Taiwan: Employment & Labour Law

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

For a full list of jurisdictional Q&As visit here
1. **Does an employer need a reason in order to lawfully terminate an employment relationship? If so, describe what reasons are lawful?**

According to the Labor Standards Act (“LSA”), employers can only terminate their employees when at least one of the statutory causes set forth in Article 11 or Article 12 has been met. Therefore, employers must first determine which one of the following types of termination is appropriate.

- **Termination without notice**, criteria for which are set forth in Article 12 of the LSA.

Generally, if employees have engaged in material misconduct or committed gross violations of their employment contracts, employers may terminate their 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 intentionally discloses any 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 days in a month.

- **Termination with notice**, criteria for which are set forth in Article 11 of the LSA.

Other than the above situations stipulated in Article 12 of the LSA, employers are only allowed to dismiss employees in the following situations stipulated in Article 11 of the LSA:

- Where the employers’ business is suspended or has been transferred.
- Where the employers’ 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 workforce and the terminated employees cannot be reassigned to other suitable positions.
- A particular worker is clearly not able to perform satisfactorily the duties required of the position held.

However, please note that Taiwanese courts generally treat unilateral termination by the
employer as a last resort, so it is hard to terminate an employee without a compelling case. Therefore, please also note some of the above situations would still need to meet specific requirements stipulated by Taiwanese courts:

1. Dismissing employees 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 would usually deem that there was no reasonable necessity for the company to terminate the employees.

2. To establish that “a change in the nature of business necessitates the reduction of workforce and the terminated employees cannot be reassigned to other suitable positions,” 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 employees cannot be assigned to another suitable position. Please note that if the employees may be re-trained to fill other positions, 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 reason to terminate any employees.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned?

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

- **Applicable circumstances**

<table>
<thead>
<tr>
<th>Number of Total Employees</th>
<th>Time Period</th>
<th>Number of Employees to be Laid Off</th>
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<tr>
<td>30–199</td>
<td>60 days</td>
<td>&gt;1/3 of workforce</td>
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<td>&gt;500</td>
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<td>&gt;1/5 of workforce</td>
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<td></td>
<td>1 days</td>
<td>&gt;100</td>
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</table>
- **Layoff procedures**

1. Prior announcement of the redundancy plan

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

Prior announcements to be given to relevant authorities/agencies or personnel shall be given 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.
- 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.
- The method for calculating the severance pay and information about the job transition assistance project.

2. Negotiation with employees

Within 10 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 10 days, invite the employees and the employer to form a Negotiation Committee to negotiate the terms of the mass redundancy plan, and propose alternatives if appropriate.

The Negotiation Committee shall have 5 to 11 members, including:

- Chairman: 1 representative designated by the competent authority;
- An even number of representatives of the employer: designated by the employer
- 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 7 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, then the Act 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 he or she rejects the offer, he or she will be terminated and receive a severance payment from his or her current employer. If he or she accepts the order, his or her time of service with the current employer must be recognized by the new employer. The selling company must pay severance to the employees that are not retained.

4. What, if any, is the minimum notice period to terminate employment?

Where an employer terminates a labor contract with cause, 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, the notice shall be given ten days in advance.
2. Where an employee has worked continuously for more than one year but less than three
years, the notice shall be given twenty days in advance.

3. Where an employee has worked continuously for more than three years, the notice shall be given thirty days in advance.

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 employee shall provide at least 10 days advance notice for those with service of more than three months but less than 1 year, at least 20 days advance notice for those with service of more than 1 year but less than 3 years, and at least 30 days advance notice for those with service of more than 3 years. However, if an employer terminates the employment without serving an advance notice within the time limit prescribed in this article, he/she shall pay the employee 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 say at home and not participate in any work?**

Actually there are no provisions regarding “garden leave” stipulated in Taiwan law, and it would be acceptable if such a “garden leave” clause is agreed to by the Company and the employee in the employment agreement and later 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, please see following requirements regarding termination procedures:

- **Requirement 1:**
  Termination of employment must be for at least one of the specific causes described in response to question 1.

- **Requirement 2:**
  Giving the required (10-day, 20-day or 30-day) prior notice or making a payment in lieu of notice.

- **Requirement 3:**
  Paying applicable statutory termination severance set forth in either the Labor Pension Act or Labor Standards Act.

- **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 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 terminate the employment and the employee may file a complaint claiming unlawful termination.

- Consequence for violating Requirement 2:
  The employer will be subject to fines of between NT$20,000 and NT$300,000.

- Consequence for violating Requirement 3:
  The employer that fails to pay severance pay in accordance with the criteria or timelines shall be subject to fines between NT$300,000 and NT$1.5 million and shall be ordered to make the payment within a given period; failure to make payments shall result in consecutive fines.

- Consequence for violating Requirement 4:
  The employers shall be subject to fines of between NT$20,000 and NT$300,000.

- Consequence for violating Requirement 5:
  The employers shall be subject to fines of between NT$20,000 and NT$1,000,000.

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 he/she/it 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 (eg 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 requires the employer to file a notice with the labor authority and public employment service institution 10 days in advance when terminating an employee. If payment is made in lieu of the notice period, such 10-day notice still needs to be made before the effective date of termination. An administrative fine from NT$30,000 to NT$150,000 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 Employment Service Act, 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 Employment Service Act, will be fined an amount of at least NT$300,000 and at most NT$1,500,000. Additionally, when employees are damaged by the employment practices referred to in Article 11 of the Act of Gender Equality in Employment, the employers shall be liable for any damage arising therefrom and the employers shall be fined no less than NT$300,000 but not exceeding NT$1,500,000.

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 employees enjoy the benefits of taking menstrual leave, maternity leave, leave for pregnancy check-ups, paternity leave or parental leave, applying for reinstatement of parental leave, or requesting other measures promoting equality in employment, employers may not treat it as non-attendance and adversely alter the employees’ full-attendance bonus payments or evaluation or take any disciplinary action that is adverse to the employees.

In addition, pursuant to Article 13 of the Labor Standards Act, 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 Labor Standards Act, an employee, upon discovery of any violation by the business entity of the Labor Standards Act and other labor laws or administrative regulations, may file a complaint with the employer, competent authorities or inspection agencies, and his/her 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 employers may not terminate, transfer or take any disciplinary action that is adverse to employees who personally file complaints or assist other persons to file complaints pursuant to the Act of Gender Equality in Employment.
15. **What financial compensation is required under law or custom to terminate the employment relationship? How do employers usually decide how much compensation is to be paid?**

There are two types of severance payments provided under the Labor Standards Act (the old pension plan) and the Labor Pension Act (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 his or her new employer. Before then, employers maintained pension funds for the benefits of all of their employees, so if employees left their then-current employers, they lost all pension seniority. Under the new pension scheme, employers are required to make monthly contributions to each employee’s pension account based on his or her salary. In connection with this new pension contribution, the Labor Pension Act also provides for a reduced severance payment obligation for employees who already received such monthly pension contribution.

For employees who were hired before June 30, 2005, if they enrolled into the new pension scheme after June 30, 2005, the severance payment will be calculated depending on his or her seniority before and after his application of the old pension plan and new pension plan.

The following assumes an employee enrolled into the new pension plan on July 1, 2005.

- **Employees who were employed before June 30, 2005 or foreign employees (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 subparagraph, or for workers who have been employed for less than one year, shall be calculated proportionally; any period of employment less than a 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 this employee chose to remain in the old pension plan after July 1, 2015.
  - 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 this employee chose to be enrolled into the new pension plan after July 1, 2015.

- **Employees who were employed after July 1, 2005 (the new pension plan):**
  - Employees shall have their severance pay paid by the employer based on their 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. In addition, the severance shall not exceed more than six months of average wages.

**Severance payments are required under the Labor Standards Act (the old pension plan) and the Labor Pension Act (the new pension plan) to be calculated as follows:**

The term “averaged 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 which an employee receives for his services rendered, including wages, salaries and bonuses, allowances and any other regular payments regardless of the name which 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 Dragon Boat Festival or Moon Festival (which is very common in Taiwan) in the six-month period immediately before his termination date, those bonuses shall be included in the calculation of the average wage.

16. **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, describe any limitations that apply.**

Yes, if no suitable termination clause applies, in practice, employers often like to offer a more favorable package to the employees for signing a separation agreement with mutual release.

Please note that there are no specific legal requirements regarding voluntary settlement / mutual agreements. The employer is free to discuss the matter with the employees to reach a mutual agreement. However, to induce the employee to accept separation, employers usually will offer a better separation package than the statutory one. Also, employers should consider compensating the employee for the unemployment insurance benefits. Under Taiwan Employment Services Act, 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 his or her age and the number of dependents. However, since in the mutual termination case, an employer in general is not willing to treat the termination as involuntary termination which is open to future challenges about whether the statutory termination cause is 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.

17. **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 Labor Standards Act and Article 7-1, 7-2 and 7-3 of
the Enforcement Rules of the Labor Standards Act, if the employer has proper business interests that require protection, and the position or job of a specific employee provides him or her 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 in violation of 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 contents of restrictions. 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 businesses. Please note that a “worldwide” geographic area will be deemed too broad and not acceptable by the courts.

- Scope of restriction: the scope of non-competing businesses shall be specified in concrete 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 concretely specified 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 him or her 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 that whether the amount of compensation will be comparable with the loss incurred by the employee in 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.

18. **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 employees/workers to keep the relevant information confidential after the termination of employment.

19. **Are employers obliged to provide references to new employers if these are requested?**

No, there is no specific obligation that employers shall 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 a proof of his or her service record.

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

As mentioned, there is NO at-will employment in Taiwan. According to the Labor Standards Act, employers can only terminate their employees when at least one of the statutory situations set forth in Article 11 or Article 12 has been met. The court’s prevailing positions in wrongful termination cases are the termination should be the last resort by the employer. Therefore, it is very difficult for employers to terminate employees in a short period of time without the employees’ compelling wrongdoings. In the case where the employee is terminated for failure to deliver satisfactory performance, it is advisable to put in place performance improvement plans ("PIP") and provide several rounds of PIP before termination. In addition, before the employee brings a civil action, he or she may apply for mediation administered by the local labor bureau for no cost. The local labor bureau may also take this chance to investigate any labor law violations. We have seen increasing number of employees’ complaints against employers. Please also note If an employee wins in wrongful termination litigation, he or she may have his or her job reinstated and receive the salaries owed during the period of litigation. Therefore, it is important 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 termination case is not assessed to be strong, then a mutual separation with a higher severance pay may be considered to avoid future disputes.

21. **Are any legal changes planned that are likely to impact on the way employers approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?**
Yes. On January 1, 2020, the Labor Matters Act (the “LMA,”) came into force. The Labor Matters Act was enacted to handle the matters between the employer and employee and job seekers. LMA was aimed to remove the barriers for the employees to sue the employers. Below is a summary. Accordingly, the employers when terminating employees should run an assessment and plan in advance before doing so.

1. **Employers’ burden of proof is higher.**

   - **Employers have duties to produce certain documents regarding labor matters.**

   *Article 35 of the LMA*

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

   - **Employers shall take the bear the burden of proof that bonus payments are not wages.**

   *Article 37 of the LMA*

   In the wage disputes between employees and employers, if it can be proved 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 pays that are calculated based on the payments paid for the work performed.

   - **Employers shall bear the burden of proof that they did not approve employees to work overtime or employees did not provide work besides 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.

2. **Reduction of employees’ barriers to litigation.**

   - **Employees may file a suit in the courts having jurisdiction over the premises where their services are provided. When employees are sued, they can apply to transfer the jurisdiction to a court of his/her choice.**

   *Paragraph 1 and 2 of Article 6 of the LMA*

   For labor cases with plaintiff employees, the court of the region where the defendant’s
domicile, residence, main business, or main office is located, or **where the plaintiff provides labor service**, shall have the jurisdiction over the case. For labor cases with plaintiff employers, the court of the region where the defendant’s domicile or residence is located, or where current or the last labor service is/was provided, shall have the jurisdiction over the case.

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

- **Reducing or temporarily waiving employees’ court cost and enforcement fees.**

*Article 12 of the LMA*

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

If a compulsory enforcement of aforementioned action is petitioned as described in the preceding paragraph, and the claim value of the enforcement is more than two hundred thousand New Taiwan Dollars, the enforcement fee shall temporarily be waived on the excess portion of the claim, and shall be deducted later from the proceeds derived from the compulsory enforcement.

3. **Enhancement of provisional remedy proceedings**

- **Reducing employees’ obligation to provide 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 the labor disputes, the security bond is either waived or substantially reduced.

- **Increasing applicability of 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 hardships to his/her livelihood, the court should inform the employee that he/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 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 with a new position that both parties agree on.