

EMPLOYMENT LAW

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IN THIS ISSUE

Christine Chen explains the key takeaways from recent controversial amendments to Taiwan's employment legislation. These amendments affect 95% of Taiwan's labor force of over 9 million people.

New Employment Rules to Come into Effect on March 1st, 2018

ABOUT THE AUTHOR



Christine Chen is a partner at Winkler Partners, overseeing the employment practice where she advises multinationals on employment matters in Taiwan. Her practice covers contentious and non-contentious employment work, including advising on employee handbooks, termination matters, and localization of employment agreements (including restrictive covenants and trade secrets protection). She is also an experienced IP litigator and won the largest trademark infringement award ever in Taiwan for a luxury brand. She can be reached at cchen@winklerpartners.com.

ABOUT THE COMMITTEE

The Employment Law Committee serves members who represent employers and their insurers. Committee members publish newsletters and Journal articles and present educational seminars for the IADC membership-at-large and mini-seminars for the committee's membership at the Annual and Midyear Meetings. The Committee presents significant opportunities for networking and business referrals. The goal of the Employment Law Committee is to build an active committee with projects that will attract and energize attorneys who practice employment law on a domestic and international basis. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:



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Amendments to Taiwan's Labor Standards Act were passed by the legislature on January 10th, 2018, after much controversy, protest and debate. Generally speaking, these amendments roll back or relax amendments which were enacted at the end of 2016, and may be amended, or clarified, further. The effective date of these amendments is March 1st, 2018.

Overtime & Annual Leave

1. The wage for overtime on flexible rest days will be calculated as actual time worked, rather than in four-hour blocks as before. This overtime should be factored into the maximum monthly overtime for each employee, detailed in the next item.

2. Overtime may be calculated over a three month period by employers, and may not exceed 54 hours in one month and 138 hours in three months. In order to implement such an overtime policy, the employer must obtain consent from the relevant labor union or, if there is no labor union, the approval of a labor-management conference. If the company has 30 or more employees, this change must be reported to the local labor authority.

3. If the employee chooses to convert their overtime hours into make-up leave and this is agreed to by the employer, the make-up leave must be equal to the hours of overtime worked. The deadline for make-up leave shall be negotiated by the employer and employees. Furthermore, any remaining

make-up leave must be converted back into payment for overtime and given to the employees upon its expiration or upon termination or voluntary resignation.

4. The employer and the employee may 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 completion of the employment contract.

Shift work

1. The employer may shorten the rest time between shifts from eleven to eight hours for those industries or businesses designated by the Ministry of Labor ("MOL"). To implement this change, the employer must obtain consent from the relevant labor union or, if there is no labor union, the approval of a labor-management conference. If the company has 30 or more employees, this change must be reported to the local labor authority.

2. Employers from those businesses or industries that are designated by the MOL and which have obtained consent from the central Competent Authority may change the placement of an employee's mandatory rest day. This adjustment allows the employee to work a maximum of 12 consecutive days. To implement this change, the employer must obtain consent from the relevant labor union or, if there is no labor union, the approval of a labor-management



conference. If the company has 30 or more employees, this change must be reported to the local labor authority.

Once the new rules come into force, it is likely that government authorities will issue clarifying interpretations on how they expect employers to implement the new rules. It is therefore suggested that employees and employers pay particular attention to these developments.

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