4 Points for Multinational Employers on How China's Revised Company Law Impacts Workplace Practices

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Multinational employers should be aware of key changes that just took effect and will impact your operations in China. Late last year, lawmakers in China revised and passed the Company Law of the People's Republic of China, which takes effect July 1. The law initially took effect 30 years ago and has undergone numerous changes over the years. The most recent revisions focus on protecting employee rights and balancing the interests of companies, shareholders, employees, and creditors. Here are the top four points employers need to know as the new law takes effect.

1. Spotlight on Protecting Employee Rights and Interests

The New Company Law stipulates that companies need to fully consider the interests of employees, consumers, and other stakeholders, as well as social public interests, such as ecological and environmental protection, and undertake social responsibilities (Article 20 of the New Company Law).

The law further clarifies specific protections involving employees' labor and economic rights and interests, adding "rest and leave" as part of the collective contract with labor unions (Article 17 of the New Company Law).

2. Clarification on Employee Representatives on the Board of Directors, Audit Committee, and Board of Supervisors

The New Company Law expands the scope of employee representative directors to all limited liability companies with more than 300 employees (except those with a board of supervisors and employee representatives). It allows companies with more than three directors to have employee representatives on the board of directors (Article 68 of the New Company Law).

The law stipulates that companies can set up an audit committee composed of directors within the board of directors, exercising the powers of the board of supervisors. If there is no board of supervisors, employee representatives on the board of directors can become members of the audit committee (Articles 69 and 121 of the New Company Law).

The new law also retains existing provision that the board of supervisors shall include shareholder representatives and an appropriate proportion of at least one-third employee representatives

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Employee representatives on the board of supervisors are elected democratically by the company's employees through the employee representative assembly, employee assembly, or other forms (Articles 76 and 130 of the New Company Law).

3. Establishing a Democratic Management System Based on the Employee Representative Assembly

Under the New Company Law, companies need to establish a democratic management system based on the employee representative assembly. Notably, when companies decide on restructuring, dissolution, bankruptcy applications, and major business issues, they'll need to listen to the opinions of the labor union and the employee representative assembly or other forms to gather employee opinions and suggestions (Article 17 of the New Company Law).

4. Recommendations for Labor Employment Management

The New Company Law is more closely aligned with other labor laws and regulations. For example, in terms of democratic consultation, the New Company Law reiterates provisions of the Labor Law and the Labor Contract Law stating that during the statutory reorganization of an employer on the verge of bankruptcy or severe operational difficulties requiring staff reduction, the opinions of the labor union or employees shall be heard. It also reiterates the Labor Union Law's provision that companies shall listen to the opinions of the labor union on major business management and development issues.

Additionally, it lists situations where the opinions of the labor union shall be heard – including dissolution and bankruptcy applications – further strengthening the protection of employee rights and interests. This means that decisions on these major matters made without this procedure may be invalid or deemed illegal.

You should pay attention to judicial interpretations and regulatory documents for direction on rolling out these new requirements. Be sure to update internal operational guidelines accordingly.

Conclusion

We will monitor developments in this area and provide updates as warranted, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information directly to your inbox. Please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our International Practice Group to learn more.

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