

2021 US Labor & Employment Webinar Week
Insights and Compliance Strategies for a New World

February 1 – 4, 2021



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Asia-Pacific L&E Updates

February 1, 2021

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Presenter



Julia Yeo

Asia Regional Hub Partner, Singapore

T +65 6922 8668

E julia.yeo@squirepb.com



AGENDA

- Latest Updates in:
 - China, Hong Kong, India, Indonesia, Singapore and Vietnam
- Major Trends:
 - Remote Working
 - Alternative Work Arrangements

A blurred background of an office environment with several people working at desks with computer monitors. The lighting is bright, and the overall scene is out of focus, emphasizing the text overlay.

Latest Updates in
Asia:

China, Hong Kong,
Indonesia,
Singapore and
Vietnam



China

New Civil Code

Guidance on Trade Secrets

Major Changes: China

New Civil Code (w.e.f. Jan 1, 2021)

Sexual Harassment

- Harassment definition – gender neutral; power harassment (*guanxi* 关系)
- Specific employer's duty to adopt anti-sexual harassment measures
- Measures to take include: channels for employee complaints, investigation procedures and rules for disciplining wrongdoers
- New civil liability framework: Harasser accountable
- Employer's civil liability?

Data Privacy

- Individual privacy = “private space/activities/ information you are unwilling to make known to another”
- Personal information: stored electronically or otherwise; includes biologically identified personal information, addresses, telephone numbers, email addresses and whereabouts
- Administrative penalties and civil liabilities

Civil remedies from employee causing damage to the third party

- Indemnity from employees for wilful misconduct or gross negligence

Key takeaways:

- Implement Respectful Workplace policy, effective reporting channels, investigating mechanisms and disciplinary violations
- Review privacy policies and protocols for compliance
- Incorporate active consistent training for employees and supervisors

Major Changes: China

Court guidance - Trade Secrets Infringements (w.e.f 12 Sep 20)

- Customer information: contact information, transaction habits, intentions
- Not a trade secret if it can reverse-engineered or independently derived
- No infringement of trade secret (customer) if customer voluntarily moves with employee (due to long relationship of personal trust)
- Employer should take measures to safeguard Confidential Information:
 - confidentiality agreement
 - Notifications of confidentiality to employees, suppliers, customers,
 - classification/digital restrictions
 - limit physical access
 - security measures
 - require exiting employees to sign confidentiality agreement, return equipment etc.

Key takeaways:

- Update confidentiality documentation; non-compete restrictions
- Update measures for safeguarding confidential information



Hong Kong

Discrimination Legislation
(Miscellaneous Amendments)
Ordinance 2020
Employment (Amendment)
Bill 2019

Major Changes: Hong Kong

Expansion of employee rights/benefits:

Amendments to Anti-Discrimination Ordinances:

- “Workplace participants” (non-employees) protected and liable for workplace harassment
- Race discrimination can be indirect - due to associated relationships
- Race discrimination can arise from imputation of a race/racial group
- Prohibition of discrimination against breastfeeding employees (w.e.f 19 June 2021)
- Lack of intention – no longer a defense to damages

Employment (Amendment) Bill 2019 – w.e.f. 11 December 2020

- 14 (instead of 10) weeks maternity leave
- Additional maternity pay capped at HKD80k (USD10,322) per employee
- Maternity benefit for miscarriage from 24 (instead of 28) weeks
- Pregnant employee gets sickness allowance if supported by medical certificate.
- Paternity leave within 14 (instead of 10) weeks of birth of the child.

Key takeaways:

- Review employment terms or policies for unintentional discrimination
- Mitigate vicarious liability risk by providing employee training
- Review policies to take into account wider definitions of discrimination and benefits.



Indonesia

Omnibus Law – A major
change in how business is
done in Indonesia

Major Changes: Indonesia

Omnibus Law (Jobs Creation Law):

Employment Structure

- Fixed term limitation period (2-1-2) abolished.
- Compensation payable to definite term employees.
- Hiring of contingent workers allowed for core business.

Employer's Rights and Obligations

- Overtime limits extended.
- Sectoral minimum wages removed.
- Introduces a new social security program, *jaminan kehilangan pekerjaan* or unemployment security.

Employee Termination

- Change in termination process.
- Severance payments reduced.

Immigration

- Relaxation on rules in hiring expats

Key takeaways:

- Removal of fixed term contract limit and relaxing outsourcing of employment gives significant flexibility and control to employers.
- Leverage on fixed term arrangements and outsourcing to better manage terminations



India

Major labour reforms with current Indian labour legislations to be reduced to 4 major labour codes

Major Changes: India

29 Indian labour legislations streamlined into 4 major labour codes:

Code on Wages

- Minimum wage protection to all; uniform definition of wages
- Uniformity in compliance requirements.
- Limitation period made uniform for claims.
- Quantum of fines increased.

Code on Social Security

- Benefits extended to gig workers and platform workers.
- Changes in provident fund threshold and gratuity payment limits.
- Foreigners to obtain Aadhaar (ID number for Indian residents)

Industrial Relations Code

- Wider reach with expanded definitions of 'worker', 'industry', 'employer' and 'industrial dispute'
- Fixed term workers regulated for the first time.
- Grievance redressal committee with mandatory women representation to be incorporated
- Recognition of a negotiating union
- Introduction of fund for welfare of retrenched workers.

Occupational Safety, Health and Working Conditions Code

- Centralized data base to maintain employee records and to harmonize standards to extend employee protections – including hours of work, leave entitlements, overtime hours and corresponding pay, night shifts, and weekly holidays.

Key takeaways:

- Better ease in doing business but cost of employment may rise in India.
- Review employment terms and policies to ensure compliance.



Singapore

Immigration /work visa
changes

New Tech.Pass

Major Changes: Singapore

New work pass regulations

- Minimum monthly salary threshold increased:
 - EP holders – S\$4500 (w.e.f. 1 Sep 20); S\$5000 for financial institutions (w.e.f. 1 Dec 20)
 - S Pass holders – S\$ 2500 (w.e.f. 1 Oct 20)
 - New salary threshold affects renewals w.e.f. 1 May 2021
- Advertising requirement for 28 days
 - Applicable for both EP and S-Passes
 - Exempted companies are still strongly encouraged to advertise
- Emphasis on fair consideration of locals and building Singapore core
- Entry approval to Singapore required

Tech.pass

- Foreign tech entrepreneurs, leaders or technical experts doing frontier and disruptive innovations.
- 2+2 years duration
- Flexible roles: entrepreneur or employee; consultant; investor

Key takeaways:

- Longer application time for hiring foreign employees
- Emphasis on building a Singapore core workforce
- New Tech.pass available for entrepreneurs or tech experts



Vietnam

Overhaul of Labour Code

Major Changes: Vietnam

Overhaul of Labour Code:

Employment Structure

- 'employment relationship' now includes certain contractor relationships.
- No more seasonal labour contracts; only fixed term (up to 3 years) or indefinite
- Labour contract extension and certain multiple definite contracts not allowed.
- E-contracts recognised

Employer's Rights and Obligations:

- Extended probationary period possible.
- Simplified regulation for salary payment.
- Changes in expat employee and work permit matters.
- Raised retirement age.
- Increase in overtime cap.
- Number of public holidays increased
- Introduction of the concept of sexual harassment.

Employee Termination:

- New grounds for unilateral termination of employment

Key takeaways:

- Increased compliance obligations for employers
- Potential increase in cost of hiring
- Review use of fixed term labour contracts and prepare for a potential increase of permanent headcount

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Major trends

- Remote Working
- Alternative Work Arrangements

Remote Working

Issues to consider:

Drawing up detailed comprehensive policy/rules

- WFH only or also work from outside country
- Eligibility /selection criteria
- Redefine work hours, overtime, location, duties
- Safety assessment of home working environment – feasible?
- Enhancing commercial insurance to cover remote work injuries
- Adjust performance matrices, productivity assessment
- Reasonable accommodation: home environment; care-giving duties
- Return to office requirements

Strengthening protection of data and confidential information

- BYOD rules and protocols – data privacy, protection of third party confidential information, monitoring/ surveillance
- Strengthening existing contracts eg. confidentiality clause, liability, performance matrices

Institutionalising new policy:

- Upskilling managers to handle new situation
- Employee consultation

Considerations:

- Keeping employees on track and motivated
- Secure and strengthen protection of company information
- Institutionalising new policies

Alternative Work Arrangements

Job sharing/ Second Job schemes:

- Sharing excess labour with another employer with labour shortage
- Pros: no terminations; no hiring; sharing costs (severance vs overtime); recall of employees when there is work
- Issues to consider: approval from authorities; agreement on cost-sharing; disciplinary issues; work injury compensation; termination of arrangement; non-compete; non-poaching; employee's consent

Gig work/ Part time / Moonlighting

- Conflict of interest where employees engage in alternative work or own business
- Rules of engagement regarding social media posts, youtube channels, endorsements
- Code of Conduct
- Can you discipline employees for their behavior outside work?

Considerations:

- Strong clear documentation between companies and with employees
- Express policies on do's and don'ts for unofficial work

Questions? Please let me know.



Julia Yeo

Asia Regional Hub Partner, Singapore

T +65 6922 8668 M +65 96633077

E julia.yeo@squirepb.com

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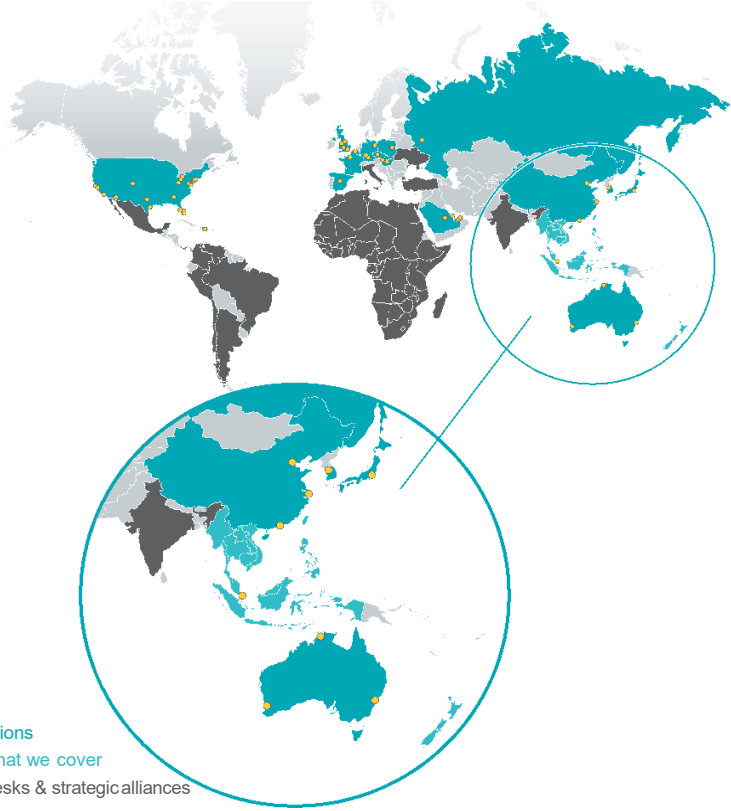
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