

TAIWAN

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DISTINCTIVE FEATURES OF THE EMPLOYMENT ENVIRONMENT

The fundamental principles of the right to work, equal opportunity, mediation of disputes and social insurance are enshrined in the Constitution of the Republic of China (Taiwan). Since the Constitution came into effect in 1947, Taiwan has implemented a comprehensive body of labor laws and regulations addressing the rights and responsibilities of employees and employers. Of primary importance is the Labor Standards Act, which establishes the minimum terms and conditions of employment and aims to protect workers' rights and interests and improve employee-employer relationships.

Taiwan has a dynamic economy that is ranked 19th in the world. Electronics and machinery exports remain major drivers of economic growth. Taiwan's service sector accounts for approximately 70% of gross domestic product. Like other developing market economies around the world, Taiwan is working to diversify its economy and trading markets and to foster capital and technology-intensive industries in order to remain competitive.

By most measures, Taiwan is weathering the current global economic downturn relatively well. In terms of the labor market, the impact of the crisis has been most noticeably reflected in employer measures to mitigate risk and to reduce costs through reductions in the labor force. Much concern has been expressed in recent years over mass layoffs, unpaid leave, overwork and wage stagnation.

China has become Taiwan's largest trading partner and the two economies are becoming increasingly interdependent. The migration of manufacturing to China over the last decade has led to structural changes in the Taiwan job market. The exodus of Taiwanese white-collar workers to China and other countries has raised concerns about a shortage of qualified professionals to meet local demand. The Economic Cooperation Framework Agreement signed between Taiwan and China in 2010 aims at lowering trade barriers and tariffs on many goods and services to increase cross-strait investment and trade.

Full-time employment is the norm in Taiwan, but increasingly companies are looking to contractors, outsourcing and manpower services to reduce labor costs. The official unemployment rate in Taiwan is low, averaging around 5% over the last decade. Birth rates have been declining, however, and the workforce, currently at about 11 million, is aging. In response to this trend, the government has in recent years placed particular emphasis on reforming pension and social security programs.

In Taiwan, all employees are entitled under law to form unions (with the exception of civil servants, teachers and military personnel, and some other employees). The formation of unions and their influence in Taiwan has been limited in the past for reasons such as the numerous legal restrictions on labor union development, striking and collective bargaining; the lack of labor struggle ideology among workers; and the predominance of small and medium-sized enterprises. Amendments to the Labor Union Act, the Collective Bargaining Agreement Act and the Settlement of Labor Disputes Act came into effect in May 2011 and aim at protecting workers' rights to join and form unions and receive fair treatment from employers, simplifying strike procedures, and encouraging dispute resolution through collective bargaining. Labor union activities are expected to increase as a result of these substantive changes.

Taiwan is generally not a litigious society. However, employees are increasingly seeking remedies in employment disputes through the courts. In most cases, disputes concern a claim of wrongful termination and are often resolved through a settlement before a judgment is reached. Taiwan is a civil law jurisdiction. As such, the courts rely on labor statutes and administrative rulings as the primary source of law, more than on court precedent.

Taiwan's Council of Labor Affairs is the central competent authority in charge of labor policy. The government has announced plans to upgrade the council to ministerial status in 2012.

KEY CHANGES IN RECENT YEARS

| Section | Subject |
|---------|--|
| 1.6 | The People with Disabilities Rights Protection Act, as revised on February 1, 2011, increases job opportunities and protections for the vision impaired. Revised hiring quotas are designed to increase employment for the disabled. |
| 1.6 | A new data protection law, which is expected to come into effect in 2012, will impose new responsibilities on employers with respect to the collection, processing, transfer and use of employee data. |
| 2.1 | The minimum wage has been raised to TWD18,780 per month, effective January 1, 2012. |
| 3.1 | Amendments to the Labor Union Act effective May 1, 2011 liberalize the formation of labor unions and promote fair treatment of union members. |
| 3.3 | Amendments to the Collective Bargaining Agreement Act effective May 1, 2011 obligate employers to participate in good-faith requests for negotiations. |
| 3.5 | Amendments to the Settlement of Labor Disputes Act effective May 1, 2011 simplify procedures for strike activities and streamline the labor-management dispute process by establishing a single mediator system. |
| 3.6 | Amendments to the Labor Standards Act, effective on June 2012, increase penalties five-fold for employers who violate work regulations under the Act. The amendments also empower the Council of Labor Affairs to create and maintain a blacklist disclosing the names of employers who violate the Act. |

KEY BREAKPOINTS RELATED TO NUMBER OF EMPLOYEES

| Employee Numbers | Action |
|------------------|---|
| 30 | Employers must establish and post work rules relating to the terms and conditions of employment in the enterprise (see <i>Work Rules</i> under <i>1.1 Contract of Employment</i>). |
| 30 | Guidelines for preventing, filing grievances against, and punishment for sexual harassment must be drawn up and publicly displayed (see <i>Sexual Harassment</i> under <i>2.4 Equal Opportunities</i>). |
| 50 | Companies with more than 50 employees must set up an Employee Welfare Committee and allocate a percentage of company funds to provide subsidies to employees, including for education, leisure activities, childcare, and so on. |
| 67 | Employers are required to employ at least one physically or mentally disabled person, or employees in amounts equal to at least 1% of total staff (see <i>Disabled Employees</i> under <i>1.6 Other Important Recruitment Issues</i>). |
| 100 | Depending on the number of employees (thresholds of 100 and 300 employees) and the industry concerned, employers may be required to set up labor safety and health committees (see <i>2.5 Health and Safety</i>). |
| 250 | Employers are required to establish childcare facilities or provide for such services, financed in part with the assistance of the central government (see <i>Childcare Facilities</i> under <i>2.1 Pay</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), supplemented by its enforcement rules and subordinate regulations, establishes the minimum terms and conditions of employment in Taiwan. The LSA prescribes standards that must be met or exceeded by employers 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 international and certain civic organizations. Occupations that have been exempted from the LSA include civil servants, teachers and researchers in public schools and academic research and service industry organizations, doctors, attorneys, coaches, athletes, referees in the professional sports industry, domestic workers and bodyguards. 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.

The right to work is guaranteed by the Constitution and enacted in statute. Taiwan's employment law regime is generally considered protective of employees. For example, the LSA does not allow for dismissal of employees "at will." Employees covered by the LSA, which constitute the vast majority of workers in Taiwan, may only be terminated unilaterally with cause as specified in the law.

Legislation

Other major pieces of legislation affecting employment include:

- Company Act 1929;
- Settlement of Labor Disputes Act 1928;
- Labor Union Act 1929;
- Collective Bargaining Agreement Act 1930;
- Labor Inspection Act 1931;
- Employee Welfare Funds Act 1943;
- Labor Insurance Act 1958;
- Labor Safety and Health Act 1974;
- Vocational Training Act 1986;
- Employment Services Act 1992;
- National Health Insurance Act 1994;
- People with Disabilities Rights Protection Act 2001;
- Protection for Workers Incurring Occupational Accidents Act 2001;
- Gender Equality in Employment Act 2002;
- Employment Insurance Act 2003;
- Massive Layoff Protection Act 2003; and
- Labor Pension Act 2005.

Other Significant Influences

Other influences on the employment relationship include employment contracts, collective bargaining agreements and company work rules. Customs and practices in companies, industries or the community also impact employment relationships.

Work Rules

The LSA mandates that employers with more than 30 employees 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, but employers may not, in most cases, unilaterally change work rules. Work rules must be filed with the competent authorities for approval and/or be recorded within 30 days of adoption and posted publicly in the workplace. Work rules function as 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 bargaining agreement applicable to the undertaking are null and void.

Although not a universal practice, individual written labor contracts are becoming more common in Taiwan. Even where an individual employment contract is in place, the authorities and courts will typically deem company work rules a constituent part of the terms and conditions of an employment relationship.

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 authority who have been appointed as a manager according to the Company Act - for example, appointment by a resolution of the Board of Directors - or other relevant laws, are not considered to be workers. They are instead considered to be appointed managers, and the relationship between the company and the manager a mandate relationship rather than an employment relationship. Mandate relationships are generally not subject to all of the requirements or protections of the LSA, particularly regarding termination.

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:

- 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 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 employment 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:

- 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 of 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.

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:

- 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;
- 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

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. As such, 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 bargaining 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 *Categories of Employees* under *1.1 Contract of Employment*). As a general rule, a benefit that an employer has provided repeatedly over time would likely be deemed an acquired right if the employer had not explicitly indicated that the benefit was discretionary.

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. The length of probationary periods is open to negotiation between employers and employees.

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 obtain a work permit to work in Taiwan, or to provide or receive training 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-collar 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. Foreigners with university degrees but who are unable to meet the two-year experience requirement may have their work permit applications reviewed by the Council of Labor Affairs (CLA), or other competent authority committee. 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 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 but must obtain prior approval from the education authorities.

Obligations for the Employer

Employers hiring foreign nationals must observe the following requirements:

- Employment contracts must comply with standards for specified work under the Labor Standards Act.
- For employers of blue-collar workers:
 - 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
 - Employers must pay an employment stabilizing fee to promote employment for Taiwan citizens.

Entry Requirements

Following positive visa-regime reviews in 2010, individuals from the following countries are eligible for visa-exempt entry to Taiwan, allowing a stay of up to 90 days: Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and the Vatican City State.

Individuals from the following countries may enter for up to 30 days without a visa: Australia, Malaysia, Singapore, South Korea and the United States.

Effective March 1, 2009, those with passports from India, Indonesia, the 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, the UK or the US. These travelers must have never worked in Taiwan as a blue-collar employee, and must first register online with the National Immigration Agency before they enter the island.

Chinese nationals must apply with the National Immigration Agency for a permit to enter Taiwan.

Work Permits

The CLA is responsible for the administration of the employment regime for foreign workers; 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 must first obtain a work permit (usually issued by the CLA), followed by an Alien Resident Certificate (ARC) allowing them to stay in Taiwan for a specified time. A work permit application typically takes one month to process. 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. PRC nationals must meet certain requirements to be allowed to enter Taiwan for business purposes.

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

- Specialized or technical work by engineers and technicians;
- 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;
- 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
- Work requiring special skills or talents 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, to the CLA's Bureau of Employment and Vocational Training as an employment stabilization fee.

1.6 OTHER IMPORTANT RECRUITMENT ISSUES**Disabled Employees**

Under the People with Disabilities Rights Protection Act (formerly the 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.

Data Privacy and Protection

The Computer Processed Personal Data Protection Act (CPPDPA) of 1995 regulates the collection, use and processing of computer-processed personal data to protect against unauthorized manipulation and provide some measure of data privacy. Industries subject to the law include credit investigation businesses, and organizations or individuals whose operations focus primarily on the collection or computerized processing of personal data in hospitals, schools, telecommunications businesses, financial institutions, securities businesses, insurance businesses, mass media, and other businesses designated by the Ministry of Justice.

The new Personal Data Protection Act (PDPA) was enacted on May 26, 2010 and will replace the CPPDPA. The PDPA is expected to come into force in 2012. Most employers will come under the regulation of the PDPA with respect to the collection, processing and use of personal data of employees. The PDPA considerably broadens the scope of "personal data" that is protected and expands the obligations of companies subject to the PDPA. For example, data subjects must be informed of their rights and of how the data will be used; and in many cases, written consent of the data subject is required.

2. ACTIVE EMPLOYMENT

2.1 PAY

Overview

Wages are usually paid once a month. Wages include base salary, allowances, bonuses and other regular payments. Employees typically receive a total of 13 or 14 months' salary per year.

The basic wage (equivalent to a national minimum wage) is fixed by the Basic Wage Commission. The Commission is comprised of from 21 members chosen from the representatives of related government agencies and various associations.

Minimum Wage

Effective January 1, 2012, the statutory national minimum wage (for all industries) is increased from TWD17,880 to TWD18,780 per month (approximately USD650), and from TWD98 to TWD103 per hour (approximately USD3.55).

Regulations for the Deliberation of Basic Wage provide that the Basic Wage Commission will conduct a wage review in the third quarter of each year, whereupon it may make a recommendation to the Executive Yuan to adjust the minimum wage.

Mandatory Wage Indexation

There is no mandatory indexation of wages in the private sector.

Bonuses

The Labor Standards Act requires that employers pay, out of the balance of any net profits, a bonus or allowance to any employee who has worked the entire preceding year without committing any fault or being disciplined for misconduct. The amount of such bonus is up to the employer. Most companies give their employees annual bonuses, typically paid out at the end of the calendar year in anticipation of the forthcoming Chinese New Year. In the private sector, the bonus is normally two months' salary. Bonuses in government agencies are usually equivalent to one to one-and-a-half months' salary.

Profit-Sharing

Under the Company Act, corporate articles of incorporation must state the percentage of surplus profits that should be distributed to employees. Most companies fix a token amount of less than 1% as the profit-sharing distribution.

Mandatory Allowances

There are no mandatory allowances.

Childcare Facilities

Employers with 250 or more employees are required to establish childcare facilities or provide for such services, financed in part with the assistance of the central government.

Total Remuneration Package

Besides annual basic salary, a majority of companies offer guaranteed and performance-related bonuses. The practice of paying 14 months' salary is very common in Taiwan. The 14-month salary is usually split into 12 months' salary, one month's salary paid before Chinese New Year, and an extra half-month's salary paid at each of the Dragon Boat Festival and Mid-Autumn Festival holidays. Another alternative is 12 months' salary plus a two-month, year-end bonus. The guaranteed bonus is usually forfeited for employees resigning before the date of payment.

It is also quite common in Taiwan to provide various allowances such as for meals and transportation. Profit-sharing stock grants are a unique Taiwanese practice stemming from the Taiwan Company Act article that allows companies to use earning distributions to issue new shares to employees, thus resulting in no charges to expense. However, since profit-sharing stock grants have been included as expense items in companies' accounting systems from 2008, stock grants for employees are being replaced by cash bonus or stock options.

Group insurance (for example, death benefits and medical plans) is a common supplement to social security benefits for employees in larger companies. Many companies provide their employees with a comprehensive physical examination in addition to a basic medical checkup. Many companies have a company car program, typically limited to senior management and employees with a business need. Other typical perquisites include mobile phones.

Companies with more than 50 employees must set up an Employee Welfare Committee and allocate a percentage of company funds to provide subsidies to employees, including for education, leisure activities, childcare, and so on.

(The subject of market compensation and benefits is covered in depth in our annual *General Industry Compensation Report - Taiwan*.)

2.2 WORKING HOURS

Overview

| | |
|------------------------|-------------------------------|
| Statutory working week | 84 hours over a 2-week period |
| Statutory working day | 8 hours |

Subject to the consent of the labor union or labor-management conference, employers may adjust normal working hours as allowed under the Labor Standards Act (LSA). Employers may redistribute the normal working hours of any two working days during a two-week period to other working days provided that no more than two hours are distributed to each of the other working days and the total number of working hours does not exceed 48 hours per week. After four hours of continuous work, employees are entitled to rest breaks of at least 30 minutes. Employees are entitled to one day of rest within every seven days of work.

The LSA provides additional flexibility in redistributing normal work hours to certain industry sectors designated by the Council of Labor Affairs (CLA). LSA limitations regarding working hours and overtime do not apply for certain types of workers designated by the CLA. For these occupations, employers and employees may reach an agreement on terms such as working hours and days off, provided that the terms are not detrimental to the health and well-being of the employees. Such agreements must be in writing and be submitted to the authorities for approval.

Work schedules implemented under Article 30 of the LSA prior to 2002, when the article was amended, are still legal. Under the prior arrangements, employers and employees could agree on one of the following work schedules:

- Two days off every two weeks: employees work five-and-a-half days the first week and five days during the second week (assuming an eight-hour workday).

- Two-and-a-half days off every two weeks: employees work six days during the first week and four-and-a-half days during the second week (assuming an eight-hour workday).
- Two days off every week: employees work eight hours and 24 minutes every day, five days a week.
- Six working days: employees work seven hours a day, six days a week.

Shift Work

For employees working under a rotation system of day and night shifts, workers on the shifts should be rotated on a weekly basis unless the employee consents otherwise.

Night Work**Legal Definition**

Evening and night work by female employees is defined by the LSA as the hours between 10:00 p.m. and 6:00 a.m. Furthermore, workers over 15 years of age, but less than 16, are not permitted to work between 8:00 p.m. and 6:00 the following morning. The LSA and its enforcement rules do not otherwise define night work.

Female employees can work at night only if the necessary safety and sanitation facilities are provided. If female workers on the night shift do not have access to mass transit, then transportation or dormitory facilities must be provided.

Overtime**Legal Provisions**

Under the LSA, an employer cannot compel an employee to work overtime if the employee cannot perform the work due to health reasons or another suitable reason.

Maximum Statutory Overtime

Total working hours, including overtime, cannot exceed 12 hours per day. The maximum amount of overtime per month cannot exceed 46 hours.

Compensation

Pay rates for overtime are as follows:

| Overtime | Percent of Normal Pay |
|---|-----------------------|
| Less than 2 hours | 133% of hourly rate |
| 2 to 4 hours | 167% of hourly rate |
| Vacation time, public holiday, emergencies* *A natural disaster, accident or unexpected event. | 200% of hourly rate |

Sundays and Public Holidays**Legal Provisions**

Depending on the holiday concerned, employees may be permitted to claim the time off. Public holidays can be exchanged with normal workdays with the consent of the labor union or the workers themselves.

Compensation: Weekend Work

Employees working on the weekend or a normal rest day are entitled to overtime premiums to the extent that the additional hours of work exceed their normal workweek.

Compensation: Public Holidays

Employees working on a public holiday are entitled to 200% of their normal wages.

2.3 HOLIDAYS AND STATUTORY LEAVE

Public Holidays

| Day | Date |
|---------------------------------------|---|
| Founding Day of the Republic of China | January 1 and 2 |
| Lunar New Year's Eve | Dates vary |
| Lunar New Year | Three days; dates vary |
| Peace Memorial Day | February 28 |
| Youth Day | March 29 |
| Children's Day | One day before Tomb Sweeping Day; date varies |
| Tomb Sweeping Day | April 1 on the Lunar Calendar; date varies |
| Labor Day | May 1 |
| Dragon Boat Festival | May 5 on the Lunar Calendar; date varies |
| Mid-Autumn Festival | August 15 on the Lunar Calendar; date varies |
| Confucius's Birthday/Teacher's Day | September 28 |
| National Independence Day | October 10 |
| Taiwan Retrocession Day | October 25 |
| Chiang Kai-shek's Birthday | October 31 |
| Sun Yat-sen's Birthday | November 12 |
| Constitution Day | December 25 |

The Enforcement Rules of the Labor Standards Act (LSA) list all commemorative and other national holidays. Employees are entitled to 19 holidays, as stated in Article 23 of the Enforcement Rules of the LSA, but the dates of the actual holidays may vary. In practice, state office holidays are different from those provided under the rule. Many businesses choose state office holidays, which are fewer, and give their employees the weekends or alternate Saturdays off.

Annual Leave

Under the LSA, paid annual leave is calculated on the basis of length of service. Employees with one or more years of service are entitled to paid annual leave at the following rates:

| Years of Service | Annual Paid Vacation Days |
|--------------------|--|
| Up to 3 years | 7 |
| 3 to 5 years | 10 |
| 5 to 10 years | 14 |
| More than 10 years | 14 + one day per additional year of employment up to 30 days |

Annual Leave Entitlement

Employees are not entitled to paid annual leave until they have completed one year of service.

Annual Leave Compensation

Employees are paid normal salary; there is no statutory holiday bonus.

Vacation Practice Typical company practice is to provide a few additional days' annual leave, the amount of which varies by seniority and job level. Employees in firms with more than 30 employees may take up to seven days of their vacation entitlement per year as family leave to care for family members.

Carry Forward and Termination Employees unable to take paid vacations for business reasons are entitled to twice their regular pay rates per unused vacation day. Employees are entitled to compensation for unused leave. There is no statutory requirement with regard to carrying forward unused leave, but many employers permit employees to carry over annual leave. At termination of employment, employees are generally entitled to compensation in lieu of unused leave.

Sick Leave

Employees are entitled to ordinary sick leave of 30 days per year for illnesses and injuries not requiring hospitalization and up to one year of sick leave in the event of hospitalization. An employee on ordinary sick leave receives 50% of his or her regular pay from the employer for ordinary sick leave not exceeding 30 days per year. Total hospitalized and non-hospitalized sick leave cannot exceed 12 months in a two-year period.

A recent amendment covers workers diagnosed with cancer, or a pregnancy with a threatened abortion, and treated as an outpatient by a physician under the hospitalized sick leave benefits.

Maternity Leave

Employees with at least six months of service are entitled to eight weeks' paid maternity leave. Employees with less than six months of service are entitled to eight weeks' paid leave at 50% of normal pay.

During pregnancy, workers may apply to be transferred to lighter work (if available) without a reduction in wages. Female employees with children under one year of age are entitled to two 30-minute breaks per day to nurse. Nursing breaks are considered working hours. Pregnant employees who miscarry are entitled to four weeks of maternity leave if they were at least three months' pregnant, one week's maternity leave if they were at least two months' pregnant, and five days if they were less than two months' pregnant.

Employees suffering medical complications due to pregnancy are entitled to up to one year of unpaid leave if hospitalized, and up to 30 days' unpaid leave if hospitalization is not required.

Paternity Leave

Male employees are entitled to three days of paid paternity leave on the birth of a child.

Parental Leave

Individuals with at least a year of service may take up to two years' unpaid parental leave for each child under age 3. Alternatively, employees may request to reduce work time by one hour per day or otherwise adjust their work hours. Reductions in work hours are non-compensated. The Employment Insurance Act was amended in May 2009 so that employees on parental leave may receive a monthly subsidy of 60% of their insured salary up to six months. They must have paid into the insurance system for at least a year in order to receive this subsidy.

During unpaid parental leave, employers are exempt from monthly contributions for the employee's labor and health insurance, and pension fund and employee contributions may be postponed for up to three consecutive years. Employees are generally entitled to be reinstated in their former position after the leave ends; however, returning employees may be terminated with 30 days' notice and severance under certain conditions such as the business being suspended, experiencing operating losses or a contraction of business, being reorganized or transferred, or being restructured.

Short-Term Leave

Short-term paid and unpaid leave entitlements for personal and family issues include:

- Marriage leave: eight days of paid leave for employee's own marriage.
- Funeral leave: duration of paid leave dependent on familial relation as follows:
 - Eight days for the death of a parent, foster parent, step-parent or spouse;
 - Six days for the death of a grandparent, parent-in-law, foster parent of spouse, step-parent of spouse, son or daughter; and
 - Three days for the death of a great-grandparent, grandparent-in-law, brother or sister.
- Personal leave: up to 14 days' unpaid annual leave.

Military Leave

Male citizens of Taiwan are subject to 12 months of compulsory military service. Employers must provide the same job with the same level of seniority to employees who return to work at the conclusion of military service. Employers are not required to provide the same job if the employee volunteers for further military service in excess of three years after the conclusion of compulsory service. Males under age 36 are also required to serve reserve duty. During reserve duty, employers must preserve the employment positions of employees and treat the period of reserve duty as paid leave.

Natural Disaster Leave

According to the Directions for Managing Labor and Wages During Natural Disasters, issued June 19, 2009, when a local government office announces time off due to a natural disaster such as a typhoon or earthquake, all employees may take that time off. The exception is if the employee gives prior consent to work in the event of a natural disaster. While government and public and private school employees are entitled to pay during government-declared natural disaster leave, this is not the case with private companies. The above directions, however, recommend that employees be paid for days taken off for natural disasters.

2.4 EQUAL OPPORTUNITIES

Equal Treatment

The Employment Services Act guarantees equal job opportunities and access to employment services. Employers are prohibited from discriminating against any job applicants or employees on the basis of race, class, language, thought, religion, political affiliation, place of origin or birth, gender, sexual orientation, age, marital status, appearance, facial features, disability, or past membership in any labor union.

Equal Pay

The Gender Equality in Employment Act (GEEA) is intended to promote gender equality in the workplace and to implement a constitutional mandate to eliminate sex discrimination. The GEEA expressly prohibits discriminatory treatment on the basis of sex with regard to hiring, training, welfare benefits, remuneration and other benefits. It also defines sexual harassment and outlines measures that employers must implement to prevent sexual harassment in the workplace. The GEEA specifies a number of mandatory measures to promote equality in employment, such as prohibiting work rules, collective bargaining agreements and employment contracts from stipulating in advance that female employees will have to quit or take unpaid leave in the event of marriage, pregnancy, childbirth or childrearing. Although the Act is aimed at redressing long-standing unfair practices against women in the workplace, the measures generally apply to both sexes.

Sexual Harassment

Sexual harassment is governed by the Sexual Harassment Prevention Act (SHPA) 2005 and the GEEA. Sexual harassment is defined by the SHPA as an act, other than one amounting to the crime of sexual assault, perpetrated upon a person against his or her will and relating to sex or the individual's gender. Sexual harassment under the GEEA is defined to include the creation of a hostile, intimidating and offensive working environment for the employee, and explicit or implicit requests of a sexual nature in return for some improvement in employment terms and conditions, or conversely, the negation of punishments or other actions detrimental to the employee.

Under the GEEA, employers are required to prevent sexual harassment in the workplace. In businesses with more than 30 employees, guidelines for preventing, filing grievances against and punishment for sexual harassment must be drawn up and publicly displayed.

2.5 HEALTH AND SAFETY

Overview

The Labor Safety and Health Act (LSHA) governs the prevention of occupational accidents and the promotion of labor safety and health. Under the LSHA, the employer is responsible for installing safety and health devices to prevent dangers arising from machinery, explosions, electricity, chemicals, dust, noise, radiation and other industrial causes, and to provide necessary emergency first aid and medical services for employees in the workplace. Employers must provide employees with the necessary safety and health training for the prevention of accidents and occupational diseases.

Labor Safety and Health Committees

Depending on the number of employees (thresholds are 100 and 300 employees) and the industry concerned, employers may be required to set up labor safety and health committees. The committees are multipart consultation mechanisms composed of the employer, the manager of the labor safety and health department, and all other managers, medical and nursing personnel, related technicians, and representatives of the labor union or the workers. Depending on the industry and employee size prescribed by law, the company must designate at least one or more labor safety and health assistants, supervisors or engineers to carry out supervisory, inspection and consultative functions.

In addition, depending on the type and scale of a hazard and an enterprise, employers must provide on-site medical health consultations to assist employees with health risk assessment and health management.

Protection of Certain Categories of Employees

Employees who work under high temperatures or extraordinary atmospheric pressure, who are in charge of hoists and precision machinery, or who are engaged in heavy physical labor or dangerous work, must be given shorter work hours.

Minors

Employees over the age of 16 are entitled to engage in all types of work. Children under age 16 may work under certain circumstances, subject to special protections of the Labor Standards Act and other laws.

Women

Female employees cannot be terminated on the basis of pregnancy, childbirth or childrearing. Pregnant workers, or workers who have given birth in the last 12 months, should not be employed in potentially dangerous or hazardous work.

2.6 TRAINING

There are no provisions for mandatory training leave. Guidelines and expectations for on-the-job training, retraining and apprenticeships are covered by the Vocational Training Act 2002.

2.7 SOCIAL SECURITY

Employees in Taiwan are covered by two main social security programs: Labor Insurance (LI) and National Health Insurance (NHI).

LI is administered by the Council of Labor Affairs and provides monetary compensation to workers in the case of non-occupational and occupational illnesses or injuries, including maternity, death, disability, old-age and medical benefits. Companies with at least five employees must participate. Premiums are shared by the employer (70%), employee (20%) and government (10%).

The NHI is a single-payer national healthcare plan. Virtually all citizens and legally employed foreigners are covered. The NHI provides healthcare benefits for non-occupational-related injuries or sicknesses, including hospitalization, outpatient care, physical therapy, childbirth, emergency care, and dental and vision care. Premiums are shared by the employer (60%), employee (30%) and government (10%).

Employees covered by the Labor Standards Act (LSA) are also entitled to retirement benefits, either under the old pension system outlined in the LSA or the new pension system of individual accounts under the Labor Pension Act. Employers contribute at least 6% of monthly pay (cap of TWD150,000) to the employee's pension account. Employees have the option to contribute up to 6% as well, which is tax deductible. The normal retirement age for both men and women is 60 years with 15 years of service.

(The subject is covered in depth in our *Retirement and Risk Benefits Report - Asia Pacific*.)

3. INDUSTRIAL RELATIONS

3.1 FRAMEWORK FOR EMPLOYEE PARTICIPATION AND REPRESENTATION

Overview

The framework for employee relations in Taiwan is largely centered on industry unions. Employees in the private sector generally have the right to unionize under the Labor Union Act (LUA), but the process has been highly regulated. Unions must submit their constitution and organizational rules to local authorities as well as the Council of Labor Affairs (CLA) for review. Unions rejected by the CLA may reapply for certification (after making the necessary changes) or be dissolved.

Revisions to the LUA, the Collective Bargaining Agreement Act and the Labor Disputes Act came into effect May 1, 2011. Key changes include:

- Loosening of long-standing restrictions on certain types of workers to form unions - for example, teachers may now unionize;
- Democratization of unions and expanded self-governance of union affairs;
- Implementation of a good-faith mechanism whereby the employer may not refuse collective bargaining without good reason, establishment of an unfair labor practices adjudication board within the CLA to resolve disputes in which employers fail to engage in good-faith bargaining;
- Streamlining of the labor-management dispute process by establishing a single mediator system; and
- Simplification of strike procedures by requiring that unions ratify a strike action by direct secret ballot in which a majority of members approve.

Employers Associations

There are many employer trade associations and industrial associations in Taiwan. The most influential representative of employers, apart from the legislators who represent them in various industries, is the Chinese National Federation of Industries. It consists of 152 member associations representing more than 80,000 industrial enterprises and is the unified national federation of the manufacturing, construction and mining industries. Although it exercises only very loose control over its members, the Federation is influential in the formulation of government labor policies and legislation.

Trade Unions

Under the LUA, "industrial union" refers to a union organized by workers of different crafts in various divisions of the same industry. "Craft union" means a union jointly organized by workers in the same craft. All employees, except those involved in management, are eligible for union membership.

Amendments to the LUA that came into effect on May 1, 2011 establish a third type of union, a corporate union, defined as a union organized by workers from one enterprise. The amendments also impose continuous penalties on employers who hamper the formation of unions or punish employees active in unions. The amendments also end the long-standing ban on teachers being able to form and join unions (although they will not be allowed to form school-specific unions) and remove the rules that only one labor union is permitted within the same industry, area or factory, as well as the 30-worker minimum to organize a union.

**Rights and
Obligations of
Workers Regarding
Union Membership**

All workers within the jurisdiction of a labor union have rights and obligations to join and become members of an industrial or craft union, except those workers who represent the employer in exercising management's rights at all levels of administration. As of May 1, 2011, all workers will be required to join their union, although there is no penalty for not doing so.

Employees ineligible for union membership include the general manager, the vice general manager, the personnel manager (including the division manager in charge of job performance evaluations), and the security personnel of an establishment. Foreign laborers legally employed in Taiwan may join industrial unions, and, as of May 1, 2011, may be elected director or supervisor of a labor union.

National-Level Organizations

The Chinese Federation of Labor is the only nationwide general federation of labor. Below the Federation there are four levels of organization: county, provincial, regional and national. As of March 2011, there were 4,945 unions (including trade union federations) in Taiwan with around three million members, comprising about 30% of the labor force. This figure is somewhat misleading, however, as local unions have not traditionally exercised the collective bargaining power associated with labor unions in the West. Most unions have been set up by self-employed professionals in order to join the Labor Insurance and National Health Insurance plans.

| Labor Unions and Federations in Taiwan | | |
|---|---------------------|----------------------|
| | Labor Unions | Union Members |
| Occupational labor unions | 3,864 | 2,728,001 |
| General Federation of Labor | 79 | 4,347 |
| Federations of industrial unions | 34 | 285 |
| Federations of occupational unions | 104 | 688 |
| Industrial labor unions | 891 | 527,924 |
| Total | 4,982 | 3,262,209 |

Source: *Bulletin of Labor Statistics*, May 2011, Council of Labor Affairs

Industrial Democracy

**Employee
Participation**

There is no law providing employees with a right to elect or appoint representatives to the management board and/or the supervisory board of a company.

**Financial
Participation**

Corporations are required to specify in their articles of incorporation what percentage of profits should be distributed to employees under the Company Act. Most companies fix a token amount of less than 1% as the profit-sharing distribution. No other forms of financial participation are required of corporations, nor are other types of employers subject to similar profit-sharing requirements.

3.2 WORKS COUNCIL/EMPLOYEE REPRESENTATIVES

There is no system of Works Councils or comparable bodies in Taiwan.

The Labor Standards Act provides that employers and employees convene "labor-management conferences" to promote coordination and cooperation between management and labor and to discuss employment conditions, welfare and productivity.

3.3 COLLECTIVE BARGAINING

Overview

Prior to the May 1, 2011 implementation of the amended Collective Bargaining Agreement Act (CBAA), collective bargaining was voluntary and employers were under no legal obligation to bargain. No detailed legal bargaining procedures or rules were available. Due to the regulatory limitations on workers' rights to organize, the small scale of most private establishments, and the generally limited effectiveness of unions, collective bargaining had not been an important method of agreeing upon employment terms and conditions in Taiwan. According to the Council of Labor Affairs (CLA), as of March 2011, there were only 41 collective bargaining agreements (CBAs) in force nationwide.

Legal Status

Amendments to the CBAA came into effect on May 1, 2011, placing new obligations on labor and management during the collective bargaining process. Neither side will be able to refuse to negotiate without a legitimate reason, and any acts of non-cooperation could be the basis for the CLA to determine that labor or management is refusing to negotiate. The CLA may fine a party between TWD100,000 and TWD500,000 for refusal to negotiate, and this penalty could be imposed repeatedly when labor or management refuses to negotiate on multiple occasions.

The amended Act also clarifies who can represent labor in negotiations. Under the new law, a party must have contractual privity in the employment relation in order to represent employees. The practical effect is that only management and government-recognized unions will be able to sit at the bargaining table.

Scope and Contents

In practice, a large part of the actual contents of most CBAs is taken directly from the provisions of the Labor Standards Act (LSA). No category of subjects for bargaining is stipulated by the LSA. It states only that a CBA may be concluded by the two parties for the purpose of specifying labor relations. Thus, any subject in the field of labor relations can be put into a bargaining proposal for negotiating.

After a CBA has been concluded, it must be submitted to the government for reference and examination. Approval of an agreement by the authorities is no longer required under the new CBAA. The government has the power to cancel or amend any provision of the agreement that it finds contrary to law, incompatible with the progress of the employer's business, or not effective in ensuring the maintenance of the employees' normal standards of living.

Duration

CBAs may be concluded for a fixed or an indefinite period, or for the period of time necessary to complete a specified work project. When an agreement is concluded for a fixed period, it must not exceed three years. Indefinite agreements may be terminated one year after the start of the agreement by either party by providing written notice three months in advance.

3.4 INDUSTRIAL ACTION

Strikes

No strike may be declared unless mediation procedures have failed and a strike is favored by a simple majority of the union membership via secret ballot in a general meeting of the labor union. During the period when labor disputes are in the process of mediation or arbitration, an employer may not lock out, suspend work, terminate labor contracts, or carry out other activities unfavorable to the workers on account of such disputes. Similarly, workers may not strike, sabotage or carry out other activities that may interfere with normal work procedure. The Settlement of Labor Disputes Act has also been amended so that employees in the public utility, medical, financial and

fixed-line telecommunications sectors must first sign an agreement promising to maintain services during any protest periods, but an enforcement date has yet to be decided.

Status of Strikers Participation in a strike is voluntary. It is prohibited to impede the performance of work by employees who do not participate in a strike. Participation in a lawful strike is not considered to be a breach of work discipline and may not result in disciplinary punishment.

3.5 SETTLEMENT AND MEDIATION PROCEEDINGS

Overview

The main law governing labor disputes is the Settlement of Labor Disputes Act 1928.

From January to May 2011, there were 9,001 labor dispute cases brought to the attention of the Department of Labor-Management Relations of the Council of Labor Affairs. Most of the cases were resolved by conciliation, while the rest were either resolved through mediation or remain unresolved. No disputes were resolved through formal arbitration. The manufacturing sector was involved in the bulk of the disputes, followed by the commercial sector, the construction industry, transport, storage and communications, social services and public administration.

In practice, mediation and arbitration procedures are of little help in settling labor disputes. Labor disputes are more often resolved by government authorities in charge of labor affairs at all levels acting in an unofficial capacity as conciliators. For this reason, government authorities face many petitions and protests by both labor unions and employers when labor disputes occur.

An amendment to the Settlement of Labor Disputes Act effective on May 1, 2011 adds a "decision" procedure for any disputes arising from employers seeking to keep employees or job seekers from joining or holding a position in a union. In a decision, also referred to as an "intervention," the competent authorities, after having received a complaint from a worker or labor union, may step in and make a direct decision on a dispute, bypassing any assistance from a conciliator or arbitrator.

Rights Disputes and Adjustment Disputes

Labor disputes are divided by law into two categories: rights disputes and adjustments disputes. Rights disputes concern differences between workers and employers over rights and obligations arising out of laws or regulations, collective bargaining agreements or labor contracts. Rights disputes may be settled either by mediation procedures or in court.

Adjustments disputes arise between workers and employers when they cannot agree on whether to continue or change the terms or conditions of employment. Adjustments disputes cannot be handled by the labor courts and can be settled only through mediation or arbitration procedures. In addition, the party representing labor in an adjustments dispute must be either a labor union of more than 10 workers, or more than two thirds of workers in an establishment employing fewer than 10 workers. Either party to a labor dispute may commence mediation procedures by applying to the competent authority. The competent authority must set up a mediation committee to deal with the matter within seven days of receiving the application for mediation. Adjustments disputes may be dealt with by an arbitration committee if requested by both parties to a dispute, or may be initiated by the competent authority.

Labor Courts

Labor courts are present in each district-level court. A labor court may hear non-labor dispute cases. In practice, labor courts are more sympathetic to employees involved in labor disputes.

4. TERMINATION OF EMPLOYMENT

4.1 TYPES OF TERMINATION

Overview

Most employment relationships in Taiwan are subject to the Labor Standards Act (LSA) restrictions on termination of employment and, therefore, are not “at will.” The LSA specifies grounds upon which an employee may be terminated and whether advance notification and severance is required.

In wrongful termination suits, the courts generally place the burden of proof on the employer to provide evidence substantiating a challenged ground for termination.

Termination for Just Cause

With Notice

An employer may terminate an employee with notice, or pay in lieu of notice, under the following circumstances. Employees dismissed under any of these grounds are entitled to severance pay:

- Stoppage of business or a transfer of ownership;
- Business loss or curtailment of business operations;
- Suspension of operations for more than one month for reasons of force majeure;
- Alteration of the business nature, forcing a reduction in the number of employees; and
- The employee is incapable of performing the tasks assigned.

Without Notice

An employer may dismiss an employee without notice or severance pay under the following circumstances:

- Employee misrepresentation of facts at the time of signing the labor contract;
- Acts of violence by the employee against the employer, the employer's family, the employer's representative, or his or her fellow employees;
- Serious breaches of the employment contract or violations of work rules;
- Where a worker has been sentenced to temporary imprisonment in a final and conclusive judgment, and is not granted a suspended sentence or permitted to commute the sentence to payment of a fine;
- Purposeful damage or abuse of machinery, equipment, tools, raw materials, products, or any articles belonging to the employer;
- Intentional disclosure of the employer's technological or business secrets; and
- Absence from work for three consecutive days, or for six days in a month, without justifiable reasons.

Termination During the Trial Period

Most employment contracts provide that the employer or employee may terminate the employment with or without cause and without notice during the first three months of employment. Under the LSA, however, employers cannot terminate employment without cause, whether during the probationary period or employment relationship.

There is no provision with regard to probationary employment. In addition, termination during the probation period or when the probation expires must follow the same relevant provisions in the LSA regarding formal employment, such as advance notice of termination and the payment of severance. Customarily, the probation period is also the training period for the new employee, and the salary is adjusted at the end of the probation or training period. The probation period or training period can be extended if agreed to by both parties.

Resignation

Employees working under indefinite-term contracts must give advance notice before resignation on the basis of the same schedule applicable to their employer (see 4.2 *Notice*).

Protected Categories

Employers cannot terminate employees on maternity leave or receiving medical treatment due to an occupational accident or disease. Termination may still occur under these conditions, however, if the undertaking cannot continue its business and subsequently receives approval from the governmental authority.

Unfair Dismissal

In cases where an employer terminates an employment relationship without a legitimate reason, the employee may request that the court determine whether an employment relationship exists (that is, whether the termination was unlawful), and whether the employee can resume his or her employment, in which case, the employer must pay the employee's salary for the period of unemployment. An employee may claim compensation for any loss or damage caused by unfair dismissal, including the loss or damage caused by the termination of labor insurance. In practice, however, employees whose employment was terminated in violation of the law or employment agreement usually request mediation with the competent authorities to resolve their problems, and the disputes often result in the employees obtaining termination indemnities.

Information and Consultation

With the exception of the information and consultation requirements of the Massive Layoff Protection Act, employers are not statutorily required to inform and consult with employees regarding the termination of employees.

4.2 NOTICE

Employees working under indefinite-term contracts that are terminated with notice are entitled to advance notification as follows:

| Service | Notice Period |
|--------------------|---------------|
| 3 months to 1 year | 10 days |
| 1 to 3 years | 20 days |
| 3 years or more | 30 days |

After receiving a layoff notice from an employer, the employee is allowed paid leave of absence during working hours of up to two days per week to seek new job opportunities.

4.3 TERMINATION INDEMNITY/SEVERANCE PAYMENT

Employees terminated with notice are entitled to severance benefits equal to one month's average pay over the prior six months for each full year of service with their employer prior to July 1, 2005. The average monthly pay includes overtime, subsidies and allowances. Benefits for periods of service of less than one year are pro-rated. Service of less than one month is counted as one month. For periods of service after that date, severance benefits are equal to 50% of the employee's average monthly wage per year of service up to a maximum of six months' pay.

This reduction in benefits is tied to the new pension entitlements established by the Labor Pension Act in 2005. Taiwanese employees changing jobs or joining the workforce after July 1, 2005 are automatically enrolled in the new pension system. A foreigner employee qualified for retirement may receive a pension under the Labor Standards Act plan of one month's average pay for each full year of service.

4.4 TERMINATION AT RETIREMENT

Under the Labor Standards Act (LSA), the two types of retirement are voluntary retirement and enforced retirement. In the case of voluntary retirement, employees may apply for retirement if they have been continuously employed for more than 15 years and are age 55 or older, or at any age if they have been continuously employed for more than 25 years. Employees who have been continuously employed for more than 10 years and are age 60 or older may also apply for retirement. Employers may compel employees to retire who are 65 years of age or older and are not competent to carry out the assigned work due to diminished mental or physical capacity.

The Old System Under the Labor Standards Act

Businesses covered by the LSA must provide retirement benefits for their workers. Under the old system, retirement benefits were funded by employer contributions of between 2% and 15% of payroll, payable as a lump sum at retirement to employees with 15 years or more of service. The benefit is equal to two months' average wage per year of service up to 15 years, plus one month's average wage for every year of service beyond 15 years, up to a maximum of 45 months' pay. Any fraction of a year less than six months is counted as half a year. Any fraction of a year which is equal to or more than six months is counted as one year of service. The average monthly wage is considered to be the employee's wage the month a retirement application is approved. Employees forced to retire because of mental or physical disabilities resulting from their work are entitled to an additional 20% of the pension amount.

The New System Under the Labor Pension Act

The old system has largely been replaced by portable individual retirement accounts under the Labor Pension Act (LPA). Employees who were covered under the old LSA system as of July 1, 2005 have a grace period of five years to decide between the old system and the LPA system. All new employees are covered by the LPA. The majority of employees in Taiwan covered under the LSA are now also covered by the LPA. Under the Act, employers are required to contribute 6% of monthly wages up to TWD150,000 to their employees' individual pension accounts. Employees may contribute up to 6% of pay on the same wage base. The Bureau of Labor Insurance administers the accounts. The State invests the funds and guarantees a minimum return equal to the interest paid by local banks on two-year certificates of deposit. At normal retirement (age 60), the account holders with 15 or more years of contributions have the option of taking a lump sum or installment payments. For account holders with less than 15 years, the benefit is payable as a lump sum. The LPA is mandatory for Taiwanese employees subject to the LSA and, as such, employers are not allowed to make LPA contributions on behalf of foreign employees.

4.5 ORGANIZATIONAL CHANGES

Overview

According to a 1985 interpretation of the Enforcement Rules of the Labor Standards Act (LSA) by the Ministry of the Interior, employer-directed changes in the nature or place of work of an employee are subject to the following conditions:

- Changes must be necessary for the business operation of the undertaking, may not violate the labor contract of the employee, and may not negatively affect salary and other working conditions.
- Employees are qualified to perform the new work.
- Employers must provide any necessary assistance if the work site is moved to a more distant location.

Only undertakings that are subject to the LSA must follow these conditions. For establishments not under the scope of the LSA, the employment agreement governs such matters.

Where employment contracts are transferred to the new owner in a merger or acquisition, the new owner must recognize the years of service and related rights of the affected employees. If contracts are not transferred, the former employer must provide notice and severance to the dismissed employees pursuant to the LSA.

Transfer of Undertaking

Article 11 of the LSA provides that employers may terminate labor contracts with advance notice when the business is suspended or ownership is transferred, when business is reduced, or when force majeure leads to business suspension for more than one month.

Article 20 of the LSA provides that an enterprise may terminate employees who will not be hired by a surviving or new company after the company is merged or consolidated. Enterprises, however, must provide prior notice (or pay in lieu of notice) and severance pay to employees who will not be hired by the surviving or new company. According to an interpretation issued by the Council of Labor Affairs, Article 20 is also applicable when a company transfers its assets and dissolves.

4.6 COLLECTIVE DISMISSALS

Article 11 of the Labor Standards Act provides that an employer may terminate a labor contract with advance notice if a change in the business's nature requires a reduction in the number of workers and the particular worker cannot be assigned to another suitable position.

The Massive Layoff Protection Act (MLPA), together with its four subordinate regulations, governs large-scale layoffs and aims to protect employees' interests and prevent unscrupulous business owners from firing their employees in massive numbers to evade proper compensation. Employers are required to report a planned layoff to the authorities 60 days in advance. During that time, employers are required to announce the layoffs publicly and, within 10 days of announcing the layoffs, consult with labor representatives on matters such as wages, severance pay, retirement pay and termination dates.

The criteria for determining whether the MLPA applies are as follows:

| Size of Company Labor Force | Number of Employees to be Laid Off and Time Frame |
|-----------------------------|---|
| Fewer than 30 employees | 10+ employees within 60 days |
| 30 to 200 employees | 20+ employees in a day, or one third of the labor force in 60 days |
| 200 to 500 employees | 50+ employees in a day, or one fourth of the labor force within 60 days |
| Over 500 employees | One fifth of the labor force within 60 days |

4.7 MANAGERIAL DISMISSALS

Overview

The Labor Standards Act (LSA) does not contain separate provisions applicable to the termination of employees in management. Taiwan's labor laws set strict restrictions on the termination of employees. The laws distinguish between "employment" relationships and "mandate" relationships. Taiwan's LSA, which applies to all employment relationships, only allows for termination for cause. The determination of whether a relationship is likely to be deemed one of employment or of mandate depends on a number of factors, including the terms of the contract, the nature and extent of the individual's substantive responsibilities, and so on. Regarding companies under the purview of the Company Act, managers under "mandate" relationships may be dismissed with the approval of the shareholders or Board of Directors if the manager violates duties specified in his or her contract. The decision to provide severance pay to a dismissed manager is at the discretion of the shareholders or company directors.

Severance

There is no formal requirement for the employer to provide any severance pay, unless stipulated under the terms and conditions of employment.

4.8 OTHER TERMINATION ISSUES

Employers are required to maintain employee records covering name, sex, birth date, place of ancestral origin, educational background, address, uniform identification card number, employment starting date, wage, labor insurance starting date, merits and demerits, injuries and diseases, and other significant facts about each worker for a minimum of five years from the date of the employee's departure.

While civil suits against employers citing discrimination or sexual harassment are rare, litigation for wrongful termination is on the rise. To defend against potential employee claims, employers should maintain thorough employee records, document issues of concern, and implement appropriate evaluation and disciplinary systems.

5. USEFUL ADDRESSES

Bureau of Employment and Vocational Training

83 Yenping N. Road
Section 2, Datong District
Taipei 103
Tel: (886) 2 8590 2567
Website: www.evta.gov.tw

Bureau of Labor Insurance

4 Roosevelt Road
Section 1, Zhongzheng District
Taipei 100
Tel: (886) 2 2396 1266
Website: www.bli.gov.tw

Bureau of National Health Insurance

140 Hsinyi Road
Section 3, Taipei 10634
Tel: (886) 2 2706 5866
Website: www.nhi.gov.tw

Council of Labor Affairs, Executive Yuan

9th Floor, 83 Yenping N. Road
Section 2, Datong District
Taipei 103
Tel: (886) 2 8590 2866
Website: www.cla.gov.tw

Institute of Occupational Safety & Health

99 Lane 407, Hengke Road
Sijhih, Taipei County 221
Tel: (886) 2 2660 7600
Website: www.iosh.gov.tw

National Immigration Agency

15 Guangzhou Street
Jhongjheng District
Taipei 100
Tel: (886) 2 2388 9393
Website: www.immigration.gov.tw

6. SAMPLE EMPLOYMENT CONTRACT

EMPLOYMENT CONTRACT

AN EMPLOYMENT CONTRACT made on the _____ day of _____, 20____. BETWEEN

(1) _____ ("the Company") and

(2) _____ ("the Employee")

Address: _____

ID no.: _____

Whereby it is mutually agreed as follows:

POSITION OF EMPLOYMENT

The Employee shall be employed as _____, in charge of _____. The nature of the Employee's position and duties may change with the needs of the company. The Employee shall be employed in any of the following locations as the company may require: _____.

COMMENCEMENT DATE

The Employee shall be employed on probation for three months from the following commencement date: _____.

RESPONSIBILITIES

- (1) The Employee shall act at all times in accordance with the instructions of the Company.
- (2) The Employee shall act at all times in a civil manner and shall be punctual, sober, conscientious and loyal in carrying out the Employee's duties.
- (3) The Employee shall recognize his or her responsibilities under the "Statement of Understanding Concerning Trade Secrets, Confidential Information and Propriety Rights" which forms a central part of, and is attached to, this Employment Contract.
- (4) The Employee shall abide by the work rules in the Company's handbook, which form a part of this agreement. Any changes to those rules shall be announced to employees and circulated two weeks in advance of their taking effect.
- (5) The Employee shall not engage in any fraud, dishonesty or criminal act.
- (6) The Employee shall not use without authority for personal purposes any office machines, equipment or other property of the Company.
- (7) During the term of this Employment Contract, the Employee shall not take any outside employment unless the Company has consented first in writing.

SALARY

The Company shall pay the Employee a salary of TWD _____ per month for 12 months a year, with the wage payable at the end of each month.

ANNUAL BONUS

For each fiscal year ending on _____, the Employee shall be entitled to a bonus calculated according to the following formula _____, provided he or she joined the company before _____.

Employees who have completed a full year of employment shall be entitled to an annual bonus.

The Employee will not be entitled to an annual bonus if he or she terminates employment prior to the end of any calendar year.

ANNUAL LEAVE

The timing of annual leave will be by mutual agreement between the company and the employee. Annual leave shall not be carried over from one 12-month period to the next unless approved by the Company. There will be no payment in lieu for any unused leave entitlement except when the contract is terminated.

TERMINATION OF EMPLOYMENT

This Employment Contract may be terminated by either party upon the delivery of written notice of termination to the other party at any time.¹

COMPUTER-PROCESSED DATA

The Company may find it necessary to use computers to process and store personnel information. The Employee consents to the Company's collection and use of computer databases to compile, update, maintain and access the Employee's personal data.

COVENANTS, INDEMNIFICATION AND INTELLECTUAL PROPERTY

Covenant Not To Compete: The employee agrees that upon termination of his or her other employment, whether by the Company or the employee and whether with or without cause, for a period of 12 months thereafter the employee shall not directly or indirectly engage in or prepare to engage in, or be employed by, any business that is engaging in or preparing to engage in any aspect of the Company's business or any aspect of any business that is competitive with the Employer, within any jurisdiction that the Employer operates at the time of termination, or as much geographic territory as a court of competent jurisdiction deems reasonable.

Indemnification and Holding Harmless: The Employee represents and warrants that the Employee's appointment with the Company will not violate the terms and conditions of any agreements entered into by the Employee prior to or during the Employee's employment with the Company. The Employee covenants and agrees to indemnify and hold the Company harmless from any and all suits and claims arising out of any breach of any terms and conditions contained in any such agreements entered into by the Employee.

Covenant Not To Divulge Confidential Information: The Employee covenants and agrees that, except as required by the proper performance of his or her duties for the Company, he or she shall not divulge any Confidential Information or Trade Secrets concerning any Company vendors, customers or employees to any other person, entity or company besides the Company. For purposes of this Agreement, "Confidential Information" shall mean information not generally known by the Company's competitors or the general public concerning the Company, including but not limited to: its financial affairs, sales and marketing strategy, acquisition plan, pricing and costs; its customers' names, addresses, telephone numbers, contact persons, staffing requirements, margin tolerances regarding pricing, skill sets, availability and wage rates. "Trade Secrets" shall mean information that the Company takes measures to keep secret and that gives the Company an advantage over its competitors, and includes but is not limited to: sales, recruiting, pricing and marketing techniques, sales and recruiting manuals, forms for acquiring and recording information, financial controls, management practices, policy and procedures.

Intellectual Property: The Employee acknowledges and agrees that all intellectual property, including patents, copyrights and trademarks, used by the Company in the Company's Business, which were created or enhanced directly or indirectly, in full or in part, based upon the actions and services of the Employee are owned by the Company. The Employee covenants and agrees to execute any and all documents necessary to establish ownership of any intellectual property in the name of the Company.

Severability: If any provision of this Employment Contract is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of this Employment Contract shall not in any way be affected.

Governing Law, Jurisdiction

If this contract is entered into in both English and Chinese, the English version shall govern.

The applicable law for any disputes arising from this Employment Contract is that of the Republic of China.

The District Court shall have jurisdiction in the first instance over any disputes arising from this Employment Contract.

¹ If the employer terminates employment within the probation period, no notice period is required, but the termination must be for cause and severance may be required. If the employer terminates employment after the probation period, the termination must be for cause, and a notice period plus severance may be required.

Agreed and accepted by:

Employee

Date

Authorized Company Representative

Date