Message from the Editor

Welcome to the first edition of the Jones Day Asia-Pacific Labor & Employment News, which will be published quarterly and will examine labor and employment law developments across the Asia-Pacific region. Each quarter, we will provide you with a rundown of upcoming changes in law and recent key decisions of courts and regulators across the region. Jones Day has significant experience advising clients on labor and employment issues, both in transactions and disputes, throughout the Asia-Pacific region. We have decided to put this experience to use to keep our clients, colleagues, and friends abreast of changes in this rapidly developing area of law. We hope you enjoy this, our first of many legal updates on labor and employment law developments in the region.

Larry DiNardo

Upcoming and Recent Changes in the Law

Taiwan: Legislative changes to regulate use of agency workers
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China: Government limits opportunity for the use of contractors by foreign corporations
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Ministry of Human and Social Security on January 24, came into effect.

**Singapore: Government balances needs of employers with the rights of employees**
The Employment, Parental Leave and Other Measures Act 2013 makes significant changes to the Singapore Employment Act, extending protection for workers and improving employment standards, while recognizing that employers have practical business concerns and a need to remain competitive.

**Key Decisions of Local Courts and Regulators**

**Japan: Mass redundancy vindicated on account of economic necessity**
Japan Airlines International Co., Ltd., the core airline business company of the JAL Group, filed an application for the commencement of corporate reorganization proceedings together with Japan Airlines and JAL Capital Co., Ltd. in January 2010.

**Australia: Full Bench of the Fair Work Commission confirms that multinational employers not obligated to relocate employees overseas in the event of Australian redundancies**
The claimant in *Murray v Ventyx Pty Ltd* [2014] FWCFB 2143 was employed as a technical project manager by Ventyx Pty Ltd pursuant to a Modern Award and was one of nine employees made redundant in Australia.

**Australia: Competition watchdog at last confronts union misbehavior**
The Australian Competition and Consumer Commission has recently confirmed that it is investigating two separate instances of trade union misconduct in Australia.
UPCOMING AND RECENT CHANGES IN THE LAW

Taiwan: Legislative changes to regulate use of agency workers
According to statistics published in May 2013, Taiwan has more than 590,000 agency workers, and that number is continually rising at an unprecedented rate. As such, existing labor laws governing agency workers have become both inadequate and outdated. To address this issue, Taiwan's Ministry of Labor approved the submission of the draft Protection of Agency Workers Bill on February 6, 2014.

In essence, the draft bill seeks to discourage the use of agency workers as a matter of principle. The bill achieves this by limiting the types of work in which an agency worker can be engaged and by setting a maximum percentage of agency workers that an enterprise ("User") may employ. The draft bill also affords agency workers the same rights as the full-time employees of the User, such as the agency worker’s right to tender a formal labor contract to the User if he or she continues to work at the User after one year. The agency and the User will be jointly and severally liable if the agency worker is not duly paid or suffers damages due to work performed.

China: Government limits opportunity for the use of contractors by foreign corporations
On March 1, the Interim Provisions on Labor Dispatch ("Interim Provisions"), which were promulgated by the Chinese Ministry of Human and Social Security on January 24, came into effect. This move demonstrates the intention of the Chinese legislature to limit the use of dispatch workers, whose rights are akin to those of contract workers in common law countries, by Foreign Invested Enterprises ("FIEs"). The history of dispatch labor can be traced back to the early stage of China's opening to foreign investment more than three decades ago. Initially, measures were adopted to restrict the development of representative offices set up by foreign investors and to control the scale of their local employment. The representative offices of foreign entities are not allowed to engage
employees directly but may have certain government-appointed employment service agencies, such as the Foreign Enterprises Human Resources Service Company Limited, to hire and then dispatch local employees to them.

By using labor dispatch workers, FIEs can circumvent the operation of the Employment Contract Law, which took effect on January 1, 2008. The Employment Contract Law includes rigorous dismissal requirements, but these do not apply to dispatch workers, who have only limited protections. To remedy the situation, the Chinese legislature has promulgated the Decision regarding the Modification of Employment Contract Law ("Decision") and its associated Regulations to provide greater protection to these workers. The Decision and the Regulations expressly provide that labor dispatch shall be an ancillary method of employment and be confined to the temporary and substitutable positions. Moreover, the Decision places a cap on the number of labor dispatch workers that an FIE may employ: 10 percent of the total headcount.

**Singapore: Government balances needs of employers with the rights of employees**

The Employment, Parental Leave and Other Measures Act 2013 ("EPLOM Act") makes significant changes to the Singapore Employment Act ("EA"), extending protection for workers and improving employment standards, while recognizing that employers have practical business concerns and a need to remain competitive. The EPLOM Act also introduces certain amendments to the Child Development Co-Savings Act. Most of the changes, with the exception of Section 45 of the EA relating to retrenchment benefits, took effect on April 1, 2014.

The key amendments to the EA include: (i) extending EA protection to more workers by increasing the income ceiling for employees to which the EA in general and Part IV of the EA apply; (ii) improving employment standards and benefits for employees in the areas of certain deductions from salaries, retrenchment benefits, and collective agreement for union representation; (iii) reducing rigidity and augmenting flexibility for employers in the areas of overtime pay, redress for unfair dismissal, working on public holidays, and sick leave and medical expenses for cosmetic consultations and procedures; and (iv) enhancing enforcement and compliance with employment standards by increasing certain penalties and granting more power to employment inspectors.
KEY DECISIONS OF LOCAL COURTS AND REGULATORS

Japan: Mass redundancy vindicated on account of economic necessity
Japan Airlines International Co., Ltd. ("JALI"), the core airline business company of the JAL Group, filed an application for the commencement of corporate reorganization proceedings together with Japan Airlines and JAL Capital Co., Ltd. in January 2010. After the commencement of these proceedings, and as a part of the corporate reorganization plan, the JAL Group made a decision to reduce its workforce by approximately 16,000 employees within its group companies, including JALI, by the end of March 2011.

Based on this decision, JALI began its workforce reduction by repeatedly offering an early retirement program with favorable conditions (such as additional special severance) to its employees, including cockpit crew members and flight attendants. Despite JALI's efforts to achieve its workforce reduction target by holding explanatory meetings and collective bargaining sessions with the labor unions (to explain the corporate reorganization plan and the necessity of workforce reduction) and having individual meetings with employees, the number of employees who applied for the early retirement program did not meet JALI's target number.

Accordingly, at the end of December 2010, JALI dismissed 81 cockpit crew members and 84 flight attendants (all of whom were indefinite term employees). Among those who were dismissed, 76 cockpit crew members and 72 flight attendants filed separate suits against JALI in the Tokyo District Court, claiming that their dismissal by JALI was void, seeking affirmation of the existence of employment relationship and back pay including wages to the date of confirmation of the court's judgment.

Both of the district court judgments indicated that the requirements for dismissal under Article 16 of the Labor Contract Act also apply to a company under corporate
reorganization or rehabilitation proceedings. Article 16 of the Labor Contract Act provides that any dismissal of an employee that is "deemed to be objectively lacking reasonable grounds and socially unacceptable" will be void. Further, under Article 16, in order for termination of employment due to business necessity ("economic dismissal") to be effective, the following four factors should be considered: (i) the necessity of decreasing employment levels, (ii) the necessity of choosing dismissal as means of restructuring, (iii) the fairness in selecting employees to be dismissed, and (iv) whether the procedure was fair. It should be noted that the district courts considered these four factors to be factors that should be considered overall and not as four separate conditions that must be met for an economic dismissal to be valid. In March 2012, the Tokyo District Court rejected the plaintiffs' claims in both cases on the basis that there was a valid "economic dismissal."

The plaintiffs in both cases appealed to the Tokyo High Court. On June 3 and 5, 2014, the Tokyo High Court rejected both appeals. The plaintiffs made a final appeal to the Supreme Court of Japan on June 17, 2014. A decision from the Supreme Court remains pending.

**Australia: Full Bench of the Fair Work Commission confirms that multinational employers not obligated to relocate employees overseas in the event of Australian redundancies**

The claimant in *Murray v Ventyx Pty Ltd* [2014] FWC 2143 was employed as a technical project manager by Ventyx Pty Ltd pursuant to a Modern Award and was one of nine employees made redundant in Australia. Ventyx notified Murray of the redundancy on July 1 and was told that it was to occur the next day. On that date, there was a meeting at which Murray was told he should supply Ventyx with any additional information relevant to the decision. Despite expressing an interest in relocating overseas during that discussion, Murray was made redundant. Murray challenged the decision in the Fair Work Commission on the basis that the dismissal was unfair.

The Fair Work Commission held that Ventyx ought to have considered options for redeployment and discussed those options as early as practicable, as set out in the Modern Award. The Full Bench of the Fair Work Commission upheld an appeal by Ventyx for the reason that the cost of relocation was prohibitive and the discussion was in fact held as early as possible, having regard to the importance of keeping client data with which Murray had been working confidential. The employer was not obliged to redeploy Murray overseas. The obligation to notify an employee of redundancies "as early as practicable" as prescribed in a Modern Award is tempered by security and confidentiality considerations and does not mean "immediately." The Full Bench also held that relocation must be practical. Accordingly, an employer could decline to fund a relocation overseas in the event of redundancy were there no business case for it.

**Australia: Competition watchdog at last confronts union misbehavior**

The Australian Competition and Consumer Commission ("ACCC") has recently confirmed that it is investigating two separate instances of trade union misconduct. These investigations are occurring against the background of recent criticism of the ACCC in its approach to these matters and a Royal Commission into Union Governance and Corruption.

The first investigation relates to one union's conduct of a secondary boycott of one company for the reason that it supplied goods to another company with which that union had a dispute. This conduct is in breach of the Australian Competition and Consumer Act 2010 (Cth), which prohibits unions and their members from acting so as to prevent one party from supplying goods to another.

The second investigation is into the lawfulness of an agreement between a transport company and the trade union for that industry. The agreement allegedly provided for payment from the transport company to the union. In return, the union would instigate safety complaints about the operations of competitors of the transport company. Both
investigations are ongoing and illustrate the aggressive investigative posture that the Australian federal government and its agencies are now taking toward union misconduct.