COUNTRY COMPARATIVE GUIDES 2024

The Legal 500 Country Comparative Guides

Taiwan

EMPLOYMENT & LABOUR LAW

Contributor

K&L Gates

Jacqueline Fu

Managing Partner | jacqueline.fu@klgates.com

Cecilia Lee

Associate, Taipei Office | cecilia.lee@klgates.com

This country-specific Q&A provides an overview of employment & labour laws and regulations applicable in Taiwan.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

TAIWAN
EMPLOYMENT & LABOUR LAW

1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

According to the Labor Standards Act ("LSA"), an employer can only terminate the employment relationship with its employee when at least one of the statutory causes set forth in Article 11 or Article 12 has been met. Therefore, an employer must first determine which one of the following types of termination is appropriate.

Termination without notice under Article 12 of the LSA.

Generally, if an employee has engaged in material misconduct or committed gross violations of his/her employment contracts, the employer may terminate the employment in accordance with this article. The statutory applicable situations include:

- When entering into the employment agreement, the employee made a false or misleading representation that is likely to cause harm to the employer;
- The employee commits a violent act or an act of gross insult against the employer, the family members or agents of the employer, or fellow employees;
- The employee has been sentenced to imprisonment in a confirmed judgment, unless the employee otherwise receives a suspended sentence or a decree allowing payment of a fine in lieu of imprisonment;
- The employee commits a material breach of the employment agreement or a serious violation of work rules;
- The employee intentionally damages machinery, tools, raw materials, products, or other property of the employer, or the employee intentionally discloses technological or confidential business information of the employer, thereby causing harm to the employer; or
- The employee is, without justifiable reason, absent from work for three consecutive days, or six non-consecutive days in a month.

Termination with notice under Article 11 of the LSA.

Apart from the above-mentioned situations stipulated under Article 12 of the LSA, it is permissible for an employer to dismiss an employee in the following situations stipulated under Article 11 of the LSA:

- Where the employer's business is suspended or has been transferred;
- Where the employer's business suffers operating losses or business contractions;
- Where force majeure necessitates the suspension of business for more than one month;
- Where a change in the nature of business necessitates the reduction of the employer's workforce and the terminated employee cannot be reassigned to another suitable position, or
- Where aparticular worker is clearly not able to perform satisfactorily the duties required of the position held.

However, it should be noted that the Taiwanese courts generally treat unilateral termination by the employer as a last resort, so it may be difficult to terminate an employee without a compelling case. Accordingly, even if one of the above grounds for termination has been met, the employer would still need to meet specific requirements stipulated by the Taiwanese courts, which include:

a. Dismissing an employee due to the business suffering operating losses or contractions usually will require evidence to show the accumulated losses. A "business contraction" means an obvious decrease in production or sales compared to the total original business, and "operating losses" requires showing a "net loss" in previous financial reports. If a

company's total business revenue shrinks over several years, it may assert that it has suffered from operating losses or a business contraction; in this case, the company is allowed to reduce its operation costs by laying off employees. If only one division will be shut down, but others are operating normally and still require employees, the courts will usually deem that there is no reasonable necessity for the company to terminate the employee; and

b. To establish that "a change in the nature of business necessitates the reduction of the employer's workforce and the terminated employee cannot be reassigned to another suitable position", the company must possess sufficient evidence to prove the following in the event of a challenge being made:
    - There was a substantial change in the nature of the company's business that requires a reduction of employees, for example, if the company removes an entire business division in Taiwan; and
    - The particular employee cannot be assigned to another suitable position. However, if the employee can be retrained to fill another position, or if other similar divisions still operate normally and even expand their business and require more employees in the same position, the courts would usually deem that there was no reasonable cause to terminate the employee.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

When a mass layoff occurs, the unique requirements set forth in the Act for Worker Protection during Mass Redundancy will apply.

Applicable circumstances

Layoff procedures

1. Prior announcement of the redundancy plan.

To implement a mass redundancy of employees, the employer is required, at least 60 days prior to the occurrence of any of the conditions for a "mass redundancy of employees", to inform the employees, the officials/staff of the competent authority, and other relevant agencies of its redundancy plan by means of a written notice and to announce it by publishing an announcement.

Prior announcements must be given to relevant authorities/agencies or personnel in the following order:

- To the labor union to which the employees to be laid off in the sections or departments that are involved in the mass redundancy belong (if applicable);
- To the labor representatives of the labor-management conference; and
- To the employees in the sections or departments that are involved in the mass redundancy; however, fixed-term employees need not be included.

The mass redundancy plan to be submitted by the employer should contain the following particulars:

- The cause of the mass redundancy;
- The departments to be affected by the mass redundancy;
- The scheduled effective date of the mass redundancy;
- The number of employees to be laid off;
- The criteria for selecting the subjects of the mass redundancy; and
- The method for calculating the severance pay and information about the job transition assistance project.

2. Negotiation with employees.

Within ten days of the date of submission of the mass redundancy plan, the employees and the employer shall enter into negotiations in the spirit of autonomy.

In the event that the employees and/or the employer refuse(s) to enter into negotiations or cannot reach an agreement, the competent authority shall, within ten days, invite the employees and the employer to form a negotiation committee ("Negotiation Committee") to negotiate the terms of the mass redundancy plan, and propose alternatives if appropriate.

The Negotiation Committee shall have five to 11 members, including:

- Chairman: one representative designated by the competent authority;
- An even number of representatives of the employer: designated by the employer; and
- An even number of representatives of the employees:

- designated by the labor union(s) (if applicable);
- designated by the labor representatives of the labor-management conference (if applicable); or
- elected by the workers in the sections or departments that are involved in the mass redundancy.

3. Filing with the court of the agreement concluded through the negotiations.

The agreement concluded through the negotiations shall be put in writing and be signed, and the competent authority shall within seven days of the date of conclusion of the agreement submit the written agreement to the court having competent jurisdiction for its examination and approval.

4. Accepting the employment service personnel dispatched by the competent authority.

Upon formation of the Negotiation Committee, the competent authority shall dispatch employment service personnel to assist both the employees and the employer by providing them with appropriate consulting services in connection with employment service and vocational training.

The employer shall not reject the employment service personnel dispatched by the competent authority and shall set a time for them to provide individual assistance to the employees.

5. Paying severance payments according to the agreement concluded through the negotiations.

3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

If a merger or acquisition is carried out under the Taiwan Business Mergers and Acquisitions Act ("BMAA"), then the BMAA itself provides a specific retention and severance process, which is different from the severance process under the LSA. The selling company or the buying company shall provide a retention offer with terms of retention to the employees to be retained. The employee may accept or reject the offer within ten days. If the employee rejects the offer, the employee will be terminated and receive a severance payment from the current employer. If the employee accepts the offer, the employee's period of service with the current employer must be recognized by the new employer.

4. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

Where an employer terminates an employee with cause set forth in Article 11 of the LSA, no matter what the category/level of such employee is, advance notice with a minimum period as stipulated below shall be given:

1. Where an employee has worked continuously for more than three months but less than one year: ten days' advance notice.
2. Where an employee has worked continuously for more than one year but less than three years: twenty days' advance notice.
3. Where an employee has worked continuously for more than three years: thirty days' advance notice.

5. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?

Yes. According to Article 16 of the LSA, an employer shall provide at least 10 days' advance notice to an employee who has worked continuously for more than three months but less than one year, at least 20 days' advance notice to an employee who has worked continuously for more than one year but less than three years, and at least 30 days' advance notice to an employee who has worked continuously for more than three years. However, if an employer terminates the employment without serving an advance notice within the time limit prescribed by Article 16 of the LSA, the employer must pay to the employee the equivalent wages for the advance notice period.

6. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and not participate in any work?

There are no statutory provisions regarding "garden leave" stipulated under Taiwan law. However, it is possible for the employer and employee to agree contractually to a "garden leave" clause as part of the employment agreement or consent to the same after serving the termination notice.

7. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

Yes. The requirements for termination are listed below:

- Requirement 1:

Termination of employment must be for at least one of the specific causes described in the answer to Question 1 above.

- Requirement 2:

Giving the required (10-day, 20-day, or 30-day) advance notice or making a payment in lieu of notice.

- Requirement 3:

Paying applicable statutory termination severance set forth in either the Labor Pension Act ("LPA") or the LSA.

- Requirement 4:

Giving a paid leave of absence for the purpose of finding a new job. Such leave of absence may not exceed two work days per week.

- Requirement 5:

Paying wages for all accrued but unused annual leave.

8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?

- Consequence for violating Requirement 1:

The employer may not lawfully terminate the employment, and the employee may file a complaint claiming unlawful termination.

- Consequence for violating Requirement 2:

The employer may be subject to fines of between TWD20,000 and TWD300,000.

- Consequence for violating Requirement 3:

Where an employer fails to pay severance pay in accordance with the criteria or timelines, it may be subject to fines of between TWD300,000 and TWD1,500,000 million and may be ordered to make the payment within a given period. Failure to make payments may result in cumulative fines.

- Consequence for violating Requirement 4:

The employer may be subject to fines of between TWD20,000 and TWD300,000.

- Consequence for violating Requirement 5:

The employer may be subject to fines of between TWD20,000 and TWD1,000,000.

9. How, if at all, are collective agreements relevant to the termination of employment?

According to the Collective Agreement Act, when an employer is bound by a collective agreement, if the employer terminates an employment agreement because an employee claims the rights that arise from the collective agreement or the rights that are contained in an employment agreement arising from a collective agreement, the termination shall be null and void.

10. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

Yes. The Employment Services Act ("ESA") requires the employer to file a notice with the labor authority and public employment service institution ten days in advance when terminating an employee. If payment is made in lieu of the notice period, such ten-day notice still needs to be made before the effective date of termination. An administrative fine of between TWD30,000 to TWD150,000 will be imposed for failure to make such notice. Also, the above severance package needs to be paid within 30 days of the termination.

11. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

According to Paragraph 1, Article 5 of the ESA, for the purpose of ensuring equal opportunity in employment, employers are 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, horoscope, blood type, or past membership in any labor union; matters stated clearly in other laws shall be followed in priority. In addition, Article 11 of the Act of Gender Equality in Employment also provides that employers shall not discriminate against employees because of their gender or sexual orientation in cases of retirement, discharge, severance, and termination.

12. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

Anyone who violates Paragraph 1, Article 5 of the ESA may be subject to a fine of between TWD300,000 and TWD1,500,000. Additionally, if an employee is damaged by the employment practices referred to in Article 11 of the Act of Gender Equality in Employment, the employer may be liable for any damage arising therefrom and the employers may be subject to a fine of between TWD300,000 and TWD1,500,000.

13. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

Yes. Based on Paragraph 2, Article 21 of the Act of Gender Equality in Employment, when an employee enjoys the benefits of taking menstrual leave, maternity leave, leave for pregnancy check-ups, leave for pregnancy check-up accompaniments, paternity leave or parental leave, applying for reinstatement of parental leave, or requesting other measures promoting equality in employment, the employer may not treat it as non-attendance and adversely alter the employee's full-attendance bonus payments or evaluation or take any disciplinary action that is adverse to the employee.

In addition, pursuant to Article 13 of the LSA, an employer shall not terminate an employment agreement with an employee who is on maternity leave from work or is receiving medical treatment because of occupational accidents.

14. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

Yes. Based on Article 74 of the LSA, an employee, upon discovery of any violation by the business entity of the LSA and other labor laws or administrative regulations, may file a complaint with the employer, competent authorities, or inspection agencies, and the employer may not terminate, transfer, reduce the wages of, or harm the rights and benefits in accordance with the law, contract, or norm of such an employee nor take any unfavorable measures against the employee. Moreover, Article 36 of the Act of Gender Equality in Employment also provides that an employer may not terminate, transfer, or take any disciplinary action that is adverse to an employee who personally file a complaint or assists other persons to file complaints pursuant to the Act of Gender Equality in Employment.

15. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

No, such action is not permitted. In Taiwan, short-term operating losses or business contractions do not constitute a statutory termination cause. In addition, although the employee would be immediately hired, it would be still inconsistent with the stated termination cause (for example, suffering accumulated losses). Instead, Taiwan authorities encourage both the employer and employee to seek an agreement to reduce work hours in response to economic impacts.

The central competent labor authority, the Ministry of Labor ("MOL"), has announced the Guidelines for Reducing Work Hours Based on Negotiations between Employers and Employees in Response to Economic Impacts ("Guidelines"). Based on the Guidelines, where the employer is to suspend work or reduce production due to economic factors, the employer may consider reducing employees' work hours and work wages to avoid redundancy, subject to compliance with the following steps and requirements:

- Before reducing an employee's work hours and wages, the employer shall consider reducing the benefits or bonuses of its representative directors, supervisors, general managers, and other high-level managers.
- The employer and each of the affected

employees must negotiate and reach an agreement regarding the temporary reductions in work hours and wages. It is advisable to first consult with the union (if applicable) and negotiate with individual employees.
- For a full-time employee paid on a monthly basis, his/her monthly wages after reduction cannot be lower than the basic minimum wage announced by the authorities (currently TWD26,400).
- In principle, the implementation period of a temporary reduction of work hours and wages shall not exceed three months. If it is necessary to extend the period, the employee's consent shall be obtained again. If operations have returned to normal, or the implementation period previously agreed upon expires, the prior employment conditions shall be restored immediately.
- To implement the reduction of work hours and wages, the employer shall comply with the "Labor-Management Work Hour Reduction Agreement (sample)" announced by the MOL and designed chiefly to provide concrete regulations as references for matters of concern during negotiations. The key points include: (a) the period and method of determining work hours and pay reductions; (b) the terms for working another part-time job during the period; and (c) the principle and payment criteria for work on non-working days.
- Both (a) the local labor authorities, and (b) the branch office of the Workforce Development Agency of the MOL shall be notified of the implementation of the reduction of working hours and wages. The same applies in the event of a change of the implementation period or method.

16. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions? Have any court or tribunal claims been brought regarding an employer's use of AI or automated decision-making in the termination process?

The typical risks relating to using artificial intelligence ("AI")technology to analyze video interviews or assess termination decisions involve discrimination, infringement of the employee's privacy, and unlawful termination.

1. Discrimination issues:

According to Paragraph 1, Article 5 of the ESA, for the purpose of ensuring a national's equal opportunity in employment, 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, horoscope, blood type, or past membership in any labor union; matters stated clearly in other laws shall be followed in priority. Anyone who violates this provision shall be subject to an administrative fine of no less than NTD60,000 but no more than NTD300,000.

As training of AI models may lead to prejudice in the application of AI, the recruitment decisions made by AI systems might be prone to discrimination against specific job applicants or employees.

2. Employee's privacy issues

Section (2), Paragraph 2, Article 5 of the ESA reads in part: "When recruiting or employing employee(s), an employer shall not engage in any of the following acts: … (2) withholding any job applicant or employee's identification card, work certificate, or any other certifying document, or requesting that the job seekers or employees surrender any other personal information unrelated to the employment concerned against his/her free will" (emphasis added).

Article 1-1 (2) of the Enforcement Rules of Employment Service Act further indicates that when an employer asks the job-seekers or employee to present said information, the personal interests of the persons concerned shall be respected, no boundary shall be crossed beyond the mandatory and specific confinements upon the economic demands or public interest protection, and an appropriate relationship with the intended purposes shall be established.

i. Physiologic information: genetic tests, medication tests, medical treatment tests, HIV tests, intelligence quotient tests, and fingerprints.
ii. Psychological information: psychiatric tests, loyalty tests, polygraph tests, etc.
iii. Personal life-style information: financial records, criminal records, family plans, and background checks.

Therefore, if the information contained in the video interviews would constitute "physiologic information." An

employer in Taiwan is not allowed to force the employee to provide such information if it is not related to the job that he or she is performing or that he or she is applying for. The employer shall be subject to an administrative fine of no less than NTD300,000 but no more than NTD1,500,000 in the event of a violation.

3. Unlawful termination issues

According to the LSA, an employer can only terminate the employment relationship with an employee when at least one of the statutory causes stipulated in Article 11 or 12 has been met. Also, the Taiwan courts take the view that termination should be the last resort. Therefore, an employer is not allowed to decide upon termination based only on the AI system's calculation and analysis without making efforts to show that there are no alternatives other than termination. For example, in the case of a performance-related termination, performance improvement plans shall be carried out and the employer must prove the employee's failure in achieving the targets set forth in the plans. Reliance on AI only may result in litigation for alleged wrongful termination, and if the employee prevails in such litigation, the employer shall be required to reinstate the employee and compensate him or her for the total lost wage, pay interest at the rate of 5% per month from the reinstatement date, and bear any insurance premium premiums and pension contributions from the date of termination.

So far, no publicized court decisions or rulings from labor authorities involved claims relating to an employer's use of AI or automated decision-making in the termination process.

17. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

There are two types of severance payments provided for under the LSA (the old pension plan) and the LPA (the new pension plan). On July 1, 2005, Taiwan enacted a new pension scheme pursuant to which an employee has his or her own pension account that is portable to the new employer. Before this enactment, an employer maintained pension funds for the benefit of all of its employees, so if an employee left his/her then-current employer, he/she lost all pension seniority. Under the new pension scheme, an employer is required to make monthly contributions to each employee's pension account based on the employee's salary. In connection with this new pension contribution, the LPA also provides for a reduced severance payment obligation for an employee who has already received such monthly pension contributions.

In the case of an employee who was hired before June 30, 2005, if he/she enrolled into the new pension scheme after June,30 2005, the severance payment will be calculated depending on the employee's seniority before and after the relevant application.

Severance payments are required under the LSA (the old pension plan) and the LPA (the new pension plan) as follows:

- An employee who was employed before June 30, 2005, or foreign employee (the old pension plan):
    - The severance pay shall be equal to one month's average wage for each year of service prior to July 1, 2005;
    - The severance pay for the months remaining after calculation in accordance with the preceding sub-paragraph, or for an employee who has been employed for less than one year, shall be calculated proportionally. Any period of employment less than one month shall be calculated as one month;
    - The severance pay shall be equal to one month's average wage for each year of service from July 1, 2005 until the termination date, if the employee chooses to remain in the old pension plan after July 1, 2005; and
    - The severance pay shall be equal to half a month for each year of service for the period from July 1, 2005 until the termination date, if the employee chooses to enroll into the new pension plan after July 1, 2005.
- In the case of an employee who was employed after 1 July 2005 (the new pension plan):
    - The employee shall have his or her severance pay paid by the employer based on his or her seniority;
    - The payment shall be an equivalent of half a month of average wages for every full year of employment and in proportion for periods of employment less than one full year; and

- The severance shall not exceed more than six months of average wages.

The term “average wage” means the figure reached by taking the total wages for the six months preceding the day on which the termination takes place, divided by the total number of days in that period. The term “wages” means the remuneration that an employee receives for the services rendered, including wages, salaries and bonuses, allowances, and any other regular payments regardless of the name that may be computed on an hourly, daily, monthly, and piecework basis, whether payable in cash or in kind. Therefore, if the employee received a non-discretionary bonus on the Dragon Boat Festival or Moon Festival (which is very common in Taiwan) in the six-month period immediately before his or her termination date, such bonuses shall be included in the calculation of the average wage.

18. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, in what form, should the agreement be documented? Describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

Yes. If no suitable termination clause applies, in practice, an employer will often choose to offer a more favorable package to the employee for signing a separation agreement with a mutual release and waiver of claims.

There are no specific legal requirements regarding voluntary settlement/mutual agreements. The employer is free to discuss the matter with the employee to reach a mutual agreement. However, to induce the employee to accept separation, an employer will typically offer a more generous separation package compared to the statutory requirements. Also, an employer should consider compensating the employee for the unemployment insurance benefits. Under the ESA, if an employee is involuntarily terminated, an employer must report such termination to the labor authority at least ten days before the termination. In addition, such employee may receive unemployment benefits depending on the employee’s age and the number of dependents. However, in mutual termination situations, an employer may not be willing to treat the termination as an involuntary termination, which would leave it open to future challenges about whether the statutory termination cause has been met or not. The employer may not want to issue an involuntary termination certificate, which is a requisite for the employee to apply for the unemployment benefit. Therefore, the employer usually will consider compensating the employee for the unemployment benefit loss instead.

There is no specific requirement that non-disclosure or confidentiality provisions must be included in a separation agreement. However, if the employer wishes to place post-termination restrictions on an employee following termination, the employer should comply with the specific requirements set forth in the LSA, which include compensation to the restricted employee.

19. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

Yes. In accordance with Article 9-1 of the LSA and Article 7-1, 7-2, and 7-3 of the Enforcement Rules of the LSA, if the employer has proper business interests that require protection and the position or job of a specific employee provides the employee with access to or the right to use the employer’s trade secrets, the employer is allowed to enter into a post-employment non-competition agreement with such employees that meet the following requirements. Any post-employment non-competition agreement that violates any of the following requirements will be null and void.

Format: The post-employment non-competition agreement shall be in writing and shall also specify in detail the content of the restriction. The employer and the employee shall each keep a copy of the agreement with their signatures or seals on it.

Content: The restrictions regarding the non-competition period, geographic area, scope of prohibited competing activities, and prospective employers shall be reasonable. The reasonableness of the restrictions shall be reviewed based on the following:

- Period of restriction: The post-employment period of non-competition shall not exceed the life cycle of the trade secrets or technological information that the employer intends to protect. Additionally, the period shall not exceed a maximum of two years. If such a period is more than two years, then it shall be shortened to two years.
- Area of restriction: The geographic area shall be limited to the area in which the employer actually engages in business. A “worldwide” geographic area will be deemed too broad

and is not acceptable to the courts.
- Scope of restriction: The scope of non-competing businesses shall be specified in detail and shall be identical or similar to the employee's business activities carried out in the service of the employer.
- Restriction on new employers: The prohibited prospective employer shall be specified in detail and shall engage in business activities that are identical or similar to and competitive with those of the employer.

Compensation: The employer shall reasonably compensate the employee concerned for the losses incurred by the employee by complying with the non-competition obligations. The remuneration received by the employee during employment cannot substitute for such compensation. The amount of compensation per month shall be no less than 50 % of one month's average wage of the employee upon resignation and shall be sufficient to support the resigned employee during the non-competition period. The employer also needs to consider whether the amount of compensation will be comparable with the loss incurred by the employee through compliance with the non-competition obligations. Furthermore, such compensation shall be paid to the employee in a lump sum upon resignation or by monthly installments to the employee after resignation.

20. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Yes. An employer may sign a confidentiality agreement with an employee to keep the relevant information confidential after the termination of employment.

21. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

No. There is no specific statutory obligation that requires an employer to provide references to new employers. However, upon termination of an employment agreement, neither an employer nor the employer's agent shall reject a request from the employee for proof of his or her service record.

22. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

The concept of at-will employment is not recognized under Taiwan law. According to the LSA, an employer can only terminate an employee when at least one of the statutory situations set forth in Article 11 or Article 12 of the LSA has been met. The court's prevailing position in wrongful termination cases is that the termination should be the last resort by the employer. Therefore, it is difficult for an employer to terminate an employee within a short period of time without compelling evidence of wrongdoing by the employee. In a case where the employee is terminated for failure to deliver satisfactory performance, it is advisable to put in place performance improvement plans (each, a "PIP") and provide several rounds of PIP consultations before termination occurs. In addition, an employee may apply for mediation administered by the local labor bureau for no cost. This would typically happen before an employee commences a civil action. The local labor bureau may also take this chance to investigate any labor law violations. There appear to be an increasing number of employees' complaints against employers, which may be the result of employees becoming more educated about their rights and may also be due to the difficult economic conditions. If an employee succeeds in a wrongful termination case, the court may require the employer to reinstate the employee and compensate the employee for the salary owed during the period of litigation. Therefore, it is important for an employer to seek a legal assessment of the strength of the case for the termination and collect sufficient evidence to defend against a claim, if any, before the court. If the case for termination is assessed to be weak, then the employer should consider negotiating a mutual separation with a higher severance pay to avoid future disputes.

Also, one key objective of the Labor Matters Act ("LMA") is to remove the barriers for an employee to sue an employer. Below is a summary. Before considering an employee termination, an employer should conduct a rigorous assessment and plan ahead before doing so.

a. Employer's burden of proof is higher.

- The employer has the duty to produce certain documents regarding labor matters.

Article 35 of the LMA

For cases that are initiated by an employee, the employer is obligated to provide documentation as prescribed in the provisions of the relevant laws.

- The employer bears the burden of proof that bonus payments are not wages.

Article 37 of the LMA

In wage disputes between an employee and employer, if it can be shown that the employee received payments from the employer based on a working relationship, the remuneration is presumed to be paid for the work performed. This definition will affect the calculation of severance, overtime, and unused vacation payments that are calculated based on the payments paid for the work performed.

- The employer bears the burden of proof that it did not approve an employee to work overtime or the employee did not provide work in addition to normal work hours.

Article 38 of the LMA

It is presumed that the work hours recorded on the employee's timesheet represent the time during which the employee has performed duties with the employer's permission.

b. Reduction of an employee's barriers to litigation.

- The employee may file a suit in the courts having jurisdiction over the premises where their services are provided. If an employee is sued by the employer, he/she can apply to transfer the jurisdiction to a court of their choice.

Paragraph 1 and 2 of Article 6 of the LMA

For labor cases with employee plaintiffs, the court of the region where the employer's domicile, residence, main business, or main office is located, or where the plaintiff provides labor service, shall have jurisdiction over the case. For labor cases with employer plaintiffs, the court of the region where the employee's domicile or residence is located, or where the current or the last labor service is/was provided, shall have jurisdiction over the case.

For cases with employer plaintiffs, as described in the preceding paragraph, the employee involved in the case may petition to transfer the case to the jurisdictional court of the employee's choice before the beginning of oral arguments. However, the said provisions do not apply to cases that continue after the parties fail to reach an agreement in labor mediation.

- Reducing or temporarily waiving an employee's court costs and enforcement fees.

Article 12 of the LMA

If an employee or a labor union initiates an action or files an appeal to confirm the existence of an employment relationship, wages payment, pensions, or severance fees, then two-thirds of the court costs may be temporarily waived.

If the employee seeks to enforce the payment judgment and the value of the enforcement is more than TWD200,000, the enforcement fee shall be temporarily waived on the excess portion of the claim and shall be deducted later from the proceeds derived from the compulsory enforcement.

c. Enhancement of provisional remedy proceedings.

- Reducing an employee's obligation to provide a security bond.

In general, a security bond is required to apply for a provisional attachment, provisional injunction, or the temporary status quo injunction, but for labor disputes, the security bond is either waived or substantially reduced.

- Increasing availability of a temporary status quo injunction to be continuously employed.

Article 48 of the LMA

When the court discovers that a litigation case in which the employee motions for payment of wages, employees' compensation, pension, or severance pay causes great hardship to the employee's livelihood, the court should inform the employee that he or she may motion for a temporary status quo injunction to receive a certain payment ex ante.

Paragraph 1, Article 49 of the LMA

If the court finds that the case for confirming the existence of an employment relationship, as initiated by the employee, has a chance to prevail, and that the employer has no major difficulties in continuously employing the employee, the court may order a temporary status quo injunction, based on the employee's motion, for continuous employment of the employee and payment of wages to the employee.

Article 50 of the LMA

If the employee initiates an action to confirm the ineffectiveness of a job transfer or to reinstate the employee to his or her original position, and the court

considers that the employer's action concerning the employee's job transfer is likely to have violated labor laws, group agreements, work rules, labor-management conference resolutions, labor contracts, or labor norms, and that the employer has no significant difficulty in continuously employing the employee in the original position, the court may grant a temporary status quo injunction, based on the employee's motion, for continuing the employment in the original position or for working in a new position that both parties agree on.

23. Are any legal changes planned that are likely to impact the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

In July 2023, Taiwan's legislature passed amendments to the Gender Equality in Employment Act and the Sexual Harassment Prevention Act. Most of the substantial provisions became effective on March 8, 2024, International Women's Day, as this series of amendments was made in light of the #METOO trend in Taiwan in the first half of 2023.

Based on the new amendments, in cases where, following an investigation by the employer or the local competent authority, the incident is determined to constitute sexual harassment and the circumstances are severe, the employer may terminate the employment contract without prior notice within 30 days from the date on which it becomes aware of the investigation results.

Contributors

Jacqueline Fu
Managing Partner
jacqueline.fu@klgates.com

Cecilia Lee
Associate, Taipei Office
cecilia.lee@klgates.com