

# TAIWAN

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## DISTINCTIVE FEATURES OF THE EMPLOYMENT ENVIRONMENT IN TAIWAN

The rapid pace of economic development combined with an aging population and rising immigration has raised a host of critical social issues for Taiwan. Based on prevailing population trends, the government estimates that Taiwan will transition from an aging society to an aged society in approximately 25 years. Similar transitions in industrialized Western nations have taken 50 to 100 years. In 1993, roughly 7% of the population was age 65 or older. In 2005, the figure was 10%. Based on current trends, 20% of the population will be age 65 or older by 2025 (Taiwan Department of Health data).

Thus, in recent years the government has placed particular emphasis on reforming occupational pensions and social security. The enactment of the Labour Pension Act in 2005 (which established individual retirement accounts for many workers) has resulted in increased employee awareness of pension and retirement issues such as the adequacy of current provisions and investment options. Due to the longevity of the population, the government has also recently passed social security reforms for workers in the private sector. The changes increase normal retirement age and contribution rates, and replace old-age lump sum benefits with old-age annuities.

Taiwan launched a universal healthcare system in 1995 with the creation of the Bureau of National Health Insurance (BNHI). The system has been remarkably successful by any number of public health measurements and now provides health insurance to 99% of the population (BNHI data). Prior to enactment of the system, only 59% of the population had health insurance. However, the system has struggled with chronic funding issues since it was established. In 2007, total National Health Insurance premiums were 370 billion NT dollars (TWD), but total expenditures equaled TWD440 billion. Tax revenue from the central government provides coverage for any funding shortfall, but methods for adequately funding the system remain a top public policy issue.

Aside from quality-of-life issues such as medical care and pensions, the government has made an effort to integrate into society a growing number of immigrants in Taiwan. The island's foreign-born spouse population now exceeds 400,000, a figure that is nearing that of Taiwan's aborigine population, and roughly one in eight children have a foreign-born parent. The Employment Services Act was amended in 2007 to prevent discrimination on the basis of place of birth, and this applies to all legally residing foreigners in Taiwan, including citizens of Hong Kong, Macau, and the PRC. The government has earmarked millions of US dollars to set up language, legal aid, and job training programs for foreign-born spouses.

## KEY CHANGES IN RECENT YEARS

Section	Subject
2.4.2	The Employment Services Act was amended to curb discrimination in the workplace on the basis of age, gender orientation, or place of birth as of May 2007.
2.7	The social security system was extended to include residents of Taiwan who are not already covered by some social security system under the Pension Act, effective October 1, 2008.
2.7	The retirement age was increased from 60 to 65.

## 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>1.1.4 Work Rules</i> ).
31	Employees with a year or more of service can take up to two years' unpaid parental leave (see <i>2.3.6 Parental Leave</i> ).
31	Guidelines for preventing, filing grievances against, and punishment for sexual harassment must be drawn up and publicly displayed (see <i>2.4.3 Sexual Harassment</i> ).
100	Employers are required to employ physically or mentally disabled employees in amounts equal to at least 1% of staff (see <i>1.6.1 Disabled Employees</i> ).
Variable	Employers are required to provide 60 days' notice of layoffs of 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

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### 1.1.1 Overview

The Labour 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 arts and literature, social services, and civic or international organizations. Occupations that have been exempted from the LSA include:

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

According to the Council of Labour Affairs, a government body with authority on labor matters, there were 5.8 million workers enrolled in the labor insurance program in 429,293 establishments as of September 2008. 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.

### 1.1.2 Legislation

Other major pieces of legislation affecting employment include:

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

### 1.1.3 Other Sources of Influence

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 community.

### 1.1.4 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

### 1.1 *Contract of Employment*

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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 law, regulation, or collective agreement applicable to the undertaking are null and void.

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

#### 1.1.5 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.

#### 1.1.6 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:

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

*1.1 Contract of Employment*

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**1.1.7 Formalities*****Content and Form***

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

- ◆ workplace and the work to be performed;
- ◆ start and finish of work hours, rest periods, vacations, holidays, leaves of absence, and shift changes;
- ◆ methods for determining pay, the timing of pay, and issuing pay;
- ◆ creation and termination of employment contracts and retirement;
- ◆ provisions for severance pay, retirement and other allowances, and bonuses as applicable;
- ◆ issues related to board, lodging, and expenses for work tools for which the employee is responsible;
- ◆ employee health, welfare, safety, education, and training;
- ◆ compensation in the event of workplace accidents and benefits for ordinary injuries or illnesses;
- ◆ rules of conduct and work discipline;
- ◆ employment awards and penalties; and
- ◆ 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.

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**1.2 Non-Compete and Other Clauses**

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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 Labour 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:

- ◆ 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;

*1.2 Non-Compete and Other Clauses*

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- ◆ nature of the employee's duties and responsibilities;
- ◆ whether the agreement was entered into freely and in good faith;
- ◆ reasonableness of duration, geographical area, and business scope of the covenant;
- ◆ whether compensatory measures apply; and
- ◆ reasonableness of penalties for violations.

### **1.3 Suspension of Employment Relationship and Change of Contract**

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#### **1.3.1 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.

#### **1.3.2 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 (see *1.1.5 Categories of Employees*).

### **1.4 Trial Period**

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There is no maximum period of probation in Taiwan and the term "probationary period" is not a legal term under the Labour 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.

So, 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**

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#### **1.5.1 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.