WORKPLACE MATTERS - ASIA PACIFIC

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Labour, Employment and Workplace Safety Alert

Welcome to the latest edition of Workplace Matters – Asia Pacific. Each edition of this newsletter will provide brief legal updates on employment issues from our offices across the Asia Pacific.

AUSTRALIA

Hacked! New privacy Obligations a Timely Reminder to Train Employees

Changes to the federal *Privacy Act 1988 (Cth)* which commenced from 22 February 2018 now create notification obligations when personal information has been disclosed or lost. Given these changes, it is important to ensure that employees who have access to personal information under the Privacy Act are aware and trained in your security procedures. Employees should know what to do if personal information is disclosed or lost.

To read the full article, click here.

CHINA

Compensation Paid to the Employee to Enforce Non-Competition Obligations in China

Under *PRC Labor Contract Law*, a labor contract will usually contain non-competition provisions. Where it does not, an employer and employee may enter into a separate non-competition or confidentiality agreement. Typically, non-compete obligations prohibit an employee from competing with the employer for up to two (2) years following expiry or termination of the labor contract. Employees holding positions in Senior Management or Senior Technician roles are generally required to comply with such non-compete obligations, while all employees should, under their labor contracts, be bound by confidentiality obligations.

To read the full article, click here.

HONG KONG

Back to Back Victories for the LGBT+ Community

On 28 April 2017, in *Leung Chun Kwong v Secretary for the Civil Service and Another* (HCAL 258/2015), the *Hong Kong Court of First Instance (HKCFI)* decided that the same-sex spouse of a civil servant working at the Civil Service Bureau (CSB) was entitled to spousal benefits. Shortly after, on 25 September 2017, in *QT v Director of Immigration* (CACV 117/2016), the Hong Kong Court of Appeal (HKCA) held that dependant visas could be granted to the same-sex spouse of an employment visa holder.

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To read the full article, click here.

JAPAN

Overtime Work Salary for Annual Salary Scheme Employees

Employees in Japan are generally paid a fixed monthly salary and may be eligible for overtime payments when working outside ordinary business hours or on public holidays. Overtime is usually calculated on an hourly basis.

To read the full article, click here.

NEW ZEALAND

Labour's First 100 Days for Workplace Law

As the first 100 days of the Prime Minister Jacinta Arden led Labour government comes to a close this week, we take a look at the status of the government's proposed amendments to workplace and immigration policy to date.

To read the full article, click here.

SINGAPORE

What Constitutes "Due Inquiry" in a Dismissal for Misconduct Scenario?

An employer is entitled to dismiss an employee for misconduct without notice after conducting due inquiry. This right is provided for in S14(1) of the *Singapore Employment Act*. It is also commonly provided for in employment contracts or a company's disciplinary procedure. But, what constitutes "due inquiry"? The Singapore High Court (HC) had to consider this question in *Long Kim Wing v LTX-Credence Singapore Pte Ltd* [2017] SGHC 151 (*Long Kim Wing*). In gist, the "due inquiry" requirement will likely be satisfied if an employer informs an employee of the allegations and evidence against them so that the employee has an opportunity to defend them self in a formal process.

To read the full article, click here.

SOUTH KOREA

Average Wages as a Basis for Calculating Severance Pay: Definitions and Interpretation

Under the applicable laws of Korea, an employer must pay its employees severance pay in the amount of at least 30 days' average wages for each year of the employee's continuous service for the employer. For example, an employee who has worked at the same job for 10 years, upon leaving that employer would be entitled to at least 10 months' wages as statutory severance pay. This is in addition to any other contractually based severance pay

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that the employee is entitled to receive.

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TAIWAN

Terminating Employees in Taiwan

The Taiwan Labor Standards Law (LSA) provides strict measures protecting dismissed employees, and Taiwan employers are required to fully comply with these termination requirements when dismissing their employees. Unlike jurisdictions such as the United States, there is no 'at-will' employment in Taiwan. According to the LSA, employers can only terminate their employees when at least one of the statutory situations set forth in Article 11 or Article 12 has been met. Therefore, employers need to first determine whether the intended termination fits within any of the following statutory termination causes. If so, then a termination can be categorized as being one without notice or with notice, depending on the circumstance.

To read the full article, click here.

KEY CONTACTS



YUJING SHU
PARTNER

SHANGHAI
+86.21.2211.2050
YUJING.SHU@KLGATES.COM



SACHA M. CHEONG
OF COUNSEL

HONG KONG
+852.2230.3590
SACHA.CHEONG@KLGATES.COM



TAKAHIRO HOSHINO
PARTNER

TOKYO
+81.3.6205.3620
TAKAHIRO.HOSHINO@KLGATES.COM



ANDREW L. CHUNG
PARTNER

SEOUL
+82.2.2198.8710
ANDREW.CHUNG@KLGATES.COM



CHRISTOPHER TAN
PARTNER AND DIRECTOR OF K&L GATES STRAITS LAW LLC
K&L GATES STRAITS LAW LLC
SINGAPORE
+65.6507.8110
CHRISTOPHER.TAN@KLGATES.COM



CECILIA LEE
ASSOCIATE

TAIPEI
+886.2.2326.5172
CECILIA.LEE@KLGATES.COM

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