



2015: THIS IS THE YEAR AHEAD

Summary of likely trends and legislative developments across Asia this year

CHINA

1. As the economic climate in China becomes more unstable, there may be more issues and disputes arising from the employment relationship in the coming year, for example, mass redundancies, salary adjustments and withdrawal of benefits. This may lead to strikes or collective employee disputes. The government is trying to address the problem and the Ministry of Human Resource and Social Security recently issued the Draft Provisions on the Mass Redundancy by Enterprises (**Draft**) which was sent to the public for comments on 31 December 2014. The deadline for comments is the end of January 2015. The Draft provides a higher threshold for redundancy and employers will need to communicate more with the trade unions and employees before being permitted to carry out a mass redundancy process. Further, the Draft suggests that employers should avoid making redundancies – we can, therefore, foresee that it will become even more difficult to make a redundancy filing. As a result, employers will be forced to use mutual termination as a mechanism for exiting employees in a redundancy situation.

HONG KONG

2. The Contracts (Rights of Third Parties) Bill has been introduced into the Legislative Council. If passed, the Bill will give a third party the right to enforce (i) a term of the contract of employment against an employer (but importantly not an employee) and (ii) a term of an employment related contract against a party to that contract. Under the Bill it is possible to contract out of the new law. Employers should, therefore, start reviewing their standard contracts, employee handbooks and other employment related documentation and consider inserting clauses to either maximize the enforceability of an agreement by a third party where this is preferred or expressly exclude the law where it is not. It is expected that the Ordinance will come into operation in December 2015.
3. The Equal Opportunities Commission (**EOC**) has launched a comprehensive review of discrimination laws in Hong Kong and will issue a report with recommendations to the government in the middle of 2015. Key topics covered by the review include: whether to legislate against discrimination based on immigration and residency status; whether to widen the definition of marital status to include de facto relationships; whether to introduce a statutory duty or requirement to provide reasonable accommodation for people with disabilities; and whether to merge all four anti-discrimination ordinances into one for ease and consistency.
4. The judiciary has proposed legislative amendments to the Labour Tribunal Ordinance, which, if approved by the Legislative Council, will give the Labour Tribunal additional powers to, for example, order a party to give security if it is just and expedient to do so, in order to minimize undue delays and abuses of the adjudication process. It is also proposed to revise the time limit for enforcing Labour Tribunal awards from 12 months to six years, to align with other civil claims. The proposed amendments are currently under review and, if approved, are expected to be passed into law by mid 2015.
5. Towards the end of 2014, the Minimum Wage Commission (**MWC**) compiled a recommendation report on the Statutory Minimum Wage (**SMW**) rate and the recommendation of the MWC has been adopted to raise the SMW rate from \$30 per hour to \$32.50 per hour. Subject to the approval of the LegCo, the revised SMW rate will come into force on 1 May 2015.
6. Hong Kong's first cross-sector competition law is predicted to come into force in 2015. This may have an effect on practices such as wage-fixing, non-solicitation agreements between competitors and the exchange of sensitive HR related information. Employers should, therefore, review their current practices to avoid competition law issues once the legislation comes into effect.
7. Notwithstanding the fact that the Personal Data (Privacy) Ordinance (**PD(P)O**) has been in effect now for a number of years, section 33, which deals with the restrictions for transfer of personal data outside of Hong Kong, is still not in force. However, the indications are that it will come into force soon. This will have a significant impact for many employers, for example, those who have centralised service centres which will necessitate the transfer of personal data outside of Hong Kong. As an initial step, the Hong Kong Privacy Commissioner for Personal Data has published a Guidance on Personal Data

Protection in Cross-border Data Transfer (the **Guidance**) which aims to assist data users in understanding their compliance obligations for cross-border data transfer once section 33 comes into effect.

8. In late December 2014, the Employment (Amendment) Bill was passed. This grants three days' paternity leave to male employees who are employed under a continuous contract in respect of the birth of each child of which he is the father. Provided the employee has been employed under a continuous contract for a period of not less than 40 weeks immediately before the period of paternity leave, the leave will be paid at four-fifths of the employee's average daily wages. Otherwise, it is unpaid. The new provisions will come into force on 27 February 2015.

JAPAN

9. Legislation amending the Worker Dispatch Act is expected to come into force this year. The proposed amendment will (i) change the length of time that a company receiving dispatched workers can utilize such dispatched workers; (ii) eliminate one of two types of dispatching licenses that are available (the less regulated and more easily obtainable dispatching license); and (iii) require dispatching agencies to make offers of direct permanent employment to dispatched workers or take other measures to protect the employment status of dispatched workers under certain circumstances.
10. Japan is currently awaiting new legislation, to be enacted within this fiscal year, which is intended to increase the number of female workers in managerial positions. Included in the legislation will be a requirement on employers with more than 300 employees (employers with less than this are encouraged) to audit the current working conditions with respect to female employees (for example, percentage of female new hires, length of employment when compared to male employees, working hours and percentage in managerial positions).

KOREA

11. The Korean government is proposing to amend the Employee Retirement Benefit Securities Act to promote the implementation of employee retirement pension plans and to gradually phase-out lump-sum severance payment schemes starting from the beginning of 2016 and to mandatorily adopt employee retirement pension plans by 2022. In order to reduce the financial burden related to such transition, companies will be allowed to maintain severance payment reserves accrued prior to the effective date of the proposed amendment to the Act.

SINGAPORE

12. The Industrial Relations (Amendment) Bill (**IRAB**) which amends the Industrial Relations Act (**IRA**) was introduced into Parliament at the end of 2014 and the amendments are due to come into force on 1 April 2015. The most important change is that trade unions will be able to represent executive employees on a collective basis and on a greater number of individual matters, for example, re-employment disputes. The changes have come as a response to the realization that the Singapore workforce now has a greater number of professionals and executives and it is, therefore, no longer sustainable for such a large number of employees to be excluded from collective representation. Senior management and certain categories of executives (e.g. executive employees with access to confidential information, including in-house legal counsel) who have substantial managerial responsibilities will continue to be excluded from the right to collective representation.
13. The Ministry of Manpower made changes to the Employment Act (**EA**) to extend better protection for more workers and improve employment standards, while allowing flexibility for employers where there are practical business concerns. Most of these changes took effect on 1 April 2014 but with effect from 1 April 2015, the non-eligibility period for retrenchment benefits will be reduced to two years from three years, in line with shorter employment tenures. This will take effect on 1 April 2015.

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