

To: Our Clients and Friends

October 4, 2011

New Employment Regulations Will Affect Maternity, Foreigner Insurance In China

Nearly a year after promulgation on October 28, 2010, the *Social Insurance Law of the People's Republic of China* ("Social Insurance Law") became effective July 1, 2011. Accompanied by a set of implementing regulations, the Social Insurance Law forms a standardized social security framework for all employers and employees in China. To further implement and clarify the Social Insurance Law, China's national, provincial and municipal governments have issued more detailed rules and regulations.

This PRC Employment Update will focus on new updates for maternity insurance in Shanghai and social insurance requirements for foreigners employed in China. Employers should take note that new social insurance requirements for foreigners will translate into increased employment costs. While the maternity insurance changes will likely also lead to increased employer costs, the widespread implications at this point are uncertain as it will be more fact specific with respect to the average monthly salaries of employers.

Maternity Insurance in Shanghai

The *Circular of the Shanghai Municipal People's Government on Implementing the Social Insurance Law and Adjusting the Current Maternity Insurance Policies in Shanghai* ("Circular"), was promulgated by the Shanghai Municipal People's Government on June 22, 2011 and became effective on July 1, 2011. The Circular was passed to amend Shanghai's previous law on urban maternity insurance and implement the new maternity insurance requirements of the Social Insurance Law.

According to the Social Insurance Law, maternity allowances must be calculated and paid based on an employer's average monthly wage in the previous year. In Shanghai, according to the Circular, the criteria determining the monthly maternity allowance granted to a woman employee that gives birth to a baby or undergoes a miscarriage will be the average monthly wage in the previous year of the employer where such an employee works ("average company wage"). If the average company wage is higher than three times the average monthly wage of employees in the Shanghai municipality in the previous year ("municipality average"), such allowance will be capped at 300% of the municipality

average. Where the average company wage is higher than three times the municipality average, the employer will cover the difference.

The Circular also updates maternity insurance premium rates. Under the previous system, employers had to pay maternity insurance premiums at 0.5% of the payment base every month. The Circular states that employers must now pay maternity insurance premiums at 0.8% of the payment base every month.

We understand based on discussions with the Shanghai Labor Bureau that the social security bureau is currently updating its internal system to reflect and implement the new Circular, and that the application for the new allowance system has been suspended up to now. Officials also advised that in the event of a secondment arrangement, the average company wage will be the average wage of the unit seconding the employee, such as the Foreign Enterprise Human Resources Service Company (FESCO) or China International Intellectech Corporation (CIIC).

We are continuing to monitor this matter in order to advise employers as to how to calculate the average company wage.

Social Insurance for Foreign Employees in China

The *Measures for Contribution of Social Insurance by Foreigners Employed within China* ("Measures") was promulgated by the Ministry of Human Resources and Social Security on September 6, 2011 and will come into effect on October 15, 2011. According to the Measures, all foreigners who are legally employed within the territory of China must participate in China's social insurance system as outlined in the Social Insurance Law, which includes basic pension, basic medical insurance, work-related injury insurance, unemployment insurance and maternity insurance.

Before the Measures, foreigners were generally only required to pay social insurance in China if such a clause was included in their labor contract or secondment agreement. In practice, inclusion of such clauses in contracts was rare. Now, employers are obligated to pay social insurance contributions and withhold and pay foreign employees' social insurance on their behalf. Failure to register or pay a foreign employee's social insurance may result in fines as high as one to three times the overdue social insurance payment.

The Measures also allow foreigners from countries that have signed bilateral or multilateral agreements on social insurance with China to continue managing social insurance according to those agreements. To date, China has signed such agreements with Germany and South Korea.

The actual insurance premium rates will vary by region in China, as provinces and municipalities issue their own detailed implementation guidelines. While more concrete details are currently unavailable, companies operating within China can certainly expect higher employment costs and greater need for regulatory compliance should they employ foreign workers.

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