

# Littler Lightbulb: Highlighting Recent Developments in the Asia Pacific Region



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Littler's International Employment Law [Practice Group](#) includes experienced practitioners who help employers solve local and multinational legal issues across borders. Our group guides global clients through the maze of employment laws, taking into account the varied economic and cultural circumstances and customs throughout the world. Here, we shine a light on burgeoning legal developments in several Asia Pacific jurisdictions.

## Australia

- **Wage Theft Investigations.** The Australia Fair Work Ombudsman's (FWO) 2018-2019 Annual Report, published by the government agency on October 20, 2019, found significant wage theft in the country over the past year. Fair Work inspectors have recovered over \$40 million in underpaid wages on behalf of more than 17,700 employees and more than \$4.4 million in court-ordered penalties. Earlier this year, the FWO announced a stronger approach to its enforcement policy, stating that making sure vulnerable workers get properly paid would be a significant focus. Following this announcement the FWO received increased anonymous reports alleging wage theft and noticed an uptick in employees and employers accessing the agency's Pay and Conditions Tool, which helps users determine appropriate pay rates and leave allotments.
- **Is Employee Political Speech Protected?** Recent cases in Australia have explored the balance between employees' freedom of expression and their work obligations. In [Rumble v. The Partnership Trading as HWL Ebsworth Lawyers](#), the federal court upheld an employee's dismissal from his law firm after he published an opinion piece criticizing firm clients. The opinion found that the firm was entitled to dismiss the lawyer because he had previously been warned to refrain from publicly criticizing clients without permission from management. The court found that the employee was dismissed for failing to follow policy, although he could have been terminated without cause as well. On the other hand, the circuit court in [Ridd v. James Cook University](#) found that an employer violated a professor's contract by censuring and then terminating him for criticizing research into the degradation of the Great Barrier Reef. In the Ridd opinion, the court held that where an enterprise agreement existed with protections for certain kinds of speech, employees could not be dismissed for engaging in that speech. Overall, these decisions imply that employers may dismiss employees for various reasons, including for ignoring employers' reasonable requests and policies, but must be careful of any enterprise agreements and industry standards.

## China

- **Social Credit System for Business Compliance.** China is launching a business compliance tool called the Social Credit System (SCS) to continuously monitor businesses' compliance with market rules and regulations. The SCS has been in development for several years and is set to be fully implemented by the end of 2020. A recent report from the European Union Chamber of Commerce in China outlines the SCS mechanisms for gathering information on companies' compliance, including self-submitted data, on-site government inspections, and digital monitoring systems. The data will go into a centralized analysis system, which will then rank companies based on their level of compliance. Companies found to be in violation of regulations could then be listed as "distrusted" by Credit China (the web portal that publishes credit information) and subject to sanctions (e.g., financial penalties, higher tax rates, licensing approvals, diminished market access), up to life-long market expulsion. The EU Chamber of Commerce report recommends that companies doing business in China act promptly to: (1) investigate required criteria monitored by the SCS; (2) undertake a gap analysis to assess any shortfalls in compliance; and (3) configure and install any necessary adjustments.



## Hong Kong

- **Employment Issues Stemming from Protests.** For several months, Hong Kong has experienced ongoing protests, leading to disruption in daily business, travel problems, and general unrest. As protests have become increasingly disruptive, employers are facing difficult decisions about whether to engage in discussions about the protests and how to protect employees while allowing them to express political views. Employees are allowed some freedom of speech, but that freedom is balanced by a private employer's right to enforce certain rules of conduct in the workplace. Employees do not usually have the right to express views that could harm their employer, for example. Moreover, as the protests drag on, employers may want to consider alternative working arrangements like working from home or directing employees to take leave time to keep operations running as smoothly and safely as possible.
- **Foreign Domestic Worker Protections.** Recent news stories have reported how foreign domestic workers, or "helpers," allegedly have faced difficult working conditions like long hours, poor living conditions, and abuse. In response to such claims, the government has raised minimum wages for helpers and increased their food allowance. But worker advocates are also pressuring Hong Kong to relax the rule that foreign domestic helpers must "live-in" with their employer, which has been criticized for creating conditions that contribute to long hours and possible mistreatment.

## India

- **On-Site Day Care Rules in Karnataka.** More than two years after India amended the Maternity Benefit Act to require businesses with 50 or more employees to provide a care center for employees' children, the State of Karnataka has provided supplemental guidance on employer duties. According to the new regulations, employers must provide day cares for all employees (whether permanent, temporary, or contract), for children under six years old. There must be a care center for each 30 children, so larger employers may need to offer multiple facilities. For employee convenience, the centers must be on site at the workplace or within 500 meters from the entrance. Centers must also follow numerous regulations regarding hours, physical space, and amenities, in addition to providing clothing, teaching materials, beds, and appropriate staff.
- **Internal Complaints Committees.** Companies with more than 10 employees must establish an Internal Complaints Committee (ICC) as part of the Sexual Harassment of Women at Workplace Act (POSH Act) in India. The definition of "employee" is broad in this context and includes short-term workers, volunteers, and interns. The Committee is tasked with providing a forum to investigate and address any complaints of sexual harassment at work. There are also several requirements for the composition of the ICC, including that the chairperson should be a senior level female employee, if possible. At least two ICC members are designated as employee members, and the Committee should also include an external member with a background in sexual harassment issues. The POSH Act also lists reasons that would disqualify sitting ICC members and sets forth penalties for non-compliance.

## Japan

- **Changes to Japan's Labor Laws.** The "[Work Style Reform Legislation](#)" was passed in 2018 and makes significant revisions to Japan's labor laws. Changes include limits on maximum overtime hours, increased overtime rates, a requirement to take annual leave, and the addition of a highly-skilled professional exemption. For large employers (generally with more than 50 employees), most of the amendments took effect in April 2019, but smaller employers are facing forthcoming implementation in 2020 and beyond. Effective dates vary to give smaller employers more time to implement necessary changes. For small



employers, the cap on overtime becomes effective in April 2020, and their exemption from increased overtime premiums will expire in April 2023. The reforms to decrease differences in pay and benefits between regular and non-regular employees take effect on April 1, 2020 for large companies, but not for smaller companies until April 1, 2021.

- **Paternity Leave.** Japan has generous paternity leave laws—fathers can take up to a year of paternity leave just as new mothers can. There are several recent lawsuits filed where male employees allege that they suffered adverse consequences after using paternity leave. While the companies plan to fight these allegations, many have acknowledged that there is a problem with too few fathers taking leave. About 6% of men take paternity leave in Japan, while nearly all women do. The government has recognized this disparity, even though the number of male government workers who used paternity leave is about double that of the private sector. The government is considering various plans to promote the use of paternity leave, including encouraging government employees to take at least one month of paternity time.

## New Zealand

- **Changes to Temporary Work Visas.** Over the next 18 months, New Zealand will be updating employer procedures for [hiring migrant workers](#). While some details are yet unknown about the new visa procedures, changes are already underway to the Talent (Accredited Employer) Work Visa (“Talent Visa”). As of October 7, 2019, employers can be accredited for only 24 months before they must reapply. Also, those applying for Talent Visas will no longer be able to get a Permanent Resident Visa. There is also an increased minimum salary that applicants must meet to apply for a work visa, rising from NZD \$55,000 to \$79,560 per year. The current Talent Visa system ultimately will be replaced, along with five other types of existing visas. For now, employers’ current accreditation will remain effective until 2021, as the government works to systematically implement changes.
- **Prescribed Rest and Meal Breaks.** Recent amendments to the Employment Relations Amendment Act 2018 created a schedule for [rest and meal breaks](#) that became effective on May 6, 2019. The changes entitle employees to take their rest and meal breaks at the prescribed times, unless both parties agree on an alternative arrangement. The number and duration of these breaks vary based on the length of an employee’s shift. The parties can change the timing of breaks but cannot shorten their duration. If the employer and employee cannot agree on a break schedule after good faith negotiations, mediation services are available. The only exceptions to the set breaks schedule are for “essential services” or employees working in national security.

## Russia

- **Electronic Records.** Aside from Russia’s new “sovereign internet” law effective November 1, 2019, allowing the government to block online content in an “emergency,” there have been several other significant legal developments pertaining to the use of electronic records in the employment context. The most significant change—the bill is expected to undergo final approvals by the end of 2019—is a switch of workers’ employment records (so-called “labor books”) to an electronic format by requiring both paper and electronic books starting in 2020, and then discontinuing paper books in 2021, unless it is a worker’s first job or a worker specifically requests a paper format. This bill is expected to result in significant savings to employers and is accompanied by related legislation that requires employers to report labor books’ contents to the Pension Fund electronically. A recent implementation of rules concerning electronic Social Security numbers and the creation of an electronic database of doctor’s notes for leaves of absence were part of the same trend. In addition, a number of recently-introduced bills acknowledge the legal significance of electronic communications. For instance, proposed changes to Russia



Labor Code section 67 would allow electronic formation of employment contracts if the related electronic exchanges meet certain requirements. On the flip side, proposed amendments to sections 15.1-15.3 would give employees a right to refuse to exchange legally significant communications electronically. Russian employers should expect to see further legal developments bringing them in sync with the global trend of cloud-based record keeping and file sharing.

## Singapore

- ***New Proposals about Older Workers.*** In August 2019, the Ministry of Manpower announced that the Singapore government has accepted all 22 recommendations made by the Ministry's Tripartite Workgroup ("Workgroup") on Older Workers to help increase the longevity of the workforce. The current retirement age in Singapore is 62, although employers are generally obligated to offer employment to workers until age 67. The proposals suggest raising the retirement age by three years by the end of 2030. The government will also require increased employer and employee contributions into the Central Provident Fund (a compulsory savings plan) but will include transitional support to help offset those costs. In addition, the Workgroup noted five broad categories where employment could be more older-worker friendly, like providing career planning and more part-time opportunities, redesigning jobs for increased productivity, restructuring medical benefits, and providing grants to support age-friendly workplaces.
- ***Termination on Medical Leave?*** On the heels of April 2019 amendments to the Employment Act (EA) affecting termination procedures and leave time, employers are looking for clarification on whether they can legally fire an employee on medical leave. The Ministry of Manpower in Singapore has said that because dismissal is such a serious step, it should be considered only after taking into account objective performance measures. Sick leave is an entitlement for most employees under the EA, but employers typically can dismiss employees for misconduct, poor performance, or redundancy. In light of the lingering uncertainty on this issue, employers in Singapore should stay tuned and consult licensed counsel with any specific questions.

We will continue to monitor these developments and other events as they impact employers around the world. Readers curious for more information about legal trends outside the U.S. may consult our Global Guide Quarterly [series](#).