

MAJOR CHANGES TO THE SINGAPORE EMPLOYMENT ACT – EXTENDED COVERAGE TO INCLUDE PROFESSIONALS, MANAGERS AND EXECUTIVES

Introduction

On 2 October 2018, the Employment (Amendment) Bill (Amendment Bill) was read for the first time in the Singapore Parliament. The Amendment Bill seeks to introduce major amendments to the Employment Act 2009 (Cap 91) (EA), and is expected to come into force in April 2019.

The changes are clearly geared towards creating a more pro-employee regime in Singapore and will have a very significant impact in the way companies operating in Singapore hire and manage their employees.

We set out below a summary of the key proposed changes to the EA, and the impact of these changes on employers.

Removal of the monthly salary cap

The EA currently only applies to employees who receive a monthly salary of less than S\$4,500 (except for public servants, domestic workers and seafarers, who are not subject to the EA but covered separately due to the nature of their work). This salary cap will be removed. As a result, coverage of the general provisions in the EA (save for Part IV of the EA, which relates to Rest Days, Hours of Work and Other Conditions of Service) will be extended to all employees, regardless of salary.

This is the most significant change in the proposed amendments to the EA. All professionals, managers and executives (both local and foreign), regardless of their salary, will now be afforded the key statutory protections under the EA including those relating to notice provisions, timely payment of salary, wrongful dismissals, holiday and sick leave entitlements, right to preserve existing terms and conditions for employment transfer resulting from a business sale or restructuring, and the dispute resolution mechanism under the EA. Previously, such employees derived their rights purely from contractual arrangements with their employer.

The Amendment Bill also extends the application of Part IV of the EA to employees earning up to S\$2,600 a month. This has been increased from the current threshold of S\$2,500 a month.

Wrongful dismissal

Under the EA, an employee who considers that he/she has been dismissed without just cause or excuse by his/her employer may make representations to

Key issues

- Major changes to the Employment Act are expected to come into force in April 2019
- Application of the Employment Act to be extended to cover all employees including professionals, managers and executives, regardless of their salary
- Provisions relating to wrongful dismissal in the Employment Act to be widened to include involuntary resignations
- Enhancement of benefits relating to sick leave and wellbeing of employees
- Dispute resolution at the Employment Claims Tribunal to be available to all employees

the Ministry of Manpower (MOM) to be reinstated in his/her former employment, provided that he/she has been employed for at least 12 months (amongst certain other conditions).

The proposed amendments will expand the definition of "dismiss" in the EA to include "the resignation of an employee if the employee can show, on a balance of probabilities, that the employee did not resign voluntarily but was forced to do so because of any conduct or omission, or course of conduct or omissions, engaged in by the employer". In addition, an employee may make such representations if he/she has been employed for 6 months, instead of 12 months. The MOM may issue tripartite guidelines on what constitutes wrongful dismissal.

Employers will therefore have to take extra precaution to ensure that their conduct does not result in a "forced resignation" by an employee. In particular, investigations and disciplinary proceedings carried out by the employer against employees must be managed carefully, in order to avoid allegations and claims of wrongful dismissal by the employee.

Deductions from salary

Various amendments will be made to the salary deductions regime.

To enhance the protection to employees, employees' written consent will now be required for the making of deductions in relation to accommodation, amenities and services. This consent can be withdrawn at any time, and no penalty can be imposed by the employer for such withdrawal.

Maternity protection and childcare benefits

Due to the proposed extension of the application of the EA to all employees, all female employees who meet the required service threshold will be entitled to 12 weeks of maternity leave.

Childcare leave for all employees who meet the required service threshold will be entitled to two days of childcare leave per year, if the employee has a child below 7 years of age.

Additional maternity and childcare benefits under the Child Development Co-Savings Act continue to apply, if the child is a Singapore citizen (amongst certain other conditions).

Sick leave

Under the proposed amendments, employees who meet the required service threshold will be entitled to sick leave following the examination and certification of any medical practitioner, rather than the current approach which provides that the medical practitioner must be one who is appointed by the employer.

Further, employees will be entitled to paid hospitalisation leave in relation to admissions to community hospitals. Currently, the EA states that an employee may only be entitled to paid hospitalisation leave if they are admitted to an acute hospital or national centre.

Employers will also be required to reimburse employees the fees of examination by medical practitioners, if the employee is certified to be entitled to paid sick leave following the examination.

Employer's obligation to furnish information on retrenchment of employees

The Amendment Bill states that the Commissioner of Labour may, by notification in the Gazette, require any employer to furnish information on the retrenchment of any employee by the employer.

This signifies that retrenchment in Singapore is likely to be taken more seriously by the MOM, although there are no proposed laws relating to retrenchment benefits.

Dispute resolution mechanism

Currently, employees may submit their claims relating to wrongful dismissal to the MOM, pursuant to the EA. Salary-related claims are to be mediated at the Tripartite Alliance for Dispute Resolution before submission to the Employment Claims Tribunal if they remain unresolved, pursuant to the Employment Claims Act 2016.

Under the proposed amendments, wrongful dismissals will be adjudicated by the Employment Claims Tribunal to provide both employers and employees with a "one-stop service" designed to provide an affordable and expeditious way to resolve disputes. In addition, given that the EA will apply to all employees, the Employment Claims Tribunal will be accessible to all employees.

Wellbeing of employees

The Amendment Bill also seeks to address the wellbeing of employees. The MOM will be empowered to make regulations relating to the conduct of an employer towards an employee to protect such employees from any employment practices that may adversely affect the wellbeing of the employee.

Conclusion

The changes introduced by the Amendment Bill are clearly geared towards creating a more pro-employee regime in Singapore. They will have a very significant impact in the way companies operating in Singapore hire and manage their employees, as employers will have to comply with the EA in their dealings with all employees. This is a sea change from the current regime, where the relationship between an employer and employees not covered by the EA is governed by contract.

Further, given that all employees will now have access to the dispute resolution mechanisms available under the EA and the Employment Claims Act 2016 which are designed to provide an affordable and expeditious way to resolve disputes, employers may face a heightened risk of claims being made against them by their employees, including potentially high-value disputes.

Companies should therefore ensure that they are familiar with these changes in order to update their employment policies, procedures and practices along with employment contracts, in anticipation of the operational date of the amended EA on 1 April 2019. Please contact us if you wish to discuss the upcoming changes to the EA and how we may help you to comply with the new regime.

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