Sexual harassment continued to be a theme in Asia Pacific in 2018. The #MeToo movement was a catalyst, resulting in increased media focus, cultural awareness and investigations in Australia, Taiwan and Hong Kong. Proposed legislative amendments in China, Malaysia, Thailand and Vietnam on sexual harassment are expected to include provisions on the prevention and handling of sexual harassment claims in the workplace.

The modern workforce continues to evolve across the region, with a landmark decision in Australia in 2018 finding that gig economy drivers are independent contractors, in the first case of its kind in the region. Philippine employers are likely to face increasing challenges in this area throughout 2019 and the issue gained traction in Thailand, particularly with enhanced flexible and home working models, while in Singapore, the Ministry of Manpower has issued standards about fundamental terms to be included in gig economy workers’ contracts.

Social insurance compliance is also a hot topic across parts of the region in 2019, with Vietnamese and Malaysian employers obligated to contribute to compulsory social insurance for foreign employees which is expected to have severe financial implications. In China, as a result of endemic underpayment of social insurance contributions, these payments will now be made to local tax bureaus nationwide which, will likely lead to stricter enforcement of social insurance collections.

There was significant activity in the global mobility space in Asia Pacific during 2018, with noteworthy policies affecting the processing of work permits for foreign workers resulting in major changes across the region. The removal of work permit requirements for employees from Hong Kong, Macau and Taiwan is expected to lead to a significant increase of employment of these residents in China and such employees will be entitled to the same protections as mainland PRC nationals.

In Indonesia, changes in regulations mean work permit applications must now be accompanied by definite period employment agreements, while in Thailand, the implementation of new work permit laws involving harsher penalties caused fear among foreign workers, resulting in rapid departures from the country. The Thai government has since attempted to mitigate the alarm and confusion by reducing sanctions and allowing operators a grace period to comply with the new requirements.

Employers must exercise caution as the effects of these new work permit regulations will be prevalent in 2019.

“We are starting to see some companies restructure their operations in China, as a result of the general economic slow down and the trade war with the US. This often involves lay-offs, which can be difficult to implement in China, not only from a legal perspective, but also as an employee relations matter, since sometimes employees take collective action to demand greater compensation. Companies will need to plan out any redundancies to take account of both the legal and employee relations issues.”

JONATHAN ISAACS
Partner, Baker McKenzie
2018 saw an increased media focus on claims related to sexual harassment and discrimination in the workplace as the #MeToo movement swept across the globe.

Meanwhile, on October 1, 2018, Australia’s “Heavy Vehicle National Laws” (effective in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Victoria) were amended to include “Chain of Control” measures, designed to impose a broad range of obligations on each party in a supply chain with the goal of eliminating safety risks, so far as is “reasonably practicable.” The new laws increase penalties for violations to AUD 3 million and enforce the concept of shared responsibility.

Regulators also started cracking down on the working conditions of vulnerable and migrant workers in the supply chain as evidenced by the introduction of the Modern Slavery Bill, which came into force on January 1, 2019, and the increased prosecution of employers who knowingly engaged contractors or subcontractors providing substandard labor conditions. Similarly, there has been increased enforcement of labor hire licensing laws in some states (e.g., Queensland), which subject labor hire firms to higher levels of scrutiny, particularly in relation to compliance with workers’ minimum entitlements and corporate and safety obligations. There has also been a marked increase in litigation funders willing to support employment law class actions.

Horizon Scanning in 2019:

New legislation and the growing number of court actions instituted by employees and regulators alike should continue to inspire vigilance among companies.

The Modern Slavery Act 2018 took effect on January 1, 2019 and requires businesses that operate in Australia with an annual turnover of at least AUD 100 million to report items such as: (i) business structure, operations and supply chains; and (ii) actions taken by the reporting entity to control, assess or address any risks of modern slavery taking place.

Although employment law class actions have historically been uncommon in Australia, high-profile class actions are currently being commenced against various employers in the airline industry and labor hire employers supplying workers to the mining industry. In addition, high-profile investigations (and legal action) have been launched by the Australian workplace regulator on a food delivery company operating in the gig economy, alleging workers had the nature of their engagement misrepresented to them.

As 2019 is an election year, the debate surrounding industrial relations will intensify, led by a strong campaign from Australian unions (which have continued to be on the decline). Areas such as discrimination and harassment, in light of the #MeToo movement, will continue to be of significant media interest and employer risk.
The removal of work permit requirements for employees from Hong Kong, Macau and Taiwan will make employment of residents easier in China, though it will likely mean that they will now be entitled to the same protections as mainland PRC nationals.

Implementing redundancies due to changes to business operations or global restructurings continues to be difficult because of legal restrictions and aggressive employee demands, which is aggravated by the local courts in certain cities taking a stricter view on when collective dismissals are permissible.

Certain companies, particularly joint ventures between multinational and Chinese companies, have started receiving pressure to establish communist party organizations in their company and grant the party organization some role in management decisions.

**Horizon Scanning in 2019:**

The government is currently working on a draft amendment to the Civil Code to finally provide a national definition for the term 'sexual harassment.' This follows the issuance of local regulations throughout China, such as in Jiangsu province this year, imposing more specific legal requirements on employers related to preventing and handling sexual harassment. Further, with increased media attention on the global #MeToo movement, there will likely be a marked increase in sexual harassment complaints raised by employees.

Underpayment of social insurance is a widespread compliance issue. As of January 1, 2019, all social insurance contributions are now paid to local tax bureaus nationwide. Currently, some cities only have designated social insurance authorities to collect contributions, while other cities authorize local tax bureaus to do so. National tax bureaus have access to all employees' salary data (which is reported for tax filings) including social insurance payments, which will likely lead to stronger enforcement of social insurance collections.

**CHINA**

In October 2018, the Employment (Amendment) (No. 2) Ordinance 2018 came into effect, which empowers the Labour Tribunal to order compulsory reinstatement or reengagement of an employee unlawfully and unreasonably dismissed without the employer’s consent. If the employer refuses to follow the order for reinstatement of the employee, the employer must pay a penalty to the employee, in addition to any termination payments, amounting to three times the employee’s average monthly wages (subject to a ceiling of HKD 72,500). The employer commits an offense if it fails to pay the additional sum.

In May 2018, the Hong Kong government abandoned its objective of legislating standard working hours due to a lack of business support. While there is a minimum wage requirement, there are currently no statutory provisions governing minimum or maximum working hours, overtime limits, or overtime pay, in Hong Kong.

Further, the following issues stood out this year:

- Sexual harassment and discrimination claims and investigations following the #MeToo movement
- Investigations into general misconduct, fraud and misuse of confidential information
- Data issues including breaches, data access requests and data transfers
- Employee misclassification claims by independent contractors
- Mobility issues, particularly moving expat employees out of China

**HONG KONG**

Horizon Scanning in 2019:

- Paternity leave increased from three to five days in mid January 2019. Further legislative changes are expected in 2019 which will expand the scope of discrimination legislation.
- There are no legislative changes to be introduced on the protection of LGBTQ rights but a case will go to the highest court in Hong Kong in early 2019 on whether a civil servant’s same-sex partner should be entitled to the same spousal benefits the government provides to spouses of heterosexual employees.
- Trends seen in 2018 – including data privacy, misclassification of independent contractors, mobility and sexual harassment – may continue to be relevant in 2019.
- The Greater Bay Area initiative may bring new employment issues for Hong Kong and parts of mainland China.
One of the most significant developments in 2018 was the implementation of a new process for obtaining permits for foreign nationals working in Indonesia ("Regulation 10"). Regulation 10 reflects a similar position taken by the Supreme Court through its circular letter that foreign nationals working in Indonesia should be employed as definite period employees. Regulation 10 includes a template for a fixed-term employment agreement required to be submitted to the Ministry of Employment for work permit applications for foreign nationals. This development impacts foreign employees who have been working in Indonesia for a long time (i.e., more than the maximum contract period permitted for a fixed-term employment agreement).

Termination of employment continues to be a concern for employers in Indonesia, specifically given that immediate termination (even when an employee has committed a violation) is not possible in Indonesia and is still subject to strict compliance with the relevant rules.

Some employers in Indonesia (particularly multinationals) intend to implement global diversity and inclusion policies in their companies. These policies usually touch on gender equality and LGBTQ rights, the latter being a culturally sensitive topic in Indonesia.

**Horizon Scanning in 2019:**

Due to the presidential election in April 2019, it is unlikely that significant laws or regulations on labor and employment will be passed during the first quarter of 2019. There are also no foreseeable changes in the general legal landscape for labor and employment in Indonesia.

The following points may arise in 2019:

- Processing work permits for foreign workers in Indonesia is expected to be faster
- Considering the requirements of Regulation 10, new foreign workers in Indonesia may need to be employed on a fixed-term basis

**INDONESIA**

In 2018 the Labor Standards Inspection Office (LSIO) strengthened its efforts to enforce compliance with the Labor Standards Act by conducting inspections, particularly regarding excessive overtime work and where employees are engaged in skilled/professional type work. There have also been notable court cases relating to reasonable working conditions for fixed-term contract employees.

**Horizon Scanning in 2019:**

Workstyle reform laws were published in June 2018 and partially come into force in April 2019. The new laws will have both positive and negative impacts on employers as follows:

- One significant change is the new concept of "white collar exemption," which may be used as an option to avoid overtime payments for a certain category of employees, although there are restrictions that need to be dealt with in order to implement this mechanism.
- There may be some challenges in relation to the additional regulations particularly surrounding excessive overtime work and working hours management. We expect the LSIO will become more active in monitoring employees' working hours and overtime work performed.

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2018 saw a significant change in the dispute resolution system before the industrial courts. Since May 2018, unfair dismissal claims are no longer being screened by the Human Resources Minister’s department, resulting in more cases being referred to the industrial courts, as there is no ministerial discretion and screening to filter frivolous claims. This has led to the industrial courts making expedited decisions to reduce the backlog of cases.

**Horizon Scanning in 2019:**

- **Increase to minimum wage and mandatory statutory social security contribution for foreign workers.** The increase of minimum wage from MYR 1,000 (MYR 920 for East Malaysia) to MYR 1,100 (for both West and East Malaysia), and the mandatory requirement for employers to effect statutory social security contributions for foreign workers effective January 1, 2019, will impact employers financially, particularly those in labor intensive businesses/industries.

- **Proposed amendments to Employment Act.** The Minister of Human Resources released a list of proposed amendments to the Employment Act 1955, which are currently at the public consultation stage. The proposed amendments open the statutory minimum protections under the Employment Act to employees across the board, regardless of income level and nature of work (with certain reservations for employees earning more than MYR 5,000 per month), thereby significantly increasing compliance risks and costs. The proposed changes also include anti-discrimination obligations that apply at the recruitment stage as well as during employment.

- **Proposed amendments to union-related laws.** The Minister of Human Resources has released a list of proposed amendments to the Industrial Relations Act 1967 and the Trade Unions Act 1959, which will give unions broader bargaining power and increase bargaining rights.

- **Proposed changes to sexual harassment laws.** Significant changes are proposed in relation to employers’ obligations regarding sexual harassment complaints at the workplace, including the mandatory requirement to investigate sexual harassment-related complaints and to prepare a policy on the prevention of sexual harassment.

Modern workforce and gig economy-related concerns posed the most significant challenges for Philippine employers in 2018, as the government continued to favor traditional employment models. The Department of Labor and Employment strictly enforces audits on companies that use independent contractors.

In 2018, the government passed a new law on occupational safety and health, which imposes penalties on employers in violation of the health and safety standards set by the Philippine Department of Labor and Employment.

**Horizon Scanning in 2019:**

The modern workforce and the gig economy will continue to challenge Philippine employers. In addition, we may see the full implementation of the new occupational safety and health law in 2019.
In 2018, the Ministry of Manpower (MOM) created policies to:

- Calibrate foreign manpower policies to support the government’s economic objectives while moderating social impact. To this end, the MOM has increased surveillance of work pass applicants, employers and sectors to ensure adherence to the Fair Consideration Framework and protect the interests of working Singaporeans.

- Develop a more inclusive workforce with progressive human resource practices, putting strong emphasis on employee protection, engagement, and safety and health. The MOM has stepped up actions against offenders.

- Ensure adequacy of retirement planning, whether through regular employment or participation in the gig economy.

The MOM has also issued standards for platforms to include certain key terms in contracts with gig workers.

**Horizon Scanning in 2019:**

The Singapore government is expected to make substantial changes to the Employment Act (EA), which will become effective on April 1, 2019. The government has also committed to making sweeping changes to the employment landscape in Singapore.

The main changes to the EA relate to:

- the scope of the EA and the employees to whom it applies
- the definition of a dismissal of an employee
- an employee’s ability to terminate employment by paying salary in lieu of notice
- the employer’s obligation to carry out due inquiry
- consolidating the dispute resolution mechanism for wrongful dismissal claims under the jurisdiction of the Employment Claims Tribunal
- transfers of employment
- when authorized deductions may be made from an employee’s salary
- expanding the scope of Part IV to blue-collar or manual employees
- the dismissal of pregnant employees without sufficient cause
- statutory entitlement to paid annual leave
- statutory entitlement to maternity and childcare benefits
- certification of an employee’s entitlement to paid sick leave
- the employer’s obligation to provide information to the Commissioner of Labor upon the retrenchment of an employee
- the empowerment of the MOM to regulate the conduct of an employer in order to protect the employee from adverse employment practices
- the employer’s administrative obligations
TAIWAN

There were significant changes to Taiwan’s employment landscape in 2018, the most notable of which were the amendments to the Labor Standards Act and the rise of the gig economy in Taiwan.

- **#MeToo movement.** There is an increased cultural awareness of sexual harassment/discrimination following the rise of the #MeToo movement, with multinational companies leading the drive for awareness. However, cultural barriers continue to pose challenges and lead to a consequent reluctance to bring sexual harassment and discrimination complaints.

- **Modern workforce.** Taiwan laws continue to gradually shift their focus from a manufacturing-based economy to a service-based economy as shown by the substantial amendments to the Labor Standards Act in the past two years. While many first-world economies no longer require strict recording of working hours, Taiwan still requires this although the current administration allowed more flexibility in using modern methods to do so, e.g., check-in by cellphone apps.

- **Gig economy.** Some companies are looking into developing platforms to make the most of the gig economy trend. However, the rules for project-based workers (e.g., fixed-term employees) remain unchanged and have not been identified as a priority for amendment and, therefore, fixed-term employment will continue to be a limited option for employers moving forward.

- **Labor law changes.** Notable recent changes to the Labor Standards Act include:
  
  - Overtime pay on rest days must be based on actual work hours instead of being rounded up.
  - “One Day Off Every Seven Days” can be relaxed to two days off every 14 days. “One Day Off every Seven Days” was changed to “One Day Off and One Rest Day Every Seven Days.”
  - Maximum monthly overtime hours increased from 46 to 54 hours.
  - A quarterly limit of overtime hours (138) imposed for any consecutive three-month span.
  - Employer-favorable trends. The government is geared toward decreasing employment regulations, which may be beneficial from an employer’s perspective.
  - Labor talent issue. There is a shortage of labor talent in Taiwan, and employers are raising concerns that hiring and retention of domestic and foreign employees will continue to be challenging if the labor environment in Taiwan does not improve for both employers and employees.

Horizon Scanning in 2019:

- **2019 labor law forecast.** Following the major changes to the Labor Standards Act in 2017 and 2018, the labor environment should be fairly stable from a policy/law perspective.

- **Potential labor law reforms.** In part due to the white papers from American and European Chambers of Commerce, the National Development Council (NDC) has been pushing the Ministry of Labor (MOL) to provide additional exemptions from the labor laws for higher-paid employees (to increase flexibility and freedom to contract). MOL issued a ruling on January 3, 2019 that employees with a monthly wage of NTD 200,000 or more and in supervisory positions can be partially exempt from certain restrictions under the Labor Standards Act, e.g., work hours, day off, annual leave, women’s night shift work, etc.

  - The NDC is considering how the modern work environment in Taiwan will be impacted by the rise of AI in the workplace.

- **Labor talent issues.** With employers facing challenges on hiring and talent shortages, the government has begun to revise its immigration rules and consider other legislation to make Taiwan a more attractive location/destination to work in comparison to the other Asia Pacific countries (e.g., salaries offered are lower compared to other countries vying for the same labor talent).
THAILAND

2018 saw a surge of global mobility issues following the enactment of new work permit laws. A number of foreign workers left Thailand due to fear of harsh penalties under the immigration laws. The government attempted to alleviate the workers’ concerns by reducing the penalties for violation and allowing a grace period for operators to comply with the new requirements. The concept of modern workforce gained traction in Thailand, although at present the focus is limited to flexible working practices with companies allowing employees to work from home.

Horizon Scanning in 2019:

- Upcoming amendments to the Labor Protection Act will introduce significant changes to the existing laws on the rates of severance pay and employer’s obligations toward its employees in mergers and acquisitions.
- Thailand’s first data privacy law is expected to come into force in 2019.
- Increased focus on gender equality/pay and harassment in the workplace.
- Proposed amendments to the Labor Relations Act will continue to be deliberated upon in 2019.

VIETNAM

Since December 1, 2018, employers are required to contribute to compulsory social insurance for foreign employees. As a result, foreign employees will be covered for all five compulsory social insurance regimes, which were previously only applicable to Vietnamese employees, at the same contribution rate. However, the application of the five regimes to foreign employees will be phased as follows:

- The short-term benefit regimes for illness, maternity, and labor accidents and occupational diseases commenced on December 1, 2018.
- The long-term benefit regimes for retirement and survivorship will apply from January 1, 2022.

This development is expected to have an adverse financial impact on employers in terms of labor costs.

Horizon Scanning in 2019:

- Labor Code reform. The Labor Code of Vietnam is being revised to provide solutions to common challenges arising in employment relationships, legalize principles provided in the Constitution and comply with Vietnam’s commitments to international agreements and conventions regarding labor standards. Important proposed amendments include:
  - All types of employees (e.g., on definite and indefinite-term contracts) can unilaterally terminate labor contracts without any reason, provided that prior notice is served
  - Gradual increase of retirement age, thus narrowing the gender gap in this regard
  - Increased annual cap of overtime hours
  - Recognition of employees’ freedom of association
  - Strengthening provisions to address sexual harassment at the workplace
- Increase of regional and general minimum salary. The Regional Minimum Salary (RMS) increased by 5% to 5.8% (depending on the applicable region) on January 1, 2019. The increase in RMS means that the capped amounts for contributions to unemployment insurance also increased.

The General Minimum Salary is expected to increase from VND 1.39 million (approx. USD 60.4) to VND 1.49 million (approx. USD 64.8) from July 1, 2019. This increase means that the capped amounts for contributions to social and health insurance will increase.

- Implementation of international commitments. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership was ratified by the National Assembly of Vietnam on November 12, 2018 and came into effect on January 14, 2019. The European Union-Vietnam Free Trade Agreement adoption is also being accelerated to reach the European Parliament for formal deliberations before the end of its current term in March 2019.

Certain commitments under these agreements are expected to impact the labor and immigration laws of Vietnam, particularly regarding labor standards, resolution of labor dispute, collective bargaining and employees’ representative body establishment.
**ASIA PACIFIC TOP TIPS**

**AUSTRALIA**
- From **January 1, 2019**, ensure compliance with the new requirements introduced by the Modern Slavery Act 2018.
- Anticipate full implementation of the labor hire licensing laws.

**CHINA**
- Look out for a definition of the term ‘sexual harassment’ through amendments to the Civil Code.
- Put sexual harassment policies in place and provide documented training to management about sexual harassment and how to handle complaints.
- Conduct internal audits of social insurance practice and ensure contributions are being correctly calculated following reform of social insurance collection processes on **January 1, 2019**.
- Be prepared for pressure to establish communist party organizations in companies and understand the legal rights and obligations in relation to this.

**JAPAN**
- In light of work style reform laws coming into force in **April 2019** and the LSIO’s increased scrutiny, revisit their policies and practices regarding overtime and working hours management.
- The work-style reform laws also include the concept of "equal work, equal pay" for non-regular employees. This part of the legislation will come into force in 2020 and employers are recommended to review their practices in relation to non-regular employees in light of the upcoming legislative changes, relevant guidelines and recent court precedents, particularly on what constitutes reasonable working conditions for fixed term employees.

**HONG KONG**
- Ensure compliance with paternity leave changes from **January 2019** and watch out for further expansion of discrimination legislation.
- Ensure policies and training on sexual harassment and discrimination are up to date and implemented effectively.

**INDONESIA**
- Carefully plan and structure the employment of foreign nationals in Indonesia following changes to work permit processes.
- Strengthen hiring processes to counter the challenges posed by the current statutory termination procedure.

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### Malaysia

- Watch out for the proposed amendments to the Employment Act in 2019.
- Be prepared for the financial impact of increased minimum wage and mandatory social security contributions for foreign workers following changes to the law on **January 1, 2019**.
- Align company policies on sexual harassment issues in the workplace to the proposed government regulations.
- Revisit employment benefits and labor practices to preserve industrial harmony and mitigate the risk of employees unionizing.

### Vietnam

- Monitor the progress of Labor Code amendments that will be formally released for consultation and keep an eye out for potential changes to immigration regulations aimed at implementing Vietnam’s international commitments.
- Ensure the relevant payroll providers/internal departments are briefed on increase of RMS and GMS effective on **January 1, 2019**.

### Philippines

- Regularly review and ensure workplace policies and appropriately drafted contracts are in place for independent contractors.
- Look out for the implementation of the occupational safety and health law in 2019.

### Singapore

- Continue to monitor manpower policy developments and be aware of the effects of widespread changes to the EA and related legislation from **April 2019**.

### Taiwan

- Look out for potential labor law reforms, specifically on the issue of additional exemptions from certain labor laws of higher-paid employees.
- Keep updated on possible changes to immigration rules in response to labor talent issues.

### Thailand

- Look out for upcoming amendments to the Labor Protection Act in relation to severance pay and the first data privacy law in the country.