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The Work Safety Law of the People’s Republic of China (“PRC”) was enacted last year by the National People’s Congress, just months after China’s accession to the World Trade Organization. The law became effective on November 1, 2002. The Work Safety Law applies to all work units (i.e., companies and other types of entities and organizations, including state-owned, private and foreign-invested enterprises and partnerships) that engage in production and operation (e.g., operate a factory or mine, or perform construction work) in the PRC (“Work Units”). All Work Units, regardless of their number of employees, are covered by the Work Safety Law. The law does not apply within the Hong Kong Special Administrative Region of the PRC, where employers must comply with other significant workplace safety requirements.

When compared to comprehensive U.S. federal and state laws and regulations on occupational safety and health, the Work Safety Law is basic and ambiguous. To complicate matters, local and provincial regulations and practices may also apply, and the law may not be thoroughly enforced in certain areas due to limited resources or other reasons. Nevertheless, the Work Safety Law is a significant development for employers in the PRC.

Overview

In some respects, the Work Safety Law imposes upon PRC employers new safety obligations and penalties for non-compliance. For example, certain members of management may now be held personally responsible for violations of safety procedures and may be subject to criminal penalties. In other respects, the law summarizes and incorporates pre-existing safety requirements included in the national Labor Law and pre-existing safety rules and regulations specific to various industries throughout the PRC.

In mainland PRC, the State Administration of Work Safety (“SAWS”) supervises and administers Work Unit safety. Under the Work Safety Law, SAWS and its local branches are empowered to inspect Work Units without notice (but without affecting their normal production and operation) and to require correction of safety violations. SAWS may order Work Units to eliminate unsafe conditions, to suspend production and to evacuate facilities. SAWS also is vested with the authority to seize unsafe facilities and equipment and to impose financial penalties on employers and certain personnel.

The Work Safety Law provides that both the Work Unit and members of management may be liable for work-related accidents. The term “accident” does not include ill health or occupational disease. Senior management with decision-making power, including directors, the general manager, the legal representative, or other senior personnel responsible for safety at the Work Unit (“Responsible Persons”), must ensure that the Work Unit invests necessary funds in safety precautions. Failure to do so may result in administrative, financial and criminal penalties, including jail.

Although the extent to which mainland PRC government agencies and officials will enforce the Work Safety Law uniformly throughout the PRC is unclear, employers with current or anticipated operations there should familiarize themselves with this law.

Safety Training

The Work Safety Law mandates that all mining and construction Work Units, all Work Units that manufacture or handle hazardous materials, and any Work Unit with more than 300 employees must either have a production safety management department or appoint a full-time production safety management team; other Work Units (with less than 300 employees) need only have a part-time safety team. Work Units also must provide the production safety management department/team, Responsible Persons, and production employees with safety education and ensure that they understand the Work Unit’s safety and operating rules before commencing their position. Safety training must be specific to an employee’s position, department and facility/work site. The local government department in charge of safety (“Local Safety Department”) is
responsible for providing material on appropriate safety training.

The Work Safety Law does not mandate the amount of safety training required. However, the Opinions on Work Safety Training for Responsible Persons, Safety Management Staff and Other Employees (“Opinions”) issued by SAWs on December 18, 2002 mandate as follows:

- Each member of the production safety management department/team and all Responsible Persons must receive a minimum of 24 hours safety training before commencing their position, and a minimum of 8 additional hours each year thereafter, organized by a training institution accredited by the local Administration of Work Safety. For those in Work Units involved in construction, mining, or manufacturing/dealing with hazardous materials, the requirement increases to 48 and 16 hours, respectively;
- Production workers, other management staff and other technical staff must receive a minimum of 24 hours safety training, organized by the Work Unit, before commencing their job duties; and
- Work Units must maintain a “work safety training” file in relation to each employee. The Opinions do not specify the file’s contents, but employers should include employee training attendance records as well as a brief summary of the topics covered during safety training.

In addition, the Work Safety Law requires that, before members of the production safety management department/team assume their safety post, they must pass a safety and management examination offered by an institution accredited or designated by the appropriate Local Safety Department.

Special operators (e.g., electric welders, crane operators, boiler operators) must obtain special operation qualification certificates from the Local Safety Department before assuming their duties. They must also complete training through a training institution accredited by the government.

**Safety Precautions at the Worksite**

Conspicuous warning signs noting serious potential hazards must be posted on appropriate equipment and throughout the facility where necessary. Employees must be provided with, supervised and educated in relation to safety equipment. Such equipment must be checked periodically and meet national or trade standards. Records must be maintained and signed in relation to repair, maintenance and examination of equipment. Although the requisite time period for maintaining such records is not prescribed, employers are well advised to retain records while the Work Unit is operational.

If two or more Work Units produce or operate in the same area (e.g., subcontractors at one construction site), and may jeopardize each other’s work safety, they must enter into a work safety control agreement. The agreement must identify safety measures and each Work Unit’s respective responsibilities. The Work Units must also jointly assign full-time work safety controllers to inspect the work area.

All Work Units must record, periodically check, evaluate and monitor places where hazardous materials are manufactured, used, stored, or transported. Buildings containing such materials must be a safe distance from employees’ dormitories, and have unblocked, clearly marked exits. Employees and the Local Safety Department must be informed of emergency procedures in relation to hazardous materials.

Work Units that design, construct or renovate manufacturing, warehousing or mining facilities involved with hazardous materials face heightened safety requirements under the Work Safety Law. Before commencing construction, employers must submit designs for construction projects to the Local Safety Department and obtain its approval. As in the United States, construction Work Units may be found liable for the quality and safety of facilities they construct.

**Reporting Requirements for Employers**

The Work Safety Law mandates reporting of any work-related accident immediately; however, the term “reporting” does not mean that all accidents must be divulged to the government. Rather, employees and supervisors must report all accidents to the Work Unit’s upper management (e.g., Responsible Persons or the production safety management team).

Other regulations clarify, to some extent, the timing and procedure for reporting work-related accidents to the government. For example, the Rules of Enterprise Work-related Accident Reporting and Settlement, which relate to work-related accidents involving bodily injury, acute poisoning and death, require management immediately to report accidents resulting in serious injury or death to the Local Safety Department, Department of Public Security (i.e., the police), Procuratorate (i.e., the District Attorney) and trade union. These groups (excluding the Procuratorate) will organize a team to investigate any work-related death. In the case of any non-fatal injury, management should organize an accident investigation team (including members of technical, safety and production staff as well as a trade union representative) to conduct an investigation without government involvement. Employers are well advised to retain investigation records so long as the Work Unit remains operational, even though the Work Safety Law does not impose such a requirement.
For certain specified significant accidents (e.g., accidents resulting in direct damage valued at more than RMB 5 million (approximately US $600,000); mining accidents resulting in the death of 50 or more persons), employers must follow the Rules of Investigation Procedure for the Extraordinary Serious Accident. These rules require employers to submit a written report within 24 hours of the accident to the local Bureau of Work Safety, the provincial government and SAWs.

Employees or employers that conceal accidents or submit delayed or false reports (internal or external) are subject to financial penalties and, in certain cases, criminal liability.

**Protection for Employees Against Retaliation**

The Work Safety Law contains provisions that bar retaliation against employees who engage in protected activity. Although these provisions are not expressly characterized as anti-retaliatory, their purpose is evident. Employees may not be terminated or have their wages or benefits reduced because of their criticism, reporting or filing of claims based on work safety issues, or refusal to violate work safety regulations. Employers that violate these provisions are subject to monetary penalties and, in certain circumstances, criminal prosecution. Employees may request the assistance of the local Labor and Social Security Department or Bureau (“LSS Department or Bureau”)15 and seek mediation or arbitration of the labor dispute.

**Workers’ Compensation Unchanged**

Work-related injury insurance payments are available to employees in mainland PRC pursuant to the Trial Measures on Enterprise Employees’ Work-Related Injury Insurance (“Trial Measures”). The Work Safety Law does not alter the Trial Measures. Moreover, it expressly bars an employer from utilizing a pre-injury contract with an employee to reduce the employer’s financial exposure to a workplace injury claim.

Although there are many differences between the Trial Measures and the workers’ compensation statutory scheme in the United States, the systems are similar in several respects. In brief, the Trial Measures apply to both work-related injuries and occupational diseases (as opposed to the Work Safety Law, which does not apply to occupational diseases). Generally, each Work Unit contributes mandatory social security insurance amounts to the LSS Department or Bureau in order to fund its employees’ work-related injury insurance (in addition to other social security insurances). This injury insurance covers an injured employee’s medical payments (basically for all medical treatment), injury and disability payments, occupational rehabilitation, and death payment as appropriate. Injured employees are entitled to wages while injured and seeking medical treatment for one to 24 months based on the seriousness of their injury. In exceptional cases, injury insurance payments may extend to 36 months. In order to claim insurance payments, the injured employee, his relatives or the trade union must submit an application for insurance payment to the local Department within 15 days of the accident or diagnosis of occupational disease.16

If work-related injury insurance payments are insufficient to compensate an injured employee’s covered costs (e.g., the Work Unit has not submitted sufficient payments to the LSS Department or Bureau; the employee has a grave or prolonged injury that exhausts statutory coverage), the employee also may seek damages from the Work Unit under civil laws. Key relevant civil laws include the **Labour Law** of 1994 (which provides for employer liability in certain circumstances for an employee’s work-related injury) and the General Principles of Civil Law of 1986. In certain circumstances, an employee may also make the equivalent of a tort claim.

Employers may not minimize or eliminate their financial exposure to workplace injury claims through a pre-injury contract with an employee. The Work Safety Law provides that any pre-injury agreement purporting to exempt or reduce a Work Unit’s liability to an employee for a work-related injury or death is void and exposes the Responsible Person to monetary penalties.

**The Role of Trade Unions**

The role of trade unions in mainland PRC is often unclear to American employers accustomed to dealing with unions under the framework of U.S. labor laws such as the National Labor Relations Act. Mainland PRC laws regarding employer-union relations are not comparable. Historically, PRC employers have regarded trade unions as ineffectual and often have not consulted with them regarding key workplace issues. Although the Work Safety Law contains provisions affording trade unions certain rights and responsibilities, the extent to which it will alter the status quo is uncertain.

Under the Work Safety Law, trade unions have the right to supervise the design, construction and operation of construction projects in relation to safety. They have the responsibility for participating in certain investigations of workplace injuries. While the Work Safety Law expressly empowers trade unions to offer their opinion (either orally or in writing) to Work Units about potentially dangerous work conditions, and even to suggest evacuation of a facility, employers are not required to follow their advice.
Rather, employers must act promptly in response to a trade union’s opinion. Regardless of the historical relationship between PRC employers and trade unions, employers are well advised to promptly remedy any genuine deficiency trade unions bring to their attention.

**Penalties**

Parties penalized for failure to abide by the *Work Safety Law*’s provisions may include the Work Unit, its Responsible Persons, its individual investors, or employees who violate work safety rules and regulations. Penalties for a Work Unit may include an order to make corrections within a specified time, fines of up to RMB 100,000 (approximately US $12,000), seizure of illegal gains, an order to cease production and operation, cancellation of the Work Unit’s business license, and/or prosecution under the *Criminal Law*. For example, a Work Unit’s failure to establish a production safety management department or team, or to provide work safety training for employees, may result in a fine of not more than RMB 20,000 (approximately US $2,400) per infraction and an order to cease production.

Individual penalties may include removal from office, restriction from working for any Work Unit in a similar role for up to five years, fines of up to RMB 200,000 (approximately US $24,000), and/or prosecution under the *Criminal Law*, which may lead to jail.

**The Role of the PRC’s Guiding Opinions and Standards for Occupational Safety and Health Management**

In December 2001, the State Economic and Trade Commission issued *Guiding Opinions on the Occupational Safety and Health Management System* (the “Guiding Opinions”) and the *Standards for Examining and Verifying the Occupational Safety and Health Management System* (the “Standards”), which are based on the International Labor Organization’s Occupational Safety and Health Management System (“OSHMS”) standards. Both the Guiding Opinions and the Standards are non-binding guidelines for all companies in the PRC (unlike the *Work Safety Law* which applies only to Work Units as defined above), to be implemented on a voluntary basis.

The Guiding Opinions and the Standards provide guidance on establishing and evaluating an organization’s OSHMS, including preparation and implementation of a written occupational safety health policy, and allocation of responsibility for safety. These guidelines are more general than the *Work Safety Law* and focus on a safe working environment for every type of company. Although both the Guiding Opinions and the Standards provide a useful foundation for occupational safety and health management, compliance with these voluntary guidelines is insufficient. The *Work Safety Law* imposes additional, separate requirements for Work Units.

As the PRC continues to reform its legal system, government bureaucracy and state-owned enterprises to build a resilient market-based economy, employers will want to remain apprised of the manner and extent to which local and provincial government agencies interpret and enforce the *Work Safety Law*.

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The “Law of the People’s Republic of China on Work Safety” was adopted at the 28th Meeting of the Standing Committee of the Ninth National People’s Congress of the People’s Republic of China on June 29, 2002. On the same day, President Jiang Zemin signed the Order of the President for its promulgation. Background regarding the implementation and purpose of the Work Safety Law is available in an official statement by the PRC’s State Administration of Work Safety (October 29, 2002) at [http://www.china.org.cn/e-news/news02-10-29.htm](http://www.china.org.cn/e-news/news02-10-29.htm).

Any separate PRC legislation in relation to road, railway and waterway traffic, fire, or civil aviation safety overrides the Work Safety Law if relevant.

Under PRC law, the “legal representative” should be the Chairman of the Board of Directors. The legal representative is the person at the company with the ultimate approval authority, which may be delegated to others in certain circumstances.

The term includes investors, which is not defined according to amount of investment but, in practice, relates only to controlling investors.

The local government department in charge of safety falls under SAWS, and varies by location. In certain locations, it may be called the local Bureau of Work Safety or the local Office of Work Safety, both of which were part of the Department of Labour prior to 1998.

The Opinions do not specifically exempt administrative staff, such as secretaries in the front office.

In relation to these employees, the Opinions do not require additional training each year thereafter, but this may be an oversight.

Article 3 of the Administrative Rule of Safety Technical Training for the Persons Engaging in Special Operations defines the term “special operations,” which includes electric welding, crane operation, boiler operation, explosives, and work high above the ground.

Details regarding their form or content are not provided in the Work Safety Law.

Employers may wish to consult with counsel as to such standards, because national and trade standards vary according to industry and are contained in more than 200 rules and regulations. The main rules and regulations are: Rules on Use of Chemical Materials at Work Places; Regulations on Management of Hazardous Chemical Materials Safety; Regulations on Labor Protection in Work Places where Toxic Products are Used; Safe Production Prohibition Orders; Rules on Crane Safety; General Rules on Production Facilities Hygiene Design; Rules on Supervision of Construction Projects Labour Safety Hygiene; Rules on Management of Labour Safety Hygiene Education of Enterprise Staff; Rules on Hazardous Explosion Locations Safety; Rules on Coal Mine Safety; Rules on Management of Demolition Works in Coal Mines; Basic Requirements on Safety Equipment of Coal Mines (tentative); Mining Safety Law; Regulations on Mine Safety Supervision; Regulations on Mine Safety; Regulations on Railway Transportation; Rules on Railway Electricity Safety; Regulations on Power Manufacturing; Rules on Management of Power Construction Projects within China Contracted by Foreign Investors; Tentative Rules on Management of Hydropower Construction Project Safety; and Rules on Supervision of Construction Safety Production.

The term “hazardous materials” is broadly defined as combustible materials, explosives, hazardous chemicals, radioactive materials, and other materials that jeopardize personal and property safety.

The term “immediately” is not defined.

The term “serious injury” is not defined.

The Work Safety Law mandates the organization of an investigation team even in the case of a non-serious injury, although in practice this may not occur regularly.

The Ministry of Labour and Social Security (“MOLSS”) is the main national government body responsible for administering employment, labor and social security issues in mainland PRC. Both the LSS Department (at the provincial level) and the LSS Bureau (at the municipal level) fall under MOLSS.

Under special circumstances, the application period may be extended to 30 days.