

EMPLOYMENT LAW UPDATE 2019

A. Introduction

In early 2018, the Ministry of Manpower (**MOM**) announced that it will be reviewing and proposing amendments to the Employment Act (Cap. 91) (the **EA**) and Employment Claims Act 2016 (No. 21 of 2016) to ensure that Singapore’s employment legislation and employment practices remain relevant and calibrated according to the profile of its labour force.

The proposed changes came into force on 1 April 2019 and generally cover the following key areas:

1. Extension of core provisions of the EA to cover all professionals, managers and executives (**PMEs**).
2. Extension of additional protections under Part IV of the EA.
3. Enhancement of existing framework for employment dispute resolution.
4. Enhancement of EA provisions to improve flexibility and responsiveness.

B. Key Amendments

Core provisions extended to cover all PMEs

Before 1 April 2019, PMEs whose salaries exceeded \$4,500 per month were excluded from the definition of an “employee” under the EA and had to rely on negotiated terms in their employment contract. After the amendments to the EA, the definition of “employee” in the EA was expanded to include all PMEs, regardless of their salary.

With the removal of the salary cap, the core provisions under the EA are extended to cover all PMEs. Key provisions under the EA include the following:

Core provisions under the EA to be extended to all PMEs	
Salary payment	Fixed salary period and prescribed timing of salary payments upon termination.
Paid annual leave	Minimum of 7 to 14 days of per year (depending on length of service).
Paid sick leave	14 days per year and up to 60 days if hospitalisation is required (including full reimbursement for medical consultation fees).
Paid public holidays	11 gazetted holidays.
Maternity protection and benefits	Subject to conditions set out in the EA and assuming that the Child Development Co-Savings Act does not apply.

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Employment records	Employers must maintain proper employment records and must issue written key employment terms and itemised pay slips to employees.
Protection against wrongful dismissal	Recourse in the event of wrongful dismissal.
Automatic transfer of employment	Automatic transfer of employment in the event of a business transfer. Continuity of employment and retention of terms and conditions under the existing employment contracts.

Additional protections for vulnerable employees

Part IV of the EA provides additional protections to workers who are perceived to have lower bargaining power in relation to their employers. Such protections include mandated rest days, fixed hours of work, payment of overtime pay. Following the changes to the EA, the salary cap for non-workmen who enjoy Part IV benefits has been increased from \$2,500 to \$2,600 and concurrently, the overtime rate payable for non-workmen has been increased from \$2,250 to \$2,600.

Enhanced employment dispute framework

Firstly, the framework for employment disputes has been streamlined and applies to all employees excluding seafarers, domestic workers and public servants. Previously, wrongful dismissal claims were adjudicated by the MOM while salary-related disputes were adjudicated by the Employment Claims Tribunals (**ECT**). Following the amendments to the EA, both types of disputes can be brought before the ECT.¹ The ECT can hear claims of up to \$20,000, or \$30,000 for employees who go through the Tripartite Mediation Framework or mediation assisted by their recognised unions. In deciding a case, the ECT will take into account the principles and parameters of the guidelines issued by the Tripartite Alliance for Fair & Progressive Employment Practices (**TAFEP**).²

Next, the definition of “dismiss” has been broadened to include forced resignations and constructive dismissals where the employee must be able to demonstrate, on a balance of probabilities, that the employee did not resign voluntarily but was forced to do so due to any conduct or omission, or course of conduct or omissions, engaged in by the employer.

Lastly, the minimum period that a PME should serve the employer before submitting a wrongful dismissal claim has been reduced from 12 months to 6 months. There is no change for non-PMEs who do not have a minimum service period.

¹ Note that the dispute will have to be registered at the Tripartite Alliance for Dispute Management for mediation before they can be brought to the ECT.

² TAFEP is an agency of the Tripartite Alliance Limited (which was jointly set up by the Ministry of Manpower, National Trades Union Congress and Singapore National Employers Federation). TAFEP aims to promote the adoption of fair, responsible and progressive employment practices so as to enable employees to realise their full potential and help employers achieve organisational excellence.

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Other amendments

Other relevant amendments	
Sick leave and medical certificates	Require employers to recognise medical certificates issued by registered doctors and dentists, instead of only those issued by government doctors and dentists or by company-approved doctors and dentists. However, no change to the policy of reimbursing employees for medical consultation fees only for consultation with government doctors or company-approved doctors.
Hospitalisation leave	Clarify that hospitalisation leave covers the following situations: <ul style="list-style-type: none"> (i) the period requiring hospital care and the period of recuperation after being discharged; (ii) quarantine orders as required by law; and (iii) situations where the hospital doctor assesses that the patient is ill enough to require hospitalisation but is not hospitalised.
Authorised deductions	Permit the employer to make salary deductions, subject to the fulfilment of the following two conditions: (i) a written consent by the employee; and (ii) the written consent must be able to be withdrawn by the employee any time.
Retrenchment	Require the employer to provide information regarding a retrenchment exercise (at least 5 employees within a 6-month period) to the Commissioner for Labour.
Working on public holiday	Provide option to employers to give PME's part of a day off instead of an extra day's salary or full day off-in-lieu.

C. Takeaways

- Given the wide-ranging nature of the amendments, employers should consider reviewing their existing employment contracts, policies and handbook in order to ensure that they are fully compliant with the provisions of the EA.
- The removal of the salary cap for PME's may have unforeseen consequences. In particular, section 11 of the EA permits either party to terminate the employment contract by paying salary in lieu of notice. In other words, employees are able to immediately resign if their notice period is bought out. It is therefore imperative that the restrictive covenants contained in the employment contract are reviewed to ensure that they are valid and enforceable.

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- With the transfer of all employment disputes to the ECT, it is important to ensure that the organisation's policies relating to employee grievance handling and termination are aligned with the principles and parameters set out in the TAFEP guidelines as it will be a factor to be taken into account by the ECT when a case comes before it.
- The employment regulatory framework in Singapore is trending towards achieving a more balanced outcome for both employers and employees by providing statutory minimum standards under the EA. Further amendments are expected and organisations are encouraged to regularly review their human resource practices in order to bring them in line with regulatory changes.

Why us?

We offer a seamless multi-disciplinary service to manage risks and provide innovative and practical solutions for your employment needs. We will be pleased to discuss with you the implications of the recent amendments to the Employment Act and how it impacts on your business.

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