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Increased employee protection and tightened immigration rules – A Singapore update

Singapore News

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As announced by Manpower Minister Lim Swee Say in Parliament on 5 March 2018, various changes in Singapore's employment landscape are on the way. The changes come in response to the increasing number of professionals, managers and executives ("**PME**") and will provide them with a higher and more effective level of protection under Singapore's employment law. Expected to come into effect by 1 April 2019, the amended regulations will improve the protection of *PMEs* by extending the application of the Employment Act ("**EA**") to the *PMEs* earning more than SGD 4,500 per month. Moreover, the salary caps in respect of Part IV of the EA will be increased. As a consequence, more employees will be covered by Part IV of the EA and benefit from its protective provisions ("**Part IV Protection Rules**"). Another change concerns the jurisdiction over wrongful dismissal claims which will be shifted from the Ministry of Manpower ("**MoM**") to the Employment Claims Tribunal ("**ECT**"). In addition, the requirements imposed on foreign talents in respect of work passes will be further tightened in order to promote the growth of Singapore's local workforce.

What are the main changes to the EA?

Currently, the EA covers three categories of employees:

- "**workmen**" (manual workers or blue collar workers);
- "**non-workmen**" (non-manual workers or white collar workers); and
- *PMEs* (managers with, in general, executive and supervisory functions and professionals with tertiary education and specialised knowledge or skills whose employment terms are like those of managers or executives) earning up to SGD 4,500 per month.

In the future, the salary cap for *PMEs* shall be removed. All *PMEs*, irrespective of their salary, will then be covered by the EA and enjoy the core employee benefits under the EA which include, for instance, protection against wrongful dismissal, paid public holidays as well as sick leave, maternity leave and child care leave entitlements.

Aside from the above, the protection provided by the EA in respect of work hours and overtime pay will be extended to more employees. As far as *non-workmen* are concerned, the EA currently provides, amongst other dispositions, protection regarding the maximum amount of work hours, rest days and overtime pay only to those earning a monthly salary of up to SGD 2,500.

The maximum hourly overtime rate ("**MOR**") payable for *non-workmen* is capped at an hourly rate of SGD 11.80. The above mentioned salary cap will soon be increased to SGD 2,600 per month and the MOR to SGD 13.63 (as far as *workmen* are concerned, the existing salary cap of SGD 4,500 will remain unchanged). These amendments will allow a greater percentage of *non-workmen* to benefit from the *Part IV Protection Rules* and ensure that overtime work is fairly paid for.

Moreover, the *ECT* shall soon replace the *MoM* in hearing wrongful dismissal claims. In the present system, salary-related disputes are already adjudicated by the *ECT*. The changes aim at providing employees with a "one-stop-solution", given that wrongful dismissal claims and salary-related disputes often go hand-in-hand.

The combination of the extension of the EA coverage to all *PMEs* with last year's introduction of the *ECT* will enhance the protection of *PMEs*. In the past, *PMEs* not covered by the EA could only resort to alternative dispute resolutions ("**ADR**") or to civil courts. In view of the relatively limited powers of the *ADR* institutions and the high costs involved in court proceedings, employees often refrained from taking any actions. From a practical point of view, this resulted in a gap in legal protection. The amended regulations have now bridged that gap, as the costs involved in *ECT* proceedings remain relatively limited and the tribunal benefits from larger powers.

Further tightening of work pass requirements

The amendments will also adjust the existing work pass regulations.

One of the most notable changes concerns the requirement to advertise vacant positions on Singapore's online portal Jobs Bank (<https://www.jobsbank.gov.sg>) for at least 14 days before being able to apply for a work pass. Currently, companies with 25 or less employees are exempted from this requirement (even though they are still required to consider Singaporeans for available positions in a fair manner). This threshold shall be lowered soon, following which all companies with 10 or more employees will have to advertise job vacancies mandatorily before being able to apply for any type of work pass. In addition, the threshold for another advertising exemption will be amended. At the moment, positions paying SGD 12,000 and above per month do not need to be advertised. In the future, the minimum salary in this respect shall be SGD 15,000. The changes are said to take effect from 1 July 2018.

Furthermore, the minimum salary required for an S-Pass application for foreign workers with mid-level skills shall be increased from SGD 2,200 to SGD 2,400 per month. This increase will occur in two stages. With effect from 1 January 2019, the minimum salary shall be increased to SGD 2,300 and the second increase to SGD 2,400 will come into effect on 1 January 2020.

The above mentioned amendments are in line with the government's plan to further promote the growth of the local workforce. It would not come as a surprise if further adjustments were made in the future.

Conclusion

The greater protection for *PMEs* and the new "one-stop-solution" offered by the *ECT* were necessary steps as they allow to address existing legal gaps. They will allow all *PMEs* to enjoy a basic level of employee protection and enable them to address any employment-related disputes in a cost-effective manner.

Employers will be required to check their existing employment contracts and handbooks. This is particularly necessary as more employees will now benefit from the *Part IV Protection Rules* and the increase of overtime rates.

Generally, it should be highlighted once more that employers are encouraged to develop modern HR strategies that are compliant with the *EA* and the Tripartite Guidelines. The *MoM* will take compliance increasingly into account when assessing work pass applications. The *ECT*, as a cost-effective dispute resolution mechanism, is also likely to be frequently used by employees.

In respect of the updated work pass regulations, smaller SMEs should take note of the lowered threshold for mandatory job advertisements on Jobs Bank. For companies with 10 or more employees, the job advertisement is mandatory before being allowed to apply for an Employment Pass.



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