

March 2018

Employment Updates

- > Employment Act to be broadened to cover more employees
- > Tightening of rules on the employment of foreign employees
- > New Tripartite Standards

On 5 March 2018, the Minister for Manpower announced in Parliament that the Employment Act (the “EA”) will be broadened to cover more employees with effect from 1 April 2019. The Minister also introduced certain measures to moderate the intake of foreign manpower and ensure that Singaporeans have fair access to better job opportunities.

Separately, the Tripartite Partners - the Ministry of Manpower (“MOM”), the National Trades Union Congress and the Singapore National Employers Federation - jointly launched:

- > the Tripartite Standard on Procurement of Services from Media Freelancers on 29 November 2017;
- > the Tripartite Standard on Unpaid Leave for Unexpected Care Needs on 1 March 2018; and
- > the Tripartite Standard on Contracting with Self-employed Persons on 5 March 2018.

Employment Act to be broadened to cover more employees

Background

The primary legislation governing employees’ rights and obligations in Singapore is the EA. The EA was last reviewed in 2012, and the latest amendments came into effect in 2015.

On 18 January 2018, the Tripartite Partners jointly launched a public consultation on the review of the EA. On 5 March 2018, the Minister for Manpower announced that MOM would seek Parliament’s approval of the following amendments to the EA later this year for implementation by 1 April 2019.

Broadening the coverage of the EA

Currently, the EA applies only to employees in Singapore who are:

- > employed in non-managerial or non-executive roles; or
- > employed in managerial or executive roles, if their salary does not exceed S\$4,500 per month.

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In consultation with the Tripartite Partners, MOM has decided to remove the salary cap of S\$4,500 so that the core EA provisions will cover all employees, including all Professionals, Managers, Executives and Technicians (“**PMET**”) regardless of salary thresholds. Such change means that all PMETs will enjoy the employee benefits under the core provisions of the EA, including:

- > paid public holidays;
- > paid sick and hospitalisation leave;
- > maternity benefits and childcare leave;
- > statutory protections relating to timely payment of salary, maternity protection and dismissal without just cause or excuse; and
- > preservation of existing terms and conditions for employment transfer resulting from sale of business and business restructuring.

For the avoidance of doubt, public servants, domestic workers and seafarers will continue to be excluded from the EA’s ambit as they are covered separately by other legislation.

Extension of Protection on Working Hours and Overtime Payment to more workers

Beyond the core provisions enjoyed by all employees covered under the EA, additional protection for more vulnerable employees is set out in Part IV of the EA and relate to time-based provisions such as annual leave, hours of work, overtime pay and rest day. These cover workmen (i.e. rank-and-file employees engaged in manual labour work) earning a monthly salary of up to S\$4,500, and non-workmen earning a monthly salary of up to S\$2,500.

Under the amended EA, the current salary cap of S\$2,500 for non-workmen will be increased to S\$2,600 to cover more employees. In terms of overtime pay, the salary cap for non-workmen will also be raised from S\$2,250 to S\$2,600.

Clarification on Scope of Automatic Transfer Rights in transfers of undertaking

We also expect to see further clarification around the types of transfers/ transactions that will constitute a transfer of undertaking for the purposes of Section 18A of the EA, pursuant to which EA employees have the right to automatically transfer to the buyer of that undertaking by law with continuity of service and on their existing terms and conditions of employment.

Dispute Resolution for Unfair Dismissal

Under the current regime, salary-related disputes are heard by the Employment Claims Tribunal (the “**ECT**”) while unfair dismissal claims are adjudicated by MOM. MOM recognised that the present framework is unsatisfactory as any affected employee must approach two separate forums for dispute resolution if his/her dismissal-related claim is accompanied by salary issues. The intention behind the proposed amendments to the EA is to streamline the process by allowing the ECT to hear both salary-related disputes and unfair dismissal claims.

Commentary

The latest amendments to the EA proposed by MOM are significant, bringing within the ambit of statutory protection a significant portion of the Singapore workforce who until now were effectively only regulated by their contractual employment terms, and will be brought before Parliament later this year.

The Minister for Manpower commented that the proposed changes are to keep pace with the changing employment landscape and workforce composition in Singapore, acknowledging that it was timely to enlarge the EA's coverage as PMETs now make up 56% of the local workforce and that this ratio is due to further increase to 65% by around 2030. The increased statutory protection of employees is also part of the shifting trend to make Singapore more employee-friendly.

We will monitor expected developments on this front and provide further updates once the EA amendment bill is available.

Tightening of rules on the employment of foreign employees

New Measures

On 5 March 2018, the Minister for Manpower also announced the following changes in Parliament:

- > **Jobs Bank advertisement:** Under the Fair Consideration Framework, companies must advertise job vacancies on the Jobs Bank for at least 14 days before they can submit Employment Pass (“EP”) applications for their foreign hires. Currently, companies with 25 or fewer employees and jobs that pay fixed monthly salary of S\$12,000 and above are exempted from the Jobs Bank advertising requirement.

From 1 July 2018, the Jobs Bank advertising requirement will be expanded to cover companies with at least 10 employees and jobs that pay up to S\$15,000 a month. These changes are being put forward by MOM to ensure that the Jobs Bank advertising requirement keeps pace with incomes changes and that the local workforce continues to be fairly considered for job opportunities.

- > **Updates to S-Pass Eligibility:** The minimum qualifying salary to apply for a S-Pass for foreign mid-level skilled staff will be raised from S\$2,200 to S\$2,400. To allow companies more time to adjust, the hike will take place over two phases:
 - the S\$2,300 qualification will kick in on 1 January 2019; and
 - the S\$2,400 qualification will take effect on 1 January 2020.

Commentary

MOM is taking the above measures to enhance the quality of foreign manpower in Singapore while ensuring that locals have fair access to more and better jobs. Despite the tightening of rules on the employment of foreign employees, the Minister for Manpower reiterated that MOM's objective is to strike a fine and dynamic balance such that its manpower policies are open enough to support business growth but tight enough to enhance local employment growth.

In this regard, MOM appears to be committed in maintaining the current workforce composition of 2/3 locals and 1/3 foreigners in Singapore.

Employers should take note of the expanded jobs bank advertisement requirements for non-exempted vacancies and the revised salary qualification(s) for S-Pass. In view of the Government's continued efforts to strengthen the Singaporean core in the workforce under the Fair Consideration Framework, employers should ensure that (i) Singaporeans have been considered fairly before foreigners are hired and (ii) foreign PMETs are of suitable quality and experience. We expect MOM will continue its heightened scrutiny on the intake of foreign manpower in the foreseeable future.

New Tripartite Standards

Background

The Tripartite Standards represent a new tripartite initiative to increase the adoption of fair and progressive workplace practices in Singapore. Each Tripartite Standard specifies a set of verifiable and actionable employment practices in a specific area of employment which employers can publicly adopt. While the adoption of the Tripartite Standards is not mandatory, employers are encouraged to do so if they wish to distinguish themselves from their counterparts as employers of choice.

In our [previous update](#) in December 2017, we examined the first four Tripartite Standards:

- > the Tripartite Standard on the Employment of Term Contract Employees;
- > the Tripartite Standard on Flexible Work Arrangements;
- > the Tripartite Standard on Grievance Handling; and
- > the Tripartite Standard on Recruitment Practices.

This update focuses on the three new Tripartite Standards that were recently launched by the Tripartite Partners:

- > the Tripartite Standard on Procurement of Services from Media Freelancers;
- > the Tripartite Standard on Unpaid Leave for Unexpected Care Needs; and
- > the Tripartite Standard on Contracting with Self-employed Persons.

The Tripartite Standard on Procurement of Services from Media Freelancers

This Tripartite Standard sets out the following specifications that organisations are expected to adopt when engaging the services from media freelancers:

- > A written contract between contracting parties should be entered into and acknowledged before the service is rendered. The contract must include the following terms: (i) names of contracting parties, (ii) nature of services, (iii) payment terms, (iv) variation/termination, (v) what information is to be kept confidential, (vi) settlement of disputes via

- negotiation and mediation first and (vii) ownership of intellectual property (if applicable).
- > Media freelancers must be paid in accordance with the agreed payment period upon payment milestones being met (as stipulated in the written contract). If no payment milestone dates are provided in the contract, the media freelancers must be paid, no later than 45 days upon the company's receipt of the invoice from the media freelancers, subject to completion of agreed deliverables.
 - > If any disputes arise in relation to the provision of services, reasonable efforts must be made to resolve the dispute via negotiation and mediation first. Any agreement reached during negotiation and mediation must be recorded in a written settlement agreement and acknowledged by the parties involved.
 - > Where media freelancers are required to offer their services on location specified by the company, they must be covered in the company's insurance. A suitable liability coverage for the insurance should include:
 - Production Equipment Insurance that covers equipment operated by media freelancers either owned by the company and/or rented to the company;
 - Commercial General Liability that covers against claims for bodily injury or for property damage/liability arising during the production; and
 - Work-related Personal Accident insurance that covers against claims for death, total and permanent disability and medical expenses due to work-related accidents for media freelancers.

The Tripartite Standard on Unpaid Leave for Unexpected Care Needs

This Tripartite Standard recognises that, at times, employees may have greater caregiving needs should their immediate family members (defined as parents (including in-laws), spouse and children) have a medical episode and require more care. While employees should first utilise their statutory leave, employers are encouraged to be more compassionate and provide additional unpaid leave to support employees during such stressful periods.

Employers who adopt this Tripartite Standard are expected to:

- > inform the employees of the types of unpaid leave offered, the process to request for unpaid leave, and expectations on responsible use of leave. Employees can request for more leave if they require.
- > notify the employees on outcomes of leave requests in a timely manner. If they are unable to grant a request, supervisors will then engage with the employees on the reasons and, where possible, discuss suitable alternatives.
- > offer employees up to four weeks of unpaid leave per year if their child is below the age of two and:

- is born (a) preterm, or (b) with congenital conditions, or (c) as part of multiple births; or
 - has any medical conditions, subject to discussion with the employer.
- > offer the employees up to two weeks of unpaid leave per year for the caring of immediate family members who are hospitalised. Leave can be taken during or after hospitalisation.

The Tripartite Standard on Contracting with Self-employed Persons

The Tripartite Workgroup on self-employed persons (“SEPs”) was formed to look into SEPs’ concerns and to formulate practical solutions for their well-being. This Tripartite Standard was one of the recommendations from the Tripartite Workgroup to improve the contracting norms of SEPs.

Employers who adopt this Tripartite Standard are expected to:

- > discuss the terms of products or services to be delivered with SEPs. The terms agreed upon should then be documented in written key terms and provided to SEPs before any products or services are delivered.
- > set out the written key terms clearly and those should include the following:
 - names of contracting parties;
 - parties’ obligations (e.g. nature of services to be provided);
 - terms of payment (amount of payment due for each product or service (or part thereof) and due date of payment);
 - if terms on variation of the agreement are provided for, how either party can vary the key terms or terminate the agreement; and
 - if terms for resolving disputes are provided for, the option for mediation should be made available, without it being a barrier to either party bringing any dispute directly to the Small Claims Tribunals.

Commentary

The Tripartite Standards reflect a unique feature of the Singapore employment landscape – tripartism, and a result of the collaboration among unions, employers and the Government to promote harmonious labour management and boost Singapore’s economic competitiveness. The Tripartite Standards represent the latest tripartite initiative to increase the adoption of fair and progressive workplace practices in Singapore.

The number of organisations that have adopted the Tripartite Standards initially launched by the Tripartite Partners has significantly increased since our last update in December 2017. As of 25 March 2018:

- > the Tripartite Standard on the Employment of Term Contract Employees was adopted by 607 organisations, an increase of **28%**;

- > the Tripartite Standard on Flexible Work Arrangements was adopted by 396 organisations, an increase of **38.9%**;
- > the Tripartite Standard on Grievance Handling was adopted by 369 organisations, an increase of **44.7%**; and
- > the Tripartite Standard on Recruitment Practices was adopted by 345 organisations, an increase of **67.5%**.

As the Tripartite Standards become more prevalent, we expect that more employers will embrace them to enhance their ability to attract and retain talent.

Last but not least, the Tripartite Partners are in active discussions to roll out more Tripartite Standards covering the conduct of retrenchment exercises and age-friendly workplace practices in the future.

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