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Taiwan

Employment and Labour Law

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

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Taiwan: Employment and 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?

Under Taiwan's Labor Standards Act ("LSA"), an employer may only terminate an employment relationship based on statutory causes set forth in Article 11 or Article 12 of the LSA. Employers must first determine whether the termination falls under termination without notice (Article 12 of the LSA) or termination with notice (Article 11 of the LSA).

Termination without notice (Article 12 of the LSA)

If an employee engages in serious misconduct or commits material breaches of the employment agreement, the employer may terminate the employment immediately without prior notice or severance pay. Statutory justifications include:

- The employee made false statements or misrepresentations when entering into the employment agreement, leading to potential harm to the employer;
- The employee commits violence or a grossly insulting act against the employer, the employer's family members, agents, or fellow employees;
- The employee receives a final criminal conviction requiring imprisonment, unless the sentence is suspended or replaced with a fine;
- The employee materially breaches the employment agreement or seriously violates work rules;
- The employee intentionally damages the employer's property (e.g., machinery, raw materials, products) or discloses confidential business or technical information, causing harm to the employer; or
- The employee is absent without just cause for three consecutive days or six non-consecutive days in a month.

Termination with notice (Article 11 of the LSA)

Employers may terminate an employee with prior notice and severance pay under the following circumstances:

- 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 a particular worker is clearly not able to perform satisfactorily the duties required of the position held.

Judicial interpretation and practical considerations

Taiwanese courts generally consider termination a "last resort" and apply strict scrutiny to an employer's justification for dismissal. Even if statutory grounds exist, employers must provide compelling evidence that termination was necessary and reasonable. Specific judicial considerations include:

- **Operating losses or business contraction**: Employers must provide documented evidence, such as financial statements showing net losses or a significant decline in revenue or production. If only one division is affected while others remain operational, courts may determine that termination is unnecessary.
- **Workforce reduction due to business changes**: The employer must demonstrate a substantial shift in business operations requiring fewer employees (e.g., shutting down an entire business unit in Taiwan). Additionally, courts may require proof that the affected employee could not be retrained or reassigned to another suitable role. If similar divisions continue to expand and require personnel, termination may be deemed unjustified.

Employers should exercise caution when terminating employees, ensuring compliance with the LSA requirements and maintaining comprehensive documentation to support the necessity of termination in case of employment disputes.

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?

In the event of mass redundancies, employers must comply with the Act for Worker Protection of Mass Redundancy (the "Mass Redundancy Act"), which imposes specific procedural requirements to protect employees.

Applicable circumstances for mass redundancy

The Mass Redundancy Act applies when an employer plans to dismiss a significant number of employees within a set period. The specific threshold for triggering mass redundancy procedures depends on the size of the workforce:

- Employers with fewer than 30 employees: Dismissal of more than 10 employees within 60 days.
- Employers with 30 to 200 employees: Dismissal of more than one-third of the workforce within 60 days, or over 20 employees within a single day.
- Employers with 200 to 500 employees: Dismissal of more than one-fourth of the workforce within 60 days, or over 50 employees within a single day.
- Employers with more than 500 employees: Dismissal of more than one-fifth of the workforce within 60 days, or over 80 employees within a single day.
- Dismissal of more than 200 employees within 60 days, or over 80 employees within a single day.

Mass redundancy procedures

1. Advance notification of the redundancy plan

Employers must notify affected employees, competent labor authorities, and relevant labor organizations at least 60 days in advance.

The mass redundancy plan must be submitted in writing and include:

- Reason for the mass redundancy;
- Departments affected;
- Scheduled effective date of layoff;
- Number of employees affected;
- Selection criteria for dismissals; and
- Severance pay calculations and job transition assistance plans.

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

- Labor unions representing affected employees (if applicable);
- Labor representatives of the labor-management conference; and
- Employees in affected departments (excluding fixed-term employees).

2. Negotiations with Employees

Within 10 days of submitting the mass redundancy plan, the employer and employees must engage in good-faith negotiations. If negotiations fail or if either party refuses to participate, the labor authority will intervene by forming a Negotiation Committee within 10 days.

The Negotiation Committee consists of 5 to 11 members, including:

- Chairperson (appointed by the competent labor authority).
- An even number of employer representatives (appointed by the employer).
- An even number of employee representatives, selected from:
  - Labor union representatives (if applicable);
  - Labor representative of the labor-management conference (if applicable); or
  - Employee-elected representatives from affected departments.

3. Filing the agreement with the court

Any agreement reached must be documented in writing and submitted to the competent court for approval within 7 days.

4. Facilitating employment services for affected employees

Once the Negotiation Committee is formed, the competent labor authority dispatches employment service personnel to assist employees in job placement and vocational training. The employer must cooperate and schedule time for individual assistance.

5. Payment of severance and finalization of redundancy

Employers must pay severance according to the terms negotiated and agreed upon during the process.

Key Considerations

The mass redundancy process is highly regulated in Taiwan, and failure to follow statutory procedures may result in invalid dismissals, reinstatement orders, and penalties. Courts and labor authorities closely scrutinize mass layoffs, particularly if they appear to be a disguised form of unfair dismissal.

Employers are advised to carefully document financial or operational justifications and ensure compliance with procedural requirements to mitigate legal risks.

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 conducted under the Business Mergers and Acquisitions Act ("M&A Act"), the M&A Act prescribes specific procedures for employee retention and severance, which differ from the LSA.

Retention and Severance Process

- The seller (current employer) or buyer (new employer) must provide retention offers to employees selected for continued employment.
- Employees have 10 days to accept or reject the offer.
- If the employee rejects the offer or is not provided one, their employment is terminated, and the current employer must provide severance pay.
- If the employee accepts, the new employer must recognize their prior service years, ensuring continuity of tenure-related benefits.

In cases where a business sale is structured as an asset transfer, employees are not automatically transferred and must sign new employment contracts with the buyer. If no offer is made, the selling employer is required to provide severance pay under the LSA.

4. Do employees need to have a minimum period of service in order to benefit from termination rights? If so, what is the length of the service requirement?

Yes, under the LSA, employees must have worked for at least 3 months to be entitled to advance notice before termination. Under Article 16 of the LSA, the minimum statutory notice period for terminating employment depends on the employee's length of continuous service:

- Less than 3 months: no advance notice required;
- More than 3 months but less than 1 year: 10 days advance notice;
- More than 1 year but less than 3 years: 20 days advance notice; and
- More than 3 years: 30 days advance notice.

If termination is due to serious misconduct under Article 12 of the LSA, an employer may dismiss the employee immediately without prior notice, regardless of the length of service.

5. 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?

The minimum statutory notice period for termination is determined by the employee's length of service under Article 16 of the LSA:

- Less than 3 months: no advance notice required;
- More than 3 months but less than 1 year: 10 days advance notice;
- More than 1 year but less than 3 years: 20 days advance notice; and
- More than 3 years: 30 days advance notice.

Nonetheless, certain employees, particularly executives, senior management, and specialized professionals, may have contractual notice periods that exceed the statutory minimum. Employers and employees may negotiate longer notice periods in employment agreements, reflecting the complexity of their roles, transition needs, or industry practices. However, contractual notice periods cannot be shorter than the statutory minimum required under the LSA.

6. Is it possible to make a payment to a worker to end the employment relationship instead of giving notice?

Yes. Under Article 16 of the LSA, an employer may terminate employment immediately by providing payment in lieu of notice. The payment must be equivalent to the employee's wages for the statutory notice period, which is determined by their length of service. By paying the equivalent wages for the notice period, the employer can terminate employment immediately, without requiring the employee to work during the notice period.

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

Taiwanese labor law does not contain specific statutory provisions regarding garden leave. However, an employer may place an employee on garden leave if both parties agree.

- **Contractual agreement**: Employers and employees may include a garden leave clause in the employment

contract or reach an agreement at the time of termination.
- **Continued compensation**: During garden leave, the employee remains employed and must be paid in full, even though they are not required to work.
- **Potential disputes**: If the employer unilaterally imposes garden leave without an agreement, it could be considered a violation of the employee's right to work, potentially leading to employment disputes.

Employers wishing to enforce garden leave should ensure that clear terms are included in employment agreements or obtain employee consent when implementing it.

8. 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. To lawfully terminate an employee in Taiwan, the employer must comply with the statutory termination procedures under the LSA and other relevant labor regulations. The key requirements are as follows:

- **Valid grounds for termination**: The termination must be based on one of the statutory causes outlined in Article 11 (termination with notice) or Article 12 (termination without notice) of the LSA.
- **Advance notice or payment in lieu of notice**: Employers must provide advance notice as follows:
  - 10 days for employees with more than 3 months but less than 1 year of service;
  - 20 days for employees with more than 1 year but less than 3 years of service;
  - 30 days for employees with more than 3 years of service; and
  - If the employer chooses not to provide notice, they must pay wages in lieu of notice.
- **Severance pay**: The employer must pay statutory severance according to the LSA or the Labor Pension Act ("LPA"), depending on which system applies to the employee.
- **Paid leave for lob search**: Employees are entitled to paid leave during the notice period for job hunting, up to two working days per week.
- **Payment of accrued but unused annual leave**: The employer must compensate the employee for any unused statutory annual leave at the time of termination.

Failure to comply with these termination requirements may render the dismissal unlawful, exposing the employer to legal claims, reinstatement orders, or compensation liabilities.

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

Failure to comply with the statutory termination procedures under the LSA and other relevant laws may result in legal claims, penalties, and financial liabilities for the employer. Employees may file claims for damages or seek reinstatement if the termination is deemed unlawful. Non-compliance with termination procedures may lead to investigations by labor authorities and reputational risks for the employer.

The specific consequences for non-compliance with each requirement are as follows:

- **Failure to establish lawful grounds for termination**: If the employer terminates employment without a valid statutory reason, the termination may be deemed unlawful. The employee may file a complaint with the local labor authority or initiate legal proceedings in courts to challenge the dismissal and seek reinstatement or compensation.
- **Failure to provide the required advance notice or payment in lieu of notice**: The employer may be fined between TWD 20,000 and TWD 300,000 for not complying with the notice requirements under the LSA.
- **Failure to pay statutory severance**: If an employer fails to pay severance in accordance with legal standards, fines range from TWD 300,000 to TWD 1,500,000. The employer may be ordered to pay the severance within a specified period. Failure to comply could lead to cumulative fines until payment is made.
- **Failure to provide paid leave for job searching during the notice period**: The employer may be fined between TWD 20,000 and TWD 300,000 for not granting paid job search leave.
- **Failure to compensate for accrued but unused annual leave**: The employer may be fined between TWD 20,000 and TWD 1,000,000 if they fail to compensate employees for unused annual leave upon termination.

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

Under the Collective Agreement Act, when an employer is bound by a collective agreement, certain protections apply to employees covered by the agreement.

- **Protection against retaliatory termination**: If an employer terminates an employee because the employee exercised rights granted under a collective agreement, or rights contained in an employment

contract derived from a collective agreement, the termination is considered null and void.
- **Priority over individual employment agreements**: If a collective agreement contains specific termination procedures or protections, those provisions take precedence over individual employment contracts, provided they do not violate the LSA or other labor laws.

Employers subject to collective agreements must ensure that any termination decisions comply with the terms of the agreement, or they may face legal challenges and reinstatement claims.

11. 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. Under the Employment Services Act ("ESA"), employers must notify the local labor authority and public employment service institution at least 10 days in advance when terminating an employee. This requirement applies even if the employer makes a payment in lieu of notice—the 10-day notice must still be filed before the effective termination date. Additionally, severance payments must be made within 30 days of termination.

Failure to notify the labor authority may result in an administrative fine ranging from TWD 30,000 to TWD 150,000. Also, delayed or non-payment of severance may expose the employer to further penalties and legal claims.

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

Under Article 5 of the Employment Services Act ("ESA"), employees are protected from discriminatory or harassing terminations based on various protected characteristics. Employers cannot terminate employees based on factors such as:

- Race, class, language, religion, political affiliation
- Place of origin, place of birth
- gender, sexual orientation
- Age
- marital status
- appearance, disability
- Horoscope, blood type
- past labor union membership

Furthermore, under Article 11 of the Gender Equality in Employment Act, Employers are prohibited from discriminating against employees based on gender or sexual orientation in cases of retirement, discharge, severance, or termination. If an employer terminates an employee on discriminatory grounds, the termination may be deemed unlawful, potentially resulting in:

- Legal claims for reinstatement or damages;
- Administrative fines or penalties imposed by labor authorities.

Employers should ensure that termination decisions are based on objective performance-related factors and legitimate business justifications to avoid potential legal disputes.

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

If an employer engages in discriminatory termination, they may be subject to legal and financial consequences under Taiwanese labor laws. According to Article 5 of the ESA, an employer who unlawfully terminates an employee based on protected characteristics may be fined between TWD 300,000 and TWD 1,500,000.

Additionally, under Article 11 of the Act of Gender Equality in Employment, if an employer discriminates against an employee based on gender or sexual orientation in termination decisions, they may be held liable for any resulting damages. In such cases, the employer may also face fines ranging from TWD 300,000 to TWD 1,500,000.

Apart from monetary penalties, employers may face claims for reinstatement if the termination is ruled unlawful. If the employee has suffered economic losses or emotional distress due to the discriminatory or harassing termination, the employer may also be required to provide compensation. Furthermore, non-compliance with anti-discrimination laws can lead to reputational damage and increased scrutiny from labor authorities.

14. 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. Certain categories of employees are entitled to additional protections against termination under Taiwanese labor laws.

Under Paragraph 2, Article 21 of the Act of Gender Equality in Employment, an employer may not take adverse actions against an employee who is on menstrual leave, maternity leave, leave for pregnancy check-ups, leave for pregnancy check-up accompaniments, paternity leave, or parental leave. This includes any action that negatively impacts the employee's attendance records, performance evaluations, bonuses, or overall employment status.

Additionally, Article 13 of the LSA prohibits an employer from terminating an employee who is on maternity leave or receiving medical treatment for an occupational injury or illness. Any termination under such circumstances would be considered unlawful, and the employee may seek reinstatement or damages.

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

Yes. Taiwanese labor laws provide protections for employees who report legal violations by their employer. Under Article 74 of the LSA, an employee who discovers that their employer has violated labor laws or administrative regulations may file a complaint with the employer, the competent labor authorities, or inspection agencies. The employer is prohibited from terminating, transferring, reducing wages, or otherwise taking any adverse action against the whistleblower in retaliation. Any termination in violation of this provision may be deemed unlawful.

Additionally, Article 36 of the Act of Gender Equality in Employment states that an employer may not dismiss, transfer, or take any adverse disciplinary action against an employee who files a complaint or assists others in filing complaints under this Act.

These protections ensure that employees can report misconduct without fear of retaliation and that any termination or workplace disadvantage resulting from whistleblowing may be challenged as an unlawful employment action.

16. 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 under Taiwanese labor laws. An employer cannot terminate an employee's contract due to financial difficulties and immediately rehire them under less favorable conditions, as this would be inconsistent with the statutory grounds for termination. Short-term operating losses or business contractions do not, in themselves, justify termination under the LSA.

Instead of unilateral termination and re-engagement on reduced terms, Taiwan's Ministry of Labor ("MOL") encourages employers and employees to negotiate temporary reductions in work hours and wages to address economic challenges. The Guidelines for Reducing Work Hours Based on Negotiations between Employers and Employees in Response to Economic Impacts provide specific steps for employers seeking to adjust work arrangements:

- Before reducing employees' wages or work hours, the employer should consider first reduce the benefits or bonuses of senior management, such as directors, supervisors, and general managers;
- Any reduction in work hours and wages must be negotiated and agreed upon by the affected employees. If a labor union is present, it is recommended to consult the union before individual negotiations.
- For full-time, monthly paid employees, wages after reduction must not fall below the statutory minimum wage;
- Temporary reductions in work hours and wages should not exceed three months, unless an extension is agreed upon by the employees. Once business operations normalize or the agreed period expires, the original employment conditions must be reinstated;
- Employers must follow the MOL's standard Labor-Management Work Hour Reduction Agreement, which includes key terms such as reduction periods, payment criteria, and provisions allowing employees to take part-time jobs;
- Local labor authorities and the Workforce Development Agency of the MOL must be notified of the implementation of reduced work hours and wages, as well as any subsequent modifications.

Employers who attempt to circumvent statutory termination protections by terminating and rehiring employees on less favorable terms risk employment

disputes and legal claims. Compliance with negotiated work-hour reductions, rather than unilateral terminations, is the legally supported approach to managing financial difficulties.

17. 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?

Employers who use artificial intelligence (AI) for recruitment or termination decisions may face legal and regulatory risks in Taiwan. These risks primarily involve discrimination, privacy violations, and unlawful termination under Taiwan's labor laws.

One of the key concerns with AI-based hiring or termination is the potential for discrimination. Under Article 5 of the ESA, employers are prohibited from making employment decisions based on race, class, language, thought, religion, political party, place of origin, place of birth, gender, sexual orientation, age, marital status, appearance, disability, and other protected categories. Since AI models may reflect biases present in the data used for training, they could lead to unintended discrimination against job applicants or employees. Employers who engage in discriminatory practices using AI may face fines ranging from TWD 60,000 to TWD 300,000.

Another risk relates to privacy violations. Under Article 5 of the ESA and Article 1-1(2) of the Enforcement Rules of the ESA, employers cannot collect or require employees to provide personal information unrelated to employment, including genetic tests, medical records, psychiatric tests, criminal records, or financial history. If AI tools collect or process such information without proper legal justification, employers may be subject to fines ranging from TWD 300,000 to TWD 1,500,000.

AI-driven termination decisions also pose risks of wrongful dismissal claims. Under the LSA, an employer may only terminate employment if statutory grounds under Article 11 or Article 12 of the LSA are met. Courts in Taiwan consider termination a last resort, meaning employers must first attempt corrective measures, such as performance improvement plans for underperforming employees. If an employer relies solely on AI without human review and fails to demonstrate that termination was necessary and unavoidable, it could be ruled unlawful. In such cases, the employer may be required to reinstate the employee, compensate for lost wages, and cover pension contributions from the termination date.

To date, there have been no publicized court decisions or administrative rulings involving AI-based termination disputes in Taiwan. However, given the global increase in AI regulation, employers using AI for employment decisions should ensure compliance with Taiwanese labor laws and consider human oversight in decision-making to mitigate legal risks.

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

Under Taiwanese labor law, severance payments are determined based on whether the employee falls under the old pension scheme governed by the LSA or the new pension scheme governed by the Labor Pension Act ("LPA"), which took effect on July 1, 2005.

For employees hired before June 30, 2005, severance is calculated based on both the LSA and the LPA, depending on whether the employee opted into the new pension scheme. Employees hired on or after July 1, 2005, fall solely under the LPA and receive severance under the new scheme.

For employees covered under the old pension scheme (LSA), severance is calculated as one month's average wage per year of service before July 1, 2005. If an employee remained in the old pension plan after this date, they continue to receive severance at this rate. If the employee opted into the new pension scheme, severance for service after July 1, 2005, is reduced to half a month's average wage per year of service. Partial years of service are calculated proportionally, and any period of employment less than a month is rounded up to one month.

For employees under the new pension scheme (LPA), severance is calculated at half a month's average wage per year of service and is also proportionally adjusted for periods of service less than a full year. The maximum severance payable under this scheme cannot exceed 6 months' average wages.

The term "average wage" is defined as the total wages earned in the six months preceding termination, divided by the total number of days in that period. Wages include salaries, bonuses, allowances, and other regular payments, whether in cash or in kind. If the employee received non-discretionary bonuses (such as Dragon

Boat Festival or Moon Festival bonuses) within the six-month period before termination, those bonuses must be included in the severance calculation.

19. 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, an employer and an employee may negotiate a mutual separation agreement in which the employee waives certain rights in exchange for a financial settlement. If no statutory termination ground applies, it is common practice for employers to offer a more favorable severance package to encourage the employee to voluntarily sign a separation agreement with a mutual release of claims.

Taiwanese labor laws do not impose specific formal requirements for voluntary separation agreements. However, to reduce legal risks, the agreement should be in writing and clearly outline the terms of termination, severance payment, and waiver of claims. To avoid future disputes, employers typically offer compensation that exceeds statutory severance and, in some cases, additional compensation for lost unemployment benefits.

Under the Employment Services Act ("ESA"), employers must report involuntary terminations to the labor authority at least 10 days in advance, allowing affected employees to apply for unemployment benefits. However, in mutual separations, employers may be unwilling to classify the departure as an involuntary termination, which could prevent the employee from accessing these benefits. To address this, employers sometimes compensate employees for the loss of unemployment benefits as part of the severance package.

There is no legal requirement to include non-disclosure or confidentiality provisions in a separation agreement. However, if an employer wishes to impose post-employment restrictions, including non-compete obligations, they must comply with Article 9-1 of the LSA and ensure that the restrictions are reasonable and supported by additional compensation.

20. 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, an employer may impose post-employment non-compete restrictions if the employee's role grants access to trade secrets or proprietary business information that requires protection. Under Article 9-1 of the LSA and Articles 7-1, 7-2, and 7-3 of the Enforcement Rules of the LSA, a non-compete agreement must meet the following requirements to be valid and enforceable. Failure to meet these requirements renders the non-compete agreement null and void.

- The agreement must be in writing and must explicitly specify the scope of the restriction.
- The restrictions must be reasonable in terms of:
  - **Duration**: The non-compete period must not exceed the life cycle of the employer's trade secrets and cannot exceed two years. If a restriction exceeds two years, courts will automatically reduce it to two years.
  - **Geographic scope**: The restriction must be limited to areas where the employer actively conducts business. A global non-compete clause is generally unenforceable.
  - **Business scope**: The restriction must specify in detail the types of competing activities and should only cover industries or roles similar to the employee's previous work.
  - **Prohibited employers**: The agreement must clearly define which competitors the employee is prohibited from joining. The restriction cannot be overly broad or prevent the employee from working in an unrelated industry.
- The employer must provide reasonable financial compensation for the non-compete period. Compensation cannot be included in the employee's salary during active employment. It must be paid separately either as a lump sum upon resignation or in monthly instalments after termination. The minimum compensation must be at least 50% of the employee's average monthly wage at the time of resignation. The compensation amount must also be sufficient to reasonably offset the employee's financial losses due to the restriction.

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

Yes. An employer may require an employee to maintain confidentiality even after termination by entering into a confidentiality agreement or including a confidentiality

clause in the employment contract. Such an agreement ensures that the employee does not disclose or misuse the employer's trade secrets, proprietary information, or sensitive business data after leaving the company.

While there are no specific statutory requirements governing post-employment confidentiality obligations, Taiwan's Trade Secrets Act provides legal protection for employers against the misappropriation of trade secrets. If an employer can prove that an employee unlawfully disclosed or used confidential information, the employer may seek damages or injunctive relief through civil or criminal proceedings.

To enhance enforceability, confidentiality agreements should clearly define the scope of confidential information, the duration of the obligation, and the remedies available in case of breach. However, confidentiality clauses should not unreasonably restrict an employee's ability to work in their industry.

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

No. Employers in Taiwan are not legally required to provide employment references for former employees. However, under the LSA, an employer must not refuse an employee's request for a service certificate upon termination.

A service certificate typically confirms the employee's job title, period of employment, and basic employment details, but does not include subjective evaluations or performance-related assessments. Employers are not obligated to disclose reasons for termination unless legally required or mutually agreed upon.

While employers may voluntarily provide references, they should be cautious about disclosing information that could be deemed defamatory or inaccurate, as it may expose them to potential legal liability.

23. 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?

One of the most significant challenges for employers in Taiwan is the lack of at-will employment. Under the LSA, an employer may only terminate an employee if at least one of the statutory grounds under Article 11 or Article 12 of the LSA is met. Courts take the position that termination should be the “last resort", meaning that an employer must present compelling evidence to justify dismissal. This makes it difficult to terminate employees quickly, particularly in cases involving performance issues.

In situations where termination is based on poor performance, employers are advised to implement performance improvement plans (PIPs) and conduct multiple rounds of documented consultations before proceeding with dismissal. If an employee challenges their termination, they may first file for mediation with the local labor bureau, which could lead to further scrutiny of the employer's compliance with labor laws. Given the increasing awareness among employees regarding their legal rights and the economic climate, there has been a rise in employment disputes. If an employee successfully challenges a termination in court, the employer may be ordered to reinstate the employee and compensate for lost wages, further complicating the termination process.

To mitigate these risks, employers should conduct a legal assessment of the case's strength before initiating termination and ensure that all supporting evidence is well-documented. If the legal basis for termination is weak, negotiating a mutual separation with enhanced severance pay may be a more effective strategy to avoid future disputes.

Another challenge is the Labor Incident Act (“LIA"), which has significantly lowered the barriers for employees to sue their employers. The LIA places a higher burden of proof on employers in labor disputes. Under Article 35 of the LIA, employers are required to provide specific employment-related documents in legal proceedings. Under Article 37 of the LIA, any payment made by an employer to an employee is presumed to be wages unless the employer can prove otherwise, which can impact severance, overtime, and vacation pay calculations. Additionally, Article 38 of the LIA presumes that work hours recorded on an employee's timesheet reflect actual work performed with the employer's permission, making it more difficult for employers to dispute overtime claims.

The LIA has also reduced litigation barriers for employees by making legal proceedings more accessible. Employees can file claims in courts where they work, and if they are sued by their employer, they may transfer the case to a court of their choosing under Article 6 of the LIA. Additionally, employees initiating lawsuits related to wages, pensions, or severance pay may have two-thirds of court fees temporarily waived under Article 12 of the LIA, reducing their financial burden.

The LIA further increases the availability of provisional remedies, such as temporary status quo injunctions, which may allow employees to continue receiving wages while their lawsuit is pending. Under Article 48 of the LIA, if an employee's livelihood is at risk due to unpaid wages, the court may grant temporary financial relief. Under Article 49 of the LIA, if an employee sues to confirm the existence of an employment relationship, the court may order the employer to continue employing the worker and pay wages during litigation. Similarly, Article 50 of the LIA allows courts to reinstate an employee if their job transfer or termination is likely to have violated labor laws or employment agreements.

Given these challenges, employers should plan terminations carefully, ensuring that:

- There is clear documentary evidence supporting the termination decision;
- PIPs and consultations have been conducted in cases involving performance-related dismissals;
- A legal review of the termination case has been completed to assess risks; and
- Separation agreements with enhanced severance pay are considered as an alternative to contentious dismissals.

By proactively addressing these issues, employers can minimize legal risks and reduce the likelihood of costly and time-consuming litigation.

24. 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?

Yes, recent amendments to Taiwan's Gender Equality in Employment Act ("GEEA") and Sexual Harassment Prevention Act (SHPA), which took effect on March 8, 2024, have introduced significant changes to how employers handle workplace misconduct, particularly in response to the #MeToo movement in Taiwan.

Under these amendments, if an employer or the local labor authority conducts an investigation and determines that an incident constitutes sexual harassment, and the circumstances are severe, the employer has the right to terminate the employment contract without prior notice within 30 days of learning the investigation results. This amendment provides a clearer legal basis for terminating employees found guilty of serious sexual harassment. These legal changes will have a direct impact on termination procedures in cases of workplace sexual harassment. Employers who proactively adapt to these changes will be better positioned to handle harassment cases lawfully and effectively while maintaining a safe and compliant workplace. Employers should take the following steps to prepare:

- **Strengthen internal investigation procedures**: Employers should ensure they have clear, documented procedures for handling sexual harassment complaints and investigations. Investigations must be thorough, fair, and well-documented, as termination decisions may be challenged if the process is flawed.
- **Update workplace policies and training**: Employers should update their sexual harassment prevention policies to align with the new legal framework. Conducting regular training for employees and managers can help prevent incidents and demonstrate compliance with legal requirements.
- **Ensure timely action**: Since the 30-day period for termination starts from the date the employer learns of the investigation results, companies must be prepared to act quickly once a finding of severe harassment is made.
- **Mitigate litigation risks**: Given the sensitivity of sexual harassment cases, employers should ensure that termination decisions are based on clear evidence and proper procedural safeguards to reduce the risk of wrongful termination claims. Consulting legal counsel before taking action can help minimize legal exposure.

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