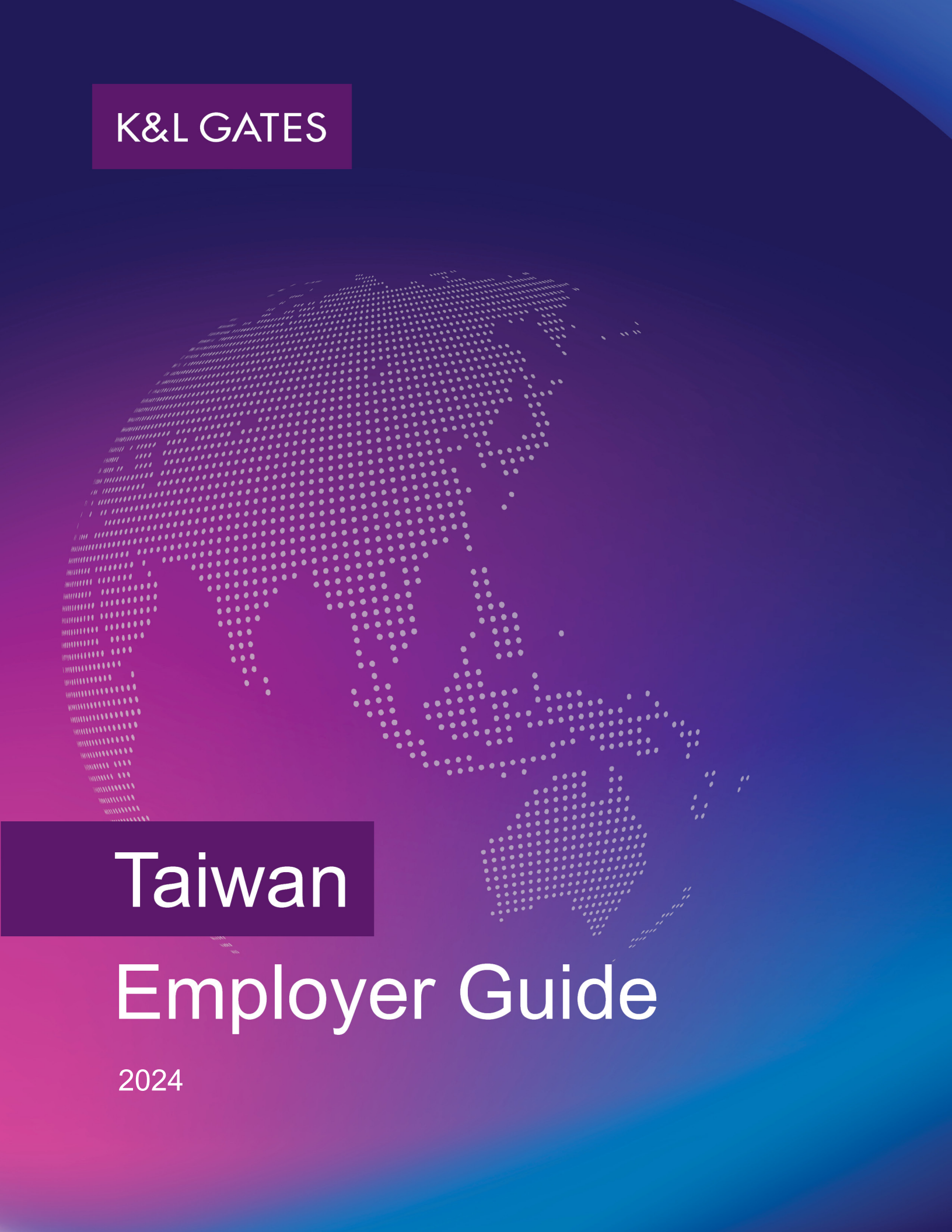


K&L GATES

Taiwan

Employer Guide

2024



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INTRODUCTION

In 2024, the most significant change to Taiwan labor laws will be to expand the protections against workplace sexual harassment. In 2023, there was an outpouring wave of “Me Too” against a wide range of public figures in Taiwan. Following this, related laws governing sexual harassment have been amended to provide better protection for employees when they encounter sexual harassment in the workplace. The new amendments will be fully implemented on 8 March 2024.

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EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers are responsible for ensuring their employees have legal status to work in Taiwan and are required to file applications for work permits on behalf of all foreign workers they employ.

Foreign workers must have visas to live and work in Taiwan, on either a temporary or permanent basis.

When a foreign worker is required to stay in Taiwan for more than 180 days, he or she will need to obtain a resident visa.

Reference/Background Checks

An employer must obtain an employee's consent to gather his or her personal data.

Police and Other Checks

The Personal Data Protection Act (PDPA) requires an employee's written consent to gather personal information, such as background police checks. Furthermore, pursuant to the Employment Service Act, an employer is not allowed to force its employees or candidates for employment to submit themselves to background checks or to provide personal information that is not related to the job that they are performing or for which they are applying.

Medical Examinations

The PDPA requires an employee's written consent to gather personal information of this nature.

Minimum Qualifications

Employers may set minimum qualifications to ensure applicants are suitable for an advertised job. However, pursuant to the Employment Service Act, for the purpose of ensuring every national's equal opportunity in employment, employers are prohibited from discriminating against any job applicant or employee on the basis of race, class, language, ideology, religion, political party, place of origin, place of birth, gender, sexual orientation, age, marital status, appearance, facial features, disability, or past membership in any labor union, unless otherwise stated clearly in other laws.

II. TYPES OF RELATIONSHIPS

Employee

Part-time and full-time employment agreements are both allowed under Taiwanese labor law; however, compensation paid to either type of employee must reach the minimum standards required by the government, which are currently NT\$183 per hour and NT\$27,470 per month, respectively.

Fixed-term employment agreements may be permitted by government authorities subject to certain conditions required by Taiwanese labor law.

Independent Contractor

Businesses can engage an individual to provide services under a service agreement; such individuals will not be classified as employees and, therefore, will not be entitled to employee benefits.

Dispatching Relationship

The employment agreement between an employee who is employed by a dispatching entity but actually works for the dispatch-requiring entity and the dispatching entity must be under an agreement without a fixed term.

Before the dispatching entity and the dispatched employee sign an employment agreement, the dispatch-requiring entity is prohibited from interviewing or appointing the specific dispatched employee.

Labor Hire

It is not common for businesses to engage contractors for a short-term project or during a temporary labor shortage.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

There is no mandatory requirement for the format of an employment agreement.

Codes or Rules

In Taiwan, there are no specific requirements on the format of employment agreements. However, it is very common for employment agreements to refer to the Labor Standards Act (LSA) if the clauses in the employment agreement are not comprehensive.

Registered Agreements

Foreign workers must file an employment agreement when the employer is applying for a work permit on their behalf. Other than the above, there is no legal requirement for registration of an employment agreement.

Policies

Work rules must be established and filed with government authorities if a business has 30 or more employees.

IV. ENTITLEMENTS

Minimum Employment Rights

Maximum Working Hours

The maximum working hours an employee can be required to work are eight hours per day and 40 hours per week, unless certain exceptional conditions exist.

Annual Leave

All employees are entitled to paid annual leave based on their length of employment as stipulated below:

- Three days when employed for six months or more but less than one year.
- Seven days when employed for one or more but less than two years.
- Ten days when employed for two or more but less than three years.
- Fourteen days when employed for three or more but less than five years.
- Fifteen days when employed for five or more but less than 10 years.
- One additional day for each year of service over 10 years, up to a maximum of 30 days.

Parental Leave

Parents are entitled to a maximum of two years of parental leave without pay, which must be taken before the child reaches three years of age.

Birth Leave

Mothers are entitled to a maximum of eight weeks of paid birth leave per child.

Employers must pay an employee's full salary if the employee has worked for more than six months and half salary if the employee has worked for less than six months.

Miscarriage Leave

Female employees who have worked for the employer for more than six months are entitled to four weeks of paid miscarriage leave if they miscarry after three or more months of pregnancy and half pay if the employee has worked for the employer for less than six months.

Employees who have a miscarriage after a pregnancy of more than two months but less than three months will be entitled to one week of leave without pay.

Employees who have a miscarriage after a pregnancy of less than two months will be entitled to five days of leave without pay.

Personal Leave

Employees are entitled to take a maximum of 14 days unpaid personal leave per year.

Compassionate Leave

Employees are entitled to take:

- Eight days of paid wedding leave.
- Three to eight days of paid compassionate leave.
- Thirty days of sick leave not involving hospitalization (at half pay).
- One year of sick leave involving hospitalization (without pay) every two years.
- Total sick leave with and without hospitalization of up to one year.

Special Holidays

Employees are entitled to some special holidays on specific dates regulated by Taiwanese labor law.

Redundancy Pay

Employees are entitled to a redundancy payment based on length of service.

Retirement Pay

Employees are entitled to retirement payments based on length of service.

Compensation for Professional Injuries

Employees or their survivors are entitled to receive:

- Compensation based on their preexisting wages, or the equivalent of 40 months' salary, if the employee completely loses the ability to work.
- Compensation subject to the degree of their injuries.
- Compensation equivalent to 45 months' salary in the event of death.

Discretionary Benefits

Employers are required to give a discretionary bonus to employees if the employer enjoys a net profit after tax.

TERMINATION OF EMPLOYMENT

I. GROUNDS

Termination of employment by an employer must comply with Articles 11, 12, and 13 of the LSA.

Termination of employment by an employee (resignation) can be solely “at will,” subject to prior notice as required by Taiwanese labor law.

Termination by mutual consent of the parties is permitted.

II. MINIMUM ENTITLEMENTS

Payments/Notice

Employers are not responsible for any payments when a fixed-term employment agreement expires.

In the event of termination of a non-fixed-term employment agreement, an employer will pay redundancy based on the employee’s length of service.

Statutory Entitlements

Employees are entitled to be given a certificate for their services from their employer after termination of the employment agreement.

III. REDUNDANCY

Genuine Redundancy

Redundancy can be on the circumstances listed in Article 11 of the LSA or by mutual consent.

Consultation

Within 10 days from the date of submission of the mass redundancy plan, the employees and the employer will enter into a consultation process.

Payment

Payment for redundancy will be calculated and paid based on an employee’s length of service.

- Employees who were employed before 30 June 2005:
 - If the employees continue to work for a business entity owned by the same employer, the severance pay will be equal to one month’s average wage for each year of service.
 - 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, will be calculated proportionally; any period of employment less than one month will be calculated as one month.
- Employees who were employed after 1 July 2005:
 - Employees will have their severance pay paid by the employer based on their seniority. The payment will be half a month of average wages for every full year of employment and prorated for periods of employment less than one full year.

IV. REMEDIES

Dismissal Action

In Taiwan, an unfair dismissal constitutes an illegal termination of the employment agreement, and the employee may claim compensation. Courts are able to grant provisional injunction orders for continuous monthly payments to an employee during any relevant litigation period.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

If the transfer of business is consummated in accordance with the Business Mergers and Acquisitions Law or the LSA, the procedures for employment transfer stated therein apply. If not, then the employee transfer, including the terms of such transfer, is subject to separate agreements between the new employer and transferred employees.

II. RESTRUCTURING

Notification

If the transfer of business is consummated in accordance with the Business Mergers and Acquisitions Law, notification should be given 30 days before the reference date of the merger/consolidation and acquisition.

If the transfer of business is consummated in accordance with the LSA, there are no regulations regarding notification.

Consultation

Not regulated in Taiwan.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Employees are required to protect trade secrets under the Trade Secrets Act.

Employees will not necessarily be required to protect information outside the scope of a “trade secret.”

II. CONTRACTUAL RESTRAINTS AND NON-COMPETES

An employer will not enter into a post-employment, non-competition agreement with employees unless the following requirements have been met:

- The employer has proper business interests that require protection.
- The position or job of the employee entitles him or her to have access to or to be able to use the employer’s trade secrets.
- The period, geographic area, scope of restricted occupational activities, and prospective employers with respect to the business competition limitation will not exceed a reasonable range.
- The employer will reasonably compensate the employee concerned who does not engage in business competition activities for the losses thereby incurred by him or her.

III. PRIVACY OBLIGATIONS

The gathering and use of an employee’s personal information is subject to the PDPA and its regulations.

IV. WORKPLACE SURVEILLANCE

Workplace surveillance is not specifically regulated in Taiwan; however, certain workplace areas cannot be “monitored,” including toilet/bathroom and changing room areas.

V. WORKPLACE INVESTIGATIONS

Workplace investigations are not specifically regulated in Taiwan; however, only authorities (police/prosecutor) with a search warrant can search a person’s personal property. Employers are not allowed to implement an inspection of employees’ property.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

In order to encourage the spirit of hard work and to ensure the progress of work, the employer may, depending on the needs thereof, conduct performance reviews of employees.

II. BULLYING AND HARASSMENT

Bullying

Employers should set up the Plan for Prevention and Management of Unlawful Infringement in the Performance of Duties to prevent employees from suffering physical or mental injuries caused by unlawful infringement, harassment, or other behaviors in the workplace.

Harassment

Employers will prevent and correct sexual harassment. For employers having more than 30 employees, measures for preventing and correcting sexual harassment, related complaint procedures, and disciplinary measures must be formally established. For employers having more than 10 employees but less than 30 employees, a complaint channel should be established and publicly disclosed in the workplace. All these measures will be openly displayed in the workplace.

III. DISCRIMINATION

Sexual discrimination is prohibited under the Act of Gender Equality in Employment.

IV. UNIONS

Representation

Establishment of a labor union is not mandatory under Taiwanese labor laws.

Right of Entry

All employees are entitled to join a union if it exists.

Industrial Disputes

Labor-management disputes can be handled based on the Act for Settlement of Labor-Management Disputes.

V. REMOTE/HYBRID WORK

Employers should work with remote/hybrid employees to identify and evaluate potential health hazards and impacts on physical and mental health from their working environment and safety issues they may encounter when performing their duties. In addition, employers are required to implement safety and health management measures for remote/hybrid employees.

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