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LEGAL WISE BY MDME | EMPLOYMENT CONTRACTS: HOW DEEP IS THE BOND?

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The establishment of an employment relationship is the end result of the (usually) stressful job hunting and candidate search process. Once the conditions are established, with more or less negotiation, employer and employee sit down and seal the deal by signing the employment contract. For many, the execution of the contract will dictate all boundaries and limits of the relationship, but for others the bond is just not that deep.

When someone is hired for a job, things get serious whether they like it or not. So, on the employment scene, regardless of being there for the long run or just a passerby, the parties have to literally seal the deal and be prepared to face the joys and hardships of the employment relationship.

The curious thing is that and contrary to what would be expected, most people don't know exactly what they've signed for until things get tough! Many employment contracts feature obligations and arrangements that do not comply with the law and, as such, are not valid or enforceable against the employee. One would think that employers and employees could decide what they wanted in their own relationship!

Well, not exactly!

Unlike many foreign jurisdictions where the signed contract dictates the exact rules by which the parties to a work relationship are bound, in Macau, if the parties agree on less favorable conditions than the ones established by the Macau Labour Relations Law the agreed upon conditions will not apply. This ensures that the legal guarantees of the employees are respected and that employers don't abuse their power.

One of the golden rules set in the law to ensure that the power balance is levelled is that work relationships which happen in Macau, stay in Macau! This means that Macau law applies in those relationships, regardless of an employment contract stating otherwise. As such, an employment contract between a Macau employer and an employee, resident or non-resident, who performs work in Macau is mandatorily ruled by Macau law. It doesn't matter if the employee was transferred to Macau and still maintains a connection with the foreign company that deployed him or her; Macau law rules!

Another common violation seen in employment contracts is to do with agreements made about payment of overtime or, more exactly, the lack of it. As a general rule, overtime is always payable, so even if the employee agrees to not being paid for overtime work such agreement does not stand. Therefore, overtime is not only due but, like all credits resulting from an employment relationship, claimable for a long period after the employment ends.

Clauses regarding disciplinary measures or penalties that provide for deductions from employees' salaries are also very liable to being negated. Macau law is very tight and specific on the amounts and circumstances under which deductions from salaries can be made.

Restrictions on annual leave also have their place in the top nullifications found in matters to do with employment contracts. Many employers assume that unused annual leave can be forfeited, which is not the case. Macau law allows accumulation of annual leave for a maximum period of two years if the parties agree on it, but if there is no agreement and there is annual leave to enjoy then the employers, sooner or later, will have to pull from their wallets and pay for those unused days.

It seems that, after all, the depths of the bonds between employers and employees is not what it seems at first sight!



Isolda Brasil*

*Senior Associate, MdME Lawyers

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