INTRODUCTION

The HR Service Providers (HRSP) Directory, published by the Hong Kong Institute of Human Resource Management (HKIHRM) annually, aims to offer a comprehensive and informative guide to HR practitioners, business executives, management, consultants, trainers and other professionals. It features a comprehensive list of HR service providers and is supplemented with a wide range of useful information including articles on HR related issues.

The Institute would like to take this opportunity to thank all participating organisations for their support. Special thanks go to article contributors who have shared their invaluable knowledge and insights with our readers.

An electronic version of the Directory is available for download at www.hkihrm-hrsp.org

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2020 Employment Law Updates – 10 Areas for Employers to Note

Jennifer Tam, Partner, Mayer Brown
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2020 has been a busy year for HR practitioners for various reasons. In addition to dealing with the challenges associated with COVID-19, business contraction (for some) and new ways of working, employers also need to handle or at least be aware of the developments in employment law. Below are 10 areas that employers should pay particular attention to.

1. Employment Support Scheme (ESS)

Under the ESS, a wage subsidy scheme, each eligible employer may receive from the HKSAR Government a maximum amount of subsidy of HK$9,000 each month per eligible employee, from June to November 2020.

There are certain undertakings and obligations that employers must provide and comply with. Employers need to ensure that the number of employees on payroll during the subsidy period is not less than the number of employees (paid or unpaid) in March 2020. They must also use all the subsidy for paying the employees’ wages. Falling which, they are required to return the subsidy in full or in part to the Government.

2. Call for listing COVID-19 as an occupational disease

COVID-19 is currently not listed as an occupational disease under the Employees’ Compensation Ordinance (ECO). The Labour Department will keep a close watch on the relevant medical and epidemiological data, and make appropriate recommendations.

Although COVID-19 is currently not a prescribed occupational disease, an employee may still claim compensation under the ECO for the virus if it is a personal injury by accident arising out of and in the course of employment. If an employee has contracted or is suspected to have contracted COVID-19 at work, the employer should report this to the Labour Department.

3. Four additional weeks of statutory maternity leave (not in force yet)

Under the Employment (Amendment) Ordinance 2020, statutory maternity leave entitlement for female employees who are employed under a continuous contract of employment will increase from 10 to 14 weeks. The additional four weeks’ statutory maternity leave will be paid at the rate of four-fifths of the employee’s daily average wage, capped at HK$80,000 in total. Employers may apply for reimbursement of the additional maternity leave pay from the Government, but details of the arrangement are not available yet.

The period of pregnancy mentioned in the definition of “miscarriage” will also be shortened from 28 to 24 weeks under the same amendment ordinance. If a female employee suffers a miscarriage at or after 24 weeks of pregnancy, she will be entitled to maternity leave, should other conditions be fulfilled.

A certificate of attendance, instead of a medical certificate, issued by a registered medical practitioner, Chinese medical practitioner, midwife or nurse, is sufficient proof for pregnancy and post-natal sickness, for payment of any statutory sickness allowance.

The above new measures are expected to come into effect by the end of this year. Employers should review their maternity leave policy to take into account the anticipated changes.

4. Unlawful breastfeeding discrimination (effective from 19 June 2021)

The Sex Discrimination Ordinance (SDO) will be amended to provide for unlawful discrimination on the grounds of “breastfeeding”. A woman will be treated as breastfeeding if she is engaged in the act of breastfeeding a child or expressing breast milk, or feeds a child with her breast milk.

Both direct and indirect breastfeeding discrimination will be unlawful. An employer will be taken to have directly discriminated against an employee on the grounds of breastfeeding, if he treats her less favourably than those who are not breastfeeding in the same or not materially different circumstances. Indirect discrimination arises when a condition or requirement is applied to everyone equally but a smaller proportion of women who are breastfeeding can comply than those who are not breastfeeding, with the employee who is breastfeeding suffering a detriment as a result and the condition or requirement being unjustifiable.

The law on breastfeeding discrimination will come into force on 19 June 2021. Meanwhile, employers should review and update their anti-discrimination policies and provide training, in preparation for the upcoming changes.

The prohibition on breastfeeding harassment will be dealt with separately in the Sex Discrimination (Amendment) Bill 2020. It is expected that the bill will be deliberated in the next Legislative Council session.

Items 5 to 9 below summarise the changes made to the SDO, Disability Discrimination Ordinance (DDO), Family Status Discrimination Ordinance (FSDO) and Race Discrimination Ordinance (RDO) in June 2020.

5. Expansion of protection from unlawful harassment in the workplace

The protection of unlawful sexual harassment, disability harassment and racial harassment under the SDO, DDO and RDO has been expanded to cover “workplace participants” if they work in or attend the same workplace. “Workplace participants” include not only employers, employees, contract workers, commission agents, partners in a firm, but also interns and volunteers.

Interns and volunteers will be personally liable for acts of harassment they commit in the course of an internship or performing the volunteer work. For employers who engage an intern or volunteer in their workplace, they may be vicariously liable for the unlawful act of harassment their intern or volunteer committed, even if the unlawful act was done without their knowledge or approval.

Employers, who can prove that they have taken reasonably practical steps to prevent the interns and volunteers from committing the act of unlawful harassment in the workplace, may have a defence to vicarious liability. The onus is on the employer to prove the defence, and the more effective precautionary steps taken the better.

Employers should implement and update their anti-harassment policies and provide appropriate training to all workplace participants on their rights and responsibilities.
6. Unlawful race discrimination and harassment by imputation and against "associates"

The definition of "race" under the RDO has been amended to cover "race" or "racial group" that is imputed to a person. Thus it is possible to engage in unlawful race discrimination by treating someone less favourably because it is assumed they are of a particular race, when in fact they may be not.

Individuals who are treated less favourably because of the race of an associate are also protected under the RDO now. "Associate" has the same meaning under the RDO and DDO, which includes the spouse of the person, another person who is living with the person on a genuine domestic basis, a relative of the person, a carer of the person, and another person who is in a business, sporting or recreational relationship with the person.

7. Protection against disability and racial harassment by service providers and customers

Under the SDO, it is unlawful for a service provider to sexually harass a customer in the course of offering goods, facilities or services, and for a customer to sexually harass a service provider when acquiring goods, facilities or services. The DDO and RDO have now been amended to provide similar protection to prohibit disability and racial harassment by service providers and customers.

8. Protection against sexual and disability harassment of a member or applicant for membership of a club

The SDO and DDO have been amended to make it unlawful for a club or the management committee of a club and its members, to sexually harass a person or to harass a person with disability who is or has applied to become a member of the club. A "committee of management of a club" means the group or body of persons, however described, who manages the club's affairs. As such, a club may be held liable for the conduct of an individual, who has a management role within the club even though he is not employed by the club.

9. Intention is irrelevant in determining damages for unlawful indirect discrimination

For unlawful indirect sex, race and/or family status discrimination committed on or after 19 June 2020, the Court may award damages to a successful claimant even if the less favourable treatment is unintentional. As intention is irrelevant to determining the issue of unlawful discrimination, an employer should proactively stress test its policies to ensure that there is no unlawful indirect sex, race and/or family status discrimination.

10. Occupational retirement schemes must be "employment-related"

The Occupational Retirement Schemes Ordinance (ORSO) was amended in late June 2020. The revised legislation will require any employer who has an "occupational retirement scheme" to confirm that such a scheme is only available to their employees, and the only members of the scheme are their current or former employees. This is to prevent any misuse of the occupational retirement scheme for non-employment related purposes.

The circumstances in which a retirement scheme can obtain an ORSO exemption certificate are also limited. For international businesses looking to set up office in Hong Kong, that wish to employ executives here who are members of an overseas retirement scheme (a home country scheme), the clear route enabling them to obtain an exemption certificate prior to the amendment is now removed. Employers must ensure an exemption certificate is obtained for the home country scheme in order to avoid committing an offence.

Further developments are expected for some of the areas covered above, from the enhanced maternity leave arrangement to the introduction of protection against breastfeeding discrimination and harassment. Employers should stay tuned for updates, and review their maternity leave and anti-discrimination and harassment policies to reflect the new legal requirements.

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As the challenges and uncertainties from COVID-19 continue, workplace stress is on the rise. In a recent survey of more than 2,700 business leaders across APAC, the majority of respondents agreed their mental health, or that of their colleagues, had been negatively impacted. Conducted by Profile Search & Selection ("Profile"), the survey, entitled "COVID-19 Impact on Mental Health in APAC", provided insights on many of the critical challenges organisations face.

Interviewed in Q2 2020, nearly half (45%) of the respondents felt that COVID-19 had adversely affected their mental health, and 60% felt that it had negatively impacted their colleagues’ mental health.

Interestingly, those suffering the most seemed to be based in Hong Kong (58% compared to 39% in Australia, 41% in China and 44% in Singapore). Perhaps Hong Kong, a city already coping with issues related to mental wellbeing stemming from workplace stress, has been further impacted by recent political uncertainties.

Percentage of respondents who indicated COVID-19 adversely affected their own mental health:

- Hong Kong: 58%
- China: 41%
- Singapore: 44%
- Australia: 39%

Workplace Stress in COVID-19 – Can Any Good Come from This

Amanda Clarke, Director, Profile Asia
Pushing accountability to those at the top of the corporate tree and understanding that they are responsible for communicating messages of change, the survey also asked respondents if their leadership team’s response to the pandemic had affected their stress levels. While 43% felt no change, 43% suffered from additional stress. These results may well be reflective of the ongoing uncertainties, and the outcome of employees being asked to take pay cuts or unpaid leave (35% of those surveyed), or even staff redundancies and some business closures (20%).

In the midst of Hong Kong’s third wave of COVID-19, a study by the Mental Health Association of Hong Kong found that among 801 employees interviewed across the city, 87% showed symptoms of stress, with 43% reporting signs of anxiety disorders. Not only are the numbers alarmingly high, but they point to a deepening issue as the year progresses.

With job insecurities and personal challenges mounting, the looming question is how can we tackle this, and what response measures have we, and can we, put into place. Since the outbreak of COVID-19, many companies have adjusted their working arrangements to fit the HKSAR Government’s social distancing requirements. But are these measures supporting individuals’ mental health, and helping to reduce workplace stress?

Looking back over the past six months, 80% of those surveyed by Profile said their company had all, or at least some, of their staff working remotely or from home. While this has benefited many, others have struggled to work in isolation or with several people in the house, and no appropriate space to work in.

Surveyed employees were also asked how productive they have felt since working from home. While nearly a third said they were less productive, 64% said they were either more productive, or just as productive as being in the office.

Unfortunately, nearly 60% said they have been working longer hours. Despite this, over half said they felt their colleagues were taking advantage of their flexible arrangements or not fulfilling their responsibilities.

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If you have been working from home because of COVID-19, how productive do you feel you’ve been in comparison to if you were working in an office environment?

If you have been working from home, how do your number of working hours compare to if you were working in an office?

To what extent do you feel your co-workers are taking advantage of their flexible arrangements and not fulfilling their responsibilities?

80% of all respondents indicated that their organisation have all or some staff working from home or remotely.

43% of respondents indicated that the response by their leadership to COVID-19 increased their stress levels.

34.7% My productivity is the same

31.5% I achieve less working from home

4.6% I have not been working from home

29.2% I achieve more working from home

28% I work a bit more

19% My working hours are the same

32% I work a lot more

14% I work a bit less

5% I’m not working from home

2% I work a lot less

2% None of them have been working from home

9% They are achieving more working from home

14% To a large extent

36% Not at all

39.1% To some extent

To a large extent
Thus, it is clear that working from home and flexible working have had a positive impact on many individuals, but there is still some way to go in terms of learning to trust and effectively manage staff remotely. Furthermore, as remote working continues, leaders will need to better communicate changes and company directives to their teams, to keep them on an even keel.

If there is one positive to emerge from COVID-19, it is that people are more comfortable talking to their colleagues about mental health (65% of those surveyed, up from 59% from Profile’s Working in APAC survey in January 2020) and a number of firms have either upgraded or put into place an employee assistance programme. Furthermore, firms are looking at new and creative ways to improve employee wellbeing – these have included subscriptions to meditation apps, online gym sessions and reduced working hours/compressed work weeks, demonstrating proactive measures taken to combat the current issues.

Looking ahead, there are strong signs that as organisations work through the pandemic, employees will want the option to continue working remotely and flexibly, and to be able to control when, where and how they work – in other words, to be truly ‘agile’. For this to succeed, managers and employers will not only need to implicitly trust their staff, but also learn to rate their performance in a whole new way. In doing so, employers are recommended to invest time and money in ensuring their technology supports remote working. Moreover, such advances will need to support real time interaction and video/virtual connectivity among staff, to maintain and build rapport across business units. Employers should also carefully consider workspace setup at home, to make sure remote working can offer employees a safe and productive environment.

Organisations who prioritise the health, safety and wellbeing of their staff will not only help improve their productivity, but in the longer term, will better attract and retain them. Prospective candidates will focus on companies with supportive environments – and in turn those perceived to be the most reliable in the face of challenges, will become the go-to employers of choice. As a result, COVID-19 will not only change the way people work, but will redefine what employees look for in an organisation. As the post-COVID-19 workforce seek out firms who can provide a healthy and happy workplace, they may even prioritise this over a higher salary offered by a more traditional organisation. In fact, we have already seen candidates make these career choices, so it won’t be long before these requirements become the norm for job seekers.

One thing is for sure – however we decide to move forward in the new normal, it is undeniably a once in a lifetime opportunity to reimagine what work means, and be part of the foundations of a very different world. While this may seem overwhelming at times, perhaps with the right support, there is the chance to channel that stress into enhanced productivity, and ultimately better working lives.
Here are five practical tips to help you develop a winning remote workplace strategy.

1. Create leadership that drives the new workplace

If you have never heard of “Head of Remote”, you are not alone. Most companies don’t have one, but that’s about to change as some of the most progressive companies transitioning to remote work like Quora and Twitter are now all hiring this position, and many more are expected to follow suit.

The post was coined by Gitlab, which boasts the largest all-remote workforce in the world. Since 2014, they have been trying to answer the question “how do we transition to remote?” As an effort to stabilise remote workflow in their growing business of 1,200 employees distributed across the globe, they hired their first Head of Remote for their leadership team.

As the name suggests, the Head of Remote’s role is to ensure that remote work, works. But there is so much more to it than that. The position helps foster trust among employees who may have never met in real life, develop best practices that improve virtual collaboration, and establish a remote company culture.

Reflecting on Gitlab’s success, if businesses want to truly embrace a remote-first culture and build

In many ways, virtual teams are an ongoing experiment that has yet to be fully embraced in Hong Kong. The resistance stems from a deeply rooted corporate culture that values employees being present in the workplace, and demonstrating loyalty through long working hours. According to the SCMP’s interview with Hong Kong businesses fighting the COVID-19 outbreak in April, many employers from local businesses said the lack of face-to-face supervision of employees made them feel uncomfortable. And while the benefits of virtual teams appealed to them, many remained reluctant to adopt a remote workplace for fear that “they will lose control of the company”.

The truth is, companies who have adopted virtual teams have an edge in talent and productivity over those who don’t. A survey by Robert Half showed that 77% of the responding workers said work from home was a key factor on whether they would accept a job offer, while a study by Cornell University suggested that virtual teams are 20% more productive than on-site employees. This is why organisations like Facebook, Shopify and JP Morgan have declared publicly that they would make work from home the new normal, as in forever.

So to say the least, the remote work genie is out of the bottle and there is no putting it back in. Implementing virtual teams is no longer a matter of “if”, but “when”. Hong Kong companies, especially local entities, need to quickly step outside their comfort zones and change their mindset that remote work is not a challenge to overcome, but instead a clear business advantage.

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Virtual Teams and Recruitment – Trends and Tips

Lawton Lai, CEO & Co-Founder, Find Recruiter

Now is the time to catch up with the new world of work.

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The post was coined by Gitlab, which boasts the largest all-remote workforce in the world. Since 2014, they have been trying to answer the question “How do we transition to remote?” As an effort to stabilise remote workflow in their growing business of 1,200 employees distributed across the globe, they hired their first Head of Remote for their leadership team.

As the name suggests, the Head of Remote’s role is to ensure that remote work, works. But there is so much more to it than that. The position helps foster trust among employees who may have never met in real life, develop best practices that improve virtual collaboration, and establish a remote company culture.

Reflecting on Gitlab’s success, if businesses want to truly embrace a remote-first culture and build
high-performance remote workplaces, then having a dedicated leader like Head of Remote to take charge in driving change is a good start.

2. Cultivate a healthy remote culture quickly

Companies with a strong organisational culture tend to have a lower turnover rate and more productive teams. But what happens to culture if your team members can’t just walk up to someone’s desk to catch up on their weekend?

A study by psychologist Susan Pinker revealed that individuals who had 15 minutes to socialise with colleagues had a 20% increase in performance over peers who didn’t. Given this, employers need to put in extra effort to build social connections among their remote teams, and cultivate a healthy remote culture. They should no longer work with the on-site mindset in which they take culture and camaraderie for granted.

Employers can consider scheduling regular virtual coffee breaks or happy hours to foster relationships that keep office traditions alive online. Also, creating an always-on video conference room where team members can pop in and out as they please, is great for encouraging informal communication and chitchat.

3. Hire the remote persona

To build strong virtual teams, it is important to recognise working remotely is a skill itself, and one that isn’t easy to learn or master. Believing that an excellent on-site worker can work as productively remotely without proper training or experience is unrealistic and sets the wrong expectations. As such, hiring managers need to add an extra layer of questioning to assess each candidate’s ability to work remotely.

Questions such as “What is your daily routine?” and “What communication challenges are you facing?” quickly help evaluate the candidate’s motivation to work from home, uncover their time management abilities, and give insights on how well they collaborate with team members on projects.

When candidate experience is more important than before, limiting the human touch is a major drawback of virtual recruiting. Thus companies need to go the extra mile in delivering a personal experience to their candidates, in other areas to compensate.

Organisations can consider using different employer branding solutions like those courtesy of Wantedly and Glassdoor, which help candidates experience the culture and people, without having to physically walk through the company doors.

Taking Action

History has a way of repeating itself. Companies who adopted technology 20 years ago have replaced every company that didn’t. Organisations who have implemented remote working these days will replace every company who hasn’t. Hong Kong businesses need to acknowledge that the transition to remote work isn’t a binary switch that is flipped, but instead requires a long journey of iteration filled with evolving leadership and cultural changes.

The future of work is here. Are you ready?
As global awareness of the importance of diversity intensifies, the positive impact of this movement is increasingly felt in the workplace. While diversity encompasses numerous facets, age, in particular, needs attention as Hong Kong contends with the fastest-ageing economy in the world, and the lowest population share of children under 14 years old.

With longer lifespans and declining birth rates, workforces are increasingly diverse in age demographics. But harnessing the full potential of an intergenerational workforce requires new and innovative solutions and ways of thinking. We look at trends in multi-generational workforces and how organisations in Hong Kong can address the needs of our most valuable asset – our people – and maximise their potential.

Workforce of the future – embracing age diversity

The business case for age diversity is nothing new. It brings a variety of perspectives, experience, technological readiness and expectations to the workplace. In addition to benefitting employees and culture, diversity has also demonstrated to positively impact organisational strength and performance.

While developing the workforce of the future has been on companies’ agenda for the past few years, COVID-19 has made it more topical than ever. “When we discuss the future of work, it is often in the context of technology and transformation,” says Vicki Fan, CEO of Mercer Hong Kong.

“Another critical aspect is the people and skillsets that make up your future organisation,” says Fan. This has implications spanning from talent strategy, development and upskilling, through to succession planning. She stresses, “Your workforce is unlikely to evolve with acceleration or agility if the way it is planned follows the same old template.”

Companies need to rethink their approach to workforce investment and growth. “A healthy workforce is not a stagnant workforce,” says Richard Roper, Health and Benefits Leader at Mercer Hong Kong. “If you get it right, an intergenerational workforce is optimised so you can bring out the best in everyone, whatever stage of work or life they are in.”

Many organisations have employees that watched black-and-white television, as well as those that never knew a world without the internet. Adeline Tan, Wealth Business Leader at Mercer Hong Kong, elaborates that “As a leader, the aim is to align them to help move the business forward.”

Looking after an intergenerational workforce

Building a thriving multi-generation workforce starts with creating better benefits experience. As they say, take care of your employees, and they will take care of your business.

Underpinning the effective planning and design of benefits is the ability to understand and analyse
employees and their behaviour. This allows organisations to ensure benefits are relevant, appropriate and – more importantly – utilised in a way that supports employees and may even reduce costs for employers.

Encouragingly, we see employers taking different employee attitudes into account when designing healthcare benefits, as evident in the uptake in flexible benefits schemes. “It used to be that everyone got the same benefits, but a lot of it was irrelevant for younger employees,” Roper explains. “Today, advanced benefits platforms allow employees to buy the right rewards for their time of life.” The freedom associated with newer benefits, such as the ability to buy or sell holidays, has proven popular with employees across the age spectrum.

Retirement benefits are another area where employees have differing needs. Companies are now more open to designing retirement planning for various age groups, so employees have relevant investment options across their life stages. To draw younger employees towards thinking about their pensions sooner, companies have increasingly provided investment options that are at high risk in nature.

“While a greater diversity of funds and more exciting options attract younger employees, this also benefits risk-takers in older groups, and would be hard to justify without an intergenerational workforce,” Tan says. She also notes that in Hong Kong, since individuals cannot remain in their pension scheme beyond the retirement age of 65, a protected arrangement to benefit from tax savings or preferential rates is required.

Managing the careers of an intergenerational workforce

Generational differences, when not managed properly, can create workforce tension and challenges for leaders, as they view career development and advancement in radically different ways. According to the Mercer 2020 Global Talent Trends (“GTT”), the majority of the Baby Boomer generation (72%) intend to work past retirement. On the other hand, 55% of Gen X feel that advancement opportunities are limited due to the top layers delaying retirement, while 43% of Gen Z expect career progression/promotion within a year.

These competing challenges require companies to rethink their career architecture and learning strategy, particularly around agile structures, job redesign and upskilling. The focus areas will ensure an intergenerational workforce to be future-fit and mobile, as well as help alleviate the talent issues involved.

One way of improving the career crunch of an organisation’s multi-generational workforce face is by providing alternative and stretched assignments, cross-department opportunities or cross-line-of-business chances to build their skills. “These lateral movements are critical, and termed career enhancement, rather than just focusing on career advancement,” says Darryl Parrant, Career Leader at Mercer Hong Kong.

“This is especially the case since Gen Y feel like they cannot easily step up, with the GTT reporting that 47% of respondents feeling there is no structure in place to support a career change,” says Parrant, who adds that “we are seeing more and more companies looking for guidance and support in new innovative career frameworks and competency models.”

Furthermore, if one were to reimagine work in a way that enables everyone to work more flexibly and explore alternative avenues of employment, a new balance could be struck. “We see more young people starting their careers as freelancers and entrepreneurs,” says Parrant, “and this requires a new attitude to how, when and where people work.”

He adds that a balanced talent ecosystem also requires organisations to consider a variety of ways of getting work done – everything from adopting flexible workplace practices to establishing a contingent workforce model, using automation to building more strategic partnerships.

Diversity requires an organisation-wide approach

Beyond the benefits of adapting to a multigenerational workforce in terms of pension planning, wealth considerations, flexible benefits, workforce flexibility and diversity of thoughts, there is a human advantage in listening to people from various groups. Mercer’s report on Diversity & Inclusion Technology: The Rise of a Transformative Market finds that, “leaders increasingly understand that not having a diverse organisation and an inclusive culture is a systemic problem, therefore individual interventions alone will not work.”

The power of a multigenerational workforce lies in its diversity of perspectives and experience. With communication, flexibility and openness to set aside assumptions and actively listen, that power can be harnessed to springboard businesses and the world of work forward.
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<td><strong>Regional/ International</strong></td>
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<td><strong>Business/ Consulting/ Learning</strong></td>
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<td><strong>Consulting Services</strong></td>
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<td><strong>Organizations &amp; Benefits</strong></td>
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<td><strong>Education/ Professional Programs</strong></td>
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<td><strong>Employee Engagement/ Relations &amp; Communication</strong></td>
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<td><strong>HR Consulting/ Service</strong></td>
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<td><strong>HRIS/ Cloud/ Software Solutions</strong></td>
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<td><strong>Legal Issues/ Tax</strong></td>
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<td><strong>Payroll/ MPF/ Pension/ Retirement</strong></td>
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<td><strong>Psychological/ Assessment Tools</strong></td>
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<td><strong>Publications</strong></td>
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<td><strong>Recruitment/ Selection/ Services</strong></td>
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<td><strong>Selection</strong></td>
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<td><strong>Others</strong></td>
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