the nature and effect of the breach in order to determine if the employer has been deprived of substantially the whole benefit of the employment contract such that the employer should be entitled to terminate the contract.

### Recommended action

For information only.

## New act in force to facilitate employment of senior workforce

### IN BRIEF

The Middle-aged and Senior-aged Employment Promotion Act (“Act”) came into force on 4 December 2020 and is designed to promote the employment of middle-aged and senior-aged workers.

#### Key points:

- The Act prohibits unjustified differential treatment of middle-aged (aged 45-65) and senior-aged people (aged over 65) who are applying for jobs or are in employment, on the ground of age.

The prohibition on differential treatment on the basis of the person's age is wide and extends to the following areas:

- a) recruitment, screening tests, employment, assignment, staffing, performance evaluations, promotion, etc.
- b) education, training or other similar activities
- c) payment of wages or welfare
- d) retirement, leave with severance pay, employment termination and discharge

Differential treatment on the grounds of age without justification can render an employer liable to a fine of NTD 300,000 to NTD 1.5 million.

- Competent authorities may grant subsidies to employers that contribute to the employment of middle-aged and senior-aged people such as where employers provide vocational training or job accommodations to such people.
- An employer may enter into a fixed-term contract with employees over the age of 65.

### Recommended action

Employers should conduct internal compliance checks to ensure there is no unjustified differential treatment of such people on the ground of age, and explore whether the company can benefit from the subsidies or extra flexibility.

## Regulation regarding payment in lieu of notice

### IN BRIEF

In October 2020, the Ministry of Labor issued a regulation regarding the calculation of a payment in lieu of notice (PILON).

- Under the Labor Standards Act (LSA), the employer is required to provide prior notice or a PILON to the employee if the employer terminates the employee based on redundancy or through a performance improvement plan.
- The duration of the notice period depends on the service year(s) of the employee, and the calculation of the PILON is the number of days of the notice period multiplied by the daily wage of the employee.
- According to the regulation, if the employee receives a monthly salary, the calculation of the employee's daily wage will be the higher of following:
  - a) monthly salary divided by 30
  - b) the total wages for the past six months divided by the total number of days in that period

### Recommended action

Where employers opt to make a payment in lieu of notice, they must ensure that the employee receives at least the employee's minimum entitlements under the LSA.

## Ministerial Regulation on the Contribution Rate to the Social Security Fund, B.E. 2564 (2021) (No. 2) issued on 5 February 2021

### IN BRIEF

- On 5 February 2021, the Ministry of Labour issued the Ministerial Regulation on the Contribution Rate to the Social Security Fund, B.E. 2564 (2021) (No. 2) (“Ministerial Regulation”).
- Under the Ministerial Regulation, effective 1 February 2021, the monthly contribution rate of employees to the Social Security Fund will be reduced to 0.5% of wages applicable for the period between 1 February 2021 and 31 March 2021 (i.e., two months).

### Recommended action

Employers should be aware of this Ministerial Regulation and submit the employees' monthly contribution of 0.5% of wages to the Social Security Fund for those two months.

## Ministerial Regulation on the Standard for Administration, Management, and Operation of Occupational Safety, Health, and Environment related to Scaffold and Falsework, B.E. 2564 (2021) issued on 1 March 2021

### IN BRIEF

- On 1 March 2021, the Ministerial Regulation on the Standard for Administration, Management, and Operation of Occupational Safety, Health, and Environment related to Scaffold and Falsework, B.E. 2564 (2021) (“Ministerial Regulation”) was issued.
- This Ministerial Regulation will govern the standards for work in relation to scaffold and falsework, effective 30 May 2021.
- The requirements for employers whose employees perform work related to scaffold and falsework include:
  - Providing and arranging for the employees to wear personal protective equipment suitable for the conditions of work using scaffold and falsework, and the types of potential dangers from such work during the entire period they are performing their work
  - Preparing regulations and procedures for safety on performing work related to scaffold and falsework, training the employees before commencing work, and supervising the employees to strictly comply with the safety regulations
  - Specifying the danger areas where scaffold or falsework are being installed, used, moved and dismantled by building fences or separating the area with other materials suitable for such danger, and putting up a conspicuous "Danger Area" sign; arranging to have orange light signal at night and prohibiting unauthorized persons from entering the area

### Recommended action

Employers whose employees perform work related to scaffold and falsework should be aware of and ensure compliance with the Ministerial Regulation.

## Ministerial Regulation on the Standard for Administration, Management, and Operation of Occupational Safety, Health, and Environment for Work in Places with Dangers from Falling from a High and Steep Place, from Bouncing, Falling, and Crumbling Materials, and from Falling into Material Container or Holder, B.E. 2564 (2021) issued on 2 March 2021

### IN BRIEF

- On 2 March 2021, the Ministerial Regulation on the Standard for Administration, Management, and Operation of Occupational Safety, Health, and Environment for Work in Places with Dangers from Falling from a High and Steep Place, from Bouncing, Falling, and Crumbling Materials, and from Falling into Material Container or Holder B.E. 2564 (2021) (“Ministerial Regulation”) was issued.
- Effective on 2 March 2021, this Ministerial Regulation will govern the safety standards for "working at height", which is defined as performing work in places that are at least two meters above ground level or building floor from which the employees could fall.
- The requirements for employers whose employees work at height include:
  - Preparing regulations and procedures for safety in working at height or in steep places where bouncing, falling or crumbling of materials may occur and where employees could fall into material containers or holders, which must at least contain details regarding potential dangers resulting from work, work planning, and the prevention and control of danger; training the employees before commencing work, and supervising the employees to strictly comply with the safety regulations
  - Providing personal protective equipment suitable for the conditions of working at height or in steep places (e.g., harness, lanyard or life line, helmet, gloves), where bouncing, falling, or crumbling of materials may occur and where employees could fall into material containers or holders, and the types of potential dangers from such work during the entire period they are performing their work
  - Providing appropriate equipment depending on the work height (e.g., scaffold for working at height of at least two meters, safety rail or net for working at height of at least four meters)
  - Ensuring that employees do not work at height outside the building or in open areas during storms, strong winds, rain or thunder

### Recommended action

Employers whose employees work at height should be aware of and ensure compliance with the Ministerial Regulation.

## Ministerial Regulation on the Standard for Administration, Management, and Operation of Occupational Safety, Health, and Environment for Work related to Construction, B.E. 2564 (2021) issued on 2 March 2021

### IN BRIEF

- On 2 March 2021, the Ministerial Regulation on the Standard for Administration, Management, and Operation of Occupational Safety, Health, and Environment for Work related to Construction B.E. 2564 (2021) ("Ministerial Regulation") was issued.
- Effective on 31 May 2021, this Ministerial Regulation will govern, the safety standards of "construction work," which is defined as construction of all types of structures such as buildings, airports, railways, roads, tunnels, harbors, doors, signs, etc., including expansion, repair, adjustment, modification, movement, demolition, and destruction of such structures.
- The requirements for employers whose employees perform work related to construction include:
  - Notifying the director-general or authorized person of the details of the construction at least 15 days prior to the commencement of certain types of construction work, including buildings with height of at least 23 meters, tunnels, and other construction work as specified by the director-general
  - Ensuring that the construction site is stable, strong and able to safely support the weight of machines, equipment and construction materials
  - Arranging to have a supervisor in charge of work safety conduct inspections before and during every step of work
  - Providing adequate emergency lighting in the construction site in case of power outage
  - Putting up a sign showing the contact numbers of relevant agencies to call for help in case of emergency, such as hospitals, fire brigade and disaster prevention agency that are closest to the construction site
  - Specifying construction areas by building stable fences at least two meters high throughout the construction line or separating the area with other materials suitable for the work, and putting up a conspicuous "Construction Area" sign and prohibiting unauthorized persons from entering the area

### Recommended action

Employers whose employees perform work related to construction should be aware of and ensure compliance with the Ministerial Regulation.

## Vietnam government issues decree with new regulations regarding foreign employees working in Vietnam and Vietnamese employees working for foreign employers in Vietnam

### IN BRIEF

On 30 December 2020, the government issued Decree No. 152/2020/ND-CP on foreign employees working in Vietnam, and recruitment and management of Vietnamese employees working for foreign employers in Vietnam ("Decree No. 152").

Decree No. 152 includes amendments and supplements with the aim of improving the state management of foreign employees as well as simplifying procedures for the recruitment of Vietnamese employees working for foreign organizations in Vietnam. Notable regulations of Decree No. 152 include, among others, the following:

- A new definition of "expert" who qualifies for a work permit in Vietnam: Under the old regulations, foreign employees who had a certificate issued by a foreign company/organization recognizing them as an expert used to be qualified as an expert for the purpose of obtaining a work permit. Decree No. 152 now strictly requires an expert to be a foreign employee who has: (i) a bachelor degree at the minimum and at least three years' experience working in the trained field and suitable to the position in Vietnam; or (ii) at least five years' experience and a practicing license suitable to the job in Vietnam.
- Extended the list of foreigners who are exempt from work permit requirements
- Rights of foreign organizations in Vietnam to recruit Vietnamese employees with certain requirements: Foreign organizations in Vietnam, including representative offices of foreign merchants, will no longer be required to go through the labor service providers authorized by the state authorities to recruit local employees; such representative offices now only have to notify the authorized labor service providers when they recruit and sign labor contracts with the local employees.

### Recommended action

Employers who use foreign employees in Vietnam should carefully review Decree No. 152 to ensure compliance with the new requirements. Notably, foreign organizations in Vietnam, including representative offices of foreign merchants in Vietnam, should thoroughly consider the new regulations on recruitment of Vietnamese employees, which can help reduce costs of employment in Vietnam.

## Detailed regulations on content of labor contract, collective bargaining councils, and occupations, jobs adversely affecting functions of reproduction and raising children

### IN BRIEF

The Ministry of Labor, Invalids and Social Affairs issued Circular No. 10/2020/TT-BLĐTBXH ("Circular No. 10"), detailing and guiding the implementation of several articles of the Labor Code. Specifically, Circular No. 10 provides regulations on: (i) contents of a labor contract; (ii) functions, missions and operations of collective bargaining councils; and (iii) list of occupations and jobs adversely affecting functions of reproduction and raising children. Remarkably, the main contents of labor contracts as regulated by Circular No. 10 are almost unchanged compared to the old regulations. However, Circular No. 10 supplements specific regulations on the contents and form of agreements on the protection of trade and technology secrets.

### Recommended action

Employers should update their internal labor regulations, HR policies, labor contracts and relevant templates in a timely manner to ensure compliance with the new legal requirements.

## Regulations on information collection, storage, consolidation, provision, publicizing and assessment of occupational accidents and technical difficulties causing serious loss of occupational safety and hygiene

### IN BRIEF

Circular No. 13/2020/TT-BLĐTBXH, issued by the Ministry of Labor, Invalids and Social Affairs ("Circular No. 13"), regulates: (i) the collection, storage, consolidation and provision of information regarding occupational accidents; (ii) the assessment and publicizing of situations of occupational accidents; and (iii) the collection, storage, consolidation, provision, assessment and publicizing of information regarding technical problems seriously endangering occupational safety and hygiene.

Importantly, enterprises are required to collect and store the information on labor accidents, record it in a labor accident book, and update the information on the MOLISA database.

The main contents of this circular, except for being slightly more detailed, are almost unchanged compared to the old regulations.

### Recommended action

For information and compliance, especially for production companies.



## List of heavy, hazardous, dangerous jobs or occupations and extremely heavy, hazardous, dangerous jobs or occupations

### IN BRIEF

The Ministry of Labor, Invalids and Social Affairs issued Circular No. 11/2020/TT-BLDTBXH, providing the new list of heavy, hazardous, dangerous jobs or occupations as well as extremely heavy, hazardous, dangerous jobs or occupations. This list supersedes all the previous lists in previous legal documents.

### Recommended action

For information only.

## Regulations on minor employees

### IN BRIEF

Circular 09/2020/TT-BLDTBXH, issued by the Ministry of Labor, Invalids and Social Affairs, details and guides the implementation of a number of articles of the Labor Code regarding minor employees.

The Circular details a number of cases and conditions for entering into labor contracts with minors:

- The person signing the labor contract on the employer side must have a clean criminal record issued no later than six months from the date of issuance to the date of signing the labor contract; there should be no criminal record of child abuse and there must be a written commitment of never having been examined for penal liability or sanctioned for child abuse acts.
- When signing a labor contract with a person under 13 years old, the contract will only take effect after a written consent from the Department of Labor, Invalids and Social Affairs has been obtained.

In addition, the circular also stipulates: (i) a list of 12 jobs that persons aged between full 13 and under 15 are permitted to do; (ii) a list of 69 jobs that harm minors' development; (iii) a list of six workplaces causing harm to the development of minors; and (iv) a list of 23 jobs in which employees from 15 years old to under 18 years old are allowed to perform overtime work and night work.

### Recommended action

Employers using minor employees should keep an eye on these regulations to ensure compliance with the law.

## General Minimum Wage remains the same in 2021

### IN BRIEF

Resolution No. 128/2020/QH14 passed by the National Assembly on 12th November 2020, regulates the General Minimum Wage (GMW) in 2021. Due to the negative impact of the COVID-19 pandemic, the plan to increase the GMW to VND 1.6 million (approximately USD 69) has been suspended as regulated in Resolution No. 122/2020/QH14. According to Resolution 128/2020/QH14, the National Assembly has decided to keep the GMW at VND 1.49 million for 2021, as regulated under 38/2019/ND-CP.

### Recommended action

For information only.

# Key Contacts



## ASIA PACIFIC / AUSTRALIA

**Michael Michalandos**

+61 2 8922 5104

michael.michalandos@bakermckenzie.com



## PEOPLE'S REPUBLIC OF CHINA

**Jonathan Isaacs**

+852 2846 1968

jonathan.isaacs@bakermckenzie.com



## HONG KONG

**Rowan McKenzie**

+852 2846 2103

rowan.mckenzie@bakermckenzie.com



## INDONESIA

**Alvira Wahjosoedibjo**

+62 21 2960 8503

alvira.wahjosoedibjo@bakermckenzie.com



## JAPAN

**Tomohisa Muranushi**

+81 3 6271 9532

tomohisa.muranushi@bakermckenzie.com



## MALAYSIA

**Brian Chia**

+603 2298 7999

brian.chia@wongpartners.com



## PHILIPPINES

**Kenneth Chua**

+63 2 8819 4940

kenneth.chua@quisumbingtorres.com



## SINGAPORE

**Celeste Ang**

+65 6434 2753

celeste.ang@bakermckenzie.com



## TAIWAN

**Howard Shiu**

+886 2 2715 7208

howard.shiu@bakermckenzie.com



## THAILAND

**Nam-Ake Lekfuangfu**

+66 2 666 2824 #4114

nam-ake.lekfuangfu@bakermckenzie.com



## VIETNAM

**Thuy Hang Nguyen**

+84 28 3520 2641

thuyhang.nguyen@bakermckenzie.com

## **Baker McKenzie helps clients overcome the challenges of competing in the global economy.**

We solve complex legal problems across borders and practice areas. Our unique culture, developed over 65 years, enables our 13,000 people to understand local markets and navigate multiple jurisdictions, working together as trusted colleagues and friends to instill confidence in our clients.

# **Baker McKenzie.**

**[bakermckenzie.com](https://bakermckenzie.com)**

©2021 Baker McKenzie. All rights reserved. Baker & McKenzie International is a global law firm with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner or equivalent in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.