Employment and Employee Benefits in Taiwan: Overview

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A Q&A guide to employment and employee benefits law in Taiwan.

This Q&A gives a high-level overview of the key practical issues including: the scope of employment regulation; employment status; background checks; regulation of the employment relationship (including unilateral changes by an employer to the terms and conditions of employment); minimum wage and bonuses; working time, holidays and flexible working; illness and injury of employees; rights created by continuous employment; provisions for fixed-term, part-time and agency workers; discrimination and harassment; termination of employment (including protection against dismissal and protected employees); resolution of disputes between an employee and employer; redundancy/layoff; employee representation and consultation; consequences of a business transfer; employer and parent company liability; employer insolvency; employers' health and safety obligations; taxation of employment income; intellectual property; restraint of trade; and relocation of employees.

Scope of Employment Regulation

1. Do the main laws that regulate the employment relationship apply to:
   - Foreign nationals working in your jurisdiction?
   - Nationals of your jurisdiction working abroad?

Taiwan is a civil law jurisdiction. The Labor Standards Act (LSA) is the most important employment-related statute, which regulates the minimum terms and conditions of employment. The LSA applies to all industries and occupations (with a few exceptions) and covers the majority of employees.

Laws Applicable to Foreign Nationals

The laws and regulations regulating employment also apply to foreign nationals working in Taiwan, regardless of any choice of law clauses contained in an employment contract. Foreign nationals, with a few exceptions, must also have a resident visa and a work permit in order to work legally in Taiwan.

Laws Applicable to Nationals Working Abroad

Where an employee who is the subject of an employment relationship governed by Taiwan employment law is assigned to work temporarily abroad, the employment relationship will continue to be subject to Taiwan employment laws, unless the employee agrees to suspend the original employment agreement.

Employment Status

2. Does the law distinguish between different categories of worker? If so, what are the requirements to fall into each category, the material differences in entitlement to statutory employment rights and are there any maximum time periods for which each category of worker can be engaged?

Categories of Worker

Employee/worker. The LSA broadly defines a worker as a person who is hired by an employer to do a job for which wages are paid. Employment contracts are divided into fixed-term (temporary) and indefinite term (permanent) contracts. Contracts relating to temporary, short-term, seasonal and specified work are generally considered to constitute fixed-term contracts.

Individuals with substantial managerial authority may be deemed to constitute appointed managers that work under a mandate relationship which is subject to the provisions of the Civil Code, rather than under an employment relationship which is subject to the provisions of the LSA.

Independent contractor/self-employed. An independent contractor working for a company is not considered to be an employee, unless the language of the contract, or the substance of the relationship between the independent contractor and the company, implies that the relationship is in fact an employment relationship.

Entitlement to Statutory Employment rights

Statutory employment rights are enjoyed upon employment by all employees (but not by independent contractors or those with substantial managerial authority). Fixed-term workers receive essentially the same statutory rights and benefits as those that apply to permanent workers.

Time Periods

Employment contracts are generally considered to constitute permanent employment contracts unless they are otherwise specified as fixed-term contracts. However, employment contracts that specifically relate to temporary, short-term (less than six months), seasonal (less than nine months) or specified work (for a specific period) will usually be considered to constitute fixed-term contracts.

Background Checks

3. Are there any restrictions or prohibitions on carrying out background checks in relation to applicants?

Restrictions/Prohibitions on Conducting Background Checks

The Employment Services Act prohibits employers from requesting information from a job applicant that is not necessary for employment, including physiological information (such as medical records), psychological information (such as psychiatric test results), and personal information (such as criminal records and credit score information).

Background Checks by Third Parties

Employers are permitted to use third parties to conduct background checks of job applicants on their behalf, but the data collected must not exceed that information that is necessary for employment or that is required in the public interest (considering the nature of the job position), and in addition, in most cases, the job applicant must also provide their express consent for such third-party data collection. Third parties are further restricted to only collecting data that is already in the public domain. Before any data is collected, the employer must notify the employee of the:

- Name of the third-party collector.
- Purpose(s) of the data collection.
- Types of personal information to be collected.
- Period, region, counterparty, and method of use of the personal information.
- Effects (on the applicant) of not consenting to the collection of the personal information.
- Rights of the job applicant under the Personal Data Protection Act.

Regulation of the Employment Relationship

4. How is the employment relationship governed and regulated?

Written Employment Contract

Generally, an employment contract need not be in writing. However, employers who wish to employ foreign nationals must have a written employment contract. The contract must include certain essential terms of employment, including, among other things, details on:

- Place of work.
- Work duties.
- Time of starting and finishing work.
- Vacations.
- Wages.
- Rules of conduct.

- Work discipline.

An employment contract can be in Chinese, English, or any other language that the parties to the contract have agreed upon. In the event of a dispute, Chinese translations of the agreement, and any supporting documents, must usually be prepared for submission with the court.

Implied Terms

Employers must meet or exceed the minimum requirements set out in the LSA and other related labour laws and regulations. Even where the obligations and entitlements are not fully detailed in a written employment contract, the employer must nonetheless comply with all mandatory legal employment provisions.

Collective Agreements

Any working conditions agreed upon in a collective agreement with unions or employee representatives will automatically be implied into any employment agreement executed between an employer and any employees who are the subject of the collective agreement. Where working conditions are different from those stipulated in a collective agreement, those conditions are ineffective and must be replaced by the stipulations in the collective agreement, unless either:

- The collective agreement expressly allows otherwise.
- The change to working conditions is for the employees' benefit.

5. What are the main points to consider if an employer wants to unilaterally change the terms and conditions of employment?

Generally, employers cannot unilaterally change the terms and conditions of the employment relationship without the employee's consent, particularly if those changes are unfavourable to the employee. However, the employer can unilaterally make changes to discretionary payments. Any changes made by the employer must be necessary and reasonable.

Where changes are made to the working conditions or transfers/reassignments are made, the following conditions apply:

- The changes must be based on the needs of the business and be for a proper purpose.
- No changes that are unfavourable to the employee can be made to salary or other working conditions.
- The changes must be suited to the specific employee's skills and abilities.
- Assistance must be provided to employees if the place of work is changed and the new place of work is inconvenient or far away for the employees concerned.
- The interests of the employee's families and their lives must be considered.

Minimum Wage and Bonuses

6. Is there a national (or regional) minimum wage? Is it common to reward employees through contractual or discretionary bonuses?

Minimum Wage

From 1 January 2023 to 31 December 2023 the minimum wage was TWD26,400 per month and TWD176 per hour. From 1 January 2024 the minimum wage is TWD27,470 per month and TWD183 per hour.

Bonuses

It is common to reward employees through contractual or discretionary bonuses. After the closing of the books of account at the end of the business year, a business entity will, after paying taxes, covering losses for the previous year and setting aside stock dividends and legal reserves, pay allowances or bonuses out of the balance of net profits. Details on bonuses must be specified in an employer's work rules.

Under the Company Act, a fixed amount or ratio of profit of the current year distributable as employees' compensation must be specified in the articles of incorporation of the company. Before paying such compensation, the company's accumulated losses must have been covered. Such distributions must be agreed upon by a majority resolution at a meeting of the board of directors, and reported on at the shareholders' meeting, and profits can be distributed as shares or cash.

Working Time, Holidays and Flexible Working

7. Are there restrictions on working hours, and if so, can an employee opt out? Is there a minimum paid holiday entitlement? Is there a statutory right for employees to request to work flexibly?

Working Hours

Restrictions on working hours. An employee can work no more than eight hours a day (not including overtime) and no more than 40 hours per week, and must have at least two rest days every seven days, with one mandatory day off and one flexible rest day. An employee cannot agree to work on the mandatory day off.

Overall working hours cannot exceed 12 hours a day (regular working hours plus overtime hours), and the maximum amount of overtime hours currently allowed is 46 hours per month. Subject to certain exceptions, overtime hours worked on flexible rest days will count towards an employee's total overtime hours.

Taiwan's LSA also provides that overtime can be calculated over a consecutive three-month period by employers, though it cannot exceed 54 hours in one month or 138 hours over three months (meaning that the general 46-hour limitation on overtime per month still applies over the three-month period as an average). The start and end date of this period can be agreed upon by the employer and employee. To implement this overtime policy, the employer must obtain consent from the

relevant labour union, or if there is no labour union, the approval of a labour management conference. If the company has 30 or more employees (including the employees of that company's branches or subsidiaries), this change must be reported to the local labour authority. The deadline for reporting these matters is one day prior to the effective date of the changes.

Overtime pay. The employee can agree to work on the flexible rest day, but higher overtime rates will apply. Employees can either choose compensatory leave equal to the number of hours of overtime worked or an overtime payment after their overtime work has been completed. There must be a written agreement between employers and employees which clearly states the relevant standards governing compensatory leave, the period within which the compensatory leave must be taken, and how any outstanding compensatory leave is dealt with at the end of this period. Employers cannot force their employees to choose compensatory leave instead of an overtime payment.

In addition, unused compensatory leave must be converted into an overtime payment, and given to the employee, upon its expiration or upon the dismissal or voluntary resignation of the employee. Expired compensatory leave converted into an overtime payment must be paid on either the date for issuing wages or within 30 days following the deadline for use of the compensatory leave. Expired compensatory leave paid to a dismissed or resigned employee must be issued immediately upon the termination of the employment relationship.

The deadline for use of compensatory leave must be agreed upon by the employer and employee, but cannot fall after the deadline for annual leave.

The overtime payment calculations for overtime work completed by employees on regular work days are as follows:

- Up to two hours of overtime: 1.34 times the regular hourly wage.
- Between two to four hours of overtime: 1.67 times the regular hourly wage.

The overtime payment calculations for overtime work completed by employees on flexible rest days are as follows:

- Up to two hours of overtime: 1.34 times the regular hourly wage.
- Over two hours and up to eight hours of overtime: 1.67 times the regular hourly wage.
- Over eight hours and up to 12 hours of overtime: 2.67 times the regular hourly wage.

Employees and employers in certain industries can opt out of these restrictions by creating a system of flexible working hours. Working hours under these arrangements will depend on the industry involved and the specific arrangement agreed upon, and will be effective provided approval is obtained from a union or a labour management conference. If working hours form part of a condition agreed upon in a collective agreement, this will automatically be implied into any employment agreement.

Employers must comply with the requirement to record employees' work attendance, and can use any of the following methods to compile employees' work attendance records:

- Attendance books.
- Attendance cards.
- Swipe card machines.
- Entry access cards.
- Biometric identification systems.
- Computer attendance record systems.

- Other recording tools that can verify employees' attendance records.

Special restrictions applicable to shift workers. There are no special restrictions applicable to shift workers. However, the company must arrange working hours and rest breaks that comply with the regulations provided for in the LSA (see below, *Rest Breaks*).

Rest Breaks

Rest breaks during the working day. Employees must be allowed to take a 30-minute rest break every four hours. However, these breaks can be rescheduled to be taken within other working hours if a rotation system (for example, shift work) is implemented, or where the work is of a continuous or urgent nature.

Rest periods between working days. Employees on rotation must have a rest period of at least 11 hours continually before commencing their next shift. Employees must also have a rest period of at least one day during each seven-day period.

Special provisions for night/shift work. Employees working under challenging or difficult conditions or with dangerous machinery must be provided with shorter working hours and longer rest breaks under the Occupational Safety and Health Act. Workers on day/night shifts must be rotated on a weekly basis, unless the employee has expressly consented to a different arrangement. Appropriate rest breaks must also be granted. Any shift changes in the rotation system must be specified in the employment contract.

Holiday Entitlement

Minimum paid holiday entitlement. Employees are entitled to the following number of days of paid annual leave based on their length of service with the employer (calculated from the date the employee commenced employment):

- Three days for service of more than six months but less than one year.
- Seven days for service of more than one year but less than two years.
- Ten days for service of more than two years but less than three years.
- 14 days for service of more than three years but less than five years.
- 15 days for service of more than five years but less than ten years.
- One additional day for each year of service over ten years (up to a maximum of 30 days).

The period within which accumulated annual leave must be used can be based on service years, calendar years, school years, fiscal years or any other kind of annual system agreed upon between the employer and employee. Employers must inform employees that they can arrange their annual leave and their annual leave entitlements within 30 days of the employee being eligible for annual leave.

An employer and the employee can agree to carry over unused annual leave to the next year. However, any remaining annual leave must be converted into wages and paid to the employee at the end of the second year, or upon termination of the employment contract. At the end of the second year or upon termination of the employment contract, the employer must pay the wages converted from remaining annual leave to the employee. Leave carried over from the first year must be converted into wages based on the employee's wage level for the first year.

Where the employer and the employee do not agree to carry over unused annual leave to the next year or where their employment contract is terminated, one day's regular wages must be paid for each day of unused annual leave remaining. An employee's daily wage is based on their regular working hours and wage at the time one day prior to either the end of their service year or the termination of their employment contract. Where an employee is paid monthly, the daily wage is based on their regular working hours and wage at the time one month prior to either the end of their service year or the termination of

their employment contract, divided by 30.

Employers can pay this amount either on the employee's regular pay day, or within 30 days of the end of the employee's service year. In the case of termination of employment, the amount must be paid to the employee immediately.

Employers must notify their employees of their annual leave entitlements and the total amount to be paid in respect of unused annual leave on an annual basis, and must record this information in each employee's salary roll. Employees should be notified in writing, electronically, or be provided with some means to access and print out the information, prior to the period when wages are usually paid each year.

Public holidays. There are between ten to 15 public holidays a year. Some are observed on fixed dates, some according to the lunar calendar. Commemorative holidays include:

- Founding Day of the Republic of China (1 January).
- Peace Memorial Day (28 February).
- Labour Day (1 May).
- National Day (10 October).

Designated holidays include:

- Lunar New Year (first three days of the lunar calendar).
- Women and Children's Day (the day before Tomb Sweeping Day).
- Tomb Sweeping Day (based on the lunar calendar).
- Dragon Boat Festival (based on the lunar calendar).
- Mid-Autumn Festival (based on the lunar calendar).
- Lunar New Year's Eve.
- Other public holidays as designated by the central government.

Employers and employees can negotiate and agree to adjust these holidays to working days.

Flexible Working

There is no statutory right for employees to request to work flexibly. Employers have discretion to implement flexible working policies but they must ensure that they adhere to the law when implementing such policies.

Illness and Injury of Employees

8. What rights do employees have to time off in the case of illness or injury? Are they entitled to sick pay during this time off? Who pays the sick pay and, if the employer, can it recover any of the cost from the government?

Employees can take the following sick leave:

- 30 days ordinary sick leave a year where the employee is not hospitalised.
- One year of sick leave within a two-year period where the employee is hospitalised.

The combined number of sick days taken generally cannot exceed one year within a two-year period. Employers can grant additional leave beyond the maximum one-year period at their discretion, or they can choose to terminate the employment relationship. However, in the event of disability, injury or sickness on account of an occupational accident, an employee will be entitled to occupational sickness leave during the period of medical treatment or recuperation. This period of sickness leave can exceed one year in a two-year period and will be provided until the employee has recovered.

Entitlement to Paid Time Off

Half-pay must be provided to employees on ordinary sick leave for up to 30 days in one year. If the injury or sickness is partially covered by labour insurance, but the amount of compensation is less than half of the employee's wage, the employer must cover the balance.

When an employee is not able to work due to disability, injury or sickness as a result of an occupational accident, the employer must pay compensation on the basis of the employee's full wage. If the employee does not recover after two years and has been diagnosed and confirmed by a designated hospital as being unable to perform the original work but does not meet the disability requirements, the employer can terminate the employment contract and make a payment to the employee which is equivalent to 40 months' average wage. An employer must obtain the employee's agreement on how this payment will be made, and how regularly this will be made (for example, on a monthly basis). There is no prescribed maximum time frame to make this type of payment.

Entitlement to Unpaid Time Off

Employees can take additional unpaid leave with employer's approval if their paid sick leave and annual leave allowances have been used. The employer can grant the employee an absence of leave without pay for a maximum period of one year.

Recovery of Sick Pay from the State

Employers cannot recover sick pay from the state.

Provisions Concerning COVID-19

All provisions concerning COVID-19 were terminated on 15 August 2023 and a full return to the standard sick leave provisions is now in effect.

Rights Created by Continuous Employment

9. Does a period of continuous employment create any statutory rights for employees? If an employee is transferred to a new entity, does that employee retain their period of continuous employment? If so, on what type of transfer?

Statutory Rights Created

In general, employees are entitled to all employment-related statutory rights upon commencement of the employment relationship, but certain rights, such as entitlement to paid annual leave, are gained after an employee has completed a specific period of employment (see *Question 7, Holiday Entitlement*).

Consequences of a Transfer of Employee

When a business entity is restructured or changes ownership, the original employer must terminate the employment contracts of the workers who wish to leave, with advance notice and severance pay. The new employer must recognise the prior period of service of any retained workers.

Fixed-Term, Part-Time and Agency Workers

10. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees? To what extent are part-time workers entitled to the same rights and benefits as full-time workers?

The LSA distinguishes between fixed-term and indefinite-term workers (see *Question 2*). However, a fixed-term contract will be automatically deemed to be an indefinite-term contract where either:

- A prior contract and a new contract together cover a period of more than 90 days, and the period of time between the expiration of the prior contract and the execution of the new one does not exceed 30 days.
- An employer raises no immediate objection to an employee continuing to work past the expiration date of their fixed-term contract.

While both fixed-term and indefinite-term workers receive essentially the same statutory rights and benefits, fixed-term workers are not entitled to advance notice or severance payments upon expiration of the term of employment. Any employee misclassified as a fixed-term worker or an independent contractor can bring a civil action against the employer claiming all of their statutory entitlements.

Temporary Workers

Temporary work is defined as work of non-continuous nature which does not exceed six months. Temporary workers receive statutory rights and benefits that are essentially the same as indefinite-term (permanent) employees.

Agency Workers

Agency workers receive statutory rights and benefits as employees of the agency. Many agency workers in Taiwan have in the past actually been regular employees, but employers have made them sign employment contracts with other agency companies before being "dispatched" to the real employer, in order for the real employer to circumnavigate the usual responsibilities applicable to employers under the LSA. The LSA now specifically prohibits the taking advantage of such legal loopholes. Under the LSA, if a client company conducts an interview and decides to recruit a candidate, but then makes a "fake" dispatch contract with an agency company instead of hiring that candidate directly, the candidate who is then "hired" by the agency company and dispatched to the client company that interviewed them can now claim to have been hired

directly by the client company within 90 days of the first day on which they provide their services as an employee.

Part-Time Workers

Statutory rights and benefits for part-time workers and full-time workers are basically the same (pro-rated where relevant). Part-time workers can also be employed (and paid) by a separate entity within the employing group of companies.

Discrimination and Harassment

11. What protection do employees have from discrimination or harassment, and on what grounds?

Protection from Discrimination

The Employment Services Act prohibits employers from discriminating against employees on the any of the following grounds:

- Race.
- Class.
- Language.
- Thought.
- Religion.
- Political affiliation.
- Place of origin or birth.
- Gender.
- Sexual orientation.
- Age.
- Marital status.
- Appearance.
- Facial features.
- Disability.
- Horoscope (zodiac sign).
- Blood type.
- Past or present membership of any labour union.

The Gender Equality in Employment Act (GEEA) also prohibits discrimination on the basis of gender and sexual orientation with regard to recruiting, hiring, training, salary, welfare benefits, remuneration, and other conditions of employment. Employers will be liable if employees or job applicants suffer harm as a result of gender or sexual orientation discrimination. Employees or job applicants who have suffered such harm can claim reasonable compensation, even for non-pecuniary losses. The statute of limitation for damage arising from discrimination or harassment is either:

- Two years, running from the time the claimant becomes aware of both the damage and the other parties' liability.
- Ten years since the harassing conduct or other wrongful acts were committed.

The GEEA also prohibits discrimination on the basis of gender or sexual orientation in the case of retirement, discharge, severance, and termination. Any work rules, employment contracts, and collective agreements that stipulate or arrange in advance that marriage, pregnancy, childbirth, or childcare activities will result in severance or an unpaid leave of absence will be deemed as null and void.

Protection from Harassment

Sexual harassment is defined broadly under the GEEA to include the creation of a hostile, intimidating and/or offensive working environment, or explicit or implicit requests of a sexual nature. Employers must actively prevent sexual harassment in the workplace. In businesses with more than 30 employees, guidelines for the prevention of sexual harassment which outline the applicable complaint procedures and the punishment for sexual harassment must be drawn up and publicly displayed. In the latest amendments to the GEEA which will come into force on 8 March 2024, employers with ten or more, but fewer than 30, employees will also be required to establish an internal complaints channel and publicly display information concerning the use of this channel in the workplace.

When employees or job applicants suffer damage as a result of sexual harassment, both the employer(s) and the harasser(s) will be jointly and severally liable for compensation. However, the employer is not liable for the damage if they can prove that:

- They have complied with the GEEA.
- They have put in place all of the requisite preventative measures required under the GEEA.
- They have exercised all necessary care in preventing damage from occurring.

If compensation cannot be obtained by the injured party as a result of this, the court may, on their application, take into consideration the financial condition of the employer and the injured party and order the employer to pay for a portion of the damage, or for the entire damage. The court can also, on its own application, order the employer to compensate part or all of the damage. Employers who pay compensation as a result of a harassment claim also have separate rights of recourse against the harasser(s).

Termination of Employment

12. What rights do employees have when their employment or employment contract is terminated?

As Taiwan is not an at-will termination jurisdiction, any termination of an employment contract must be carried out

according to one of the specifically allowed circumstances for unilateral termination under the LSA (that is, either termination with notice and severance pay, or termination without notice or severance pay).

Termination with notice and severance pay. An employer can terminate an employment contract with notice (or with pay in lieu of notice) and with severance pay only in one of the following circumstances:

- Stoppage of business or a transfer of ownership.
- Business losses or curtailment of business operations.
- Suspension of operations for more than one month due to a force majeure event.
- Alteration of the business nature, forcing a reduction in the number of employees where those employees cannot be reassigned to other suitable positions.
- The employee is incapable of performing the tasks assigned.

Termination without notice or severance pay. An employer can terminate an employment contract without advance notice or severance pay only in one of the following circumstances:

- Misrepresentation of the facts by the employee at the time the labour contract was signed which leads, or may lead, to the employer suffering damage.
- Acts of violence by the employee against the employer, the employer's family or representative, or other employees.
- Serious breaches by the employee of the employment contract or work rules.
- The employee has been sentenced to temporary imprisonment in a final judgment, which cannot be suspended or commuted to a fine.
- Purposeful damage or abuse to the employer's property by the employee.
- Intentional disclosure by the employee of the employer's technological or business secrets.
- The employee's absence from work for three consecutive days, or for six days in a month, without justifiable reason.

Notice Periods

Employers. Where notice and severance pay must be given, advance notice is provided as follows on the basis of the employee's length of service:

- Ten days' notice for service of more than three months and less than one year.
- 20 days' notice for service of more than one year but less than three years.
- 30 days' notice for service of three years or more.

Dismissal where notice and severance pay are not required, except where a worker has been sentenced to temporary imprisonment, must be carried out within 30 days from the date the employer becomes aware of the circumstance that initiates the dismissal.

Employees. Employees on fixed-term contracts of a duration of over three years may terminate the employment when three years has been completed but must give 30 days' notice. Employees on fixed-term contracts of a duration of less than three years are not permitted to terminate their contracts without one of the causes for termination listed below (without notice), or without the employer's agreement. Employees on indefinite-term contracts must give the same amount of notice as

employers (see above, *Notice Periods*: Employers).

An employee can terminate an employment contract without giving advance notice only in one of the following situations:

- Misrepresentation of the facts by an employer at the time the employment contract was signed, which leads, or may lead, to the employee suffering damage.
- The employer, their family member or their agent commits violence against or grossly insults the employee.
- Where work is likely to be injurious to the employee's health, the employee has requested an improvement to working conditions, but no changes are made.
- An employer, an agent of the employer or a fellow worker contracts a harmful, contagious disease and there is a possibility that the employee may contract this disease.
- An employer fails to pay wages in accordance with the employment contract, or does not give sufficient work to an employee who is paid on a piecework basis.
- An employer breaches the employment contract or violates any labour statute or administrative regulation which is likely to adversely affect the employee's rights and interests.

Severance Payments

As regards severance payments, Taiwanese employees who began their current jobs prior to 1 July 2005 are given a choice between selecting the old retirement system under the LSA or the newer system under the Labor Pension Act (LPA). Foreign national employees permitted to reside permanently in accordance with the relevant provisions of the Immigration Act and employed in Taiwan are also now eligible to receive severance payments under the LPA. Employees who began their current jobs after 1 July 2005 can only use the system under the LPA. Severance pay under both the LSA and the LPA must be paid within 30 days of termination of the employment contract. Employees cannot waive their rights to severance or retirement pay.

For severance pay under the LSA, severance pay will be equal to one month of average wages for each year of service for an employee who has been continuously employed by the same entity. An employee who has worked for less than a year will be entitled to severance pay in proportion to their months of service, with a fraction of a month deemed equal to one month.

For severance pay under the LPA, entitlement to severance pay is still calculated based on one month's average wages for each year of service, but the amount payable for each year of service will be equal to 50% of the employee's average monthly wage, up to a maximum of six month's pay.

Procedural Requirements for Dismissal

The employer must file a report to the competent labour authority at least ten days prior to any unilateral termination of an employment contract. If the employee is a foreign national, the employer must notify (in writing) the competent labour authority, the National Immigration Agency and the police within three days following the termination of an employment contract.

13. What protection do employees have against dismissal? Are there any specific categories of protected employees?

Protection Against Dismissal

Grounds for dismissal. Any dismissal must be carried out according to one of the specifically permitted circumstances for unilateral termination (see *Question 12*).

Procedural requirements for dismissal. Employees that have been dismissed can apply for mediation with the local government employment centre, or can alternatively file a civil action challenging a dismissal (mediation must precede a trial). Most Taiwan courts have a specialised division dealing with labour-related cases. If the court determines that the dismissal was unlawful, the employer must pay the employee's salary for the period of unemployment, as well as compensation for any loss or damage caused by the dismissal. The employee can also be reinstated.

Prerequisites to qualify for protection against dismissal. There are no prerequisites required of employees to qualify for the general protections against dismissal that are provided in the LSA. Dismissed employees may apply for mediation and later file a civil action for protection after the dismissal (a civil action can only be filed when mediation fails).

Protected Employees

Employers cannot dismiss employees who are either:

- On maternity leave or parental leave.
- Receiving medical treatment as a result of an occupational accident or disease.

An employer cannot dismiss or transfer any employees affected by a mass redundancy plan during the negotiation period of that plan.

Resolution of Disputes Between an Employee and Employer

14. Is there a governmental or independent organisation to which employees can refer complaints in the event that there is a dispute between the employee and the employer?

The agency in charge of recording and resolving employment disputes is the Department of Labor under each city or county government (for example, the Department of Labor, Taipei City Government (*https://bola.gov.taipei/*)).

The Department of Labor will try to mediate the dispute after conducting a basic investigation of both parties' evidence. There are no fees for the mediation procedure conducted by the Department of Labor. Disputes mediated through the Department of Labor by a single mediator can take up to 20 days to be resolved. Those referred to a mediation committee can take from 42 up to 49 days to be resolved.

If the dispute cannot be resolved using the mediation procedure of the Department of Labor, the aggrieved party can then file a lawsuit with the District Court. The court will decide whether to proceed with the civil action to trial, or to enter the dispute into another mediation supervised by a judge.

The aggrieved party may wish to proceed directly with litigation to resolve their dispute, but the court will require them to first undertake a mediation period before any trial can commence. One of the three labour mediation committee members will be the judge who will later try the case if the parties fail to reach a settlement during the mediation period. Court-mandated

mediation may result in a fee being charged depending on the nature of the claim (whether it is a proprietary or non-proprietary claim). Meditation under the court's supervision, which should follow the rules of the Labor Incident Act, should conclude within three months. If the case is then brought to the court for trial, the first instance trial should be concluded within six months.

Redundancy/Layoff

15. How are redundancies/layoffs defined, and what rules apply on redundancies/layoffs? Are there special rules relating to collective redundancies?

Definition of Redundancy/Layoff

Any redundancy must be based on one of the specifically allowed circumstances for unilateral termination (see *Question 12*). Depending on the circumstances of the redundancy, employers may be required to be given advance notice and severance pay. Mass layoffs are defined under the Act for Worker Protection of Mass Redundancy.

Procedural Requirements

The procedural requirements for redundancies are the same as for unilateral termination (see *Question 12*).

Redundancy/Layoff Pay

Employees are entitled to advance notice (or pay in lieu of notice) and severance pay, as well as any outstanding bonuses/payments.

Collective Redundancies

Where any of the following criteria are met, a mass redundancy situation will arise:

- For companies with less than 30 employees at one site: dismissal of more than ten employees within 60 days.
- For companies with 30 or more employees but less than 200 employees at one site: dismissal of more than one-third of employees within 60 days, or more than 20 employees in a single day.
- For companies with 200 or more employees but less than 500 employees at one site: dismissal of more than one quarter of employees within 60 days, or more than 50 employees in a single day.
- For companies with 500 or more employees at one site: dismissal of more than one-fifth of employees within 60 days, or more than 80 employees in a single day.
- Where any business entity intends to lay off over 200 workers within 60 days, or more than 100 workers in a single day.

Where any of the above criteria are met, the employer must create a mass layoff plan. The plan must specify the details of the mass layoff and provide all the affected employees with at least their minimum statutory entitlements.

An employer must then deliver the plan to both:

- The local labour authority.
- The labour union, or the labour representatives from the labour management committee, or the employees to be laid off.

These groups must be notified at least 60 days prior to the proposed termination date. The affected employees and employer must then enter into negotiations within ten days from the start of this 60-day period. An employer cannot dismiss or transfer any of the employees involved in the mass layoff during this negotiation period. The employer can implement the plan at the end of the 60-day period.

Employee Representation and Consultation

16. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? What does consultation require? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?

Management Representation

Employees are not entitled to management representation.

Consultation

Taiwan has both labour management committees and labour unions. A labour union can be established if more than 30 employees support the establishment of one. Labour management committees must be established by the employer, with employers and employees being equally represented. Meetings should be conducted at least quarterly.

Approval from a labour union or labour management committee must first be obtained before an employer can:

- Change the working hours of its employees.
- Implement annuities insurance for its employees, which can replace the compulsory pension system under the Labor Pension Act.

Failure to obtain approval from the labour union or labour management committee, or to notify affected employees and/or the authorities of any of the above, can result in the imposition of administrative penalties.

Major Transactions

Employee consultation or consent is not required for major transactions.

17. What remedies are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?

Remedies

Unless consultation is required because an action requires the consent of either the labour union or the labour management committee (see *Question 16, Consultation*), there are no other remedies for failing to comply with consultation duties.

Employee Action

There are no further remedies available to employees.

Consequences of a Business Transfer

18. Is there any statutory and/or common law protection of employees on a business transfer?

Automatic Transfer of Employees

There is no automatic transfer of employees on a business transfer. The new employer can decide whether or not to continue to employ the employees. Those employees who do not accept the new working conditions of the new employer must have their employment contracts terminated and be provided with their statutory minimum entitlements.

Protection Against Dismissal

Employees who do not agree to be retained by the new employer are entitled to severance pay, payment in lieu of unused annual leave, payment in lieu of notice and a pension (if applicable), which must be paid by the original employer.

Where an employer implements a mass layoff plan, any employees affected by the plan cannot be dismissed or transferred during the negotiation period between the employer and employees.

Harmonisation of Employment Terms

Employees can decide whether or not to accept the new employer's employment terms. If they are not accepted, the employees must receive all of their statutory minimum entitlements from the original employer. The new employer must recognise the prior period of service of those employees who are retained.

Employer and Parent Company Liability

19. Are there any circumstances in which:

- An employer can be liable for the acts of its employees?
- A parent company can be liable for the acts of a subsidiary company's employees?

Employer Liability

An employer will be jointly liable with the employee to compensate for any injury which an employee has wrongfully caused to the rights of another in the performance of their duties unless either:

- The employer has exercised reasonable care in the selection of the employee, and in the supervision of the performance of the employee's duties.
- The injury would have occurred notwithstanding the exercise of such reasonable care by the employer.

In addition, an employer will be responsible for the intentional or negligent acts of their agent and of any person performing an obligation for that employer to the same extent as that employer is responsible for their own intentional or negligent acts, unless otherwise agreed between the parties.

Employers are jointly and severally liable with the relevant employee to pay compensation for damage caused as a result of that employee's conduct which breaches gender discrimination or sexual harassment laws. Employers can then separately claim reimbursement against the employee who committed the wrongful act.

Parent Company Liability

If a subsidiary company's employee's wrongful acts are related to the performance of the duties of a parent company, a parent company can be held liable for the acts of the subsidiary company's employee. Whether the wrongful acts are related to the duties of the parent company will depend on a court's objective appraisal of the performance of the duties and the inherent relationship between the parent and subsidiary.

A parent company will be responsible for the intentional or negligent acts of a subsidiary company's employee (provided the subsidiary company is acting as the parent company's agent) along with the employee themselves to the same extent that it is responsible for its own intentional or negligent acts, unless otherwise agreed between the parties.

Employer Insolvency

20. What rights do employees have on the insolvency of their employer? Is there a state fund which guarantees repayment of certain employment debts?

Employee Rights on Insolvency

When an employer has suspended or liquidated its business or has declared bankruptcy, the creditor rights of employees will be regarded as equal to the creditor rights of those with mortgage rights, pledges or liens of the first priority. Employees must be paid in accordance with the proportion of their creditor rights, and have priority rights to:

- Wages (provided those wages equate to less than six months of wages) to be paid to employees according to the employment contract.
- Retirement pensions that the employer has failed to disburse.
- Severance pay that the employer has failed to disburse.

The Bankruptcy Act contains debt relief provisions but these do not relieve the employer from paying any labour pension contributions that are due.

State Guarantee Fund

All employers must pay 0.025% of the total labour insurance wage for each employee into an arrears wage payment fund each month. Any wages, pensions and severance pay owed by employers that remain unsettled after employees have filed a request for payment will be paid from this fund.

Companies with more than 50 employees must further establish an employee welfare fund and set up an employee welfare committee. The welfare fund is the property of all employees of the company, and must be distributed to the employees when the company enters bankruptcy or is dissolved.

Health and Safety Obligations

21. What are an employer’s obligations regarding the health and safety of its employees?

The Occupational Safety and Health Act places various obligations on employers with regard to the health and safety of their employees, including, among other things:

- Installing necessary preventative equipment and measures to prevent occupational accidents.
- Providing medical services and examinations in certain instances.
- Ensuring all dangerous equipment is inspected and complies with the required standards prior to use.

Companies that meet certain thresholds must set up a health and safety committee. Companies with more than 300 employees, or over 100 employees who engage in hazardous work, must also employ medical personnel.

When an employee is injured at work or succumbs to an occupational disease, in addition to labour insurance payments, the employer must further compensate the employee for necessary medical expenses.

Taxation of Employment Income

22. What is the basis of taxation of employment income for:

- Foreign nationals working in your jurisdiction?
- Nationals of your jurisdiction working abroad?

Foreign Nationals

Income taxation in Taiwan is regulated by the Income Tax Act and the Income Basic Tax Act. A person residing within Taiwan for 183 days or more during a tax year is considered a tax resident and must report and pay income tax annually on their Taiwan-source income. The employers of non-tax residents with income generated in Taiwan must withhold income tax on that income generated in Taiwan.

Nationals Working Abroad

Taiwan nationals with household registration in Taiwan who reside in Taiwan for more than 31 days, or who reside in Taiwan for between one and 30 days and have their centre of vital interests in Taiwan, will be deemed to be tax residents and will be subject to income tax in Taiwan on their Taiwan-source income accordingly.

The overseas income of a Taiwan tax resident is also taxed in Taiwan if it meets all of the following criteria:

- The overseas income is at least TWD1 million.
- The overseas income taken together with other items that should be included in the basic income tax calculation is over TWD7.5 million.
- The tax rate applicable to the overseas income in the country from which that income was generated is lower than the tax rate applicable in Taiwan.

However, if the tax resident has paid income tax overseas, the amount of tax paid may be deducted from the basic income tax that will be applied in Taiwan.

23. What is the rate of taxation on employment income? Are any social security contributions or similar taxes levied on employers and/or employees?

Rate of Taxation on Employment Income

Income tax for tax resident employees (see *Question 22*) is charged at progressive tax rates which vary from 5% up to 40%, based on the net taxable Taiwan-source income. The Taiwan-source income of foreign nationals staying in Taiwan for less than 183 days is generally subject to withholding tax at a rate of 18% (withheld and paid by the employer). However, if the

foreign national's total monthly salary in Taiwan is less than 1.5 times the minimum wage for the corresponding year (TWD39,600 for the year 2023; TWD41,205 for the year 2024), the withholding rate is reduced to 6%.

Social Security Contributions

Employers and employees must make the following social security contributions:

- National health insurance (NHI): the NHI premium for all employees is charged against each employee's salary and is split between the employer (60%), the employee (30%) and the government (10%).
- Labour insurance: an employee who is employed in a company or business with a legal entity in Taiwan which has more than five employees must have labour insurance. This is calculated as a percentage of the insured's salary up to a current monthly maximum of TWD45,800, and is split between the employer (70%), employee (20%) and the government (10%).
- Employment service insurance: employers with at least one employee who have a legal entity in Taiwan must contribute towards the insured's employment service insurance premium, which is 1% of the insured monthly salary. Contributions are split between the employer (70%), the employee (20%) and the government (10%).
- Occupational accident insurance: the insurance premium rate varies depending on the company's industry, ranging from 0.1% up to 0.5%, and is fully covered by the employer.
- Labour pension: employers with legal entities in Taiwan must make monthly contributions of at least 6% of each employee's monthly salary to each individual employee's labour pension fund, if applicable. The current ceiling on labour pension contributions for employers is TWD150,000 annually.

Intellectual Property (IP)

24. If employees create IP rights in the course of their employment, who owns the rights?

Trade Secrets

Trade secrets created or developed by an employee in the course of their work duties are owned by the employer, unless otherwise agreed between the parties. Trade secrets created or developed by an employee in that employee's own time are owned by the employee. Where a trade secret is created or developed by an employee in their own time but using the resources or experience of the employer, the trade secret can be used by the employer if a reasonable consideration is paid to the employee.

Copyright

Any copyrightable work created by an employee in the course of their work duties is owned by the employee, unless otherwise agreed between the parties (the employer owns the economic rights of those copyright works, while moral rights belong to the employee).

Patents

An employer owns any patent created or developed by an employee in the course of their work duties, along with the right to

raise the application for that patent, unless otherwise agreed between the parties. The employee will be entitled to have their name shown on the records as the creator/developer. Patents created or developed by an employee in their own time are owned by the employee. A patent created or developed by an employee in their own time but using the resources or experience of the employer can be used by the employer if a reasonable compensation is paid to the employee. The right to raise the application for that patent and the patent rights belong to the employee. An employee must notify their employer of any patents personally obtained during the period of employment.

Restraint of Trade

25. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

Restriction of Activities

Restriction of activities during employment. Employers can enter into agreements concerning non-competition and non-disclosure that can apply both during employment and after termination of employment. However, the restrictions must be reasonable and are subject to certain guiding legal principles.

Restriction of activities after termination of employment. An employer can reach an agreement with its employees concerning non-disclosure and non-compete obligations that apply after termination of employment provided that they are reasonable.

Post-Employment Restrictive Covenants

Any non-compete restrictive covenant (whether during or after employment) must be in writing and conform to the following principles:

- The employer must have an interest protected by the non-compete clause.
- The departed employee's job duties and position enabled them access to, or use of, the employer's trade secrets.
- The region and scope of the non-compete restrictions must be related to the employer's actual business activities.
- The departed employee's new employer must be in competition with the departed employee's previous employer, and must be specifically mentioned in the non-compete clause.
- The employee must receive reasonable compensation/consideration.

Any agreement which violates any of the above provisions will be deemed to be null and void. Compensation can be in the form of cash, securities or any other valuable property/asset. In determining what constitutes "reasonable compensation", the following factors must be considered:

- The compensation amount is not less than 50% of the employee's average monthly wage at the time of termination/resignation.
- Whether the compensation given is sufficient to pay for the relevant employee's living expenses during the non-compete period.

- Whether the compensation given corresponds to the loss suffered by the employee through their agreeing to the non-compete agreement, as well as the period, region and scope of business activities affected under the non-compete agreement.
- Any other factors relating to the reasonableness of the compensation provided.

The parties can mutually agree on whether compensation will be paid as a lump sum or in monthly instalments. The duration of the non-compete restriction cannot exceed a maximum of two years.

Relocation of Employees

26. Can employers include mobility clauses in employment contracts, or take any other measures, to ensure that employees are obliged to relocate?

Employers in Taiwan who seek to change the working conditions of employment agreements, or reassign employees through mobility clauses, must comply with the following principles under the LSA, otherwise they will be found to be in breach of both the employment agreement and the LSA:

- The change must be based on the needs of the business and be for a proper purpose.
- No unfavourable changes can be made to the employee's salary or other working conditions.
- Changes must be suited to the specific employee's skills and abilities.
- Employers must provide assistance to employees if the place of work is inconvenient.
- Employers must consider the interests of their employees' families and lives.

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