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China Employment Law Update - August 2007

Abstract
An update in ongoing developments regarding labor relations and employment in China.

Keywords
China, labor law, employment, public policy, labor relations

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China Employment Law Update

August 2007

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Plans initiated to implement Employment Contract Law

National and local authorities have initiated efforts to implement the Employment Contract Law (ECL) (劳动合同法) following the law's approval by the Standing Committee of the National People's Congress (NPC) on June 29, 2007. The law becomes effective on January 1, 2008.

According to officials at the Ministry of Labor and Social Security (MOLSS), the MOLSS will issue implementing rules for the ECL before the end of this year. The implementing rules may address key issues such as the required procedures for implementing company rules as well as when an open-term contract must be provided to an employee who has completed two fixed terms of employment.

On July 12, 2007, the MOLSS also issued a notice requiring local labor bureaus to revise employment-related laws and regulations for compliance with the ECL. Among the areas of concern were probation periods, economic layoffs, severance payments, agency workers, and part-time employees.

Local authorities have reportedly begun the review process, with Beijing, Shanghai, and Jiangsu provinces among the jurisdictions revising their labor contract regulations.

For more information regarding the details of the Employment Contract Law, please refer to our recent Client Alert.

Labor disputes law slated for approval

On August 26, the Law on the Mediation and Arbitration of Labor Disputes (劳动争议调解仲裁法) was submitted to the Standing Committee of the NPC with a goal of approval by December 2007 and implementation on January 1, 2008.

The most significant proposal in the draft law is likely the extension of the statute of limitations from 60 days to six months. The draft law also incorporates grounds listed in a 2006 Supreme People's Court interpretation regarding when the statute of limitations period should be tolled.

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A provision of the draft that is intended to bar appeals to courts and therefore expedite the resolution of disputes would subject the following types of disputes to final determination in labor arbitration:

- disputes involving claims that do not exceed the equivalent of 12 months of the local minimum monthly wage;
- disputes relating to work hours, rest, leave, and social insurance; and
- disputes relating to the enforcement of collective contracts.

The draft law would not affect the rights of parties to appeal other types of claims to People's Courts.

There appear to be discussions on whether mediation prior to arbitration should be expanded, and possibly made mandatory.

Shanghai approves collective contract regulations

On August 16, 2007, Shanghai approved the Collective Contract Regulations (上海市集体合同条例) regarding collective bargaining. The regulations become effective on January 1, 2008. The regulations supplement national rules on collective bargaining as well as provisions in the ECL.

The new Shanghai rules obligate employers to engage in collective bargaining if demanded by a union or employee representative unless a "justifiable reason" exists. The rules prohibit, without exception, employers from refusing to engage in collective bargaining if:

- the employer plans to lay-off at least 20 employees or 10% of the workforce;
- a labor dispute causes a work stoppage or results in the submission of a complaint; or
- an unsafe work condition is discovered.

No penalties except for orders to initiate bargaining are provided in the rule. The Shanghai rules reduce the period when an employer must respond to a request for collective bargaining from 20 days to 15 days. These rules also provide details on procedures for industry-wide and regional collective bargaining as well as collective bargaining involving branch offices.

In a related development, collective bargaining regulations in Shenyang, Liaoning province became effective on August 1. Unique features of these regulations include a five-day limit for employers to respond to requests for collective bargaining and penalties for refusing to engage in collective bargaining such as the labor bureau officially recording the enterprise as not being of good standing and announcing this to the public, and fines

of up to RMB20,000 for an employer and up to RMB10,000 for an employer's chairman in serious cases.

Employment Promotion Law is passed

The Standing Committee of the National People's Congress passed the Employment Promotion Law (就业促进法) on August 30, 2007.

This law will take effect on January 1, 2008. Full text was not available at the time of writing this update. More details on the law will be provided in a later client alert.

Guangdong requires employers to establish procedures to prevent sexual harassment

In regulations issued during May, Guangdong province became the first reported jurisdiction to explicitly require employers to establish investigation and complaint procedures to protect women against sexual harassment. The regulations also require employers to create "appropriate working environments".

Details regarding the new requirements and penalties for failure to comply were not included in the amended Implementing Rules of the Law of the Protection of the Rights and Interests of Women (实施妇女权益保障法办法).

Additional rules issued for employee stock plans

On April 6, the State Administration of Foreign Exchange (SAFE) issued guidelines governing the approval and procedural requirements for overseas-listed stock plans provided to employees in China. These guidelines specifically cover employee stock purchase plans (ESPP) and employee stock option plans (SOP), but may be extended to cover other types of equity awards. The guidelines supplement rules issued in January 2007 that announced SAFE's jurisdiction over overseas stock plans.

According to the April guidelines, PRC national employees must use a domestic agent to participate in overseas stock plans. The agent, which may be an affiliate or subsidiary of the overseas-listed company, must open an onshore foreign exchange account to handle the conversion of Renminbi into foreign exchange for the purchase of shares. The agent must also apply for an annual quota for foreign exchange conversion and payment. All foreign exchange derived from participation in the stock plans must be repatriated into the onshore accounts for periodic monitoring.

The guidelines also set for procedures for companies with existing ESPPs and SOPs to obtain approval of their plans.

For more information regarding the April 2007 guidelines, please refer to our recent Client Alert.

Firms sanctioned for labor violations in Olympics-related case

Four firms in Guangdong province that manufactured licensed Olympics products were sanctioned in July by the Beijing Organizing Committee of the Olympic Games (BOCOG) for labor violations.

The BOCOG terminated Le Kit Stationery Co.'s right to manufacture and sell licensed products because the company had used child labor and failed to sign labor contracts with some employees.

Three other companies had their licenses suspended by the BOCOG for violating overtime requirements. Among these three companies, Yue Wing Cheong Light Products (Shenzhen) and Mainland Headwear Holdings Ltd., (Shenzhen) were respectively fined RMB 883,700 and RMB 533,700 by the Shenzhen labor bureau for exceeding the maximum number of 36 hours of overtime per employee per month. The fines were reportedly suspended pending a hearing.

Investigations by the BOCOG and national and local labor authorities against the four companies were sparked by a report released by the non-governmental organization PlayFair Alliance 2008.

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