

GREATER CHINA EMPLOYMENT LAW HIGHLIGHTS

Two years from the enactment of the draconian Labour Contract Law, how has the courts interpreted them?

Email communications can constitute labour contract

A district court in Shanghai ruled that labour contract was agreed when an offer emailed by an employer to an applicant was accepted by email. The judge came to this decision because the offer letter contained the pre-requisite terms like commencement date, job position, work location, compensation, benefits and leave. Thus, the Court was of the opinion that the employer did not avoid the requirement of the Labour Contract Law to sign written contract with the applicant as the email offer letter and reply constituted a valid labour contract.

Courts' interpretation of "equal pay for equal work"

Employees holding the same position can be paid differently when employers can show that they have different skills and productivity. A district court in Jiangsu province ruled against the demand of an employee to be paid insurance benefits based on the wage of a co-worker whose salary was 300% higher than his. The court ruled that his lower salary was justified because of his abilities and lower productivity.

The Supreme People's Court of China reacts to the economic crisis

In view of the global economic crisis, the Supreme People's Court of China issued the *Guiding Opinion on Handling Adjudication Work for Employment Disputes Cases in the Current Circumstances* on 6 July 2009. The Guiding Opinion instructs courts to keep facilitation of enterprise growth in mind when adjudicating employment disputes, instead of just upholding labour rights. Also, courts should encourage employers and employees to resolve disputes by mediation. This Guiding Opinion appears to be an attempt to alleviate the stringent measures under the current Chinese labour law regime, where courts are encouraged to pay regards to economic considerations when deciding employment disputes.

The Minimum Wage Bill: A new chapter of Hong Kong Employment Law?

Hong Kong has never had minimum wage legislations in the past. Since the proposal of the

Minimum Wage Bill was announced, it has been a source of controversy. There are worries it will hurt Hong Kong's free economy and induce job loss to other Asian countries with cheaper labour.

The Bill

- An employee who is covered by the law is entitled to payment of not less than the minimum wage.
- The minimum wage is the hours of works multiplied by the minimum hourly wage rate in a wage period.
- Provisions in an employment contract that intends to reduce this right or protection will be void.
- The current position is that domestic helpers will not be covered by the Bill but there is provision for a reduced hourly minimum wage for disabled persons.

Which employers need to be concerned?

- There are debates regarding the amount of the minimum wage. Employer groups are of the view that an amount around HK\$20 (US\$2.56) is appropriate while trade unions have rallied for an amount above HK\$30 (US\$3.85).
- The Minimum Wage Commission will evaluate the comprehensive Census and Statistics Department data for setting the minimum wage.
- No conclusion as to the amount of the minimum wage is drawn yet. We will keep you updated on further developments.

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