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Employment

Law and Practice – Taiwan

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TAIWAN

LAW AND PRACTICE:

p.3

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Law and Practice

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TAIWAN LAW AND PRACTICE

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1. Terms of Employment

1.1 Contractual relationship

According to the Labour Standards Act (LSA) and the Enforcement Rules for the LSA, contracts are required. Except for the following scenarios, there is no strict requirement in principle for an employment contract to be in writing.

However, for supervisory/administrative employees, professional employees with designated responsibility, monitoring or intermittent jobs and other work with special characteristics where the employer and the employee have the flexibility to negotiate with respect to “work hours and days of leave [eliminating the applicability of the LSA rules],” the LSA requires the agreement to be recorded in writing (Article 84-1).

According to Article 7-1 of the Enforcement Rules for the LSA, a post-employment non-compete agreement must be in writing.

For the terms that should be included in an employment agreement, Article 7 of the Enforcement Rules for the LSA provides the following list of items:

- matters relating to the workplace and the work to be performed in the workplace;
- matters relating to the time of starting and finishing work, rest periods, holidays, public holidays, leave and shift changes in the rotation system;
- matters relating to the determination, readjustment, calculation, final settlement, dates and methods of wage payment;
- matters relating to the entering into and termination of a labour contract, and retirement;
- matters relating to severance pay, pension and other allowances, and bonuses;
- matters relating to the expenses for boarding, lodging and tools that the worker should bear;
- matters relating to safety and health;
- matters relating to labour education and training;

- matters relating to welfare;
- matters relating to compensation and remedy for occupational accidents and subsidy for ordinary injury or sickness;
- matters relating to work discipline that shall be observed;
- matters relating to award and discipline; and
- other matters relating to rights and obligations of the labour and management.

1.2 Compensation and work hours

Minimum wage and overtime regulations

The minimum wage rose to TWD21,009 per month and TWD133 per hour starting from 2017.

According to the LSA, overtime wages shall be paid under the circumstances given below.

- An additional one third of regular hourly rates for up to two hours of overtime and an additional two thirds of regular hourly rates for between three to four hours of overtime. For overtime work as a result of natural disasters, acts of God or other force majeure events, the worker shall be paid double regular hourly rates (Article 24, 40).
- If the worker is required to work on holidays or days off, the worker shall be paid double regular rates provided that the employer has obtained consent from the worker to work during those times (Article 39).
- An amendment to the LSA passed the third reading at the Legislative Yuan on 6 December 2016 and entered into effect on 23 December 2016, under which, Article 36 of the LSA now entitles workers to two days of rest every seven days, with one day as an official holiday (as before) and the other day as a “day of rest.” If an employer requires the services of an employee on the day of rest, the overtime rates will be even higher than in the first item in this list: an additional one third of regular hourly rates for up to two hours of work and an additional two thirds of regular hourly rates for work beyond two hours. For the purposes of overtime calculation on the days of rest: work four hours or less, four hours of overtime work; work more than four hours and up to eight hours, eight hours of overtime work; work more than eight hours and up to 12 hours, 12 hours of overtime work.

Limitations on hours

According to the LSA, a worker’s regular hours may not exceed eight hours per day and 40 hours per week (Article 30). However, the employer may, with the consent of the labour union if present or the labour-management conference if there is no labour union, adjust the regular working hours pursuant to the adjustment schemes laid out under Articles 30 and 30-1 of the LSA.

Executive Compensation

In Taiwan, the LSA does not apply to management personnel who are retained rather than hired by the company. The compensation for such personnel is generally governed by the principle of freedom of contract.

1.3 Other terms of employment

Limitations on confidentiality and non-disparagement requirements

There is no law or regulation in Taiwan stipulating limitations on confidentiality and non-disparagement requirements.

Required leaves

Maternity Leave

The LSA grants eight weeks of maternity leave in general, but for a miscarriage after carrying past the first trimester, four weeks of maternity leave are granted (Article 50). The Act of Gender Equality in Employment (AGEE) further provides that a miscarriage after a pregnancy period between two and three months shall be granted one week of maternity leave and a miscarriage after a pregnancy period of no more than two months shall be granted five days of maternity leave (Article 15).

Sick Leave

According to the Regulations of Leave-taking of Workers (RLTW), 30 days of sick leave per year for illness not requiring hospitalisation; for illness requiring hospitalisation, one year of hospitalised sick leave is granted for every two-year period. The sum of non-hospitalised sick leave and hospitalised sick leave may not exceed one year over a two-year period (Article 4).

Occupation-related injury leave

Employees shall be granted leave for medical care in response to disability, injury or sickness incurred as a result of an occupational hazard.

Childcare leave

According to the AGEE, an employee who has worked for at least six months may apply for unpaid childcare leave for children under the age of three at the time of the application. The childcare leave may not exceed two years. For an employee taking care of two or more children, the childcare leave for each child may be combined together for up to two years of care for the youngest child (Article 16).

Family care leave

According to the AGEE, for an employee taking care of family members receiving vaccinations, or if an employee’s family has fallen seriously ill or otherwise become involved in a serious accident, the employee may apply for a seven-day family care leave, which is classified as unpaid personal leave (Article 20).

Annual leave

Under the current LSA, an employee who has worked for at least one year but no more than three years shall be granted seven days of annual leave; for an employee who has worked for at least three years but no more than five years, ten days; for at least five years but no more than ten years, 14 days; and one day is added for each year above ten years up to a maximum of 30 days (Article 38).

However, the aforementioned amendment that passed the third reading at the Legislative Yuan on 6 December 2016 also made changes regarding annual leave (effective on 1 January 2017). An employee who has worked for at least six months but no more than one year shall be granted three days of annual leave; for an employee who has worked for at least one year but no more than two years, seven days; for an employee who has worked for at least two years but no more than three years, ten days; between three years and five years, 14 days; between five years and ten years, 15 days; and one day is added for each year above ten years up to a maximum of 30 days.

Marriage leave

According to the RLTW, an employee may take up to eight days of marriage leave (Article 2).

Personal (unpaid) leave

According to the RLTW, an employee may take up to 14 days of personal leave per year (Article 14).

Leave for pregnancy check-ups

According to the RLTW, a pregnant employee may take up to five days of leave for pregnancy check-ups (Article 15).

Paternity leave

According to the RLTW, an employee whose spouse is giving birth may take up to five days of paternity leave (Article 15).

Funeral leave

According to the RLTW, depending on which relative of the employee has passed away (parents, children, grandparents, great-grandparents), an employee may be granted between three and eight days of funeral leave (Article 3).

Menstruation leave

According to the AGEE, a female employee whose menstruation is causing her difficulties at work may request one day's menstruation leave per month. Menstruation leaves of no more than three days in a year will not be counted as sick leave, while any additional days will be deemed as part of sick leave days used (Article 14).

2. Employee Representation/Unions

2.1 Representatives

The Labour Union Act (LUA) provides workers with a right to join labour unions (Article 4). Member representatives may be elected by the union members for unions of 100 or more members.

If a member or member representative cannot attend a union meeting, he or she may authorise another member or member representative to act as a proxy (Article 27). Proxies may not make up more than one third of the members/member representatives who attend in person at the meeting. The Council of Labour Affairs, the predecessor of the Ministry of Labour, officially explained in 2011 that while members may have another member act as a proxy in union member meetings, member representatives may only call upon another member representative as a proxy in a union member representatives' meeting, so a regular member may not act as a proxy for a member representative in a union member representatives' meeting.

2.2 Unions

The LUA categorises unions into business unions, manufacturing (industry) unions and professional unions (Article 6). The Ministry of Labour reports on its website that, as of September 2016, there were 919 business unions, 169 manufacturer unions and 4,124 professional unions in Taiwan.

2.3 Union elections/representation

Under the LUA, a member of a labour union who is 20 years of age may be elected as a director or supervisor of the union. However, if that member has also joined an industrial or commercial organisation, he/she may not be elected as a director, supervisor, general director, general supervisor, vice-chairman, chairman of the board of directors or chairman of the board of supervisors (Article 19). Each of the above positions has a term of four years.

As mentioned above, member representatives may be elected per the union's charter rules for a union with 100 or more members. The member representative's term shall also be four years, commencing from the date of the first member representatives' meeting after the election (Article 15).

The LUA specifies that for unions with 500 or fewer members, there shall be five to nine directors on the union board and an additional two directors for every additional 500 members of the union for up to 27 directors (Article 14). According to the Enforcement Rules for the LUA, the number of member representatives shall be at least three times the number of directors.

3. Restrictive Covenants

3.1 Noncompetition clauses

Enforceability

There is generally no prohibition in Taiwan law on an employer requesting an employee to enter into a non-competition agreement for employee's non-competition obligation during the term of employment and the courts have recognised the enforceability of such a non-compete agreement.

For a post-employment non-compete agreement, the LSA stipulates the following requirements for an employer to reach a non-compete agreement with an employee:

- the employer has a proper business interest to protect;
- the employee's job or duties would cause him/her to come into contact with the employer's business secrets;
- the duration, region, (limitation on the) scope of employment activities and new employers stipulated in the non-compete agreement do not exceed reasonable limits; and
- the employer will provide reasonable compensation for all losses incurred by the employee for refraining from engaging in competitive acts after departure from the current employment.

Failure to abide by the above may render the non-compete clause unenforceable (Article 9-1).

General standards for their terms

According to the LSA, the non-compete clause after departure from employment may not exceed two years (Article 9-1).

Independent consideration for a non-competition clause

As with enforceability above, non-compete clauses require the employer to provide reasonable compensation for the post-employment non-compete obligation. According to the Enforcement Rules for the LSA, the standards for the amount shall take into consideration the following:

- the monthly compensation provided must be no lower than 50% of the monthly wages received by the employee at the time of his/her departure from employment;
- the compensation must be sufficient for the employee's livelihood during the non-compete period;
- the compensation must be commensurate with the loss incurred by the departing employee for compliance with the duration, region, (limitation on the) scope of employment activities and new employers stated in the non-compete agreement.

3.2 Nonsolicitation of employees provisions

There is no law or regulation in Taiwan regarding the nonsolicitation of employees. Such provisions are generally governed by the principle of freedom of contract. As long as

the substance of such provisions is not against public policy or morals, or is obviously unfair, the provisions should be enforceable.

3.3 Nonsolicitation of customers provisions

There is no law or regulation in Taiwan regarding the nonsolicitation of customers. Such provisions are generally governed by the principle of freedom of contract. As long as the substance of such provisions is not against public policy or morals, or is obviously unfair, the provisions should be enforceable.

4. Data Privacy Laws

4.1 General overview

The controlling statute in Taiwan regarding data privacy is the Personal Information Protection Act (PIPA). Under the PIPA, if the employer would like to collect the personal information of employees for a clear and specific purpose relating to HR management, the employer may begin the collection and processing of non-sensitive personal information of the employees once it has complied with the notice requirements under Article 8 of the PIPA (Article 19). For "sensitive personal information" (such as medical history, genetic information, sex life, results of physical examinations and criminal backgrounds), unless otherwise provided by law, in addition to the notice under Article 8 of the PIPA, the employer shall generally obtain the express written consent of the employee first before collection and processing (Article 6).

5. Foreign Workers

5.1 Limitations on use of foreign workers

According to the Employment Service Act, the employer must seek permission from the central competent authority before hiring a foreigner unless the foreign worker is (i) retained by the government or an academic institution as a consultant or researcher, or (ii) married to a Taiwan national who has established household records, or (iii) retained by a public or private university to give a presentation speech (Article 48). Foreigners may be employed for a maximum of three years, but the employer may apply for an extension if it is necessary to continue employing the foreign individual. If the hiring is for a major construction project, the maximum term of extension is six months (Article 52). The specific jobs that an employer may hire a foreigner for in Taiwan are the following (Article 46):

- in specialised or technical work;
- as a manager/executive of a business invested in or set up by overseas Chinese or foreigner(s) with the approval of the government;

- as a teacher at high schools, universities/colleges or higher, or as teachers at schools established for foreign residents;
- as a temporary foreign language instructor at cram schools;
- as an athletics coach and athlete;
- in religious, artistic and showbusiness work;
- as a crew member of a vessel permitted by the competent authority (such as a merchant vessel, working vessel, etc);
- in marine fishing/netting work;
- as a domestic assistant or in nursing work;
- as workers designated by the central competent authority in response to national major construction project(s) or economic/social development needs; or
- other specialised workers ad hoc approved by the competent authority due to the lack of specialists in the domestic employment market and the necessity to retain the service of such specialists.

For the final four categories, the employer is required to show that it had attempted to recruit Taiwan nationals with reasonable employment terms but was unable to fulfil its needs before applying for permission to hire foreigners (Article 47).

5.2 Registration requirements

Other than the application for work permits described above, there is no registration requirement for hiring foreigners.

6. Grounds for Termination

6.1 Is cause required

Cause is required and causes for termination by employers are limited to the circumstances under Articles 11 and 12 of the LSA.

The employer may give notice of termination upon the occurrence of any of the following (Article 11):

- suspension or transfer of the employer's business;
- the employer incurring operating losses or facing a business contraction;
- the suspension of business operations for one month or more due to force majeure;
- a change in the nature of the employer's business necessitates a reduction of workforce and there are no other suitable positions for the terminated employees to be reassigned to; or
- the employee is clearly unable to perform the duties of the position held satisfactorily.

The employer may immediately terminate the employment relationship upon the occurrence of any of the following (Article 12):

- if the employee misrepresented any facts at the time of signing an employment contract in a manner so as to mislead his/her employer and thus caused him/her to incur damages therefrom;
- the employee commits a violent act against, or grossly insults, the employer, one of his/her family members or an agent of the employer, or a co-worker;
- the employee has been sentenced to temporary imprisonment in a final and conclusive judgment, and is not granted a suspended sentence or permitted to commute the sentence to payment of a fine;
- the employee was in serious breach of the employment contract or committed a serious violation of work rules;
- the employee deliberately damaged or abused any machinery, tool, raw materials, product or other property of the employer, or deliberately disclosed any technical or confidential information of the employer thereby causing damages to the employer; or
- the employee went absent from work for three consecutive days or for a total of six days in any month without just cause.

For resignation from the employee's side, in principle, an employee may terminate a fixed-term employment contract for a term of more than three years with a 30-day notice to the employer upon completion of three years' work, while an employee may terminate an employment contract with indefinite term without cause with prior notice.

The employee may immediately terminate the employment relationship upon the occurrence of any of the following (Article 14):

- if the employer misrepresented any facts at the time of signing an employment contract in a manner so as to mislead the employee and thus caused him/her to incur damages therefrom;
- the employer, the employer's family member or the employer's agent engaged in a violent act or grossly insulted the employee;
- the contracted work is hazardous to the employee's health and the employer refused to make improvements despite requests to do so;
- the employer, the employer's agent or other co-workers were afflicted by a harmful contagious disease and continued work may cause the employee to contract such disease and seriously threaten the employee's health;
- the employer fails to pay the compensation agreed to in the employment contract, or fails to provide sufficient work to an employee who is paid on a piecework basis; or
- the employer's violation of the employment contract or labour laws has adversely affected the rights of the employee.

6.2 Layoffs

Terminations under Article 11 of the LSA detailed above require the employer to notify the employee, but the notice may be replaced by a payment of wages. The minimum notice periods are as follows (Article 16):

- ten days for employees who have worked for the employer for at least three months but less than one year;
- 20 days for employees who have worked for the employer for at least one year but less than three years; or
- 30 days for employees who have worked for the employer for at least three years.

7. Procedures for Implementing Terminations

7.1 Internal and appeal procedures

There is no law or regulation in Taiwan requiring the employer to draft internal procedures or appeal procedures with respect to termination.

8. Notice Periods/Severance

8.1 Required notice periods

For terminations under Article 11 of the LSA by the employer, the employer must provide notice to the employee a certain amount of time in advance. For an employee's termination of an employment contract with indefinite term without cause, the employee is also required by law to provide notice to the employer a certain amount of time in advance.

8.2 Required severance

According to the LSA, for an employer termination under Article 11 of the LSA and an employee termination under Article 14 of the LSA, the employer is required to provide severance (Article 17). The severance calculation standards are (i) for an employee's seniority calculated under the LSA, one month of wages for each full year of service and the amount shall be prorated for a partial year of service, with service of less than one month deemed as one month of service; and (ii) for an employee's seniority calculated under the Labour Pension Act, half a month's wages for each full year of service, with the amount prorated for a partial year of service. The maximum amount of severance shall be capped at six months' wages.

Severance must be paid to the employee within 30 days of the termination of the employment contract.

9. Termination Agreements

9.1 Obtaining releases

Currently, releases may be divided into two categories.

For contracting away the statutory rights of the employee, if the agreement contains a clause that causes the employee to waive a statutory right against the employee, such releases will generally be found to be unenforceable under Taiwan's Civil Code for violation against a compulsory legal requirement or an inequitable waiver of rights for the employee (in the case of a release in a standard-form contract).

For contracting away the rights of the employee that are more favourable than those provided in the law, as there is no violation of statutory requirements, it will generally be considered enforceable under the freedom of contract principle.

9.2 Enforceable releases

For releases in the termination of a retainer agreement between an employer and a manager, the freedom of contract principle generally applies and as long as the release is not contrary or repugnant to the public morals of Taiwan, the parties may freely decide on the terms of the release.

However, there are statutory limitations in play for releases in the termination of an employment contract between an employer and an ordinary employee. The release generally may not cause the employer to be no longer responsible for matters that the employer is required to perform by law, nor could the release be contrary or repugnant to the public morals of Taiwan.

The particular circumstances in the Taiwan Civil Code that will be considered an inequitable waiver of rights for the employee if the release is not negotiated are (Article 247-1):

- the drafting party's obligations are eliminated or decreased;
- the liability of the other party is increased;
- the other party is caused to waive its rights or restrict the exercise of its rights; or
- other material disadvantages to the other party.

10. Employment Disputes

10.1 Employment Discrimination Claims

According to the anti-discrimination in the workplace rules in Taiwan, the law addresses anti-discrimination in the following manner.

Overall regulations

General anti-discrimination rules are found in the Employment Service Act, which provides that: "An employer is

prohibited from discriminating against any job applicant or employee on the basis of race, class, language, thought, religion, political party, place of origin, place of birth, gender, gender orientation, age, marital status, appearance, facial features, disability, or past membership in any labour union. Matters clearly stated in other laws shall be followed in priority [Article 5].” Violations shall be punishable by a fine of TWD60,000 to TWD300,000 (Article 65).

The term “job applicant or employee” in Article 5 of the Employment Service Act above also includes:

- foreigners granted permission to work in Taiwan;
- foreigners granted permission to work and reside in Taiwan who are married to a Taiwan national with household registration records;
- mainland China citizens with permission to stay with relatives in Taiwan and work in Taiwan;
- mainland China citizens with permission to reside in Taiwan for an extended period and work in Taiwan during the period of residence;
- Hong Kong or Macau residents who qualify as overseas Chinese with permission to work in Taiwan and their spouse or children who meet the conditions to obtain Taiwanese citizenship; and
- Hong Kong or Macau residents with permission to work in Taiwan.

Sexual/gender discrimination

The AGEЕ expressly prohibits the employer from engaging in any discriminatory behaviour based on the gender or sexual orientation of the employee, including for matters such as performance reviews, availability of benefits, wages, retirement pensions and severance (Chapter 2).

10.2 Contractual, Wrongful Dismissal Claims

In Taiwan, if the employer did not comply with Article 11 of the LSA in dismissal of an employee, the termination would be regarded as arbitrary termination. Article 35 of the LUA also provides that if an employee is terminated by an employer for forming a labour union, joining a labour union, participating in a labour union’s activities, requesting to engage in group negotiations, participating in a group negotiation, or participating or supporting labour protests, such termination shall be deemed invalid and the wrongfully terminated employee may petition the competent authority to make a decision pursuant to the Act for Settlement of Labour Management Disputes (ASLMD).

10.3 Retaliation/Whistleblower Claims

The LSA provides that an employee may make a complaint to the employer, competent authority or supervisory institution regarding an employer violation of the relevant labour laws. The employer may not retaliate by terminating or reassigning the employee as a result of such complaint (Article

74). Violations may be punished by a fine of TWD20,000 to TWD300,000 (Article 79).

While there is no current law or regulation regarding whether a complaint should be made to the competent authority anonymously, the aforementioned amendment to the LSA that passed the third reading at the Legislative Yuan and entered into effect on 23 December 2016 contains a change to Article 74 requiring “the competent authority or the supervisory institution to keep strictly in confidence the identity of the whistle-blower and may not disclose information that would sufficiently identify such individual.” The public officials who allowed such disclosure will face criminal prosecution and administrative liability, as well as civil liability to the whistle-blower for damages incurred.

The above amendment, however, is still clearly premised on the fact that the authority is aware of the whistle-blower’s identity and thus must keep such information in confidence. In general practice, when an official receives a complaint made anonymously or under a false name or address, due to the difficulty in completing basic actions, such as communicating with such complainant(s), the official may choose not to process the complaint with permission from his/her superiors.

11. Dispute Resolution

11.1 Judicial procedures

Taiwan has special labour fora designed to handle labour disputes and they are headed by judges who have been chosen by their fellow judges in other courts as having particular expertise in labour laws.

The procedure for a labour dispute is generally identical to that of any other civil dispute. The Code of Civil Procedure provides that an action shall be initiated by a complaint filed to a court with jurisdiction and general civil matters are heard at the district court level as the court of first instance. Appeals of district court decisions go to the high courts as the court of second instance. Appeals of high court decisions for errors in the application of law go to the Supreme Court as the court of third instance. Supreme Court appeals are also limited to matters where the amount in controversy is over TWD1.5 million.

As an additional note, with respect to labour disputes in particular, the Code of Civil Procedure states that the employer and the employee should in principle seek for a court-conducted mediation or a competent authority-conducted mediation as the first step in dispute resolution (Article 403). However, this is only a suggestion and not compulsory, and a court will hear a dispute between parties that did not previously go through mediation.

The Code of Civil Procedure allows a group with similar legal interests to appoint one or more persons amongst themselves to sue or be sued on behalf of the appointing parties and the appointed parties (Article 41). In terms of a group of employees in the same legal position, they may seek the assistance of the labour union that they are a member of in initiating the action on their behalf.

11.2 Alternative dispute resolution

In Taiwan, the validity of pre-dispute arbitration agreements depends on the type of labour dispute in question.

For disputes over adjustments, only the ASLMD has control. Article 25 of the ASLMD stipulates that the parties may submit to the competent authority for arbitration if they have already failed in mediation, or if the parties had agreed in writing not to go through mediation.

For disputes over rights, the ASLMD and the Arbitration Law have control. The Arbitration Law allows the parties to have an arbitration agreement in place so that current or future disputes may be settled by an arbitration tribunal of one or more arbitrators. Hence, in a labour dispute over rights, the parties may agree pre-dispute the terms of the arbitration agreement.

An additional note is warranted here: according to Article 37 of the ASLMD, an arbitration award rendered for a labour dispute over rights has the same effect on the parties as a final court decision. However, for an arbitration award rendered for a labour dispute over adjustments, the award is deemed to be a contract between the parties and if one party is represented by a union, the award is in effect a collective agreement.

Either party of a labour dispute may apply to the competent authority of the location where the employee is providing services for a mediation session to resolve the dispute. The mediation may be headed by a mediator appointed by the competent authority or by a mediation committee. Similar to court proceedings in the first instance, the mediator or mediation committee has the duty to conduct fact-finding investigations and the targets of the investigations may not refuse to co-operate without just cause.

A successful mediation will be considered as a contract between the parties. Similarly, in a dispute over rights, a successful mediation that has been ratified by a court shall have the same effect as a final court decision.

11.3 Damages or other relief

Back pay

Should an employer be found by a court or other legal adjudication body to have violated the labour laws (such as wrongful termination, an unlawful request for an employee

to go on leave without pay, etc), the employer shall be required to make up all back pay owed to the employee, starting from the time of the unlawful act until the day the employee is reinstated, plus 5% annual interest accruing from the day after the payment is due.

Front pay

Taiwan has no statute as to the concept of front pay in the sense of compensation in lieu of reinstatement. However, if front pay is defined as damages for loss of future earnings, current practice in Taiwan does not allow for such relief, as a debt obligation in the future is only actionable if such obligation is already confirmed to exist and there is good cause to believe that the obligor will not perform such obligation at that point in time. As the nature and extent of the debt obligation are thought to be not yet fixed due to the potential for wage adjustments, reassignments or other changes, Taiwan law does not allow an employee to make such front pay claims.

Emotional distress/compensatory damages

According to the AGEE, if the employer is found to have engaged in sexually discriminatory conduct – such as violating the rules on wages, job assignment, pregnancy, childcare and other benefits accorded – the employee may claim for damages even if no monetary damages were incurred and the employee may also seek relief for restoration of personal reputation if the discriminatory act has damaged the personal reputation of the employee (Article 29).

The Civil Code also provides for a more general version of emotional distress relief in the same manner as the aforementioned relief for sexual discrimination under the AGEE. If an employer caused injury or infringed upon an employee's body, health, personal reputation, freedom, credit, privacy, or other personality interests, the employee may seek compensatory damages even if no monetary damages were incurred and the employee may also demand restoration of personal reputation (Article 195).

Punitive damages

There is currently no law in Taiwan regarding punitive damages in a labour dispute. However, if the employment contract does provide for punitive damages, Taiwan law and practice as a rule will generally allow such provision to be enforceable.

Reinstatement damages

According to current practice in Taiwan, if an employee initiates and prevails in a declaratory action regarding the existence of the employment relationship, the employee may, in addition to back pay, also request reinstatement as specific relief.

11.4 Attorney's fees

There is currently no law in Taiwan regarding the scope of an attorney's fees in a labour dispute, regardless of side.

12. Extraterritorial Application of Law

12.1 Application of domestic law outside the country

The Taiwan statute governing the choice of law, both in terms of the extraterritoriality of Taiwan law and the application of foreign law, is the Act Governing the Choice of Law in Civil Matters Involving Foreign Elements.

As a labour relationship is classified as a type of debt obligation relationship under Taiwan law, Article 20 applies, which means that the governing law that the parties had agreed to shall be respected in determining the validity and effect of the legal acts of the parties. If the parties did not expressly agree to a specific governing law or if such governing law is invalid, the law with the closest connection to the matter at hand shall control; this is defined as the law of the domicile of the obligor at the time the key (or characteristic) legal act of the debt relationship at issue was made.

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