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# Taiwan Labor

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Council of Labor Affairs, Executive Yuan 中華民國 精彩一百

## Quarterly Focus

### ◆ Government Implements "Convention on the Elimination of All Forms of Discrimination Against Women"

Measures and plans done by the Council of Labor Affairs to eliminate the gender.



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## Quarterly Focus

### Government Implements "Convention on the Elimination of All Forms of Discrimination Against Women" Measures and plans done by the Council of Labor Affairs to eliminate the gender.

#### The status quo of gender equality implemented by the Council of Labor Affairs.

1. The Council of Labor Affairs (CLA) has enacted the following laws, along with related regulations, to protect equal employment rights for women in accordance with the Constitution: the "Labor Standards Act," "Gender Equality in Employment Act," "Employment Services Act," "Labor Insurance Act," "Employment Insurance Act," "Occupational Accident Labor Protection Act," and "Labor Safety and Health Act."
2. The CLA has reinforced the following measures in order to effectively eliminate discrimination against women in employment, full-fledged protections of female laborers, implementations of the "Employment Services Act," eliminations of obstacles against female in the workplace, and creation of gender equality in work place:
  - (1) Basic protection of labor conditions: The provisions of the "Labor Standards Act" and "Gender Equality in Employment Act" stipulate equal pay for equal work and equal pay for equal value. In 2010 the average pay for women in the industrial and service sectors in Taiwan was 80.12% of men's and the salary gap between men and women is narrowing year by year, shrinking from 25.92% in 2000 to 19.88% in 2010. In 2010 the average regular salary for women as a ratio of that of men in Taiwan was 82.3%, better than those of the United States with 81.2% and Japan with 69.3%.
  - (2) Relaxation of working hours: Differential rules on genders basis have been eliminated; and, to remove difficulties in the utilization of human resources by corporations and promote female employments, regulations on extended working hours have been revised and unified for both genders.
  - (3) Regulations to ban gender discrimination in employment: The provisions of the "Gender Equality in Employment Act" and "Labor Standards Act" ban gender discrimination in job-seeking, recruitment, appointment, evaluation, promotion, training, benefits and retirement, severance, job leaving, and termination.
  - (4) Reduction of gender segregation in employment: Relevant measures have been implemented, a diverse range of vocational training courses and competitions have been offered, and women have been provided with more occupational and career choices.
  - (5) Protecting the work qualification of foreign and mainland Chinese spouses: It was proposed to the Mainland Affairs Council (MAC) that mainland Chinese spouses who receive permission to reside with their relatives in Taiwan be allowed to work without applying for a work permit. In August 2009,



▲ Minister of Labor Affairs Wang Ju-hsuan works to promote women's rights.

the MAC revised and the CLA abolished the "Regulations Governing Work Permission and Management for Mainland Spouses During Residency with Their Relatives in Taiwan."

### 3. Diversified channels have been established to reinforce women's labor participation and their job capabilities by developing female laborforce and assisting their employments, thereby stimulating the extension and development of women's employment abilities.

- (1) According to the manpower survey carried out by the Directorate General of Budget, Accounting and Statistics, the overall labor participation rate of women in July 2010 overcame the 50% mark, rising from 46.02% in 2000 to 49.89% in 2010. This shows a rising trend over the past decade in Taiwan's female labor participation rate, surpassing those of Japan and Korea in 2009.
- (2) To reinforce workplace skills and enhance laborer competitiveness, the CLA has implemented an "Industrial Human Resource Investment Plan" that combines the upgrading of diversified practice-oriented training courses by outstanding training units in private sectors with subsidies for participating female laborers, up to NT\$50,000 per laborer for a period of three years. This encourages on-the-job laborers to learn independently and enhance their working skills.
- (3) To provide pre-job trainings for the unemployed, the trainings of women for new types of jobs have been developed in line with the manpower demands of industries. In addition to the existing trainings for jobs suitable for women, such as wedding consultants, newlywed secretaries, pet beauty salon, etiquette teaching, Chinese cooking certificates, clothes-making, and beauty and hair design, training courses have also been developed for new women's occupations including cooking for post-natal confinement, marketing of biotech health foods and health-care products, floral designs, and financial planning. Those courses provide with more alternatives in vocational trainings.
- (4) In order to assist women to join the micro-business start-up movement, the CLA has organized training courses for occupations suited to start an enterprise, offering specific courses, as demanded in market analysis, channel marketing, financial control, and operational management.
- (5) Public employment service centers provide unemployed women with training consultation and suitability assessment, then recommend and arrange suitable training to meet their needs and help them find employments. Each vocational training center plans and carries out occupation-oriented pre-job trainings according to different needs, cultivating vocational skills for women's reemployments. Women are

provided employment consultations in cooperation with NGOs, and vocational assessment tools are also developed to assist women finding suitable jobs. In addition, indigenous women in tribal villages are assisted in acquiring information inaccessible within the villages.

- (6) Countermeasures are provided in regard to occupational obstacles, and employment services are strengthened with reference to the special needs of foreign and mainland Chinese spouses as well as victims of domestic violence and sexual abuses.
- (7) Multiple Employment Promotion Program is being carried out to encourage the development of women's social enterprises and provide suitable employment services to female victims of violent crimes; in addition, 「the Spread Your Wings Project」 is being implemented to promote economic independent.

### 4. Specific measures for the protection of motherhoods:

- (1) Provision of working conditions with health and safety protection: The current "Labor Safety and Health Act" and "Labor Standards Act" prevent female laborers from engaging in dangerous or hazardous work during pregnancy or within one year after giving births.
- (2) Revision of the "Labor Insurance Act": The revised Act includes childbirth benefits by providing women with childbirth compensation for childbirths or premature births involving the same pregnancy within one year following the expiration of insurance. Women who experience childbirth within 280 days or premature birth within 181 days of the expiration of insurance may apply for childbirth benefits.
- (3) Measures for the promotion of workplace healthy for female employments: A workplace injury and disease warning system has been established, along with an occupational injury and disease service management center. A smoke- and toxin-free workplace has been established, and health inspection quality and consultation services have been enhanced. Surveys, research, and improvement are continuously carried out on safety and health issues for women-dominating professions and employments.

### 5. Establishment of friendly workplaces and prohibition of sexual harassments in the workplaces:

- (1) In implementing the provisions of the "Gender Equality in Employment Act," the CLA has established a Gender Equality in Employment Committee to review and consult on issues involving gender equality at work and carry out gender equality at work surveys as well as "friendly workplace" certification. As a result, the implementation of gender equality measures by enterprises has improved every year. In addition, the scope of unpaid parental leave has been expanded from enterprises with thirty or more employees to all employees.
- (2) Allowances are provided to those taking unpaid parental leaves. The "Employment Insurance Act" has been revised to provide a legal basis for the payment of allowances for unpaid parental leaves, for which both parents are eligible to apply. This will assure equal rights for both genders. The number of persons applying for these allowances had topped 86,000 by the end of August 2011, and the total amount of allowances paid had exceeded NT\$7.02 billion (equivalent to US\$219 million).
- (3) Provisions for tocolysis leave were included on May 4, 2010, benefiting approximately 3 million people. The scope of application of family leave has also been expanded to encompass all employees, benefiting about 8.22 million employees.
- (4) Prevention of sexual harassments in the workplace: Article 13 of the "Gender Equality in Employment Act" stipulates that the obligation of employers to prevent sexual harassment

in the workplaces. Workshops on the "Gender Equality in Employment Act" and the prevention of sexual harassment have been organized, standard operating procedures for handling sexual harassment cases by local labor agencies have been established, and training courses for seed instructors for sexual harassment prevention have been held.

- (5) Assistance for the establishment of social service and child-care facilities: To promote female employments and help them tackle child-care issues by assisting employers in setting up child-care facilities or providing appropriate child care measures, the CLA has formulated the "Rules for the Standards of Establishing Child-Care Facilities and Measures and Providing Subsidies" and promulgated the "Operating Instructions for Subsidies for Child-Care Facilities and Measures" for the provisions of systematic subsidies.

In dealing with female employments, in addition to following the four administrative principles of "equality, humanity, safety, and dignity", the CLA will work vigorously to enhance the participation of female laborers, prohibit discrimination against female employments, reinforce employment assistance for women, and strengthen female empowerments.

#### 1. Establishment of a "Win-win Taiwan Workplace Platform"

This platform will serve as a channel for interactions, observation, and extension regarding family-friendly measures by enterprises and will assist them in establishing systematic family-friendly measures including those for balancing work and family (such as unpaid parental leaves, family leaves, fraternity leaves, and "family days"); flexible working hours and diversified

working arrangements; female career development, fostering, and employment; establishment of nursing rooms and child-care facilities; and provision of measures to prevent sexual harassments in the workplaces.

#### 2. Promotion of "Micro-Business Start-up Phoenix Program" and the APEC Micro Handicraft International Marketing Plan

As part of next year's government reorganization, vocational training, entrepreneurial guidance, and employment services resources will be integrated with the purposes of helping unemployed (or between-jobs) participants in vocational trainings to initiate their own businesses and undergo comprehensive entrepreneurship incubations. Female proprietors of micro-enterprises in remote areas will be assisted in developing mass productions and engage in international trades, the frere-market model will be utilized to establish a production and marketing channel between Canada and Taiwan, assistance will be provided for the development of micro-enterprises owned by indigenous women, and Taiwanese industries with special local colors will be boosted into the international arenas, thereby achieving the goal of connecting the with international marketing networks.

#### 3. Reviewing and Implementing the Provisions of the "Convention on the Elimination of All Forms of Discrimination Against Women"

In accordance with the provisions of Article 11 of the "Convention on the Elimination of All Forms of Discrimination Against Women" (CEDAW) on equality in employment, the CLA's laws, regulations, administrative orders, and related measures are being reviewed, and necessary revisions will be done within three years.



## Policies and Regulations

# Revision of Three Labor Laws Marks Milestone in Laborers' Rights and Interests

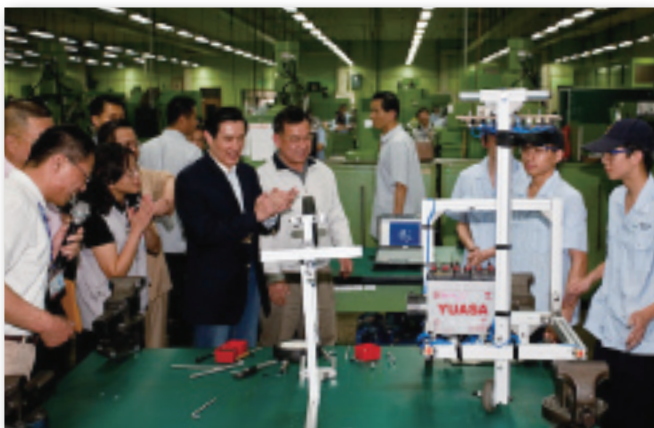
During her past career for the protection of women's rights, Council of Labor Affairs (CLA) Minister Wang Ju-Hsuan often discovered that a woman fighting for her rights and interests from a position of weakness would frequently be embarrassed by an inability to pay the enormous cost of litigation. Since taking over her present office, Minister Wang has found that laborers face the same difficulty; so, on May 1 of 2009, she established a "Labor Rights Fund" to provide legal support for laborers. The new provisions of the "Settlement of Labor Disputes Law" provide a legal basis for the temporary reduction of or exemption from litigation costs and guarantee bonds, so that laborers fighting for their rights and interests do not have to bear enormous litigation costs. In the meantime, subsidies for litigation provided by government agencies help balancing the playing field in the settlement of labor-management disputes and assure laborers of their legal rights.

### Revision Emphasizes Financial Independence for Unions

When Minister Wang traveled to the United States recently and visited a union there, she discovered that the union enjoyed strong financial independence, with more than a hundred union officers and even in-house lawyers. In Taiwan, by contrast,

unions depend on subsidies from the employers side or the government and generally suffer from such a shortage of funds that they have no resources to work with. For this reason the recent revision of the law emphasizes financial independence for labor unions, stipulating that the union membership fee may not be less than one day's pay and annual dues may not be less than 0.5%. This reinforces the finances of labor unions and enables them to develop on their own. In the past it frequently happened that when laborers wanted to organize a union, their employers would interfere by transferring or demoting them; as a result, laborers did not dare, nor desire, to organize unions. The revised law contains additional rules concerning unfair labor practices, stipulating that an employer who engages in unfair practices will be subject to a fine of up to NT\$300,000, imposed consecutively. In addition to mediation and arbitration, the new "Settlement of Labor Disputes Law" adds a newly created adjudication dispute settlement mechanism specifically for the resolution of disputes concerning unfair labor practices. This too will have a positive impact on the formation of labor unions.

Furthermore, the law stipulates that both labor and management have an obligation to negotiate in good faith, and without valid reason may not refuse to negotiate. If either side should violate certain rules of behavior or fail to adopt certain kinds of behavior, then it will not be negotiating in good



▲ President Ma Ying-jeou shows his concern for worker's rights by visiting basic-level factories to understand their needs.

faith, constituting a kind of unfair labor practice subject to a fine of NT\$100,000 to NT\$500,000 under the "Collective Agreement Act," with consecutive fines if necessary. Therefore, this will provide a deterrent effect.

In addition, the "Labor Union Act" has been revised under the principles of "protection of the right to associate," "independence of union affairs," and "democratization of operations," "catergorize basic-level labor unions as" industrial unions," "occupational unions," and "corporation unions." The law also stipulates that teachers have the rights to organize industrial unions or occupational unions, while deleting the provision that employees of educational enterprises are not allowed to unionize. The implementation of the "three labor laws" gives unions more room to develop independently and facilitates the benign formation of collective labor relations.

In years past Taiwan's labor standards were mostly established by the government, and the roles and functions of unions were weakened. The implementation of the "three labor laws" eliminates the control of labor union affairs by the competent authorities, and the right granted by the "Labor Union Act" to laborers in different professions to form unions protects the right of laborers to organize, facilitating dialogue and collective

bargaining so that labor and management will move from opposition toward cooperation and work together to create shared benefits.

### Reinforced Implementation of the "Labor Management Conference System"

The implementation of any legal system is not something that can be accomplished overnight. In order to achieve the true function of labor-management harmony, the CLA will continue carrying out educational publicity on the labor-management conference system and bolstering the related legal system. In the meantime, the CLA will compile a "Reference Manual for the Signing of Collective Agreements" for enterprise units and unions that wish to negotiate and have a need to do so. Scholars and experts will be invited to form a collective bargaining guidance team to provide on-site guidance at companies and help promote the signing of collective agreements between labor and management, bolster the good-faith negotiating mechanism, and realize the collective bargaining function of unions.

The implementation of the three new labor laws will put future collective labor relations at the core. In the process of carrying out the allocation of economic benefits through collective bargaining by unions, however, disputes will inevitably arise. To avoid labor-management opposition for the sake of opposition, the CLA will provide guidance for the reinforcement of the autonomous function of rational negotiation between unions and employers, and will use the "social partnership relations" concept to seek to resolve conflicts by promoting collective labor-management dialogue or tri-party government-labor-management consultations.

In addition, the CLA will reinforce educational publicity for labor-management groups and administrative agencies to improve their knowledge in regard to the concept, function, and operation of the social dialogue mechanism. At the same time, training courses in such areas as social dialog case drills and overseas experience analysis will be strengthened so as to establish, in social partners in Taiwan, psychological identity and willingness in regard to the social dialogue mechanism. This will help social groups engage in social dialogue and bring the implementation of government policy more in line with the needs of society.



## Policies and Regulations

# Protecting Labor Rights and Interests: The Mass Layoff Labor Protection Law

### Policy Background

Under the impact of the apparent growing trend toward globalization, in order to survive and develop continuously, corporations have no choice but to carry out strategic redeployment in regard to the organization of their production and processing operations; and, under these conditions, mass layoffs are difficult to avoid. While it is part of the natural rhythm of the free-market mechanism for employers to make operational decisions that include mass layoffs, such decisions face laborers with employment problems.

On the other hand, the mass layoffs that accompany adjustments in corporate operational strategies have an impact

on social order and stability because of the concentration of their timing and their large scale. To achieve a balance between social benefits and respect for the market mechanism, it is necessary for legislation to provide appropriate protections for employees who placed in disadvantageous positions when mass layoffs occur.

### The Legislative Revision Process

The Mass Layoff Labor Protection Law was implemented on May 7, 2003, but some of its provisions were difficult to enforce. A partial revision was implemented on May 23, 2008 to address this problem.

## Objectives of Legislation

The Mass Layoff Labor Protection Law has twin objectives: One is to regulate the labor market and promote employment security, and another is to provide safeguards in the mass layoff process and reinforce employment protection.

### 1. Regulation of the labor market and promotion of job security

Due to mass layoffs of laborers are inevitable facts of the operation of economic factors; in terms of overall social benefits, however, they are detrimental to the operation of the employment mechanism and the self-regulation function of the labor market. Massive unemployment has a heavy impact on individual laborers and on society as a whole. By regulating re-entry into the labor market of massive numbers of the unemployed, the Mass Layoff Labor Protection Law assures the normal operation of the market mechanism as well as the maintenance of social stability.

On the basis of this, in order to assist with the re-entry into the labor market of laid-off laborers, when enterprise units carry out mass layoffs they have an obligation to notify and negotiate with the affected employees. This kind of procedural obligation appears to be a kind of restriction on the operating rights of employers, and from the economic, social, and legislative policy aspects it needs to be covered by explicit legal standards.

### 2. Safeguards in the mass layoff process and reinforcement of employment protection

Based on social solidarity, the tangible and intangible social costs of mass layoffs must be burdened by the whole nation, society, and population. The costs of unemployment compensation, employment security, and social security system, for example, must be burdened by the population as a whole.

Therefore, the consideration of legal protection provisions in regard to mass layoffs cannot be limited to simple thinking of how to heighten laborer incomes and provide employment assurance following layoff. A major objective of relevant legislation is to build up procedures to follow and design protective mechanisms for use in times of mass layoffs. Another is to carry out an equitable adjustment of the rights of laborers and employers, and find a suitable balance of benefits for the two sides.

## Key Points of the Mass Layoff Labor Protection Law

### 1. Protections in layoff procedures

When enterprises engage in mass layoffs they must notify the competent authority as well as relative units and personnel, in writing, of their downsizing plans. They must also publicly disclose the plans. The obligation to notify the competent authority in writing is an obligation of the employer under public law, but is not a major requirement for the effectiveness of mass layoffs. The

purpose of requiring employers who propose to carry out mass layoffs of laborers to submit their downsizing plans to unions or dismissed laborers is to allow laborers to map out constructive alternative plans, and to establish a labor-management channel for dialogue or even negotiation aimed at improving the feasibility of the downsizing plans.

Employers' layoff plans must include the reason for the planned layoff, the units subject to layoff, date of layoff, number of downsized personnel, criteria for choosing laborers to lay off, method of calculation of severance pay, and method of re-employment assistance.

### 2. Protection of laborers' creditor rights

In case of layoffs without providing the legally mandated retirement pension or severance pay, or layoffs for other than legally permitted reasons, the CLA will provide Legal aid to the laid-off laborers so as to protect their right to work or their creditors' rights. If the insurance annuity is so inadequate that the dismissed laborers cannot get unemployment compensation, the CLA will provide subsidies for living expenses during the period of litigation. To prevent employers from purposely avoiding retirement payments, severance pay, and salary payments, the competent authority may report enterprises that carry out mass layoffs and that have debts reaching a certain stipulated amount to the CLA, which will investigate the matter and ban the chairman or responsible person of the enterprise from leaving the nation.

### 3. Establishment of an early-warning system

In order to assure an effective grasp of information regarding mass layoffs, the regulations require that when stipulated incidents occur, those involved should report to the competent authority and the competent authority may, depending on circumstances, go to the enterprise unit to investigate the matter.

## Fruitful results of implementation

### 1. Mass layoff litigation and living subsidies

Since the implementation of legal aid and living expenses related to mass layoffs in July of this year, litigation subsidies totaling more than NT\$887,000 have been provided to 305 persons and living expense of more than NT\$1,601,000 have been extended to 174 people.

### 2. Banning of company representatives from leaving the country under the "Mass Layoff Labor Protection Law"

The chairmen and responsible people of 10 enterprises have been banned from leaving the country under the law since its implementation, and the employers have been required to resolve the relevant issues. Three of the cases were annulled following the ban on leaving the nation; in one case the enterprise went bankrupt, in the second case the employer paid all of the debt owed, and in the third case the employer provided necessary guarantees.



## Policies and Regulations

# Creating a Friendly Workplace: Helping Corporations Provide Child Care Services for Laborers

The structure and methods of labor are undergoing major changes as the knowledge economy develops, with women entering the labor market in large numbers have become the

trends and the number of double-income families growing all the time. Under these conditions, child care is no longer the responsibility of women alone; but needs the participation of family, ►►



▲ The government encourages companies to provide child care services.

government, corporations, and society as a whole.

In order to promote gender equality in employment, the encouragement of women laborers seeking employment, the development of female labor resources, and the upgrading of the female labor participation ratio, women everywhere are hoping for the provision of child care by their employers. To relieve women of concerns about family care and stabilize their working mood, help laborers resolve the problem of child care, and thereby stabilize labor productivity and reinforce corporate competitiveness, the Council of Labor Affairs has formulated "Rules for the Standards of Establishing Child Care Facilities and Measures and Providing Subsidies" in accordance with Article 23 of the "Gender Equality in Employment Act." In addition, the CLA has formulated the "Operating Instructions for Child Care Subsidies and Measures" to encourage enterprises to establish child care facilities and provide child care measures to help solve child care problems for their employees, eliminate obstacles to female employment, and achieve a balance between work and family care. This kind of labor welfare will be of inestimable benefit to a firm's corporate image, the fulfillment of its social responsibility, and the satisfaction and loyalty of its employees.

The following standards are designed by the CLA in order to help enterprises established employee child care services and to provide subsidies to encourage them to do so:

1. A subsidy of NT\$2 million is provided for child care facilities that are newly built and legally registered.
2. A maximum subsidy of NT\$500,000 annually is provided for the improvement of child care facilities that are already built and registered.
3. A maximum subsidy of NT\$300,000 annually is provided for child care measures.

In order to encourage enterprises to offer child care measures and services, active assistance is provided in resolving problems

of law, land, professional services, and expenditures related to child care facilities. To meet laborers' child care needs, the social and educational units of county and city governments provide information on nearby child care facilities to enterprises that are unable to establish such facilities of their own, and serve as a go-between for high-quality community child care institutions.

According to a survey of child care facilities or child care measures offered by enterprise units with 250 or more employees, carried out by the CLA in 2011, 4.9% had established their own child care centers and 63.9% had signed contracts with outside child care centers for preferential child care measures, for a total of 68.9% having established child care measures or provided child care measures. This was an improvement of 32.6 percentage points over the total of 36.3% enterprises that were found by the 2002 survey to be offering child care facilities or measures.

In the future, the CLA will provide the following measures to encourage enterprises to offer child care measures, provide employees with convenience in finding child care services, and satisfy the diverse needs of laborers:

1. Trial operation of assistance for corporations in providing joint child care:
  - (1) Encouragement of enterprises in science parks, industrial zones, and other places with dense populations of laborers to establish joint child care services for their employees.
  - (2) Encouragement of enterprises that have already established child care facilities to strengthen their willingness to provide joint child care measures for neighboring laborers.
2. Establishment of an integrated corporate child care resources platform: The provision of enterprises and laborers with convenient child care information and services.
3. Establishment of an advisory team for the implementation of joint corporate child care: Provision of assistance to corporations in providing child care services.
4. Demonstration, observation, and sharing of good corporate child care performance: Vigorous encouragement of corporations to provide child care services, and enhancement of the corporate image for a friendly workplace.

In sum, to resolve the laborers' work-family conflict and satisfy the needs of child care for laborers amidst the social trend toward fewer children, a corporate family welfare policy of providing diversified child care will offer the complete child care services that laborers need to pursue their jobs with an easy heart, increase labor productivity, and achieve the goal of balancing work and family needs for laborers.



## Policies and Regulations ➤

# Reinforcing the Job-change System for Foreign Laborers

If a foreign laborer encounters a situation not attributable to himself or herself and the original employer is unable to retain employment, the foreign laborer may apply to the Council of Labor Affairs for a change of employer. But in order to reinforce the job-change mechanism while taking both the needs of

employers and the working rights and interests of foreign laborers into consideration, the CLA recently reviewed the change-of-employer mechanism and mapped out plans under which, once the local government allows an unilateral cancellation of employment contract in cases that foreign laborers are not



attributable, the foreign laborers can change employers once the contract cancellation initiated by either the employers or the foreign laborers.

### Current Status of Employer Change by Foreign Laborers

Under Article 59 of the "Employment Services Act," if an employer of foreign laborers closes down its factory or suspends business, or fails to pay salaries according to the labor contract resulting in the termination of the contract, or for other reasons that are not attributable to the foreign laborers, the foreign laborers involved may, with the approval of the CLA, apply to change employers or jobs. The "Procedure Guidelines of Transferring Employers for Foreigners," as implemented by the CLA in 2003 and amended three times, provide assistance for foreign laborers in the manufacturing and construction industries, as well as in home caregiving or other types of jobs, in locating the new employers; the Guidelines also help employers find foreign laborers when the domestic supply is insufficient. The rate of success for foreign laborers applying to the CLA for a change of employers during the last three years has reached 89%.

The CLA has responded to the feedbacks of groups concerned about foreign laborers and of employers concerned about carrying out timely reviews of the foreign laborer employer transfer system by reviewing the following scenarios: an employer who fails to pay salaries to foreign laborer salaries on time, but repays them afterwards, is reprimanded but not punishable by permit cancellations; or the employer's permit to hire foreign laborers is cancelled due to the misdemeanors of the labor broker involved, albeit the employer fulfilled all the responsibility; or laborer-employer disputes in which the employer is not in violation and fault cannot be attributed to the foreign laborer. Because these cases are not yet administered by the implementations of the change of employment procedures, the foreign laborers involved cannot apply for a change of employers; laborer-employer relationship is thus left in tension, making it difficult to maintain amicable relationship.

### Expanded Interpretation of Non-attributable Liability to Foreign Laborers

To collect opinions from all sectors of society for use as a reference in reviewing the foreign laborer employer transfer system, the CLA called on a meeting of scholars, exports, laborer-employer groups, groups concerned with foreign

laborers, labor brokers associations, and local governments on March 8, 2011. With thorough discussions, the meeting proposed that under the principle of due consideration for the rights and interests of both laborers and employers and in accordance with Article 59 of the "Employment Services Act," in cases where employers have attributable liability not punishable by the cancellation of permits, or where no liability is attributable to either the foreign laborers or the employers, the employers should retain the right to hire other foreign laborers under their original quotas and the foreign laborers should be allowed to transfer to new employers entitled to hire foreign laborers. The participants also suggested that the administrative rules for change of employers by foreign laborers should be revised first, and that rules for the unilateral application for contract termination by foreign laborers and the review mechanism should be carefully worked out. Other suggestions included the simplification of procedures and documentation for employers' applications to hire foreign laborers, and the provision of special guidance for employers or laborers who frequently request employer transfers.

In addition, the Foreign Labor Policy Consultative Group gave its preliminary agreement, at a meeting on April 18, 2011, on policy planning directions to this effect: with due consideration of rights and interests to both the needs of employers and foreign laborers, the CLA should expand the interpretation of the scope of application of non-attributable liability for foreign laborers so that when foreign laborers encounter in cases that liability is attributable to their employers but not punishable by the termination of employment permits, or when laborer-employer disputes occur not attributable to the foreign laborers, once the local government allows the application of unilateral contract termination and either the foreign laborers or the employers express an intent to terminate, or if the foundation of mutual trust in laborer-capital relationship has collapses and continuation of employment becomes difficult, the foreign laborers will be allowed to change employers while the original employers will be able to retain their hiring quotas for foreign laborers and hire others. The procedures and documentation for rehiring by employers as well as transferring foreign laborers should be simplified, and inspection visits will be paid to foreign laborers and employers who apply transfer frequently.

In the future, whether foreign laborers are engaged in industrial or social welfare, once the local government allows a unilateral contract termination, either the laborers or the employers may initiate the contract termination unilaterally. The foreign laborer will then be allowed to transfer to other employers entitled to hire foreign laborers, and the original employers will be allowed to hire other foreign laborers.



## News Outlook

# Labor Council to Consult Labor and Employer parties in Promoting Domestic Worker Protection Act

The Council of Labor Affairs (CLA) has always been intensely concerned with the labor rights of domestic workers, and after years of discussion has now formulated a draft of Domestic Worker Protection Act (tentative translation), which was submitted to the Executive Yuan for deliberation in March this year. The CLA notes that it kept the conventions established by the International Labor Organization (ILO) in mind during the process of formulation, and that the spirit of those conventions has been incorporated in the draft act. The CLA also commits itself to the

constant solicitation of a wide range of opinion as it continues its vigorous promotion, in an attitude of pragmatism and in line with conditions in Taiwan, of the Domestic Worker Protection Act.

Due to the fact that domestic workers work in the home (which is unlike general workplaces) and the families of some of those under care are disadvantaged, the rights and interests of both must be considered and any relevant law must be pragmatic and practicable. Numerous meetings and public hearings have been held in recent years, and to assure

protection of the basic labor rights of domestic workers the CLA invited representatives from the National Alliance of Taiwan Women's Associations, Awakening Foundation, Peng Wan-Ru Foundation, Migrant Empowerment Network in Taiwan, League of Welfare Organizations for the Disabled, Federation for the Welfare of the Disabled, and other relevant organizations to help map out the draft Domestic Worker Protection Act at a recent meeting.

The CLA explains that in regard to the Migrant Empowerment Network's request that the overtime pay of domestic workers be calculated in accordance with the standards set forth in the Labor Standards Act, representatives of employers' organizations expressed their opposition during the meeting, saying that the work and rest times of household caregivers are difficult to define and overtime is hard to calculate; if the calculation method of the Labor Standards Act is followed, disputes would erupt and antagonistic relations between labor and management might even result. The representatives suggested, therefore, that overtime pay be worked out by laborers and employers in accordance with the nature of the work. In regard to the Migrant Empowerment Network's proposal that the cost of accommodation and meals not be deducted from laborers'

salaries, in consideration of the fact that once the law is enacted salaries may not be less than the minimum wage, and in reference to the stipulations of international labor conventions to the effect that if the minimum wage is applied then partial compensation may be paid in kind, this provision requires further negotiation.

The CLA emphasizes that the different parties achieved a consensus in the recent meeting, with participants approving the basic principle of "at least one day's leave per week." In regard to the labor inspection, the participants felt that families have a right of privacy and that it was difficult to enter homes to carry out inspection. It was decided at the meeting, therefore, that a substitute method should be worked out.

The CLA reiterates that the rights of domestic workers must be protected. In view of the special nature of domestic work and the need for respite care, as well as the necessity of considering the rights and interests of both workers and employers and of practicability, the difficulty of enacting this law is extraordinarily high. The CLA will continue soliciting a wide range of opinions with the aim of achieving a social consensus and succeeding in the promotion of the Domestic Worker Protection Act in a step-by-step and pragmatic manner.



## News Outlook

# Expanded Protection of Right to Work for Foreign Spouses: Divorced Foreign Spouses May Now Continue to Work in Taiwan Without Work Permits

In order to protect the rights of foreign spouses to work during their residences in Taiwan, the Council of Labor Affairs (CLA) said that in addition to their rights to work in Taiwan without work permits while their marital relationships prevail, as of August 20, 2011; foreign spouses are allowed to work without applying for a work permit after their marital relationship dissolved for the causes of divorce, death, or other reason, so long as their uninterrupted residences in Taiwan is approved by the National Immigration Agency in accordance with the provisions of the Immigration Act.

The CLA said that according to Article 48 of the Employment Services Act, foreign spouses whose residences in Taiwan have been approved can work legally on the island without applying for work permits. In consideration of the needs for foreign spouses to work in Taiwan after their marital relationship dissolved but before their period of residence expired and while the purposes of their residences unchanged, on June 3, 2008 the CLA announced that foreign spouses would be allowed to keep working in Taiwan after the dissolution of their marital relationship so long as their original dependent residency permits remained valid. In addition, foreign spouses are allowed to apply for work permits, in accordance with the provisions of Article 51 of the Employment Services Act, following the dissolution of their marital relationship so long as they are permitted to stay in Taiwan with their underage children or other direct blood relatives.

Now the CLA has responded to the need of foreign spouses to keep working in Taiwan following the dissolution of their marital relationship by expanding their rights to do so. An amendment to Article 9-1 and Article 11 of the Enforcement Rules for the Employment Services Act, promulgated on August 18 this year, adds a provision allowing foreign spouses whose marital relationship has been dissolved to work in Taiwan without applying for work permits so long as they meet one of the

following conditions and are given permission by the National Immigration Agency to keep their residences in Taiwan:

1. The dependent relative is dead.
2. The foreign spouse has been subject to physical or mental abuse by his or her spouse, and the court has issued an order of protection.
3. The foreign spouse, after divorce, has been granted custody of his or her own underage children who have established household registrations in Taiwan.
4. The foreign spouse has been subject to domestic violence and has been granted a court decree of divorce, and has underage natural children with household registrations in Taiwan.
5. The foreign spouse has been ordered to leave the country because his or her residency permit has been cancelled, causing concern of grave and irreparable harm to underage natural children with household registrations in Taiwan.

The CLA calls on employers to prevent the use of forged residency documents by job seekers as foreign spouses by noting whether the applicants are legitimately married to ROC citizens with local residency and whether they have legal residency in Taiwan, and by carefully comparing the ID photo and accompanying documents on the applicant's residency certificate with the applicant personally. The employer should also require the applicant to present related documentation, such as the dependent's household certificate, and hire the applicant only after verification of the documentations. In this way, the employer can avoid being penalized for hiring runaway foreign laborers carrying false documents. ❀



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行政院勞工委員會

Council of Labor Affairs, Executive Yuan



中華民國精彩一百

## 專題報導

- ◆ 消除對婦女一切形式歧視公約 (CEDAW) 施行法通過  
勞工委員會消除婦女歧視之措施及未來作法



## 政策法規

- ◆ 勞動權益里程碑，勞動三法修法
- ◆ 保障勞工權益：大量解僱勞工保護法
- ◆ 營造友善職場：協助企業辦理勞工托兒服務
- ◆ 強化外籍勞工轉換雇主制度

## 新聞瞭望

- ◆ 勞委會將蒐集與協調勞雇團體意見，務實推動「家事勞工保障法」立法
- ◆ 擴大保障外籍配偶工作權：放寬婚姻關係消滅後經准予繼續居留之外籍配偶得免許可在臺工作



## 專題報導

### 消除對婦女一切形式歧視公約 (CEDAW) 施行法通過 勞工委員會消除婦女歧視之措施及未來作法

#### 勞委會對消除婦女歧視實施概況

- 一、勞委會依據憲法訂定保障婦女平等就業權之相關法規，主要包括：「勞動基準法」、「性別工作平等法」、「就業服務法」、「勞工保險條例」、「就業保險法」、「職業災害勞工保護法」、「勞工安全衛生法」等法律及相關規定，保障女性平等就業。
- 二、為有效消除對婦女就業的歧視，健全婦女勞動保護，落實就業服務法，消除婦女職場就業障礙，尊重兩性平權之就業環境，勞委會推動以下相關措施：
  - (一) 工作條件之基本保障：勞基法及性別工作平等法規定同工同酬及同值同酬規定；另我國平均薪資，2010年工業與服務業部門女性受雇者平均薪資為

男性的 80.12%；至於男女薪資差距自 2000 年之 25.92%，至 2010 年之 19.88%，呈現逐年縮減之趨勢。與美、日兩國比較，2010 年女性平均經常性薪資占男性之比率，我國為 82.3%，高於美國之 81.2% 及日本之 69.3%，我國兩性平均經常性薪資差距較美國、日本小。

- (二) 工時規定鬆綁：刪除性別差別規定，另排除企業人力資源運用困擾及促進婦女就業，修正延長工時之規定，使兩性勞工延長工時之標準一致化。
- (三) 禁止性別就業歧視的規定：性平法及就業服務法規定禁止求職、招募、進用、考績、陞遷、訓練、福利及退休、資遣、離職及解僱的性別歧視。
- (四) 縮小性別職業隔離：實施相關措施，開辦多元職訓課程及競賽，提供女性更多職涯選擇。
- (五) 保障外籍與大陸配偶工作資格：建議勞委會放寬大陸配偶經獲准依親居留者，不須申請許可，得在臺



▲ 勞委會主委王如玄，全力推動婦女權益。

工作，陸委會已於 2009 年 8 月修正，勞委會亦廢止「大陸配偶在臺灣地區依親居留期間工作許可及管理辦法」。

### 三、提升婦女勞動參與，強化婦女就業能力，建立多元管道，開發女性勞動力，並輔導女性就業，以促進女性就業能力之延伸與發展：

- (一) 行政院主計處人力資源調查統計，女性整體勞動參與率於 2010 年 7 月突破 50%，並自 2000 年 46.02% 提高至 2010 年 49.89%，顯見婦女勞動力參與率近 10 年來有逐年上升之趨勢，2009 年度已超越日韓。
- (二) 為強化在職勞工職場技能，提升其競爭力，推動「產業人才投資方案」，結合民間訓練單位提供多元化實務導向之訓練課程，補助每位參訓在職婦女勞工訓練費用，每人每 3 年內最高補助 5 萬元，以鼓勵在職勞工自主學習，提升工作技能。
- (三) 對於失業勞工之職前訓練措施，配合產業人力需求，開發婦女訓練之新職種：除現有已開辦適合婦女參訓之職類，如婚禮諮詢師、新婚秘書、寵物美容造型、禮儀師訓練班、中餐證照、服裝製作、美容美髮等，另開發婦女訓練新職種，包括做月子餐料理、生物科技保健品及保養行銷、花藝設計、財務規劃等，並規劃新職種訓練課程，以增加婦女參訓之選擇。
- (四) 為利婦女投入微型創業，如屬辦理適合創業之職類班次，將視需要於課程中安排市場分析、通路行銷、財務控制、經營管理等創業所需之知能技巧課程。
- (五) 由公立就業服務機構提供失業婦女職業訓練諮詢適性評估後，推介安排參訓，以確保婦女失業者參訓之需求，促進其就業。另由各職訓中心依訓練之需求，規劃辦理就業導向職前訓練，培養二度就業婦

女就業技能；並結合民間團體提供婦女就業諮詢，發展職業輔導評量工具協助婦女適性就業，並提供部落原住民婦女可就近諮詢解決部落取得資訊不易的問題。

- (六) 結合轄區資源，針對就業障礙，提供因應措施；另針對外籍配偶與大陸地區配偶、家庭暴力及性侵害被害人之特殊性，加強提供各項就業服務措施。
- (七) 辦理「多元就業開發方案」，鼓勵婦女社會事業發展，提供受暴婦女適性就業服務，辦理「展翅專案」，促其經濟自立。

### 四、提供保護母性具體措施：

- (一) 提供健康和安全保障的工作條件：現行勞工安全衛生法及勞動基準法對於女性員工、妊娠中或產後未滿 1 年之女工不得從事危險性或有害性工作，已有規定。
- (二) 增進生育給付權益：修正勞工保險條例規定，被保險人在保險有效期間懷孕，於保險效力停止後 1 年內，且其參加保險日數滿 280 日分娩或 181 日早產者，得請領生育給付。
- (三) 促進婦女健康就業的職場具體措施：建置職業傷病網路通報系統，設立職業傷病服務管理中心；建構職場無菸、無毒害之工作環境，提升健康檢查品質與諮詢服務；持續進行婦女群聚行業、工作等安全衛生課題進行調查研究並改善、推廣運用。

### 五、建構友善職場，禁止職場性騷擾：

- (一) 落實性別工作平等法，設置性別工作平等會審議、諮詢性別工作平等事項、辦理性別工作平等專案檢查及友善職場認證等具體措施，事業單位實施促進性別工作平等措施情形已逐年改善。此外，並擴大育嬰留職停薪適用範圍，由受僱 30 人以上事業單位的勞工至所有受僱者。
- (二) 實施育嬰留職停薪津貼：修正就業保險法，推動育嬰留職新津貼發放之法律依據，未來夫妻雙方均可申請，有助落實兩性平權，截至 2011 年 8 月底，初次申請核付人數已達 8 萬 6 千多人，核付金額計 70 億 2,000 萬餘元。
- (三) 2010 年 5 月 4 日增加「安胎休養」請假規定，受惠人數約 300 萬人；擴大家庭照顧假適用範圍，由受僱事業單位的勞工及於所有受僱者，受惠人數約 822 萬人。

(四) 職場性騷擾防治：性別工作平等法第13條課予雇主有防治職場性騷擾的義務，規定雇主應防治性騷擾行為的發生；辦理性別工作平等法暨性騷擾防治宣導會，建立地方勞工行政主管機關受理性別平等申訴案件標準作業程序，及性騷擾防治種子師資培訓研習會。

(五) 輔助社會服務及托兒設施之設置：為促進婦女勞工就業，協助雇主辦理托兒設施或提供適當托兒措施，有效協助員工解決子女托育問題，訂定「托兒設施措施設置標準及經費補助辦法」，並訂頒「補助托兒設施措施作業須知」提供制度性之補助。

未來，勞委會對於女性就業，除遵循「平等、人性、安全、尊嚴」4大施政理念外，並將積極提升女性勞動參與，禁止婦女就業歧視，強化婦女就業協助，加強女性培力。

### 一、成立「臺灣職場雙贏平臺」

做為各企業建立家庭友善措施交流、觀摩及推廣的管道，協助企業建立制度化的家庭友善措施，包括：平衡

工作與家庭措施（如：育嬰留職停薪、家庭照顧假、陪產假、家庭日等）、彈性工時及多元化的工作安排、女性的職涯開發、培育、任用、設置哺乳室、托兒設施及建立職場性騷擾防治措施等。

### 二、積極推動創業鳳凰與APEC微型手工藝行銷國際計畫接軌

組織改造後，除整合職業訓練、創業輔導及就業服務資源，協助參加職業訓練之失（待）業者創業，進行完整創業培育，並協助我國偏遠鄉下婦女微型企業主發展量產與開創國際貿易，運用公平貿易模式建立加拿大及臺灣間之國際產銷管道，促進原住民婦女微型企業之發展，將臺灣在地產業特色走入國際，達到與國際行銷網路接軌目標。

### 三、檢視與落實該公約就業平權之規定

依據「消除對婦女一切形式歧視公約」（CEDAW）第11條就業平等權之規定，檢視勞委會相關法律、行政命令及相關措施，於施行法規定期間（3年）內完成修正工作。



## 政策法規

# 勞動權益里程碑，勞動三法修法

勞委會主委王如玄過去曾參與婦女權益保障工作，過程中常發現處於弱勢的婦女，為爭取自我權益時，常因無法支付龐大的訴訟費用而受盡委屈。王如玄自擔任勞委會主委後，發現勞工也面臨同樣困境；因此，在2009年5月1日成立「勞工權益基金」，辦理勞工法律扶助事宜，進而在新「勞資爭議處理法」，特別增訂訴訟費用及擔保金的暫減免條文，賦予法源依據，使勞工爭取權益時無須支付龐大訴訟費用，同時藉由行政機關提供的訴訟補助，平衡勞資雙方的爭議處理能力，以利爭取法律上的權利。

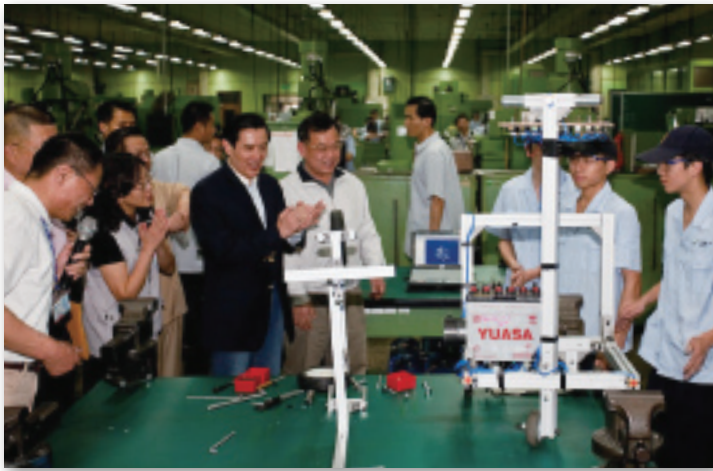
### 修法著重工會財務自主

王主委最近曾赴美國並參訪工會，發現工會財務自主且實力強大，內部會務人員高達百餘人，甚至有專業律師駐會。反觀國內工會，都得靠資方或政府補助過活，普遍出現經費短缺，巧婦難為無米之炊。因此這次修法也著重

在工會的財務自主部分，明訂入會費不得低於1日工資，經常會費不得低於0.5%，讓工會財務更健全，更有能力自主發展。過去也常發生勞工有意發起籌組工會，雇主予以調職、降職等的打壓現象，形成勞工不敢也不願組工會。這次修法增訂「不當勞動行為」的規範，明訂雇主如有違反不當行為時，最高可處30萬元罰鍰，且可連續處罰。除此之外，新「勞資爭議處理法」也在調解和仲裁之外新創了一個「裁決」的爭議處理機制，專門處理不當勞動行為的勞資爭議，深信對工會發展有正面積極效果。

另外，明訂勞資雙方皆有誠信協商的義務，無正當理由者，不得拒絕。勞資任何一方如果違反了某些行為或不去採取某些行為，就是不誠信協商，將構成不當勞動行為的一種，依「團體協約法」可以處10萬元至50萬元罰鍰，必要時還可以連續處罰，因此它會有一定的嚇阻效果。

除此之外，秉持「勞工團結權保護」、「會務自主



▲ 總統馬英九關心勞工權益，經常參訪基層工廠，瞭解需求。

化」、「運作民主化」等原則，修正「工會法」，將基層工會組織型態分為「產業工會」、「職業工會」及「企業工會」。同時明定教師有組織產業工會或職業工會之權利，刪除禁止教育事業員工組織工會之限制。隨著新勞動三法實施，可讓工會有更自主發展空間，並有助於集體勞動關係的良性發展。

過往我國的勞動基準大都由政府制訂，工會的角色與功能往往被弱化，新勞動三法的實施，排除主管機關對於工會會務的管制，再加上各業勞工均得依「工會法」組織工會，不但可落實保障勞動者團結權自由，更有利於勞資對話，團體協商的推動，讓勞雇雙方由對立走向合作，共

創利益、共享成果。

## 加強推動「勞資會議制度」

任何法制的推動，不可能一蹴可幾，為達到勞資和諧實質功能，勞委會將持續辦理勞資會議宣導及健全勞資會議法制，以加強推動「勞資會議制度」，促進勞資合諧；同時修編「簽訂團體協約參考手冊」，針對有協商意願及協商需求的事業單位和工會，邀請專家學者組成團體協約輔導團，入廠輔導並協助推動勞資雙方簽訂團體協約，促進誠信協商機制，有效發揮工會集體協商功能。

新勞動三法實施後，未來集體勞動關係成為主軸，但工會透過集體協商進行經濟利益分配的過程中，不可避免地會有爭議發生，為避免勞雇間為反對而反對，勞委會將輔導強化工會與雇主理性協商的自主能力，透過「社會夥伴關係」的概念，藉由促進勞雇團體雙方對話或政勞資三方諮商等途徑，以尋求同舟共濟，解決爭端。

另外，勞委會也將加強對勞資團體及行政機關的宣導工作，增進勞資政對社會對話機制概念、功能及運作的認知。同時加強辦理社會對話案例技巧演練、國外經驗分析等培訓課程，建立我國社會夥伴對社會對話機制的心理認同及意願，以極積協助工會團體進行社會對話，讓相關政策推動更符合社會需求。



## 政策法規

# 保障勞工權益：大量解僱勞工保護法

## 政策背景

隨著全球化經濟影響日趨明顯，企業為求生存與永續發展，勢必對生產和工作組織之調整進行策略性布局，在此情況下，大量解僱勞工將難以避免。雖雇主隨市場變動而做出大量解僱之經營決策，為自由經濟市場自然規律，惟此種經營變革，將導致勞工面臨個人就業問題。

另一方面，因為企業經營策略調整所伴隨的大量解僱行為，因為時間集中及範圍龐大，對社會秩序安定有一定影響，基於平衡社會利益及尊重市場機制，對處於此不利地位之受僱者，實有必要立法予以適當保護。

## 立修法過程

大量解僱勞工保護法於2003年5月7日施行，惟此法

實施以來部分法條操作上窒礙難用，爰於2008年5月23日修正部分條文並公布實施。

## 立法目的

大量解僱保護立法有雙重目的：其一為調節勞動市場，促進就業安定；其二為大量解僱程序保障，強化就業保護。

### 一、調節勞動市場，促進就業安定

由於大量解僱勞工係經濟因素下不可避免的事實，但就整體社會利益而言，將不利於就業機制的運作及勞動市場自我調整的功能。大量失業人口對於勞工個人，乃至於社會層面，皆有嚴重的衝擊及影響。爰此，該法即在發揮調節被大量解僱勞工再進入勞動市場的時間，以確保市場

機制的正常運作及社會穩定。

基於此，為調節被解僱勞工再次進入勞動市場時間，事業單位於大量解僱時應負有通知及協商義務，該程序性義務規範，似乎對雇主經營權之一種限制，但從經濟、社會、立法政策層面考量，有受到法律明確規範之必要。

## 二、大量解僱程序保障，強化就業保護

基於社會連帶關係，大量解僱勞工所引起的有形或無形的社會成本，必須由整個國家、社會及全體人民共同負擔，例如在失業給付與就業安全、社會安全體系方面均需全民負擔。

因此，在思考大量解僱之法律保護規範內容中，不應只是簡單的考慮如何提高勞工所得以及解僱後之就業保護。而為建構一有效的大量解僱時因循的程序與保護制度的設計，誠為該法重要目的。如何公平調整勞雇雙方利益，並尋求二者之利益平衡。

## 大量解僱勞工保護法之內容重點

### 一、解僱程序之保護

事業單位大量解僱勞工時，須以書面方式，將解僱計畫書通知主管機關及相關單位或人員；同時將解僱計畫書公告揭示之。書面通知主管機關義務，乃雇主之公法上義務，但並非大量解僱的生效要件。要求大量解僱勞工之雇主向工會或被解僱勞工提出解僱計畫書之目的，在使勞工能夠做出建設性的相對方案，建立勞資間對話甚或協商大量解僱內容，以增加解僱計畫書之可執行性。

雇主之解僱計畫書內容包括：計畫解僱的理由；解僱部門；解僱日期；解僱人數；挑選解僱勞工之基準；以及計算資遣費計算方式及輔導轉業方案的方法。

## 二、勞動債權之保護

對於未依法律給付退休金、資遣費或未依法定事由解僱，由勞委會提供被大量解僱勞工訴訟補助，以保障其工作權或勞動債權。對於因保險年資不足，至無法領取失業給付者，並提供訴訟期間必要生活費用補助；為防止雇主刻意規避退休金、資遣費及工資給付，對於大量解僱之事業單位董事長或實際負責人，就其積欠金額達一定標準者，得由主管機關提報勞委會經審查禁止其出國，以確保勞工之債權。

## 三、建立預警制度

為能有效掌握大量解僱之資訊，規定一定情事出現時，關係人即應通報主管機關，主管機關得視情況赴事業單位進行訪查，以掌握大量解僱資訊。

## 實施成果

### 一、大量解僱勞工訴訟及必要生活費用補助

有關大量解僱勞工訴訟及必要生活費用補助自開辦以來迄今（100年7月），共補助訴訟費88萬7千多元，嘉惠勞工305人、必要生活費160萬1千多元，嘉惠勞工174人次。

### 二、「大量解僱勞工保護法」限制事業單位代表人出境

該法自實施以來共限制10家事業單位董事長及實際負責人出國，要求雇主出面解決。其中有3件於禁止出國後廢止案，分別為事業單位破產、雇主償還所有積欠債務，雇主願提供相當擔保。



## 政策法規

## 營造友善職場：協助企業辦理勞工托兒服務

隨著經濟知識發展，勞動結構與勞動方式有重大變遷，女性大量投入勞動市場及雙薪工作家庭已成為趨勢。當女性大量投入勞動就業市場、雙薪工作家庭日漸增加，以及少子女化等因素，兒童托育及照護將不再僅是女性的責任，而是需要家庭、政府、企業和整體社會共同參與。

為推動性別工作平權政策，促進女性勞工就業，有效開發女性人力資源，提高女性勞工之勞動參與率，企業

托育成為就業婦女所期盼。為使勞工在工作與家庭照顧無後顧之憂，安定工作情緒，提高生產能力，有效協助員工解決子女的托育問題，以穩定勞動生產，強化企業競爭，行政院勞工委員會爰依據「性別工作平等法」（原名兩性工作平等法）第23條第3項規定，訂定「托兒設施措施設置標準及經費補助辦法」，同時勞委會訂定「補助托兒設施措施作業須知」，以獎勵補助方式，鼓勵事業單位辦理



▲ 政府積極鼓勵企業辦理托兒服務。

托兒設施或提供適當托兒措施，協助解決員工子女托育問題，以消除婦女工作就業阻礙，並能兼顧工作與家庭托育照顧平衡。並且，此項勞工福利對於事業單位之企業形象、社會責任，員工的滿足感及向心力有著莫大的助益。

勞委會為積極輔導企業辦理員工托育福利服務，並提供經費補助做為鼓勵企業辦理托兒服務，加強落實輔助勞工托兒福利服務，目前補助標準如下：

- 一、新興建完成登記立案者補助費為200萬元。
- 二、已設置並登記立案者補助改善或更新托兒設施費，每年最高為50萬元。
- 三、托兒措施補助每年最高為30萬元。

對於事業單位在設置托兒設施之法令、土地、專業服務及經費等問題積極協助解決，以鼓勵輔導企業辦理企業托兒各項措施及服務。對於無法設立托兒設施之企業，藉由直轄市及縣市政府社政、教育單位提供企業與勞工鄰近托育場所資訊，媒合品質優良之社區托育機構，以符合勞工子女托育照顧之需求。

根據勞委會2011年對僱用員工規模250人以上之事

業單位提供托育設施或托兒優惠措施情形調查統計資料顯示，有設立托兒所者占4.9%，與托兒所簽約，提供托兒優惠措施者占63.9%，合計有68.9%事業單位設置「托兒設施」或提供「托兒措施」；與2002年調查結果相比較，有提供「托兒設施」或「托兒措施」者由36.3%提高32.6個百分點。

勞委會為積極鼓勵企業辦理托兒福利措施，提供員工在托育照顧的便利性，滿足勞工多元化需求，未來具體措施如下：

#### 一、推動輔導企業聯合托育試辦計畫

- (一) 鼓勵在科學園區、工業區、勞工密集區域之企業興建聯合照顧勞工子女托育服務。
- (二) 鼓勵已設立托育設施之企業，增加其具提供鄰近勞工聯合托育措施之意願。

#### 二、建置企業托育照顧資源整合平台：提供企業及勞工便捷之托育照顧資訊及托育服務。

#### 三、成立推動企業聯合托育輔導團：協助企業辦理企業托兒服務。

#### 四、辦理績優企業托兒示範觀摩經驗分享：積極鼓勵企業辦理企業托兒照顧服務，並提升企業友善職場形象。

綜上，少子女化為社會趨勢，為解決勞工工作與家庭衝突，滿足勞工托育照顧需求，企業提供多元托育照顧的家庭福利政策，使員工在獲得完善之托育照顧服務後，期能安心就業、擴大勞動生產率，以達到員工工作與家庭平衡，及創造勞資雙贏局面。



### 政策法規

## 強化外籍勞工轉換雇主制度

目前外籍勞工若有不可歸責事由，且原雇主無法繼續聘僱，可依法向勞委會申請轉換雇主。但為強化外籍勞工轉換機制，兼顧雇主用人需求與外籍勞工工作權益，勞委會近期已重新檢討轉換機制，規劃外籍勞工倘有不可歸責事由，經地方政府認定適用單方解約者，外籍勞工或雇主提出解約，即可轉換雇主。

### 外籍勞工轉換雇主現況

依「就業服務法」第59條規定，外籍勞工如有雇主關廠、歇業或未依勞動契約給付薪資並經終止勞動契約，或有其他不可歸責於受聘僱外籍勞工之事由，經勞委會核准，可以申請轉換雇主或工作。勞委會於2003年發布實施外籍勞工轉換雇主準則歷經3次修正，協助製造業、營

造業、家庭看護工及其他工作類別之外籍勞工，轉由新雇主接續聘僱，銜接雇主國內招募不足之人力需求。近3年來，外籍勞工向勞委會申請轉換雇主且成功轉換之比率平均已達89%。

而為回應外籍勞工關懷團體及雇主反映應適時檢討外籍勞工轉換雇主制度之意見，勞委會經檢討實務上，有發生以下案例，例如：雇主積欠外籍勞工薪資但已補發，可歸責但未達廢止聘僱許可程度之行為，或是因雇主已善盡監督責任但仲介公司未善盡受委任責任，致使雇主受廢止聘僱外籍勞工許可處分等情形，或是發生雇主未違法而外勞亦無法歸責之勞資爭議，因目前並未納入適用外籍勞工轉換雇主要件予以規範，造成外籍勞工無法申請轉換雇主，勞雇關係處於緊張狀態，甚至難以繼續維持良好關係。

### 檢討擴大解釋外籍勞工不可歸責適用範圍

為蒐集社會各界意見，做為檢討外籍勞工轉換雇主制度之參考，勞委會於2011年3月8日邀集學者專家、勞資團體、外勞關懷團體、仲介公會及地方政府共商，建議在兼顧勞雇雙方權益下，依就業服務法第59條規定，讓可歸責但未達廢止許可之雇主，或外籍勞工與雇主皆無可歸責者，雇主得保留聘僱外勞名額接續聘僱其他外籍勞工，

並同意原聘外籍勞工得轉換至具聘僱外勞新雇主處繼續工作。另建議先行修正外籍勞工轉換雇主行政規則，及建議外籍勞工單方提出終止契約之適用樣態與審核機制應詳盡規範，並建議配套簡化雇主承接外籍勞工申請程序與文件，及建議專案輔導常申請轉換或接續聘僱之雇主或外籍勞工。

另經2011年4月18日外勞政策協商諮詢小組勞資政社會對話，初步同意政策規劃方向，在兼顧雇主用人需求與勞工工作需要之雙方權益之下，由勞委會規劃擴大解釋外籍勞工不可歸責適用範圍，使外籍勞工面對雇主可歸責但未達廢止許可程度或發生無可歸責外籍勞工之勞資爭議時，經地方政府認定適用單方解約態樣，且外勞或雇主任一方提出解約意思，基於勞資關係互信基礎破裂，難再繼續，外籍勞工將可轉換雇主，原雇主則能保留聘僱外籍勞工名額，以承接其他外籍勞工，並將研議簡化轉出外勞之雇主承接程序與文件等配套措施，及重點訪視經常轉換外勞或雇主者等措施。

未來，不論從事產業工作或社福工作之外籍勞工，倘經地方政府認定適用單方解約，雇主或外籍勞工任一方提出解約要求，外籍勞工即可轉換至具有聘僱外勞資格之新雇主處繼續工作，雇主亦可接續聘僱其他外籍勞工，滿足招募不足之人力需求。



新聞瞭望

## 勞委會將蒐集與協調勞雇團體意見，務實推動「家事勞工保障法」立法

對於家事勞工之勞動權益，勞委會向來非常重視與關心，歷經多年研議，業已研擬家事勞工保障法草案於2011年3月陳報行政院審議。勞委會表示，在研議草案過程中，已持續關注國際勞工組織（ILO）所定公約內容，並已將其精神納入草案規範，今後將繼續廣徵各界意見，並依據我國國情，以務實的態度持續積極推動「家事勞工保障法」。

由於家事勞工係在家庭中提供勞務，有別於一般工作廠場，且部分被看護者之家庭係屬弱勢，兩者權益必須兼顧，所制定之法律亦須務實可行。近年來多次召開會議及公聽會，為保障家事勞工基本勞動條件權益，勞委會邀請

臺灣婦女團體全國聯合會、婦女新知基金會、彭婉如基金會、臺灣移工聯盟、中華民國殘障聯盟、中華民國老人福利推動聯盟等婦女及勞、雇團體共同研商「家事勞工保障法草案」。

勞委會說明，有關移工聯盟要求家事勞工加班費比照勞動基準法計算標準一節，雇主團體與會代表已於會場中發言反對，認為家庭看護工的工作與休息時間難以釐清，加班時數難以計算，如依勞基法標準計算，執行上將產生爭議，甚至認為將造成勞資對立，故加班費部分也希望回歸勞雇雙方就工作性質議定。另移工聯盟要求膳宿費不得從工資中扣除一節，因考量立法後工資給付不得低於基本

工資，且參考國際勞工公約，如有適用最低工資者，得部分以實物給付方式支付，故該條文須進一步協商。

勞委會強調此次會議中，各方有達成以下共識，與會代表皆贊成「每7日至少應有1日休息，做為例假」之基本原則；另有關勞動檢查部分，與會人員均體認到家庭具有隱密性，進入家庭實施勞動檢查確有困難，故會議決定另

行研議可行替代方式。

勞委會再次強調，家事勞工勞動權益須予以保障，惟考量到家事工作的特殊性，及需有喘息服務等配套措施，且須兼顧勞雇雙方權益及務實可行，所以立法困難度非常高，今後仍將繼續廣徵各界意見，以求凝聚社會共識，以漸進務實的方式推動家事勞工保障法。



## 新聞瞭望

### 擴大保障外籍配偶工作權： 放寬婚姻關係消滅後經准予繼續居留之外籍配偶 得免許可在臺工作

為保障外籍配偶在臺居留期間之工作需求，勞委會表示除婚姻關係存續中之外籍配偶得免申請許可在臺工作外，自100年8月20日起，因離婚或配偶死亡等原因致婚姻關係消滅之外籍配偶，經內政部入出國及移民署依入出國及移民法規定，准予繼續居留者，亦不須申請許可，即得合法在臺工作。

勞委會表示，依就業服務法第48條規定，外籍配偶經獲准居留，不須申請許可，即得合法在臺工作；又考量外籍配偶在婚姻關係消滅後，居留期限尚未屆滿且居留事由尚未變更前，仍有在臺工作之需要，故該會已於97年6月3日放寬外籍配偶於婚姻關係消滅後，在原依親居留許可未失效前仍得繼續在臺工作；另外籍配偶於婚姻關係消滅後，經獲准與其在臺之未成年子女或其他直系血親共同生活，並獲准居留，亦得依就業服務法第51條規定，申請核發工作許可在臺工作。

勞委會並表示，考量外籍配偶離婚，並有子女或配偶死亡等原因致婚姻關係消滅後，經內政部入出國及移民署以其他事由准予繼續居留者，在臺居留期間應仍有工作之需求，卻因現行法規限制，而衍生必須申請工作許可始得在臺工作或甚至無法工作之問題，故勞委會進一步擴大保障外籍配偶之工作權，已於100年8月18日修正發布就業服務法施行細則第9條之1及第11條規定，增訂婚姻關係消

滅之外籍配偶，有下列情形之一，並經內政部入出國及移民署准予繼續居留者，亦得免經許可合法在臺工作：

- 一、依親對象死亡。
- 二、其本人遭受配偶身體或精神虐待，經法院核發保護令。
- 三、於離婚後取得在臺灣地區已設有戶籍未成年親生子女監護權。
- 四、因遭受家庭暴力經法院判決離婚，且有在臺灣地區設有戶籍之未成年親生子女。
- 五、因居留許可被廢止而遭強制出國，對在臺灣地區已設有戶籍未成年親生子女造成重大且難以回復損害之虞。

勞委會呼籲，為避免有心人士假藉外籍配偶名義持偽造居留證件應徵工作，雇主對前來應徵工作之外籍配偶，除應注意其是否具備「與我國設有戶籍之國民結婚」及取得合法居留外，並應仔細比對其所持居留證上之照片及所載資料，且請應徵者出示相關證件（例如：依親之戶口名簿等）核對後再予聘僱，以免因誤聘持偽造居留證件之行蹤不明外勞而受處罰。❖