



Detroit – Washington D. C.

# OESA China HR Webinar

January 20, 2011

Supporting partners:



# Agenda

- **Agenda:**
- **7:00 – 7:05 a.m. EST / 8:00 - 8:05 p.m. CST/CCT**
- Welcome and Introductions, **Margaret Baxter**, Senior Vice President, Operations and International Affairs, OESA
- **7:05 – 7:45 a.m. EST / 8:35 – 9:35 p.m. CST/CCT**
- Towers Watson Presentation - China Compensation Survey Results and HR Trends and Challenges in China, **Steven Kueffner**, Practice Leader International Consulting and **Simon Shi** International Consultant– Towers Watson/Detroit
- **7:45 – 8:05 a.m. EST / 8:45 – 9:05 p.m. CST/CCT**
- Foley & Lardner Presentation – Current Labor Trends in China: Unionization, Collective Bargaining and Labor Unrest in China, **Ken Duck**, Special Counsel, Foley & Lardner
- **8:05 – 8:20 a.m. EST / 9:05 – 9:20 p.m. CST/CCT**
- Question and Answer
- **8:20 a.m. EST / 9:20 p.m. CST/CCT**
- Adjournment



# China Human Resources Trends and Challenges

January 20, 2011





# Topics

- Complex Compliance Environment in China
- Rise in Labor Disputes
- Rise in Wages
- Government Push to Unionize and Use Collective Contracts



# Labor Law in China: Compliance Challenges

- National Labor Law (1995) and related national and local implementing regulations
- National Labor Contract Law (1/1/2008) and related national (9/18/08) and local implementing regulations
- Mediation and Arbitration of Employment Disputes Law (5/1/08)
- National and Local Labor Bureau Notices
- National Supreme People's Court and Local Supreme People's Court Opinions



# Compliance Challenges

- No published case law and no system of case precedent
- Many (*neibu*) interpreting rules and procedures at local level
- National law prevails over local regulations, but many areas where local regulations differ from region to region
- Burden for employers who have companies in different areas and who are trying to meet the various local requirements
- Local influence over arbitrators and judges
- Termination for “Cause” and application of PRC labor laws to foreigners working in Shanghai



# Highlights of Recent Labor Laws

- Labor Contract Law (effective 1/1/08)
  - Shorter probationary periods (1 month for nontechnical personnel, 2 months for technical and 6 months for senior technical and management personnel)
  - Higher min. pay during probationary period (80%)
  - Non-competes still enforceable, but capped at 2 years and special consideration still required for enforcement (amount varies by locality)



# Highlights of Recent Labor Laws

- Labor Contract Law (con't)
  - Statutory severance now due in cases of non-renewal of labor contract
  - Contracts automatically convert to open-ended contract following 2<sup>nd</sup> renewal of fixed term contract and after 10 years of service
  - Double salary penalty if no written labor contract
  - Requires employment handbook, following proper consultation process



# Labor Disputes

- Still a “One mediation, one arbitration and two trials” system
  - A party can refuse to fulfill mediation agreement or go directly to arbitration
  - Must arbitrate before you can litigate
  - 2008 Law on Mediation and Arbitration of Employment Disputes intended to speed up process and reduce workload of People’s Courts



# Labor Strife

- Filed labor disputes doubled in 2008 and again in 2009 and 2010
  - “Free of charge” arbitration system provides easy access
  - Prior system required at least RMB 500 filing fee which likely weeded out weak claims
  - New system encourages disputes regardless of merits of the case
- Increase is especially pronounced among FIEs
  - Labor unrest “control valve” useful to central government
  - Recent Honda and Toyota examples



# Wage Increases

- Minimum wages have doubled over past 5 years
- Increases even greater for skilled labor, especially in coastal cities
- Local Bureaus of MOLSS must assess changes in minimum wages at least every 2 years (more frequently in practice)
- Wage Increase Regulations (currently under draft by MOLSS) could mandate a doubling of minimum wages over next 5 years



## Minimum Wage Increases

地区	2005	2006	2007	2008	2010
上海	690元	750元	840元	960元	1120元
北京	580元	640元	730元	800元	960元
广州	684元	780元	780元	860元	1100元
深圳	690元	810元	850元	1000元	1100元
苏州	690元	750元	850元	850元	960元
杭州	670元	750元	850元	960元	1100元



## Unionization: Pre-2008 Financial Crisis Push

- Wal-Mart and Taiwan's Foxconn unionized (2006)
- FIEs were instructed by ACFTU officials to organize enterprise union or face unspecified legal consequences
- After failing to make progress with other MNCs, ACFTU (June 2008) launched an aggressive campaign targeting China subs of Fortune 500 companies



## Renewed Push in 2008

- Though many Fortune 500s initially resisted, some believed it was inevitable and decided to work with the ACFTU
- Many who did co-opted the union by themselves designating the union chair and committee members
- Per ACFTU, unionization rate among Fortune 500s rose from less than 50% to 83% in 2008



# Current Unionization Push

- Goal is 100% unionization among FIEs and private PRC companies
- June 4, 2010 Urgent Notice on Further Advancing the Establishment and Use of Enterprise Labor Unions
  - Focusing on unionization of FIEs with HK, Macao and Taiwanese investment
  - Also, calls for expanding union representation of migrant workers



## Role of ACFTU in China

- ACFTU more interested in collecting dues than actually representing rights and interests of its members
- Unionization enhances the Party's ability to police political activities and maintain social stability
- Typically organizes social and educational outings, like trips to the Great Wall
- In disputes, typically acts as mediator between labor and management which may improve relations and reduce individual disputes



## Risks Associated with ACFTU

- Most companies co-opt union by making sure mid-level managers are elected to leadership in the enterprise union
- Although weak in practice, ACFTU has significant power
  - Company must consult with union on all fundamental matters, such as restructuring
  - Union rep must attend meetings related to worker rights and interests, including board meetings



## ACFTU Countermeasures Against “Non-Cooperative” Companies

- Bringing negative media attention (Honda)
- Lobbying local authorities to impose sanctions
  - Withholding government approvals
  - Initiating regulatory-related audits (tax)



## “Rainbow Plan”: Collective Bargaining

- Introduced in 2008 by ACFTU and MOLSS
- Goal of phasing-in use of collective contracts by 2012
  - Large companies in eastern China by 2009, in central China by 2010 and the rest of China by 2012
- ACFTU reported by end of 2009, more than 1.2 mil. collective contracts signed involving more than 2 mil. enterprises and nearly 162 mil. workers nationwide



## Renewed Push on Collective Wage Bargaining

- 2008 financial crisis temporarily halted ACFTU efforts which became more focused on reducing risk of unemployment
- Notice on Pushing Forward Collective Bargaining and Implementation of the Rainbow Plan (5/5/10)
  - Requires trade unions to focus on collective wage negotiations in private and labor-intensive operations
- Revised Rainbow Plan (5/5/10)
  - Aims to promote collective bargaining for fair wages and increase coverage to 60% in 2010 and 80% by 2011



# Local Developments in Push for Collective Bargaining

- Under pressure from HK businesses, Guangdong regulations on democratic management and collective bargaining temporarily shelved. Troubling aspects:
  - Employee representation on the board
  - Requirement to collectively bargain if at least 1/3 of employees so demand
  - Protections offered to employees during strikes in certain situations
  - [Status update] Comments will be taken into consideration and a new draft will be published for comment in the near future



## Local Developments in Push for Collective Bargaining

- Fujian Province passed new regulations on collective bargaining - took effect on 1/1/11
  - If an employer refuses to collectively bargain or delays such bargaining after being requested by the union or other employee representatives chosen by a majority of employees, then the labor bureau may fine the company RMB30,000 and may also fine the legal representative or main person in charge up to RMB10,000
- Shanghai passed (12/23/10) collective wage bargaining regulations to take effect on 05/01/11 and implementing regulations are in draft form



# What to Expect Going Forward

- **Greater Unionization Pressures**
  - Labor Union Law expected to be amended in second half of 2011
- **More Collective Bargaining Demands and Continued Increase in Wages**
  - (Draft) National Payment of Wages Regulations reportedly provides that if employer unjustifiably denies employee's request for collective bargaining in relation to wages, and fails to correct such violation in period stipulated by authorities, employer may be liable for fine of up to RMB200,000
- **Continued Complex Labor Law Compliance Environment**



# QUESTIONS?

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# Thank You

## Who's giving the presentation

Title

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