

ASIA-PACIFIC EMPLOYMENT LAW OVERVIEW

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	China	India	Vietnam	Thailand	Malaysia	Indonesia	Philippines	Singapore
Population (m)	1,321	1,198	86	63	28.3	229.9	91.9	4.9
Gross GDP(bn)	US\$7,800	US\$3,298	US\$240	US\$547	US\$384	US\$909	US\$317	US\$239
Per Capita GDP	US\$5,943	US\$2,780	US\$2,793	US\$8,239	US\$14,081	US\$3,980	US\$3,515	US\$56,226
Area (,000 sq m)	9,596	3,287	331	514	329	1,919	300	0.7
Legal System	Civil Law	Common Law	Civil Law	Civil Law	Common law	Civil law	Combined	Common law
Sources of employment law	The PRC Constitution, the Labor Law and the Labor Contract Law of the PRC constitute the main sources of the employment law in PRC with some other regulations	The Indian Constitution and laws on employment issues enacted by state and federal governments.	Constitutions, Labor Code, Civil Code, Civil Procedures Code, Law on Trade Unions, Law on Social Insurance and Law on Enterprises and other legal instruments.	Labor Relations Act, Provident Fund Act, Social Security Act, Workmen's Compensation Act, Alien Employment Act, Act on Establishment of Labor Courts and Labor Court Procedures .	See the Employment Act 1955, Weekly Holidays Act 1950 and Wages Councils Act 1947 ⁱ	Various Acts, Government Regulations, Decisions of the Minister of Manpower and Transmigration, and Governor Decisions	The Labor Code of the Philippines, its Implementing Rules and Regulations, the Civil Code of the Philippines and jurisprudence.	The Employment Act and Regulations, the Retirement Age Act, the Industrial Relations Act and the Children Development Co-Savings Act.
Employment at will and exceptions	Only for the employee save for bonded apprentices.	Yes ⁱⁱ	Yes without exceptions	Yes	Yes and there are exceptions ⁱⁱⁱ	Yes	No. Employee is entitled to security of tenure and may be terminated only for just ^{iv} or authorized causes. ^v	Yes.
Obligations in the dismissal of an employee	An employer is permitted to discharge an employee without notice under certain limited situations of misconduct	According to contract unless covered by the Industrial Dispute Act ^{vi}	Employee can be lawfully terminated under a few instances such as serious misconduct and for unlawful terminations, employer must re-employ the employee	Employees can be dismissed with cause for dishonesty, intentionally committing a crime, and neglect of duty	The dismissal of an employee without cause or other than retirement or resignation will give rise to obligations. ^{vii}	Yes but not all dismissals results in obligations. Only a dismissal that is not based on a fault or resignation of the employee will	Yes but not all dismissals results in obligations. Only a dismissal that is not based on a fault or resignation of the employee	Employees can be summarily terminated based on conduct or terminated without cause by giving notice

	and to discharge an employee with notice under other limited exceptions. In the first situation, no termination benefits are payable.		OR pay compensation if reemployment not possible..	or without cause in lieu of compensation.		give rise to an obligation on the employer to pay a severance pay and gratitude pay.	will give rise to an obligation on the employer to pay compensation or reinstatement if possible.	or payment in lieu of notice. Unlawful dismissal will give rise to liability to pay damages and reinstatement but latter rarely ordered.
Discrimination existing	Discrimination is prohibited	None as discrimination is prohibited	Discrimination is prohibited but there are special provisions providing for more favourable treatment for certain employees. ^{viii}	Discrimination is prohibited. ^{ix}	Racial, sexual, gender and religious discrimination exists but only sexual harassment is covered by a code	Discrimination is prohibited	Discrimination is prohibited.	Discrimination is prohibited.
Minimum benefits	Yes different minimum wage standards may be prescribed in different administrative regions according to different local social and economic development conditions. ^x	Yes minimum wages, provident fund, overtime wages, gratuity, minimum leaves, are provided for by legislation.	Yes, social and health insurance contributions, unemployment insurance contributions, bonuses and pension are provided by legislations and regulations.	Yes, there are minimum wage requirements but they vary according to geographical region and type of work. Provident fund and other compensation schemes and pensions are provided.	Yes - rest days, maximum working hours, public holidays and annual leave	Minimum wage, sick leave, annual leave, social security, maternity leave, pension benefits and festive allowance	Yes, Employees are entitled to paternity leave, maternity, retirement benefits and single parent benefits, holiday pay, night shift differentials, rest day, 13th month pay, service charge (when applicable) and overtime pay. There also may be minimum wage.	Yes minimum wages, provident fund, overtime wages, gratuity, minimum leaves, are provided for by legislation.
Permits required to hire foreigners	Both employer and employee	Yes ^{xi}	Yes but there are certain categories of	Yes. The permits must be changed	Yes, employment pass, visit pass or	A Work permit and a Stay permit	Alien Employment	Foreigners must obtain a work

	require permits to hire foreigners.		foreigners which are exempted. ^{xii}	upon the change of employers.	professional worker visit pass is required.	are required.	Permit (AEP) and the relevant working visa must be obtained.	permit.
Restrictive covenants enforceable	Yes but with restriction – confidentiality and non-competition clauses are enforceable if employee continues to be paid	Yes but only for term of contract	The Labour Code of Vietnam is silent on the enforceability of restrictive covenants. The law is expected to be clarified in 2010.	Yes but subject to the test of whether the restraint is reasonable or has the effect of prohibiting certain professionals from practicing their profession.	Generally not enforceable	It is enforceable only if it complies with Indonesian Civil Code	Yes but must be for a limited period of time which is reasonable and does not deprive the employee of his livelihood.	Yes but extent of enforceability depends on reasonableness and proportionality of the covenant to protect the legitimate interest of the respective parties.
Ownership of inventions and intellectual property	In absence of contract and if done in the course of service, the employer is the owner of copyright and patent.	Owner by inventor in absence of contract	Employer shall be vested with economic rights (ownership, etc.) over the work, created during employment. Employee shall have some moral rights (such as authorship), unless the parties agree otherwise in the contract.	Owner will be the employer unless agreed. he employee however, has a right to additional remuneration for the invention.	Generally owned by employers	Owned by inventor in the absence of contract	Belongs to the employee if the creation of the object of the copyright is not a part of his regular duties, unless there is an agreement to the contrary.	Owner by employer in absence of contract.
Employee or Independent Contractor	This position is unclear	Based on control and supervision	Based on control and supervision. The rights of both classes are provided for separately by different legislations.	Based on control and supervision as well as the nature of the engagement i.e. whether it is for a specific period or task or job based.	Matter of control	An independent contractor means work for a specified time and based on a term or the completion of a certain job for which a probationary period is prohibited. An	Matter of control along with other factors such as payment of wages and power to dismiss.	Based on control test

						employee is to perform work under the employer for unspecified time.		
Organisation of unions	Recognised and offers protection to workers	Indian law recognizes the existence of trade unions and collective bargaining.	Employees have rights to join trade unions and employers are required to cooperate with the union.	Unions are recognised and collective bargaining is protected..	Unions are recognised and collective bargaining is protected	Unions are recognised in Indonesia	Trade unions are recognised.	Trade unions are recognised and collective bargaining agreements are enforced.

ⁱ The most important piece of legislation is the Employment Act 1955 (the “Act”). The Act is only applicable to employees who earn RM1,500 or below. In addition, the Act is also applicable to any person who has entered into a contract of service with an employer who is engaged as a manual labourer, supervises employees engaged in manual labour, is engaged in the operation or maintenance of any vehicle for transport of passengers or goods or is engaged as a domestic servant. The Act is applicable to these categories of employees/workers regardless of the amount of wages earned by the workers/employees. As in common law jurisdiction, there are also many case laws on employment matters in Malaysia.

ⁱⁱ ‘Employment at will’ is typically applicable to Managerial Personnel (performing predominantly managerial, administrative and supervisory duties) and workmen who do not fall under the ambit of Industrial Dispute Act, 1947 (performing non-supervisory work including any manual, unskilled, skilled work). Workmen who do fall under the ambit of Industrial Dispute Act, 1947, are employed according to the scheme of the legislation.

ⁱⁱⁱ An employee can terminate his contract of employment at any time. The employee does not have to give reasons for the termination. An employer can also dismiss an employee without providing any reasons provided the required notice is given and if there is none, the provisions of the Employment Act apply. Nonetheless, an employee can bring a claim to the Industrial Court under Section 20 of the Industrial Relations Act 1967 for reinstatement if the employee is dismissed without just cause or excuse. The Industrial Court has repeatedly stated that dismissal without just cause or excuse is not acceptable in Malaysia today. The reason for dismissal must be reasonable and the proper procedures for dismissal must be adhered to.

^{iv} Serious misconduct or wilful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; gross and habitual neglect by the employee of his duties are valid grounds for dismissal.

^v Introduction of labor-saving devices; redundancy; retrenchment; and illness (when the employee is suffering from a disease and whose continued employment is prohibited by law or is prejudicial to his health and that of his co-employees.).

^{vi} Employees within the ambit of Industrial Disputes Act 1947 enjoy several protections, (majority of them dealing with social security measures) benefits and amenities including terminal benefits as provided for in the legislation.

^{vii} Termination benefits are usually paid to employees who are retrenched if the employee has served for at least 12 months with the employer.

^{viii} Woman, junior and senior employees, disabled and specialized and highly technical employees.

^{ix} However, setting different benefits and welfare, or other terms of employment (such as retirement age) for different job positions is not generally regarded to be unlawful discrimination.

^x There is also co-contribution for the basic benefits and insurances: pension, medical, unemployment, work injury, maternity insurances and housing accumulative fund

^{xi} Foreign nationals are required to register themselves with the concerned "Foreigners' Registration Officer" within two weeks of their first arrival in India, if they hold a visa for a period of more than 180 days. This registration is required irrespective of whether or not they intend to stay in India for less or more than 180 days.