

# TAIWAN

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## DISTINCTIVE FEATURES OF THE EMPLOYMENT ENVIRONMENT

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The fundamental principles of the right to work, equal opportunity, mediation of disputes and social insurance are enshrined in the Constitution of the Republic of China (Taiwan). Since the Constitution came into effect in 1947, Taiwan has implemented a comprehensive body of labor laws and regulations addressing the rights and responsibilities of employees and employers. Of primary importance is the Labor Standards Act, which establishes the minimum terms and conditions of employment and aims to protect workers' rights and interests and improve employee-employer relationships.

Taiwan has a dynamic economy that is ranked 19th in the world. Electronics and machinery exports remain major drivers of economic growth. Taiwan's service sector accounts for approximately 70% of gross domestic product. Like other developing market economies around the world, Taiwan is working to diversify its economy and trading markets and to foster capital and technology-intensive industries in order to remain competitive.

By most measures, Taiwan is weathering the current global economic downturn relatively well. In terms of the labor market, the impact of the crisis has been most noticeably reflected in employer measures to mitigate risk and to reduce costs through reductions in the labor force. Much concern has been expressed in recent years over mass layoffs, unpaid leave, overwork and wage stagnation.

China has become Taiwan's largest trading partner and the two economies are becoming increasingly interdependent. The migration of manufacturing to China over the last decade has led to structural changes in the Taiwan job market. The exodus of Taiwanese white-collar workers to China and other countries has raised concerns about a shortage of qualified professionals to meet local demand. The Economic Cooperation Framework Agreement signed between Taiwan and China in 2010 aims at lowering trade barriers and tariffs on many goods and services to increase cross-strait investment and trade.

Full-time employment is the norm in Taiwan, but increasingly companies are looking to contractors, outsourcing and manpower services to reduce labor costs. The official unemployment rate in Taiwan is low, averaging around 5% over the last decade. Birth rates have been declining, however, and the workforce, currently at about 11 million, is aging. In response to this trend, the government has in recent years placed particular emphasis on reforming pension and social security programs.

In Taiwan, all employees are entitled under law to form unions (with the exception of civil servants, teachers and military personnel, and some other employees). The formation of unions and their influence in Taiwan has been limited in the past for reasons such as the numerous legal restrictions on labor union development, striking and collective bargaining; the lack of labor struggle ideology among workers; and the predominance of small and medium-sized enterprises. Amendments to the Labor Union Act, the Collective Bargaining Agreement Act and the Settlement of Labor Disputes Act came into effect in May 2011 and aim at protecting workers' rights to join and form unions and receive fair treatment from employers, simplifying strike procedures, and encouraging dispute resolution through collective bargaining. Labor union activities are expected to increase as a result of these substantive changes.

Taiwan is generally not a litigious society. However, employees are increasingly seeking remedies in employment disputes through the courts. In most cases, disputes concern a claim of wrongful termination and are often resolved through a settlement before a judgment is reached. Taiwan is a civil law jurisdiction. As such, the courts rely on labor statutes and administrative rulings as the primary source of law, more than on court precedent.

Taiwan's Council of Labor Affairs is the central competent authority in charge of labor policy. The government has announced plans to upgrade the council to ministerial status in 2012.

## KEY CHANGES IN RECENT YEARS

Section	Subject
1.6	The People with Disabilities Rights Protection Act, as revised on February 1, 2011, increases job opportunities and protections for the vision impaired. Revised hiring quotas are designed to increase employment for the disabled.
1.6	A new data protection law, which is expected to come into effect in 2012, will impose new responsibilities on employers with respect to the collection, processing, transfer and use of employee data.
2.1	The minimum wage has been raised to TWD18,780 per month, effective January 1, 2012.
3.1	Amendments to the Labor Union Act effective May 1, 2011 liberalize the formation of labor unions and promote fair treatment of union members.
3.3	Amendments to the Collective Bargaining Agreement Act effective May 1, 2011 obligate employers to participate in good-faith requests for negotiations.
3.5	Amendments to the Settlement of Labor Disputes Act effective May 1, 2011 simplify procedures for strike activities and streamline the labor-management dispute process by establishing a single mediator system.
3.6	Amendments to the Labor Standards Act, effective on June 2012, increase penalties five-fold for employers who violate work regulations under the Act. The amendments also empower the Council of Labor Affairs to create and maintain a blacklist disclosing the names of employers who violate the Act.

## KEY BREAKPOINTS RELATED TO NUMBER OF EMPLOYEES

Employee Numbers	Action
30	Employers must establish and post work rules relating to the terms and conditions of employment in the enterprise (see <i>Work Rules</i> under <i>1.1 Contract of Employment</i> ).
30	Guidelines for preventing, filing grievances against, and punishment for sexual harassment must be drawn up and publicly displayed (see <i>Sexual Harassment</i> under <i>2.4 Equal Opportunities</i> ).
50	Companies with more than 50 employees must set up an Employee Welfare Committee and allocate a percentage of company funds to provide subsidies to employees, including for education, leisure activities, childcare, and so on.
67	Employers are required to employ at least one physically or mentally disabled person, or employees in amounts equal to at least 1% of total staff (see <i>Disabled Employees</i> under <i>1.6 Other Important Recruitment Issues</i> ).
100	Depending on the number of employees (thresholds of 100 and 300 employees) and the industry concerned, employers may be required to set up labor safety and health committees (see <i>2.5 Health and Safety</i> ).
250	Employers are required to establish childcare facilities or provide for such services, financed in part with the assistance of the central government (see <i>Childcare Facilities</i> under <i>2.1 Pay</i> ).

N.B. This list highlights key statutory breakpoints and is not exhaustive.

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## 1. START OF EMPLOYMENT

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### 1.1 CONTRACT OF EMPLOYMENT

#### Overview

The Labor Standards Act (LSA), supplemented by its enforcement rules and subordinate regulations, establishes the minimum terms and conditions of employment in Taiwan. The LSA prescribes standards that must be met or exceeded by employers on such issues as labor contracts, wages, work hours, time off and leaves of absence, child workers, female workers, retirement, benefits, compensation for occupational accidents, apprenticeships, work rules, supervision and inspection.

All industries and occupations are subject to the LSA, except those specifically exempted by the central authorities. Exempted organizations include international and certain civic organizations. Occupations that have been exempted from the LSA include civil servants, teachers and researchers in public schools and academic research and service industry organizations, doctors, attorneys, coaches, athletes, referees in the professional sports industry, domestic workers and bodyguards. In practice, many businesses that are not subject to the LSA base their employment contracts and work rules on the minimum standards set forth in the LSA.

The right to work is guaranteed by the Constitution and enacted in statute. Taiwan's employment law regime is generally considered protective of employees. For example, the LSA does not allow for dismissal of employees "at will." Employees covered by the LSA, which constitute the vast majority of workers in Taiwan, may only be terminated unilaterally with cause as specified in the law.

#### Legislation

Other major pieces of legislation affecting employment include:

- Company Act 1929;
- Settlement of Labor Disputes Act 1928;
- Labor Union Act 1929;
- Collective Bargaining Agreement Act 1930;
- Labor Inspection Act 1931;
- Employee Welfare Funds Act 1943;
- Labor Insurance Act 1958;
- Labor Safety and Health Act 1974;
- Vocational Training Act 1986;
- Employment Services Act 1992;
- National Health Insurance Act 1994;
- People with Disabilities Rights Protection Act 2001;
- Protection for Workers Incurring Occupational Accidents Act 2001;
- Gender Equality in Employment Act 2002;
- Employment Insurance Act 2003;
- Massive Layoff Protection Act 2003; and
- Labor Pension Act 2005.

### Other Significant Influences

Other influences on the employment relationship include employment contracts, collective bargaining agreements and company work rules. Customs and practices in companies, industries or the community also impact employment relationships.

### Work Rules

The LSA mandates that employers with more than 30 employees must establish work rules on the terms and conditions of employment in the enterprise. Employers are not required to consult with workers regarding the content of the work rules, but employers may not, in most cases, unilaterally change work rules. Work rules must be filed with the competent authorities for approval and/or be recorded within 30 days of adoption and posted publicly in the workplace. Work rules function as employment contracts for employees without individual contracts and establish legal norms for actual individual agreements. Work rules that contravene any mandatory provision of a law, regulation or collective bargaining agreement applicable to the undertaking are null and void.

Although not a universal practice, individual written labor contracts are becoming more common in Taiwan. Even where an individual employment contract is in place, the authorities and courts will typically deem company work rules a constituent part of the terms and conditions of an employment relationship.

### Categories of Employees

The LSA broadly defines a worker as "a person who is hired by an employer to do a job for which wages are paid." Consequently, a manager working for a company is considered to be a worker under the LSA unless the language and substance in the contract between the manager and the company clearly shows that it is not a contract of employment. Individuals vested with substantial managerial authority who have been appointed as a manager according to the Company Act - for example, appointment by a resolution of the Board of Directors - or other relevant laws, are not considered to be workers. They are instead considered to be appointed managers, and the relationship between the company and the manager a mandate relationship rather than an employment relationship. Mandate relationships are generally not subject to all of the requirements or protections of the LSA, particularly regarding termination.

The age of majority in Taiwan is 20 years. Pursuant to provisions of the Civil Code, employment contracts for employees under the age of 20 must be approved by their guardians to be legally enforceable. The LSA requires employers to keep the consent letters as well as documents for employees under the age of 16.

### Types of Contracts

#### Fixed-Term Contract

According to the LSA and its enforcement rules, labor contracts can be divided into two categories: fixed-term contracts and indefinite-term contracts. Contracts relating to temporary, short-term, seasonal and specified work are considered fixed-term contracts and are defined as follows:

- Temporary: non-continuous work for less than six months. (Duration of work cannot be estimated.)
- Short-Term: non-continuous work for less than six months. (Duration of work can be estimated.)
- Seasonal: non-continuous work for less than nine months in which the raw materials, sources of materials or market are influenced by seasonal factors.
- Specified: non-continuous work that can be completed within a specified period, which should not exceed one year without the approval of the competent labor authorities.

Fixed-term contracts will become indefinite-term contracts if the employee continues to work beyond the termination date of the contract. Similarly, if an employee enters into consecutive (within 30 days) fixed-term contracts lasting 90 days or more, the employment contract is considered to be an indefinite-term contract. These provisions do not apply to contracts for seasonal or specified work.

**Indefinite-Term Contract**

Any employment contract for continuous work is considered a non fixed-term contract. The terms and conditions of fixed- and indefinite-term employment contracts may be stated orally or in writing, but must include certain information under Article 7 of the Enforcement Rules of the LSA.

**Formalities****Content and Form**

Under the LSA Enforcement Rules, employment contracts must include information on the following matters:

- Workplace and the work to be performed;
- Start and finish of work hours, rest periods, vacations, holidays, leaves of absence and shift changes;
- Methods for determining pay, the timing of pay, and issuing of pay;
- Creation and termination of employment contracts and retirement;
- Provisions for severance pay, retirement and other allowances, and bonuses as applicable;
- Issues related to board, lodging and expenses for work tools for which the employee is responsible;
- Employee health, welfare, safety, education and training;
- Compensation in the event of workplace accidents, and benefits for ordinary injuries or illnesses;
- Rules of conduct and work discipline;
- Employment awards and penalties; and
- Rights and obligations of employees and management.

**Language**

In general, the employment contract can be drafted in a foreign language if both parties agree; however, most contracts are drafted in Mandarin Chinese. In the event of a dispute with regard to conflicting versions of an employment contract in two or more languages, the Mandarin Chinese text prevails unless the contract provides otherwise.

**1.2 NON-COMPETE AND OTHER CLAUSES**

No law in the Republic of China specifically addresses post-termination restrictive covenants such as confidentiality and non-compete agreements. In 1992, the Supreme Court ruled that restrictive covenants were reasonable and could therefore be enforced. In its decision, the Court laid out a three-part test to determine if the covenant was enforceable based on: whether the employment contract was signed by both parties; whether it prevented employment with a company in the same or a similar line of business; and whether the restriction was for a reasonable period of time. The Court also ruled that penalties against breaking the restrictive covenant were enforceable, and that contracts could also contain reasonable restrictions on the use of the former employer's trade secrets. However, lower courts have ruled against the use of restricted employment covenants in other circumstances.

In 2003, the Council of Labor Affairs (CLA) issued a reference handbook on the subject to curb disputes over restrictive covenants in employment contracts. According to the CLA, the following factors are the most significant for determining the likely enforceability of restrictive covenants:

- Existence of a clear breach of trust or act of bad faith on the part of the employee and a protectable legal interest on the part of the employer;
- Nature of the employee's duties and responsibilities;
- Whether the agreement was entered into freely and in good faith;
- Reasonableness of duration, geographical area and business scope of the covenant;
- Whether compensatory measures apply; and
- Reasonableness of penalties for violations.

### 1.3 SUSPENSION OF EMPLOYMENT RELATIONSHIP AND CHANGE OF CONTRACT

#### Work Suspension

There are no specific regulations governing the suspension of an individual employment contract. Wages and benefits may be terminated only when the contract is terminated. As such, employees would have to be paid during a period of suspension for investigation if not otherwise stipulated (although this concept of suspension is not common in Taiwan and there are no special suspension or investigation procedures). If the suspension is in response to a strike, employers may suspend wages.

#### Contract Modification

The law provides that once the terms and conditions of service have been agreed upon via an employment contract or collective bargaining agreement, the employer cannot unilaterally amend or vary the same without consent from the employees. Employers can, however, unilaterally modify work rules, subject to review and approval of the local labor authorities (see *Categories of Employees* under 1.1 *Contract of Employment*). As a general rule, a benefit that an employer has provided repeatedly over time would likely be deemed an acquired right if the employer had not explicitly indicated that the benefit was discretionary.

### 1.4 TRIAL PERIOD

There is no maximum period of probation in Taiwan, and the term "probationary period" is not a legal term under the Labor Standards Act. The length of probationary periods is open to negotiation between employers and employees.

Although the maximum probationary period is no longer regulated, market practice tends to center on three-month periods. During probation, employment terms, conditions and benefits are not required to equal those for regular employees, but must still meet the minimum prescribed legal standards. After three months of employment, probationary employees are entitled to at least 10 days' notice of termination regardless of any remaining period of probationary employment. Employees terminated during probation are entitled to severance.

### 1.5 EMPLOYMENT OF FOREIGN WORKERS

#### Overview

The employment of foreign nationals is governed by the Employment Services Act (ESA). Foreign nationals must obtain a work permit to work in Taiwan, or to provide or receive training in Taiwan. The penalties faced by employers and personnel managers for hiring unauthorized foreign employees can be quite severe, and can include both fines and jail sentences.

Taiwan makes a distinction between foreign blue-collar and white-collar workers. To apply for most white-collar jobs, foreign nationals generally must have a university degree from an accredited university and at least two years of work experience. Foreigners with university degrees but who are unable to meet the two-year experience requirement may have their work permit applications reviewed by the Council of Labor Affairs (CLA), or other competent authority committee. Master's degree holders are exempt from the work experience requirement, regardless of the industry in which employment is sought. Companies with annual business revenues over TWD10 million and foreign business chambers may hire students from foreign universities to serve as interns for a duration of six months, with an additional six months, if necessary. Scholars on visits of no more than six months are not required to apply for a work permit but must obtain prior approval from the education authorities.

### Obligations for the Employer

Employers hiring foreign nationals must observe the following requirements:

- Employment contracts must comply with standards for specified work under the Labor Standards Act.
- For employers of blue-collar workers:
  - Employers who illegally accommodate, hire or act as an agent for foreign workers, or to whom the deportation can be attributed, are responsible for all necessary travel and accommodation expenses for escorts for deported employees; and
  - Employers must pay an employment stabilizing fee to promote employment for Taiwan citizens.

### Entry Requirements

Following positive visa-regime reviews in 2010, individuals from the following countries are eligible for visa-exempt entry to Taiwan, allowing a stay of up to 90 days: Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and the Vatican City State.

Individuals from the following countries may enter for up to 30 days without a visa: Australia, Malaysia, Singapore, South Korea and the United States.

Effective March 1, 2009, those with passports from India, Indonesia, the Philippines, Thailand and Vietnam are also eligible for 30-day, visa-free entry if they also hold a visa issued by or permanent residency in Australia, Canada, Japan, New Zealand, Schengen Area countries, the UK or the US. These travelers must have never worked in Taiwan as a blue-collar employee, and must first register online with the National Immigration Agency before they enter the island.

Chinese nationals must apply with the National Immigration Agency for a permit to enter Taiwan.

### Work Permits

The CLA is responsible for the administration of the employment regime for foreign workers; the Science Park Administration for work permits for Taiwan's science parks; and the Export Processing Zone Administration for work permits for special export processing zones.

Foreign nationals must first obtain a work permit (usually issued by the CLA), followed by an Alien Resident Certificate (ARC) allowing them to stay in Taiwan for a specified time. A work permit application typically takes one month to process. The issuance of ARCs and visa renewal applications are handled by the National Immigration Agency, established in 2007 to handle the growing number of immigrants, Chinese professionals and foreign tourists.

Chinese nationals are not considered foreigners and instead fall into a special category handled by different government agencies according to the purpose of their stay. PRC nationals must meet certain requirements to be allowed to enter Taiwan for business purposes.

According to Article 46 of the ESA, categories of employment open to foreign nationals include:

- Specialized or technical work by engineers and technicians;
- Heads of government-approved enterprises, including managers of companies that have Foreign Investment Approved or Overseas Chinese Investment Approval status from the Ministry of Economic Affairs;
- Work that has been designated by the CLA as meeting the needs of important national construction projects, or that is necessary for economic or social development; and
- Work requiring special skills or talents in short supply in Taiwan.

**Foreign Worker Levy**

Employers of foreign blue-collar workers are required to pay amounts of between TWD600 and TWD10,000 per month, per foreign worker, to the CLA's Bureau of Employment and Vocational Training as an employment stabilization fee.

**1.6 OTHER IMPORTANT RECRUITMENT ISSUES****Disabled Employees**

Under the People with Disabilities Rights Protection Act (formerly the Disabled Citizens Protection Act), employers with 67 or more workers are required to employ at least one physically or mentally disabled employee, or employees in amounts equal to at least 1% of total staff. Employers who do not employ sufficient numbers of the disabled to meet the quota are required to contribute to local employment funds for the disabled in amounts equal to the monthly minimum wage times the number of vacant positions below the threshold.

**Data Privacy and Protection**

The Computer Processed Personal Data Protection Act (CPPDPA) of 1995 regulates the collection, use and processing of computer-processed personal data to protect against unauthorized manipulation and provide some measure of data privacy. Industries subject to the law include credit investigation businesses, and organizations or individuals whose operations focus primarily on the collection or computerized processing of personal data in hospitals, schools, telecommunications businesses, financial institutions, securities businesses, insurance businesses, mass media, and other businesses designated by the Ministry of Justice.

The new Personal Data Protection Act (PDPA) was enacted on May 26, 2010 and will replace the CPPDPA. The PDPA is expected to come into force in 2012. Most employers will come under the regulation of the PDPA with respect to the collection, processing and use of personal data of employees. The PDPA considerably broadens the scope of "personal data" that is protected and expands the obligations of companies subject to the PDPA. For example, data subjects must be informed of their rights and of how the data will be used; and in many cases, written consent of the data subject is required.