

TAIWAN

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DISTINCTIVE FEATURES OF THE EMPLOYMENT ENVIRONMENT IN TAIWAN

While Taiwan's economy has proven to be incredibly agile in the face of recessions and financial crises during the last few decades, it was not able to escape the recent global downturn. As there were fewer international buyers for its exports in 2009, during the first quarter of which its economy contracted by over 10%, workers experienced unprecedented levels of layoffs, unpaid leave, and unemployment claims. The country's unemployment rate reached over 6% in August 2009, up from 4% in 2008. This is the highest rate since the Directorate General of Budget, Accounting and Statistics began keeping statistics in 1978.

In response to the slowing economy, several companies, especially those in Taiwan's renowned high-technology sector, have placed their employees on unpaid leave within the last year as an alternative to layoffs. Most companies in Taiwan must pay laid-off employees a half-month to one month's salary for every year they have worked for the company. The practice of unpaid leave is seen as a short-term solution to having to pay out large severance payments in order to whittle down a company's human resource expenses. According to the Council of Labor Affairs (CLA), over 200,000 workers in almost 18% of all businesses were on unpaid leave for some part of January 2009.

Unpaid leave has been a double-edged sword for many employees in that, while they still have a sense of job security, they have witnessed their salaries dwindle as they are asked to take an increasing number of days of unpaid leave each month. In addition, the media have published many stories of workers on unpaid leave still showing up at their offices and working for free in the hope of impressing management and guaranteeing their security in the event of any future layoffs. The CLA, however, has made it clear that full-time employees must not receive less than the minimum wage of 17,280 NT dollars (TWD) per month, regardless of any unpaid leave schemes.

Increased economic ties with China over the past year and the establishment of direct flights across the Taiwan Strait have brought hopes of job creation, especially for those in the tourism and transportation sectors. While the number of Chinese tourists has increased significantly, Chinese nationals are still barred from working freely in Taiwan and are treated as a special case, distinct from other foreign citizens applying to work on the island. The rules relating to Chinese business delegations, however, have been relaxed in the past year, allowing delegations of up to 200 members to visit Taiwan each year, up from the previous 30. Chinese business delegations must still apply to Taiwan's Ministry of Economic Affairs for approval to visit the island. The number of Chinese businesses operating in Taiwan is expected to increase as an anticipated economic cooperation framework between the two sides comes into place.

KEY CHANGES IN RECENT YEARS

Section	Subject
1.1	Overview Social-based civic organizations are now included in the Labor Standards Act.
2.3	Paternity Leave Male employees are entitled to three days of paid paternity leave on the birth of a child beginning January 16, 2008
2.3	Parental Leave Parents on parental leave may now receive a six-month government subsidy according to The Employment Insurance Act, which was amended in May 2009.
2.3	Short-Term Leave The Directions for Managing Labor and Wages During Natural Disasters were issued on June 19, 2009, to provide guidelines for natural disaster leave and salary issues.
3.4	Strikes Article 54 of the Settlement of Labor Disputes Act was amended so that the quorum is half of a union's members, but an enforcement date has yet to be decided.
4.4	Termination at Retirement Employees may apply for retirement if they have been continuously employed for more than 10 years and are age 60 or older, according to an amendment to Article 53 of the Labor Standards Act that took effect in April 2009.

KEY BREAKPOINTS RELATED TO NUMBER OF EMPLOYEES

Employee Numbers	Action
31	Employers must establish and post work rules relating to the terms and conditions of employment in the enterprise (see <i>1.1 Work Rules</i>).
31	Employees with a year or more of service can take up to two years' unpaid parental leave (see <i>2.3 Parental Leave</i>).
31	Guidelines for preventing, filing grievances against, and punishment for sexual harassment must be drawn up and publicly displayed (see <i>2.4 Sexual Harassment</i>).
67	Employers are required to employ at least one physically or mentally disabled employee or employees in amounts equal to at least 1% of staff (see <i>1.6 Disabled Employees</i>).
301	Employers must establish on-site medical units at workplaces where day-to-day operations average in excess of 300 employees, or where over 100 employees are engaged in hazardous work (see <i>2.5 Labor Safety and Health Committees</i>).
Variable	Employers are required to provide 60 days' notice of layoffs of from one fifth to one third of staff (see <i>4.6 Collective Dismissals</i>).

N.B. This list highlights key statutory breakpoints and is not exhaustive.

1. START OF EMPLOYMENT

1.1 CONTRACT OF EMPLOYMENT

Overview

The Labor Standards Act (LSA) establishes the minimum terms and conditions of employment in Taiwan together with its enforcement rules and subordinate regulations. The LSA prescribes standards on such issues as labor contracts, wages, work hours, time off and leaves of absence, child workers, female workers, retirement, benefits, compensation for occupational accidents, apprenticeships, work rules, supervision, and inspection. All industries and occupations are subject to the LSA, except those specifically exempted by the central authorities. Exempted organizations include those in fields such as the arts and literature, social services, and civic or international organizations. A March 2009 interpretation issued by the Labor Commission includes social-based civic organizations in the LSA, effective May 2009. Occupations that have been exempted from the LSA include:

- x teachers and researchers in schools and academic research and service industry organizations;
- x doctors, attorneys, and accountants;
- x coaches, athletes, and referees in the professional sports industry; and
- x workers in the household services and personal services industries.

According to the Council of Labor Affairs, a government body with authority on labor matters, there were 8.8 million workers enrolled in the labor insurance program in 471,104 establishments as of June 2009. In practice, many businesses that are not subject to the LSA base their employment contracts and work rules on the minimum standards set forth in the LSA.

Legislation

Other major pieces of legislation affecting employment include:

- x Settlement of Labor Disputes Act 1928;
- x Labor Union Act 1929;
- x Collective Agreement Act 1930;
- x Labor Inspection Act 1931;
- x Employee Welfare Fund Act 1943;
- x Labor Insurance Act 1958;
- x Labor Safety and Health Act 1974;
- x Employment Services Act 1992;
- x National Health Insurance Act 1994;
- x Protection for Workers Incurring Occupational Accidents Act 2001;
- x Gender Equality in Employment Act 2002;
- x Employment Insurance Act 2002;
- x Massive Layoff Protection Act 2003;
- x Labor Pension Act 2005.

Other Significant Influences

Other influences on the employment relationship include employment contracts, collective agreements, and company work rules, as well as customs and practices in companies, industries, or the community.

Work Rules

Under Article 70 of the LSA, employers with more than 30 workers must establish work rules on the terms and conditions of employment in the enterprise. Employers are not required to consult with workers regarding the content of the work rules. The rules must be filed with the competent authorities for approval and/or recorded within 30 days of adoption and posted publicly in the workplace. Work rules function as individual employment contracts for employees without individual contracts and establish legal norms for actual individual agreements. Work rules that contravene any mandatory provision of a law, regulation, or collective agreement applicable to the undertaking are null and void.

Although not a universal practice, individual written labor contracts are becoming more common in Taiwan.

Categories of Employees

The LSA broadly defines a worker as "a person who is hired by an employer to do a job for which wages are paid." Consequently, a manager working for a company is considered to be a worker under the LSA unless the language and substance in the contract between the manager and the company clearly shows that it is not a contract of employment. Individuals vested with substantial managerial power who have been appointed as a manager according to the Company Act – e.g., appointment by a resolution of the Board of Directors – or other relevant laws, are not considered to be workers.

The age of majority in Taiwan is 20 years. Pursuant to provisions of the Civil Code, employment contracts for employees under the age of 20 must be approved by their guardians to be legally enforceable. The LSA requires employers to keep the consent letters as well as documents for employees under the age of 16.

Types of Contracts

Fixed-Term Contract

According to the LSA and its enforcement rules, labor contracts can be divided into two categories: fixed-term contracts and indefinite-term contracts. Contracts relating to temporary, short-term, seasonal, and specified work are considered fixed-term contracts and are defined as follows:

- x Temporary – non-continuous work for less than six months. (Duration of work cannot be estimated);
- x Short-Term – non-continuous work for less than six months. (Duration of work can be estimated);
- x Seasonal – non-continuous work for less than nine months in which the raw materials, sources of materials, or market are influenced by seasonal factors;
- x Specified – non-continuous work that can be completed within a specified period, which should not exceed one year without the approval of the competent labor authorities.

Fixed-term contracts will become indefinite-term contracts if the employee continues to work beyond the termination date of the contract. Similarly, if an employee enters into consecutive (within 30 days) fixed-term contracts lasting 90 days or more, the employment contract is considered to be an indefinite-term contract. These provisions do not apply to contracts for seasonal or specified work.

Indefinite-Term Contract

Any labor contract for continuous work is considered a non fixed-term contract. The terms and conditions of fixed- and indefinite-term employment contracts may be stated orally or in writing, but must include certain information under Article 7 of the Enforcement Rules of the LSA.

Formalities

Content and Form

Under the LSA Enforcement Rules, employment contracts must include information on the following matters:

- x Workplace and the work to be performed;
- x Start and finish of work hours, rest periods, vacations, holidays, leaves of absence, and shift changes;

- x Methods for determining pay, the timing of pay, and issuing of pay;
- x Creation and termination of employment contracts and retirement;
- x Provisions for severance pay, retirement and other allowances, and bonuses as applicable;
- x Issues related to board, lodging, and expenses for work tools for which the employee is responsible;
- x Employee health, welfare, safety, education, and training;
- x Compensation in the event of workplace accidents and benefits for ordinary injuries or illnesses;
- x Rules of conduct and work discipline;
- x Employment awards and penalties; and
- x Rights and obligations of employees and management.

Language

In general, the employment contract can be drafted in a foreign language if both parties agree; however, most contracts are drafted in Mandarin Chinese. In the event of a dispute with regard to conflicting versions of an employment contract in two or more languages, the Mandarin Chinese text prevails unless the contract provides otherwise.

1.2 NON-COMPETE AND OTHER CLAUSES

No law in the Republic of China specifically addresses post-termination restrictive covenants such as confidentiality and non-compete agreements. In 1992, the Supreme Court ruled that restrictive covenants were reasonable and could therefore be enforced. In its decision, the Court laid out a three-part test to determine if the covenant was enforceable based on whether the employment contract was signed by both parties; whether it prevented employment with a company in the same or a similar line of business; and whether the restriction was for a reasonable period of time. The Court also ruled that penalties against breaking the restrictive covenant were enforceable, and that contracts could also contain reasonable restrictions on the use of the former employer's trade secrets. However, lower courts have ruled against the use of restricted employment covenants in other circumstances.

In 2003, the Council of Labor Affairs (CLA) issued a reference handbook on the subject to curb disputes over restrictive covenants in employment contracts. According to the CLA, the following factors are the most significant for determining the likely enforceability of restrictive covenants:

- x Existence of a clear breach of trust or act of bad faith on the part of the employee and a protectable legal interest on the part of the employer;
- x Nature of the employee's duties and responsibilities;
- x Whether the agreement was entered into freely and in good faith;
- x Reasonableness of duration, geographical area, and business scope of the covenant;
- x Whether compensatory measures apply; and
- x Reasonableness of penalties for violations.

1.3 SUSPENSION OF EMPLOYMENT RELATIONSHIP AND CHANGE OF CONTRACT**Work Suspension**

There are no specific regulations governing the suspension of an individual employment contract. Wages and benefits may be terminated only when the contract is terminated, so the employees would have to be paid during a period of suspension for investigation if not otherwise stipulated (although this concept of suspension is not common in Taiwan and there are no special suspension or investigation procedures). If the suspension is in response to a strike, employers may suspend wages.

Contract Modification

The law provides that once the terms and conditions of service have been agreed upon via an employment contract or collective agreement, the employer cannot unilaterally amend or vary the same without consent from the employees. Employers can, however, unilaterally modify work rules, subject to review and approval of the local labor authorities (please refer to *Categories of Employees* under 1.1 *Contract of Employment*).

1.4 TRIAL PERIOD

There is no maximum period of probation in Taiwan, and the term "probationary period" is not a legal term under the Labor Standards Act (LSA). The length of probationary periods is open to negotiation between employers and employees. Prior to 1997 when the LSA's Enforcement Rules were amended, the maximum period of probation was four months.

Although the maximum probationary period is no longer regulated, market practice tends to center on three-month periods. During probation, employment terms, conditions, and benefits are not required to equal those for regular employees, but must still meet the minimum prescribed legal standards. After three months of employment, probationary employees are entitled to at least 10 days' notice of termination regardless of any remaining period of probationary employment. Employees terminated during probation are entitled to severance.

1.5 EMPLOYMENT OF FOREIGN WORKERS

Overview

The employment of foreign nationals is governed by the Employment Services Act (ESA). Foreign nationals must have a work permit to work in Taiwan. The penalties faced by employers and personnel managers for hiring unauthorized foreign employees can be quite severe, and can include both fines and jail sentences.

Taiwan makes a distinction between foreign blue- and white-collar workers. To apply for most white-collar jobs, foreign nationals generally must have a university degree from an accredited university and at least two years of work experience. Master's degree holders are exempt from the work experience requirement, regardless of the industry in which employment is sought. Companies with annual business revenues over TWD10 million (USD312,500) and foreign business chambers may hire students from foreign universities to serve as interns for a duration of six months, with an additional six months, if necessary. Scholars on visits of no more than six months are not required to apply for a work permit.

Obligations for the Employer

Employers hiring foreign nationals must observe the following requirements:

- x Employment contracts must be in accordance with the standards for specified work under the Labor Standards Act.

For employers of blue-collar workers:

- x Employers who illegally accommodate, hire, or act as an agent for foreign workers, or to whom the deportation can be attributed, are responsible for all necessary travel and accommodation expenses for escorts for deported employees; and
- x Employers must pay an employment stabilizing fee to promote employment for Taiwan citizens.

Entry Requirements

The Taiwan government began setting the framework for 30-day, visa-free entry in 2003, and individuals from the following countries may stay in Taiwan up to 30 days without a visa: Australia, Austria, Belgium, Canada, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, South Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Monaco, the Netherlands, New Zealand, Norway, Poland, Portugal, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, the US, and the Vatican City.

Japan, Ireland, and the UK have recently had their visa-free time limits extended, the result of positive visa-regime reviews by the governments of these countries and Taiwan. Beginning February 1 2008, Japan passport-holders can stay up to 90 days without a visa. Effective March 3, 2009, UK passport-holders may stay up to 90 days without a visa and are eligible for a 90-day extension. Irish passport-holders were granted up to 90 days visa-free entry on July 1, 2009.

Effective March 1, 2009, those with passports from India, Indonesia, Philippines, Thailand, and Vietnam are also eligible for 30-day, visa-free entry if they also hold a visa issued by or permanent residency in Australia, Canada, Japan, New Zealand, Schengen Area countries (including Iceland, Italy, Germany, Netherlands, Portugal and Spain), the UK, or the US.

Work Permits

The Council of Labor Affairs (CLA) is responsible for the administration of the employment regime for foreign workers, along with the Ministry of Transportation and Communications (for shipping-, travel-, and transportation-related work permits), the Science Park Administration (for work permits for Taiwan's science parks), and the Export Processing Zone Administration (for work permits for special export processing zones).

Foreign nationals are usually granted a work permit first (usually issued by the CLA), followed by an Alien Resident Certificate (ARC), which allows them to stay on the island for a specified time. The issuance of ARCs and visa renewal applications are handled by the National Immigration Agency, established in 2007 to handle the growing number of immigrants, Chinese professionals, and foreign tourists. Chinese nationals are not considered foreigners and instead fall into a special category handled by different government agencies according to the purpose of their stay.

According to Article 46 of the ESA, categories of employment open to foreign nationals include:

- x Specialized or technical work by engineers and technicians;
- x Heads of government-approved enterprises, including managers of companies that have Foreign Investment Approved or Overseas Chinese Investment Approval status from the Ministry of Economic Affairs;
- x Work that has been designated by the CLA as meeting the needs of important national construction projects, or that is necessary for economic or social development; and
- x Work requiring special skills or talent in short supply in Taiwan.

Foreign Worker Levy

Employers of foreign blue-collar workers are required to pay amounts of between TWD600 and TWD10,000 per month per foreign worker as an employment stabilization fee.

1.6 OTHER IMPORTANT RECRUITMENT ISSUES

Disabled Employees

Under the Physically and Mentally Disabled Citizens Protection Act, employers with 67 or more workers are required to employ at least one physically or mentally disabled employee, or employees in amounts equal to at least 1% of total staff. Employers who do not employ sufficient numbers of the disabled to meet the quota are required to contribute to local employment funds for the disabled in amounts equal to the monthly minimum wage times the number of vacant positions below the threshold.