

## INTERNATIONAL ARBITRATION

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*This article provides an overview on the amendment to the Labor Standards Act of Taiwan in December 2016, which is the largest amendment after said Act being effective.*

## An Introduction to the Newly-Amended Labor Standards Act of Taiwan

### ABOUT THE AUTHORS



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Following the extensive negotiations and discussions for months, the Taiwan Government has adopted amendments to the Labor Standards Act (“LSA”) that have a fundamental impact on the economy and employer/employee relationship.

The LSA was first introduced in 1984 in Taiwan, with the objective of protecting the basic rights of laborers. Currently, the LSA and other labor-related laws and regulations cover essential topics in the employment relationship, including, among other topics, labor contract, minimum wages, working hours, retirement and pension scheme, compensation for occupational accidents, work rules, labor insurance and gender equality. In addition, the LSA grants the labor authorities the power to inspect employers, issue orders of rectification and impose sanctions in case of any violation.

While labor groups have been campaigning for the improvement of working conditions, employers argue that any major amendment will have a potential adverse impact on Taiwan’s investment environment. At the end of December 2016, the Legislative Yuan finally passed the amendments in the shadow of the depressed economy. The key points of the amendments are:

1. Employees are Now Entitled to Two Days off Every Week

Under the old law, employees were to be given one day off every seven days. The amendments stipulate that employees are entitled to two days off every seven days, including one “mandatory day off” and one “flexible rest day”. On the mandatory day off, an employer may request an employee to

work only when a natural disaster, accident or emergency occurs and the employer thinks there is a need to continue carrying on the employee’s work. The employee will receive double pay and is entitled to a day off to compensate for working on the mandatory day off. On the flexible rest day, an employer may request an employee to work on that day after obtaining his/her consent. If the employee works on the flexible rest day, for the first 2 hours of work, the employee is entitled to receive additional wages equal to at least one and one-third times the employee’s hourly wage. For work beyond 2 hours, the employee is entitled to receive additional wages equal to one and two-thirds times the employee’s hourly wage. If the total working hours on that day do not exceed 4 hours, the employee is still entitled to receive overtime pay for 4 hours. If the total hours worked exceed 4 hours but are less than 8 hours, the employee is entitled to receive overtime pay for 8 hours. If the total hours worked exceed 8 hours and are less than 12 hours, the employee is entitled to receive overtime pay for 12 hours.

2. Reduction of Public Holidays Available to Employees

Under the amendments, the number of public holidays available to employees is reduced to 12 days from 19 days.

3. Adjustment on the Accrual of Annual Paid Leave

New employees are granted more days off for annual leave. The amendments stipulate that new employees will qualify for 3 days of annual leave after working for the employer for six months in the first year of employment,

increasing to 7 days after working for more than one year but less than two years, to 10 days after more than two years but less than three years, and to 14 days after three years but less than five years. After working for five years but less than ten years, the employee is entitled to have 15 days of annual leave. After working for ten years, the employee is entitled to have one additional day of annual leave for each year of employment beyond ten years, subject to a cap of 30 days of annual leave per year. In addition, the amendments stipulate that employees are entitled to decide when to take annual leave. However, if the employer has an urgent business need or if the employee has particular personal reasons, the parties may negotiate to adjust the dates for taking the annual leave.

#### 4. Employers Shall Maintain Detailed Records Relating to the Wages Paid

The amendments require that an employer shall maintain the detailed records relating to the wages paid, consisting of information on the paid wages, details of the calculation of wages, total amount of the wages, annual leave and wages payable for unused annual leave. Moreover, employers shall provide

employees with such information annually in writing.

#### 5. Employers are Subject to Higher Fines

If an employer fails to comply with the requirements relating to working hours, salary payment and other requirements, the applicable fine has been raised to NTD \$1 million. In addition, depending on the scale or size of the employer, the number of employees impacted by the violation or the severity of the violation, the labor authority may impose additional fines of up to 50% of the maximum limit.

The new amendments came into force starting in January 2017, but the arguments supporting or against the amendments remain. Investors and employers should review their work rules, maintain records relating to wages and pay particular attention to the wages payable for additional working hours in compliance with the new law.

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