



HIRING EMPLOYEES

JURISDICTION:TAIWAN

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1. *What are the main laws and regulations pertaining to the employment relationship (particularly as they relate to hiring employees)?*

The main laws and regulations pertaining to employment relations in Taiwan are

- (1) The Labor Standards Act 1984, (as amended, most recently on 25 December 2002): to provide minimum standards for working conditions, protect workers' rights and interests, improve employee-employer relationships and promote social and economic development.
- (2) The Employment Services Act 1992 (as amended, most recently on 11 July 2007): to promote nationals' employment with a view to enhancing social and economic development.

2. *Are there rules or laws requiring that certain candidates or groups of candidates be given preferable or affirmative consideration?*

The Employment Services Act gives preferable or affirmative consideration to Taiwan nationals over foreigners by stipulating that no employment of foreign workers should jeopardize nationals' opportunities in employment. Other than that, the Employment Services Act, Article 5, stresses nationals' equal opportunities in employment and prohibits employers from discriminating against any job applicant or employee on the basis of race, religion, age, gender, sexual orientation, marital status or disabilities, and so on. Meanwhile, regulations made pursuant to the two main Acts give various incentives, such as subsidies for employers who hire persons with disabilities, and disincentives, such as responsibilities to contribute to the subsidy fund, for those employers who do not.

3. *Are there any age limits on who may be hired for a particular job?*

Yes. According to the Labor Standards Act, Articles 44 and 45, generally employers cannot hire people younger than 15 years of age; and employers cannot hire people above 15 but under 16 to do heavy and dangerous work. As regards a maximum age limit, according to the Labor Standards Act, Article 54, generally speaking, employers can oblige employees who have reached 60 years of age to retire. However, according to the Employment Services Act, Article 5, employers are prohibited from discriminating against any job applicant or employee on the basis of age.

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4. ***Who can work in the country, and what are the requirements for proof of citizenship, foreign work visas, etc.?***

All Taiwan nationals are permitted to work in Taiwan. Further, according to Employment Services Act, Articles 43 and 46, foreigners can work in the country only if their employers have got approvals (working permits) from the authorities and the available types of work are limited to the following fields:

1. Specialized or technical work;
2. Director/Manager/Executive of a business invested in or set up by overseas Chinese or foreigner(s) with the authorization of Taiwan government;
3. Teacher at the following schools:
 - (a) Teacher at a public or registered private college/university or school established especially for foreign residents;
 - (b) Approved teacher teaching course(s) on foreign language(s) at a public or registered private high school or below; or
 - (c) Teacher teaching course(s) at a public or registered private experimental high school's bilingual department or at bilingual school;
4. Full-time teacher teaching course(s) on foreign language(s) at a short-term class registered for supplementary schooling in accordance with the Supplementary Education Act;
5. Sports coach or athlete;
6. Religious, artistic, or show business work;
7. Crew member of a merchant vessel, working vessel, or vessel permitted by the Ministry of Transportation and Communication;
8. Marine fishing/netting work;
9. Household assistant;
10. Work designated by the authorities in response to national major construction project(s) or economic/social development needs; and
11. Other specialized work approved by the authorities due to the lack of such specialists in the domestic employment market and due to the business necessity to retain the service of such specialists.

Also, employers can hire foreigners only if the employers meet the capital and revenue requirements set forth in the regulations made under the Employment Services Act.

5. ***Are employment contracts required (and, if so, what are the required terms)?***

Employment contracts are not generally required but there are some exceptions. Written employment contracts are required between employers and apprentices, and between employers and employees who are either under exceptional work time arrangements permitted by the Labor Standards Act Article 84-1 and the regulations thereunder, or who are foreigners taking jobs under sections 8 to 10 of Article 46 of the Employment Services Act (see answer to question 4 above).

Practical Considerations: Since labor laws and regulations apply to all kinds of employment, written employment contracts are highly recommended to ensure compliance with applicable labor laws and regulations.

6. ***May any employer conduct background and reference checks?***

Yes. Background and reference checks are not prohibited by relevant labor laws and regulations. However, employers should abide by applicable laws and regulations governing privacy and the security of personal information.

7. ***Are there limitations to the type of “testing” that may be performed on candidates (drug testing, personality testing, etc.)?***

No.

Practical Considerations: Although no such limitations are set forth in the relevant statutes, employers should always take human rights protections into consideration and ensure that any such tests are conducted under the free will of the employee in question.

8. ***Is there a minimum or maximum orientation period, and what additional rights or restrictions must be observed during that orientation period?***

There is no minimum or maximum orientation period. Although probation periods in employment agreements are not prohibited by relevant labor laws and regulations, the dismissal of any employee is subject to the provisions of the labor laws and regulations. Expiration of a probation period is not one of the lawful causes for the dismissal of an employee, and employers should also obey relevant labor laws and regulations if they wish to dismiss an employee who is still within his/her probation period.

Practical Considerations: Any deviation from clear performance requirements for an employee within the probation period, however, may be regarded as lawful cause for the dismissal of that employee.

9. ***Are there any prohibitions or limitations on hiring “temporary employees” to help cover workforce needs?***

Yes. Employers can only hire temporary employees by a fixed term contract for temporary, short-term, seasonal, or specific work as defined Article 9 of the Labor Standards Act and the regulations thereunder.

Practical Considerations: Some companies in Taiwan use “manpower dispatching” (“employee leasing”) companies to provide alternative solutions to their needs.

10. ***Are there any specific declarations to be made or done (not covered above) before hiring an employee (and, if so, in which cases and of what sort)?***

No.

11. ***Are there any additional laws or requirements not referenced above that impact the hiring decision?***

No.