

Increased penalty for employers who employ overstayers

Immigration (Amendment) Ordinance 2021 (“IAO”)

29 November 2021



The IAO came into effect on 1 August 2021, bringing a myriad of changes to the law relating to immigration and deportation. What it means for employers is that they are now potentially facing heavier penalties for employing illegal workers.

In the past, a person who has entered Hong Kong legally on a visa, but has overstayed and who takes up employment, could only be prosecuted for breaching his/her conditions of stay but not for the more serious offence of unlawful employment. A person would only be prosecuted for unlawful employment if he/she takes up employment in Hong Kong having entered Hong Kong illegally or was subject to a removal or deportation order.

The IAO has now closed this lacuna. In short, the offence of unlawful employment now covers overstayers.

What does this mean for employers?

The IAO has also increased the maximum penalty for employers who employ illegal workers from a maximum fine of HKD350,000 and 3 years of imprisonment to a maximum fine of HKD500,000 and imprisonment for up to 10 year.

In addition, where the employer is a corporate, directors and/or other responsible officers could also be personally held liable if the offence of unlawful employment was committed with their consent or connivance of, or was attributable to any neglect on their part.

The High Court has laid down sentencing guidelines that employers who employ illegal workers should be given an immediate custodial sentence and the employers are expected to take all practicable steps to determine whether a person is lawfully employable prior to employment.

AUTHOR

Andrea Randall
Partner

Angel Leung
Trainee Solicitor

Takeaways for employers

Employers should review their internal policies and procedures to ensure they have evidence that their employees are able to work for them in Hong Kong. Where employees are working pursuant to a work visa, employers should ensure they have a clear record of the visa conditions and track the expiry dates of any visas. Where extension of work visa is required, employees should ensure the application is made in good time before its expiry.

Contact Us

Please do not hesitate to contact **Andrea Randall**, a Partner and Head of the Employment Practice in Hong Kong for any employment law-related queries you may have.

All materials contained in this article are provided for general information purposes only and should not be construed as legal, accounting, financial or tax advice or opinion on any specific facts or circumstances and should not be relied upon in that regard. RPC accepts no responsibility for any loss or damage arising directly or indirectly from action taken, or not taken, which may arise from reliance on information contained in this article. You are urged to seek legal advice concerning your own situation and any specific legal question that you may have.

CONTACTS



Andrea Randall
Partner
+852 2216 7208
andrea.randall@rpc.com.hk



Angel Leung
Trainee Solicitor
+852 2216 7202
angel.leung@rpc.com.hk

www.rpc.asia