Baker McKenzie.

Asia Pacific Employment & Compensation Quarterly Update

Quarter 3: 2020

Introduction

Our Asia Pacific Employment & Compensation Team is pleased to provide you with our third quarterly update for 2020 highlighting key employment law changes across the Asia Pacific region.

The fluctuating waves of COVID-19 mean that while in some jurisdictions employees are returning to the office, in others they continue to work remotely from home. The length of the pandemic has meant that many employers have been forced to examine business costs and alternative workplace solutions. In particular, we are seeing many companies consider remote working as more of a permanent business solution going forward. You may wish 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.

We hope you find these resources useful.

Stay safe,

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AUSTRALIA

Federal court decisions on the employee/independent contractor distinction

IN BRIEF

The Federal Court of Australia has recently handed down a trio of decisions dealing with the legal distinction between employees and independent contractors. The cases also examined how this test was to be applied in the context of a labor hire relationship.

The court used the existing multifactorial and totality of circumstances approach. This approach requires the court to examine the particular circumstances of the individual case (for example, the level of control exercised over the individual, the presence of branding, etc.) to judge whether the totality of these factors weighs in favor of the relationship being deemed to be one of employment.

In these cases, the court confirmed that the multifactorial test should continue to be applied.

The court established that the fact a labor hire company is the employer of a particular individual for the purposes of employment entitlements does not preclude a finding that the host company is the employer for vicarious liability purposes.

Recommended action

Employers should review their contractor engagements and ensure that they have been correctly engaged and would not be better classified as employees.

JobKeeper extension

IN BRIEF

The Australian Government introduced new JobKeeper legislation on 25 August 2020.

The subsidy scheme and existing industrial flexibilities, except annual leave, will remain in force until 28 March 2021.

Under the changes, the current JobKeeper rate of AUD 1,500 a fortnight will drop to AUD 1,200 a fortnight from late September and to AUD 1,000 a fortnight from early January, with a lower payment introduced for employees who worked less than 20 hours a week before the pandemic.

Businesses that previously received JobKeeper but do not qualify under the new eligibility rules will be known as "legacy employers" and will be subject to a new turnover test.

These legacy employers will have continued access to most of the labor flexibilities if they can demonstrate their turnover has declined by 10% or more in relevant quarters this year compared to the previous year.

Employers will be required to hold a "10% decline in turnover" certificate, issued by an independent financial services provider.

Recommended action

Employers should review the changes to see if they qualify for the extended JobKeeper payment.

Paid parental leave amendment (flexibility measures) act and paid parental leave amendment (flexibility measures) rules

IN BRIEF

The Paid Parental Leave Amendment (Flexibility Measures) Act and Paid Parental Leave Amendment (Flexibility Measures) Rules came into effect on 1 July 2020.

The legislation provides for a nonflexible paid parental leave period of up to 12 weeks (60 weekdays) that must be taken in the 12 months following the birth or adoption of a child.

Recommended action

Employers should ensure that their parental leave policies comply with the changes that are now in effect.

Potential new unpaid parental leave legislation

IN BRIEF

The Morrison government has introduced legislation to permit all parents to take up to 30 days of flexible unpaid parental leave until their child turns two and ensure 12 months of unpaid parental leave is available for families dealing with stillbirths, infant deaths and premature births.

Industrial Relations Minister Christian Porter, told parliament the Fair Work Amendment (Improving Unpaid Parental Leave for Parents of Stillborn Babies and Other Measures) Bill 2020 "could mean, for example, a new parent spending a block of unpaid parental leave with their newborn after birth and then taking 30 days flexibly after they return to work."

"Employees will be able to take these days as a single day, groups of days or a single continuous block."

The minister said the change "complements the new flexible parental leave payment under the government's Paid Parental Leave scheme," after recent legislative changes.

Recommended action

Watch for developments.

WorkPac seeks special leave to take Rossato to the High Court

IN BRIEF

Labor hire company WorkPac has sought special leave to appeal last month's Rossato decision to the High Court.

The Federal Court last month found that a coal-mining worker, during his engagement in six consecutive employment contracts over almost four years to April 2018, was a permanent WorkPac employee.

Industrial Relations Minister Christian Porter confirmed that the government would intervene in the case.

Recommended action

Watch for developments.

High Court overturns Federal Court majority in Mondelez leave decision

IN BRIEF

The High Court has determined that employees working longer than standard hours are not entitled to use those hours as the basis for calculating their paid personal/carer's leave entitlement.

The ruling overturns a full Federal Court majority finding that two 12-hour shift workers at a Cadbury chocolate factory were entitled to 10 days of personal leave at 12 hours each, rather than 10 days of 7.6 hours.

The High Court declared that 10 days of personal leave "means an amount of paid personal/carer's leave accruing for every year of service equivalent to an employee's ordinary hours of work in a week over a two-week period, or 1/26 of the employee's ordinary hours of work in a year. A 'day' for the purposes of s 96(1) refers to a 'notional day', consisting of one-tenth of the equivalent of an employee's ordinary hours of work in a two-week period."

Please see here for the decision.

Recommended action

Employers should review their leave policies and ensure that they are compliant with the high court's decision.

Fair Work Commission has emphasized the need for employers to spread the burden fairly when standing down employees

IN BRIEF

The Fair Work Commission in Kurt Stelzer v The Trustee for The Ideal Acrylics Unit Trust T/A Ideal Acrylics 2020 FWC 4129 has emphasized the need for employers to spread the burden fairly when standing down employees.

A business stood down an employee for three months while others retained their full-time hours. The Commission said that a fair approach would have been for the employer to apportion the reduction of labor between employees.

Recommended action

For information

Extension to the COVID-19 flexibility variations in the Clerks — Private Sector Award 2010

IN BRIEF

The Fair Work Commission extended the COVID-19 flexibility variations in the Clerks — Private Sector Award 2010 until 30 September 2020.

The provisions were set to expire on 30 June 2020.

The provisions allow employees to spread out working hours without incurring penalty rates within a reduced span of work hours.

Recommended action

Employers should ensure that they are compliant with the flexibility variations.

Lawful direction to complete COVID-19 survey despite employee privacy concerns

IN BRIEF

The Fair Work Commission in Kieran Knight v One Key Resources (Mining) Pty Ltd T/A One Key Resources [2020] FWC 3324 held that a worker was validly dismissed for failing to comply with a direction to complete a COVID-19 survey.

The information for the survey was limited to the employee's name, travel history and travel intentions.

This information was not regarded as sensitive information.

Additionally, a permitted general situation exemption applied because the direction was made to enable the employer to comply with its WHS obligations.

Recommended action

For information

Fair Work Commission moves to accommodate new work-from-home reality

IN BRIEF

The Fair Work Commission (FWC) has released a draft award schedule addressing work-from-home arrangements, describing it as a conversation-starter that recognizes the need to adapt to COVID-19 realities.

The draft schedule would enable employees to work the same hours over fewer days, share reduced hours across a team, and take twice as much leave at half pay, while employers utilizing the schedule's provisions would need to consent to the FWC arbitrating any disputes.

The Commission's President Iain Ross noted in a statement that while at the start of the year federal agreements containing provisions for home-based work or telework covered about 20% of workers, most modern awards incorporated no such mechanism.

Please see here for the draft award schedule.

Recommended action

Watch for developments.

Paid Parental Leave Amendment (Flexibility Measures) Act and Paid Parental Leave

IN BRIEF

The Paid Parental Leave Amendment (Flexibility Measures) Act and Paid Parental Leave Amendment (Flexibility Measures) Rules came into effect on 1 July 2020.

The legislation provides for a flexible paid parental leave period of up to six weeks that can be taken in the 24 months following the birth or adoption of a child.

The relevant changes are:

a) The 18-week paid parental leave (PPL) period can be split up into a 12-week PPL block and a six-week "flexible" PPL block.

b) The first 12-week PPL block can be taken any time within 12 months of birth/adoption. The parent can then return to work, and take the remaining six weeks of PPL as a "flexible" block at another time.

c) The six-week "flexible" block can be taken at any time within 24 months of birth/adoption.

d) If a parent wants to split up their PPL, there are different eligibility rules they'll need to satisfy (there's statutory work and income tests, and the employee must be on leave, be the primary carer, and meet residency requirements).

e) These changes only apply to children born or adopted after 1 July 2020.

Recommended action

Review parental leave arrangements.

PEOPLE'S REPUBLIC OF CHINA

Supreme People's Court issues guidance to ensure more consistent court rulings

IN BRIEF

On 27 July 2020, the Supreme People's Court (SPC) issued new guidance to all courts instructing them to research earlier court opinions on similar cases ("Guidance"), to ensure consistency and predictability in court rulings. The Guidance took effect on 31 July 2020. The Guidance urges judges to research similar cases with similar facts and legal issues when making judgments on certain complex cases. Key highlights of the Guidance include the following:

First, judges are obligated to research similar cases for complex and important cases in the following circumstances:

- no clear or consistent rule has been established for the pending case in hand
- the pending case will be submitted to a judges' meeting or judicial committee for discussion
- the president of the court or chief judge makes such a request
- other cases where there is a need to check earlier similar cases

Second, the Guidance indicates that when conducting research on similar court cases and guiding opinions, courts should follow the below order of legal bases:

- "guiding cases" (zhidaoxing anli) issued by the SPC — that judges will (yingdang) follow
- "typical cases" (dianxing anli) and other cases issued by the SPC — that can be referenced by judges
- "referenced cases" (cankaoxing anli) and other cases issued by the local high people's court — that can be referenced by judges
- earlier cases issued by the local upper-level court and the court itself — that can be referenced by judges

In addition, except for the "guiding cases" issued by the SPC, judges should give priority to similar cases ruled on in the previous three years.

Third, if either party in a dispute relies on a similar case when making its arguments, the court has to explain to the parties whether it has considered the similar case before delivering the judgment. If the similar case submitted is a "guiding case," such explanation must be included in the judgment.

The Guidance does not mean that the PRC will now become a common law system. However, it does allow companies to search for and apply certain previous cases as an example or a guide for judges to consider in similar disputes. In order to unify the application of the law as required by the SPC, lower-level courts are expected to put more emphasis on considering previous cases, in particular the "guiding cases" selected and published by the SPC.

Recommended action

Companies should keep a close eye on the "guiding cases" published by the SPC. Further, in the event of disputes, companies should conduct similar case searches and construct their arguments accordingly.

Supreme People's Court issues judicial interpretation on trade secrets cases

IN BRIEF

Recently, the Supreme People's Court issued a judicial interpretation on trade secrets cases ("Trade Secrets Judicial Interpretation"), effective from 12 September 2020. Following an amendment to the Anti-Unfair Competition Law in 2019, this Trade Secrets Judicial Interpretation further clarifies relevant matters involved in trade secret disputes.

The highlights of the Trade Secrets Judicial Interpretation are summarized as follows:

- Customer information, such as the customer's name, address, contact information, transaction habits, intentions, content, is a trade secret.

  However, if the company claims that a specific customer is a trade secret only based on the grounds that it maintains a long-term stable trading relationship with that specific customer, the court will not support this claim. In addition, if the employee can prove that the customer traded with the employee's original company based on personal trust in the employee, and after the employee resigned, the customer voluntarily chose to do business with the employee or the employee's new company, then the court will not uphold this as "obtaining the trade secrets of the former company by improper means."

- If the company takes one of the following measures, the court will hold that the company has taken measures to protect the confidentiality of information (which is one of the mandatory conditions for a company to establish that such information constitutes a "trade secret"):
  - signing a confidentiality agreement or stipulating confidentiality obligations in the contract
  - imposing confidentiality requirements through policies, training, written notifications, etc., on employees, former employees, suppliers, customers, visitors, etc., who can access and obtain trade secrets
  - restricting visitors from visiting, or conducting differentiated management of production and business sites that involve trade secrets, such as factories and workshops
  - differentiating and managing trade secrets and devices carrying trade secrets by means of marking, classification, isolation, encryption, sealing and limiting the range of people who can access the trade secrets
  - taking measures such as prohibiting or restricting the use, access, storage and copying functions of computer equipment, electronic equipment, network equipment, storage equipment, software, etc., that can access and obtain trade secrets
  - requesting exiting employees to register, return, clear or destroy the trade secrets, including in relation to any devices containing trade secrets that such employees have accessed or obtained, and requesting employees to continue to assume their confidentiality obligations post-termination
  - taking other reasonable confidentiality measures
- If the trade secrets holder has provided preliminary evidence of the benefits obtained by the infringer due to the infringement, but the infringer possesses the account books and information related to the infringement of trade secrets, the court may order the infringer to provide the account books and information at the request of the trade secrets holder. If the infringer refuses to provide these without justifiable reasons or does not provide these truthfully, the court may determine the benefits obtained by the infringer from the infringement based on the claims and evidence provided by the trade secrets holder.

In addition, under a new draft amendment to the Criminal Code, the punishment for stealing Chinese trade secrets to benefit a foreign entity has been increased — the proposed penalty is up to a five-year jail sentence plus penalties in normal cases, and in excess of a five-year jail sentence plus penalties in severe cases.

Recommended action

Companies should follow the guidance under the Trade Secrets Judicial Interpretation, such as signing confidentiality agreements, establishing confidentiality policies, etc., to increase their chances of success in trade secret cases.

Seven authorities encourage expansion of the scale of internship programs

IN BRIEF

Seven authorities, including the Ministry of Human Resources and Social Security and the Ministry of Education, recently collectively issued a Notice about Further Strengthening Internships ("Notice"), stipulating that China will expand the scale of internships and improve the quality of internships.

The internships mentioned in the Notice are not general internships provided by companies for college students. Generally, the internships to which the Notice applies are for college graduates who are unemployed within the two-year period after leaving college. In addition, unemployed young persons aged 16-24 are also qualified to participate in the internship program. Any enterprise or institution that would like to offer such an internship program is required to file an application with the local Human Resources and Social Security Bureau to enable them to qualify as an "internship base." The internship program for each intern usually lasts for three to 12 months. During the internship period, the "internship base" (i.e., the company or institution for which the interns work) will provide a basic living fee to and purchase personal accident injury insurance for the interns. The basic living fee will usually be in the range of 70% to 100% of the local minimum wage decided by the local Human Resources and Social Security Bureau. The local Human Resources and Social Security Bureau will also provide some allowances to the internship base. There is no employment relationship established between the internship base and the intern.

According to the Notice, the government will expand the scale of the internship base and increase internship positions as well as encourage qualified young people to participate in such internship programs. Further, the government also encourages the internship base to increase the basic living fee for interns to the standard equal to the local minimum wage, to purchase additional commercial insurance for its interns and to employ them after the internship program ends.

Recommended action

The local provincial or municipal governments have different implementation rules applicable to the internship programs, particularly in relation to the internship base application and applicable benefits for interns and internship bases. Companies that are interested in becoming an internship base should become familiar with the specific local rules and policies for such internships, and the benefits/incentives offered.

China takes steps to support flexible employment through multiple channels

IN BRIEF

On 28 July 2020, the State Council issued the Opinions on Supporting Flexible Employment Through Multiple Channels ("Opinions"). The Opinions introduce various steps taken by the government to support flexible employment (which generally includes self-employed workers, part-time employment and emerging employment models). We highlight the key points below.

- Create more job opportunities. The government will expand and upgrade certain industries where part-time workers are commonly used, such as cleaning, retail and construction. The government will boost the development of emerging employment models (e.g., e-retailing, mobile travel, online education, internet healthcare).
- Guarantee workers' benefits and interests. The government will formulate relevant labor and social security regulations for flexible workers working at internet platform enterprises. Internet platform enterprises should consult with their workers regarding remuneration, rest and leave, work safety, etc. The local union is encouraged to consult with the guild or enterprise representative to set up labor quota, working hours, disciplinary policies, etc.
- Improve self-employment business environment. The government will make efforts to eliminate unreasonable restrictions hampering flexible employment, and encourage individuals to start up their own businesses.

Recommended action

For information

New guideline issued to improve protection of the rights and interests of online platform workers

IN BRIEF

On 20 July 2020, the Supreme People's Court and the National Development and Reform Commission jointly issued a Guideline on Providing Judicial Services and Support to Promoting Improvements to the Socialist Market Economy System in a New Era.

Among other things, this guideline aims to support entrepreneurship and protect entrepreneurs' rights, to guide the labor force to change their mindsets on working arrangements, and to improve the protection of the rights and interests of the labor force working in non-traditional types of working arrangements, such as couriers and online platform workers. The guideline, however, provides no further details on how the courts will act to improve the protection of the rights and interests of such workers.

The guideline also pledges to strengthen judicial support for promoting employment, protecting employees' equal employment opportunity rights, prohibiting discrimination based on sex and hometown location etc., supporting employees' reasonable claims concerning work injury insurance, medical insurance and basic pension (as part of the social insurance program).

Recommended action

Online platforms and companies that engage a labor force outside of the traditional employment relationship (such as contractors and freelancers) should devote attention to such individuals' work safety, duly contribute work injury insurance (where possible) or otherwise purchase necessary commercial insurance for such contractors and freelancers to cover potential work injury claims and to follow other applicable requirements that the government may impose on such working relationships.

Jiangsu Province High Court issues guiding opinion on employment disputes relating to COVID-19

IN BRIEF

On 25 August 2020, the Jiangsu Province High Court, the Jiangsu Province Labor Bureau and the Jiangsu Province Bureau of Justice jointly issued a guiding opinion on employment disputes relating to COVID-19. The opinion touches on the following key employment law issues.

First, during the period when an employee is in isolation and cannot perform regular work after being diagnosed with COVID-19, is suspected of having contracted COVID-19, or has been in close contact with a known or suspected COVID-19 carrier, the company should pay the employee's regular full salary during the isolation period. After the isolation period ends, if the employee still needs to be absent from work in order to receive medical treatment, the company should pay the appropriate amount of sick pay during the statutory medical treatment period.

Second, if due to COVID-19, a company arranges its employees to provide services over the phone or internet, the company should either pay the newly agreed salary or continue paying a regular salary to the employees if no agreement has been reached in this respect. If an employee works on a rest day and does not take compensatory leave within the six-month period, the company will be obliged to pay the employee overtime payment at a rate of 200% of the regular salary. Furthermore, due to COVID-19, a company may temporarily assign its employees to other companies to provide services in accordance with the employment contract or with the mutual consent of the employees.

Third, an employee who cannot work due to government isolation, medical observation or other government emergency measures, is protected from termination of their employment and, if the employee's employment contract expires during this period, the employment contract will be automatically extended until the isolation period ends. However, if an employee conceals their illness relating to COVID-19, refuses to accept testing or mandatory isolation, or refuses to return to work without a justifiable reason, the company may summarily dismiss the employee.

The Jiangsu opinion is generally consistent with the national rules relating to COVID-19 matters and also provides additional detailed guidance on salary payment, termination of employment, flexible working arrangements, etc.

Recommended action

Companies with operations and employees in Jiangsu should follow the local rules.

National health authorities issue standards for enforcement of occupational health requirements

IN BRIEF

On 31 August 2020, the National Health Commission of the PRC (NHC) issued standards for supervision and enforcement of occupational health requirements ("Standards"). The Standards became effective from the date of issuance.

According to the Standards, local health authorities, when carrying out occupational health supervision and enforcement, will look at a wide range of matters. These matters include the adoption and improvement of occupational disease prevention and control measures, the daily monitoring and regular detection and evaluation of occupational hazards in the workplace, the notification of and warning systems in place for occupational disease hazards, the occupational health training, the monitoring of employees' occupational health and any transfer/outsourcing of work that poses occupational disease hazards. If a problem is identified, the local authorities should issue a written opinion on their findings, and investigate and deal with illegal acts in compliance with the law. In addition, information contained in the local authority's findings should be made public and integrated into the employers' social credit information.

Recommended action

The Standards do not directly apply to employers, as they are meant to address occupational health supervision and enforcement by local authorities. However, the issuance of the Standards clearly signals China's intent to undertake frequent and close inspections of workplaces with a view to preventing and controlling occupational diseases, and inspection results may affect a company's social credit rating. To this extent, employers should be aware of this development.

Jiangsu court denies unlawful dismissal claim raised by employee who initiated strike against relocation

IN BRIEF

A court in Jiangsu Province recently denied an employee's claim for double severance for wrongful termination of employment. In this case, the company had decided to relocate its premises to a new address, which was 1 kilometer from the original work location. The employee was unhappy about the work relocation and initiated a strike. The employee refused to return to work even after the company had issued several orders to do so. The employee's strike resulted in the company having to cease operations as the employee was responsible for a machine necessary for the operations. The company terminated the employee's employment on the basis that the employee had seriously violated the company rules.

According to the company's Code of Conduct and Employee Handbook, gathering people to stop work, disrupting the operation and production of the business, or disobeying the company's reasonable orders were deemed serious misconduct and an employee's employment could be terminated immediately without severance. In addition, both the Code of Conduct and Employee Handbook had been adopted through the required employee consultation procedure and publicized to the employees.

The judge found that the termination was legal and denied the employee's claim for double severance for wrongful termination. The court examined the case from two perspectives. First, the Code of Conduct and Employee Handbook could be used as the basis for employment management as they were formulated through the required employee consultation procedure and publicized to the employees in accordance with the law. Second, the content of such documents did not violate the provisions of laws and regulations. Therefore, the company was entitled to terminate the employee's employment based on such company policies.

Furthermore, in addition to an obligation to comply with company rules and regulations, the judge found that both employers and employees have contractual obligations based on the principle of good faith. In this case, the relocation occurred pursuant to a change in the overall objective circumstances, and the new location was near the original place of work. The relocation in this case could not be regarded as a major change in the agreed work location. Even if an employee raises an objection, the employee should negotiate with the company to solve the problem within the scope of the law. The company could reasonably view the initiating of a strike in such circumstances as unacceptable behavior.

Recommended action

Employers are required to formulate company rules, such as the introduction of an employee handbook or other rules that directly affect employees' interests, through an employee consultation procedure and must publicize such rules/policies to the employees in accordance with the law. Employers are required to do so in order for such company rules/policies to be valid and to enable the employer to rely on such rules/policies for employee management purposes or as grounds for employment termination. Furthermore, this case, on a certain level, confirms that employers may unilateral change the employee's work location, as long as the employer can prove the relocation is based on objective needs, reasonable and will not impose material inconvenience on the employees.

Listed parent company held to be liable as joint employer of its subsidiary's employee

IN BRIEF

A recent High Court decision in Yung Wai Tak Abraham William v. Natural Dairy (Nz) Holdings Ltd (in Provisional Liquidation) (17/08/2020, HCLA26/2018) [2020] HKCFI 2067 ("Decision") held that a Hong Kong listed company and its wholly owned subsidiary were joint employers of the appellant, notwithstanding that the written employment contract was made solely made with the subsidiary. The appellant's main job was to serve the listed company as its company secretary. The parent company was held liable for, among others, unpaid wages, statutory severance payment and payment in lieu of notice owed to the appellant by the subsidiary. In coming to its conclusion, the court applied the "overall impression" test set down by the Hong Kong Court of Final Appeal in Poon Chau Nam v. Yim Siu Cheung[1]. The court took into account all relevant features of the parties' relationship, including the proper interpretation of the written employment contract, the recruitment process, the services provided by the employee to the companies involved, the employer's confession and other contemporaneous documentary evidence.

The case serves as a reminder that:

1. A joint employer can be held liable for wages and other employee benefits.
2. Group companies that share resources for administrative convenience should be mindful of the use of services of employees of an associated entity within the same group and be careful in regulating the employment relationship within the group. The entity that mainly or substantially uses the services of an employee within the same group may be held jointly liable as a joint employer of that employee.
3. An employment contract can be entered into orally, in writing or by conduct. As illustrated in the Decision, the court can infer their employment relationship from the background and the conduct of the parties even though there is no written employment contract.

Please refer to the following alert for an in-depth analysis of this case: link.

Recommended action

Employers should be aware that it is possible, depending on the circumstances, for more than one group company to be held to be an employer of an employee

Acquiescence to misconduct may be an obstacle to summary dismissal

IN BRIEF

A recent High Court decision in Tse Wing Yee v. Hena Group Company Limited and Fong Yuen Ting v. Hena Group Limited [2020] HKCFI 2359 ("Decision") touched on legal principles concerning summary dismissal. The court had dismissed the appellant employer's ("Appellant") appeal against its former employees ("Respondents") and held that the Appellant had acquiesced to the Respondents' lateness to work and did not have lawful grounds to summarily dismiss them. In coming to its Decision, the court held that the presiding officer was correct in their findings and had considered all relevant circumstances, including the lack of warning letters and the relaxed approach taken by the directors regarding punctuality. The court also held that the Appellant had terminated the employment by notice, thereby waiving its right to summarily dismiss the Respondents.

1. [2007] 10 HKCFAR 156.

1. Acquiescence to misconduct may have an adverse impact on the employer if the employer later wishes to summarily dismiss an employee based on the acquiesced misconduct.
2. Where the employer adopts a strict practice regarding certain misconduct, such as unpunctuality and tardiness, it should promptly issue warning letters to the misbehaving employees and reminders to all employees to avoid being deemed to have acquiesced to such misconduct.
3. If the employer intends to summarily dismiss an employee, it should communicate this to the employee in clear terms.
4. If the employer intends to summarily dismiss an employee based on a single act of misconduct, the employer should consider whether the misconduct is so serious that it amounts to repudiation. In particular, the employer should balance the impact of the summary dismissal on the employee with the effect of the employee's misconduct on the employer to decide if such dismissal is justified. If in doubt, the employer should seek legal advice to explore the proper exit mechanism.
5. Summary dismissal is a serious step to take against employees and the burden of proof lies with the employer.

Further detail

Background

The appeal originated from two claims that were combined at the Labour Tribunal. Tse Wing Yee ("Tse") and Fong Yuen Ting ("Fong") (collectively, "Respondents") were employees of Hena Group Company Limited ("Hena" or "Appellant"). The Respondents claimed arrears of salary, deductions from salary, payment in lieu of notice, annual leave pay, bonus and statutory severance payment/long service payment. Hena admitted liability regarding annual leave pay but argued that other payments were not payable due to the Respondents' misconduct, such as persistent unpunctuality, dishonesty and failure to obey Hena's reasonable orders. The Labour Tribunal held for the Respondents and awarded the claimed amounts with interest.

Hena appealed to the High Court claiming that the presiding officer made erroneous determinations on questions of law. The issues in dispute can be summarized as follows:

- Whether Hena had lawful grounds to summarily dismiss the Respondents in accordance with Section 9 of the Employment Ordinance (Cap. 57) ("Legality Dispute").
- Whether the Respondents were summarily dismissed on 15 February 2016 ("Factual Dispute").
- Whether the Respondents were dismissed for redundancy.

Leave to appeal was granted on 26 October 2017 based on the grounds concerning the Legality Dispute and the Factual Dispute.

In handing down the Decision of 10 September 2020, the court held that the presiding officer did not err on questions of law. The appeal, therefore, was dismissed.

The court's findings

The court held that in determining whether an employee deliberately disobeyed the employer's order, one should consider whether the employer had issued warnings to the employee. However, the lack of warnings does not automatically mean that the employer is barred from summarily dismissing the employee. The court agreed with Fong's counsel that one should also consider the seriousness of the misconduct, the attitude of the employee and other relevant circumstances. The court supplemented that the mere implementation of a "clocking in" system does not mean the employer adopts a strict practice regarding punctuality.

At the Labour Tribunal, the presiding officer concluded that Hena knew and acquiesced to the Respondents' persistent unpunctuality. Thus, their unpunctuality did not constitute a reason for summary dismissal. The presiding officer's conclusion was based on the following findings:

- The "clocking in" system was placed at a readily available spot. There was no concealment of employees' attendance records ("Records").
- The Respondents did not deliberately conceal their lateness to work by destroying or tampering with the Records.
- If Hena had strictly implemented the punctuality policy, it would have known that the Respondents were often late to work (as the directors could easily check the readily available Records) and would not have only asked for the Records from Tse at the end of 2015 for deductions of salary. Further, it would have issued reminders to all employees to be punctual or conducted random checks.
- Hena had previously issued a warning letter to another employee who was often late but there had never been any mass warnings or notices issued regarding punctuality issues. In fact, the Respondents never received any warnings due to their unpunctuality.

The court was satisfied that the presiding officer had considered all relevant circumstances.

In any event, it was the employer's burden to prove that the employees were summarily dismissed. The court applied Ko Hon Yue v. Chiu Pik Yuk[1] that sets out that if an employer knew that it had a right to summarily dismiss an employee but decided not to exercise such a right, the employer would be deemed to be waiving the right. Based on the presiding officer's findings, Hena did not clearly inform the Respondents of their summary dismissal. Therefore, the dismissal of the Respondents' employment must have been by way of notice or payment in lieu of notice. It follows that even if Hena did have lawful grounds to summarily dismiss the Respondents, it had waived its right to do so.

The court also applied Allidem v. Kwong Si Lin[2] and Tsang Tak Chi v. China Wall Limited[3] that set out that summary dismissal for a single act of misconduct can only be justified where the misconduct amounts to repudiation or in "very exceptional circumstances." It is also necessary to balance the impact of the summary dismissal on the employee with the effect of the employee's misconduct on the employer to decide if such dismissal is justified. Tse and Fong worked for Hena for more than 10 and eight years, respectively. No evidence showed that they had committed any serious misconduct during their employment. Although Fong avoided her responsibility when the directors asked her to send procurement-related materials to the Shenzhen office, the presiding officer found that this single incident was not so serious as to constitute repudiation of contract or exceptional circumstances. The court held that such findings were proper.

Based on the above, Hena failed to establish the grounds for appeal concerning the Legality Dispute. It follows that it was unnecessary to consider further the Factual Dispute. Nevertheless, the court made a brief analysis and was of the opinion that Hena had failed to establish grounds in relation to the Factual Dispute.

As no grounds for the appeal were established, the court dismissed the appeal and upheld the Labour Tribunal's decision.

Recommended action

This case serves as a reminder that summary dismissal is difficult to justify in Hong Kong and an employer's acquiescence to employee misconduct can result in an employer losing the chance to summarily dismiss an employee.

1. [2017] 5 HKLRD 510.
2. [2006] 1 HKC 252.
3. HCLA33/1998.

Statutory maternity leave extended to 14 weeks

IN BRIEF

As mentioned in our last update, statutory maternity leave will be increased from 10 weeks to 14 weeks. On 9 July 2020, the Hong Kong Legislative Council passed the Employment (Amendment) Bill. Maternity leave under the Employment Ordinance will be increased by four weeks. The current statutory rate of maternity leave pay will be kept at four-fifths of the employee's average daily wages in respect of the additional four weeks of maternity leave, subject to a cap of HKD 80,000 for those additional four weeks.

These changes will come into effect on 11 December 2020.

Recommended action

Employers should review their maternity leave and pay policies to ensure compliance with the new legislation.

Government eases contributions payments to the Manpower mandatory social security programs

IN BRIEF

On 31 August 2020, the Indonesian Government issued Government Regulation No. 49 of 2020 on the Adjustment of Contributions to the Manpower Social Security Programs during the Non-natural Disaster of the Spread of COVID-19 ("Regulation 49"). Regulation 49 essentially adjusts the requirements in relation to contributions for the mandatory social security programs administered by the Manpower Social Security Organizing Agency (Badan Penyelenggara Jaminan Sosial Ketenagakerjaan (BPJS Ketenagakerjaan)). The adjustments include:

- extension of payment deadline for monthly contributions to the Occupational Accident Security Program (Jaminan Kecelakaan Kerja (JKK)), Death Security Program (Jaminan Kematian (JKM)), Old Age Security Program (Jaminan Hari Tua (JHT)) and Pension Program (Jaminan Pensiun (JP))
- reduction of contributions to the JKK and JKM programs
- postponement of part of the monthly contributions to the JP program

There are certain requirements to be eligible for the adjustments, among other things:

- reduction of contributions to the JKK and JKM programs are provided to companies (and employees) that have been enrolled in the programs before August 2020 and have fully paid the JKK and JKM contributions up to July 2020 (reduction for those registering after July 2020 will start from the third month after the registration)
- medium to large-scale companies are only eligible for the postponement of the JP contributions if they are suffering more than a 30% reduction in sales/income and subject to an approval from BPJS Ketenagakerjaan

The adjustments are effective as of August 2020 until January 2021.

Recommended action

For information

Guidelines for promoting side businesses have been amended to clarify how to manage total working hours and health status when employees engage in a side business

IN BRIEF

The Ministry of Health, Labour and Welfare (MHLW) first published guidelines on side businesses in January 2018 in order to promote side businesses among employees who work for a primary employer. The guidelines provided a basic framework to cover the situation where an employee is engaged in a side business. However, certain details, such as how total working hours, overtime and health protection measures should be managed between several employers, remained unclear despite the continuous increase in the number of employees wishing to engage in a side business. In response, the MHLW amended the guidelines to clarify those points and the new guidelines came into force on 1 September 2020.

The key points covered in the guidelines are as follows:

- Employees' working hours at the primary employer and in the side business should be added when calculating overtime hours.
- To this end, employers need to confirm whether, and for how many hours, their employees engage in a side business based on the employees' report, etc.
- If the aggregate amount of prescribed working hours (i.e., contractual working hours, for example, seven hours) for a certain employer and for another employer exceeds the statutory working hours (i.e., eight hours a day and 40 hours a week), the hours in excess of the statutory working hours will be deemed overtime hours for the employer that entered into an employment agreement with the employee later than the other.
- If the aggregate amount of working hours in excess of prescribed working hours for the respective employers exceeds the statutory working hours, the excess amount will be viewed as overtime and the employer that allowed the employee to work such overtime will be required to pay overtime allowance.
- As there is a risk of long working hours if an employee engages in side businesses, the employer needs to comply with regulations on the maximum working hours and conduct prescribed medical examinations and interviews with employees as required under the Industrial Safety and Health Act based on the aggregate working hours.

Recommended action

Employers should check that it is clear in the employment agreement or the work rules whether employees are allowed to engage in side businesses and, if yes, the necessary procedures, including reporting obligations in relation to the number of hours worked for the employer of the side business, should be followed.

If side businesses are allowed under the employment agreement or the work rules, the employer should make sure that it can prohibit or restrict the employees' engagement in the side business if there are risks of breach of confidentiality or non-compete obligations, or there are health issues, etc.

Modifications to the Industrial Relations Act proposed by the Senate

IN BRIEF

On 25 August 2020, the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Bill 2020 ("Bill") was passed by the Dewan Negara (Senate), among other things, to modify the Industrial Relations Act 1967 (IRA). However, it is yet to be promulgated and the modifications have yet to come into force.

Once the Bill is promulgated, the modifications to the IRA will be deemed to have come into operation on 18 March 2020.

The Bill excludes the period between 18 March 2020 to 9 June 2020 ("MCO and CMCO Period") from the calculation of the following timelines under the IRA:

a) timeline for employers to accord recognition to a trade union or notify the union in writing of the grounds for not according recognition ("Notification"), that is, within 21 days after service of the union's claim for recognition on the employer

b) timeline for trade unions to make a written report to the Director General of Industrial Relations (DGIR) to claim for recognition from an employer, that is, within 14 days of (i) receipt of the employer's Notification, or (ii) the expiry of the 21-day timeline above

c) timeline for employees to file a written representation for unfair dismissal to the DGIR, that is, within 60 days of their dismissal

The exclusion of the MCO and CMCO Period from the timelines above addresses the disadvantages arising from an inability to travel or make the relevant applications or filings during the enforcement of the Movement Control Order and Conditional Movement Control Order in Malaysia.

Recommended action

Employers that have dismissed an employee or failed/refused to accord recognition to a union during the MCO and CMCO Period, should be aware of any potential claims that may arise.

Proposed amendments to the Employment Act

IN BRIEF

The government has proposed amendments to the Employment Act (EA), including the following changes:

a) widening the scope of the EA to cover all employees irrespective of the amount of salary or job scope

b) employees to be entitled to three days of paid paternity leave

c) reduction of maximum number of working hours in one week from 48 hours to 44 hours

d) increase in entitlement to maternity leave from 60 days to 98 days

e) prohibition on employers from discriminating against employees on the basis of gender, religion, race or disabilities in the terms and conditions of employment offered

f) employees to be granted flexible working arrangements

g) removal of discretion of employers to refuse inquiry into any complaints of sexual harassment

The EA applies to West Malaysia. There is similar legislation in force in Sabah and Sarawak, i.e., the Sabah and Sarawak Labour Ordinances ("Labour Ordinances"). The government is currently consulting with industry stakeholders on proposed amendments to the Labour Ordinances, which essentially reflect the proposed changes to the EA.

It is unclear at this stage when the changes will be tabled in parliament or when they are intended to take effect.

Recommended action

Employers should watch for developments.

Proposed amendments to the Trade Unions Act

IN BRIEF

The government has proposed amendments to the Trade Unions Act but the amendment bill has not yet been tabled in parliament.

The amendments would enable employees to be represented by multiple trade unions at once, as well as remove the requirement for members of trade unions to fall within the same or similar establishment, industry, trade or occupation.

It is unclear when the changes will be tabled in parliament or when they are intended to take effect.

Recommended action

Employers should watch for developments.

PHILIPPINES

Department of Labor and Employment encourages payment of wages and monetary benefits through transaction accounts

IN BRIEF

On 3 August 2020, the Department of Labor and Employment (DOLE) issued Labor Advisory No. 26, Series of 2020. It encourages employers to pay wages and other monetary benefits on time through transaction accounts (i.e., a bank or electronic money account held with a financial service provider accredited with the Central Bank of the Philippines that can be used to store, send and receive funds) to afford their employees access to formal financial services for the promotion of their welfare, to reduce the costs and risks of physical disbursements, and to promote digital payments as a safer alternative to the physical exchange of bills and coins.

Pursuant to this, employers are highly encouraged to explore and undertake certain initiatives toward the use of transaction accounts.

Recommended action

If not yet implemented, employers are advised to consider the use of transaction accounts for the payment of wages and other benefits to their employees.

DOLE issues guidelines on the processes and proceedings before the DOLE offices in areas under community quarantine

IN BRIEF

On 14 August 2020, the DOLE issued Department Order No. 214, Series of 2020. It lifted the interruption of the prescriptive period for the commencement of actions, claims, petitions, complaints, processes and other proceedings before the Office of the Secretary of Labor and Employment, the DOLE bureaus and DOLE regional offices in all areas under community quarantine, except in areas that are under enhanced community quarantine (ECQ), modified ECQ or total lockdown.

Recommended action

Employers should be mindful of the prescriptive periods on their actions or proceedings before the DOLE offices, if any.

DOLE issues guidelines on the engagement of children aged from 15 to under 18 in public entertainment or information during community quarantine

IN BRIEF

On 8 July 2020, the DOLE issued Labor Advisory No. 24, Series of 2020. This states that employers, whose business is allowed to operate during community quarantine, may engage a child aged from 15 to under 18 in public entertainment or information during community quarantine provided the child's participation is done in their home under the supervision of adult family members, and subject to compliance with other requirements.

On 11 September 2020, the DOLE issued Labor Advisory No. 24-A, Series of 2020 (revising Labor Advisory No. 24). This states that a child aged from 15 to under 18 may be allowed to participate on camera in studio or location shoots for public entertainment or information during community quarantine provided the prescribed minimum public health standards are strictly implemented and observed. The child has the right to refuse work in accordance with applicable laws.

Recommended action

Employers in public entertainment or information should be aware of these requirements.

SINGAPORE

Singapore Government extends Jobs Support Scheme by up to seven months

IN BRIEF

The wage subsidy under the Jobs Support Scheme (subsidy applies to the first SGD 4,600 of the gross monthly wages paid to each local employee) has been extended by up to seven months to help employers retain their local workers. The wage subsidy will now cover wages paid up to March 2021 for firms in sectors hardest hit by the COVID-19 crisis. Sectors that are managing well will receive wage subsidies up to December 2020.

The wage subsidy will range between 10% and 50% for wages paid from September 2020 onward. It will also be adjusted based on the projected recovery of the different sectors.

Recommended action

For your information only

Actions taken against businesses flouting COVID-19 safety rules

IN BRIEF

There has been an increase in the number of business (ranging from food and drink establishments, offices and beauty services) flouting COVID-19 safety rules. Penalties include fines and suspension of business operations. In summary, the Singapore Government is taking social distancing very seriously to prevent an emergence of a second wave of COVID-19 cases. Employers/companies who are found to be flouting COVID-19 safety rules will be fined. In serious cases, the authorities may order the business to suspend its operations.

Recommended action

For information only.

Advisory for employers and employees travelling to and from COVID-19 affected areas (updated as of 2 September 2020)

IN BRIEF

Employers should remind employees of the Ministry of Health's travel advisory to defer all nonessential travel. Employers should also obtain a health and travel declaration from their employees on whether they have recently travelled overseas, or it they have any upcoming overseas travel plans.

For employers who wish to bring their foreign employees (they must be a work pass holder) back to Singapore, the employer is reminded that the approval of the Ministry of Manpower must first be obtained. In addition, the employer must ensure that the employer and employee can fulfill additional requirements and responsibilities to bring the pass holders back into Singapore. This includes paying for their COVID-19 tests and the stay at the dedicated Stay-Home Notice facility, if applicable.

Recommended action

High, if employers intend to bring their foreign employees back to Singapore.

Significant updates to Work Pass salary criteria (effective 1 September 2020, 1 October 2020 and 1 December 2020), and further expansion of the job advertising requirement (effective 1 October 2020)

IN BRIEF

With effect from 1 September 2020, only new Employment Pass applicants who can command a fixed monthly salary of SGD 4,500 or more, subject to meeting other criteria on qualifications and experience, will be considered. Mature and experienced professionals are also required to command higher salaries commensurate with their work experience and skill sets.

For applicants in the financial services sector, the minimum qualifying salary is SGD 5,000 (with effect from 1 December 2020). This is also subject to the applicant meeting other criteria on qualifications and experience. Mature and experienced professionals are also required to command higher salaries commensurate with their work experience and skill sets.

With effect from 1 October 2020, the qualifying salary for S Pass applicants will be raised to SGD 2,500. This is also subject to the applicant meeting other criteria on qualifications and experience. Mature and experienced professionals are also required to command higher salaries commensurate with their work experience and skill sets. S Pass applications will also be subjected to the Fair Consideration Framework job advertising requirement.

For renewal applications (Employment Pass and S Pass), the new salary criteria will come into effect from 1 May 2021.

Recommended action

High, for employers with a significant number of foreign employees in its headcount. Employers may also wish to renew existing work pass applications before the new salary criteria comes into effect on 1 May 2021.

TAIWAN

Guidelines for reduced workhours with reduced pay revised

IN BRIEF

A reduced work hours with reduced pay system is similar to furlough in some jurisdictions. Under this system, the employer can reach an agreement with the employee to reduce the employee's work hours and wages at the same time in order to avoid terminations due to the financial difficulties of the employer, if certain requirements are met, e.g., at least the legal minimum wage is paid to the employees, etc.

In order to provide further assistance to employees who are subject to the reduced work hours with reduced pay system, with effect from 1 July 2020, the guidelines were amended so that:

1. Employers are required to report to both the local labor authority and the Workforce Development Agency on the number and roster of the affected employee, proof of the financial difficulty of the employer, agreement on the reduced work hours with reduced pay etc.
2. Employees can report to the local labor authority that the employer has been implementing the reduced work hours with reduced pay system if the employer fails to do so.

Recommended action

Employers should be aware of their reporting obligations if they implement pay reductions under the reduced work hours with reduced pay system.

Amendments to the operation rules for the competent authority to apply to prohibit the representative and the responsible person from going abroad

IN BRIEF

Pursuant to the Act for Employee Protection of Mass Redundancy ("Act"), responsible persons or representatives of the employer may be restricted from going abroad by the relevant competent authority in certain circumstances. Under the Act, the "competent authority" is the Ministry of Labor at the central level, the municipal government at the municipal level, and the county (city) government at the county (city) level.

For example, under Article 12 of the Act, where a business entity delays the payment of retirement pension fund, severance pay, or wage to its workers in the course of implementing mass redundancy of workers and, if thresholds of delayed payment amounts have been met, and the employer further fails to make the payments within the time limit ordered by the competent authority, the Ministry of Labor may request, by an official notice, the authority in charge of border control to prohibit the representatives or the responsible persons of the business entity from going abroad.

With effect from 10 August 2020, the operation rules for the competent authority to apply to prohibit the representative/responsible person from going abroad have been revised. The revised rules set out the details of the documents that the competent authority needs to review when making such an application and authorizes the labor authority to apply to the immigration authority to notify them if the representative/responsible person is attempting to go abroad during the labor authority's review period. This change gives the labor authority clearer authority to make a request for company documents while conducting the investigation and provides the labor authority with a mechanism to monitor whether the representative/responsible person is trying to go abroad during the review period.

Recommended action

For information only.

THAILAND

Notification of the Ministry of Digital Economy and Society on Security Protection Standard of Personal Data issued on 17 July 2020

IN BRIEF

On 17 July 2020, the Notification of the Ministry of Digital Economy and Society on Security Protection Standard of Personal Data, B.E. 2563 (2020), was issued.

According to the notification, which is effective from 18 July 2020 until 31 May 2021, a data controller that is exempted from the applicability of the Personal Data Protection Act, B.E. 2562 (2019), must notify its personnel, employees and other relevant persons of the personal data security protection measures, and raise their awareness of the importance of data security protection. Moreover, a data controller must implement data protection security measures that should cover administrative safeguards, technical safeguards and physical safeguards relating to personal data access control (e.g., user access management).

Recommended action

Employers should be aware of and ensure compliance with the notification.

Processes for work permit applications

IN BRIEF

On 31 August 2020, the Ministerial Regulation regarding the Application for Permission to Work, the Granting of Work Permit, and the Notification of Foreigner's Work, B.E. 2563 (2020), was issued.

This ministerial regulation prescribes the processes for the application for permission to work. It includes the granting of work permits, the submission of the application for permission to work on behalf of a foreigner, the notification of work, the issuance of the letter acknowledging the notification of work, the notification of work period extension, the issuance of the letter acknowledging the work period extension, the application for renewal of work permits and the renewal of work permits.

Recommended action

Employers should be aware of and ensure compliance with the ministerial regulation.

Requirements for foreigners who apply for work permits

IN BRIEF

On 31 August 2020, the Ministerial Regulation regarding the Prohibited Qualifications and Characteristics of Foreigners who may apply for Work Permits, B.E. 2563 (2020), was issued. According to this ministerial regulation, any foreigner who applies for a work permit must have the qualifications and must not:

1. be a person of unsound mind or having mental infirmity
2. have been sentenced to imprisonment by a final judgment in accordance with the immigration law or the foreigner's working management law, unless the individual has been released for at least one year before the date of the work permit application
3. have certain diseases (e.g., alcoholism, narcotic addiction)

Recommended action

Employers should be familiar with the requirements of the ministerial regulation.

New guidance detailing the law amending and supplementing a number of articles of the law on foreigners' entry into, exit from, transit through and residence in Vietnam

IN BRIEF

On 1 July 2020, the government issued Decree No. 75/2020/ND-CP detailing several articles of the law amending and supplementing a number of articles of the law on foreigners' entry into, exit from, transit through and residence in Vietnam ("Decree No. 75"). Decree No. 75 took effect from 1 July 2020.

Decree No. 75 provides, among other things, regulations on procedures for granting visas in several specific cases:

i. If foreigners who are exempt from visa requirements upon entry into border-gate economic zones and coastal economic zones wish to travel to other locations in Vietnam, they can obtain visas with the help of an entity or an individual in Vietnam that acts as their sponsor.

ii. If foreigners who are exempt from visa requirements upon entry into border-gate economic zones and coastal economic zones under treaties to which Vietnam is a signatory have expired temporary residence permits and wish to travel to other locations in Vietnam, they can obtain visas in accordance with such treaties.

iii. If foreigners who enter Vietnam according to treaties to which Vietnam is a signatory, without a commercial presence or a partner in Vietnam, they can apply for a visa via the national web portal on immigration.

Recommended action

For information

New regulations on compulsory social insurance for labor accidents and occupational diseases

IN BRIEF

On 28 July 2020, the government issued Decree No. 88/2020/ND-CP detailing and guiding the implementation of several articles of the law on labor safety and hygiene regarding compulsory insurance for labor accidents and occupational diseases ("Decree No. 88"). Decree No. 88 will replace Government Decree No. 37/2016/ND-CP dated 15 May 2016 from 15 September 2020.

Decree No. 88 amends and supplements regulations on procedures for and levels of entitlement to labor accident and occupational disease insurance. In particular, the caps of monetary support under labor accident and occupational disease insurance have been revised as follows:

i. Monetary support for medical examination of occupational diseases will be capped at 50% of expenses for medical treatment as provided by the Ministry of Health after a health insurance payout, provided it does not exceed VND 800,000 per person each time.

ii. Monetary support for the treatment of occupational diseases will be capped at 50% of expenses for medical examination as provided by the Ministry of Health after a health insurance payout, provided it does not exceed VND 15 million per person each time.

iii. The monetary support for working function rehabilitation is capped at 50% of expenses for working function rehabilitation as provided by the Ministry of Health after a health insurance payout, provided it does not exceed VND 3 million per person each time.

Recommended action

Employers should review Decree No. 88 to familiarize themselves with these requirements.

The ministry of labor, invalids and social affairs promulgates the list of occupations bound by strict requirements for labor safety and hygiene

IN BRIEF

On 20 August 2020, the Ministry of Labor, Invalids and Social Affairs (MOLISA) issued Circular No. 06/2020/TT-BLDTBXH on promulgation of the list of occupations subject to strict requirements for labor safety and hygiene ("Circular No. 06"). Circular No. 06 will replace the MOLISA Circular No. 13/2016/TT-BLDTBXH dated 16 June 2016 from 5 October 2020.

Circular No. 06 promulgates the list of occupations subject to strict requirements for labor safety and hygiene and requirements of training for labor safety and hygiene. Some examples of the relevant occupations include:

- directly producing, using, storing and transporting dangerous and hazardous chemicals classified by the Globally Harmonized System of Chemical Classification and Labelling
- testing, manufacturing, using, storing and transporting explosives and explosive accessories
- working at a height of over 2 meters above the ground, on mobile platforms or at precarious places
- working in contact with ionizing radiation, radioactive or nuclear materials, operating radiographic equipment using nuclear radiation or an electromagnetic field
- working in contact with an electromagnetic field at high frequency bands from 3 kHz or higher

A link to the list can be found here: http://vnniosh.vn/Portals/0/VietTotal.Documents/Circular//E-TT-06-2020-BLDTBXH.pdf.

Recommended action

Companies should review the list to determine if they fall under the list, and if so, must implement the relevant requirements for labor safety and hygiene.

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