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Singapore

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General labour market and litigation trends

The employment landscape in Singapore is a unique one, based on the concept of 'tripartism', which is a partnership between employer organisations, trade unions and the Singapore government to promote the adoption of fair and responsible employment practices.

More particularly, the tripartite partners consist of the Ministry of Manpower, the National Trades Union Congress and the Singapore National Employers Federation. Together, they establish tripartite guidelines which supplement labour law in Singapore and which come under the purview of the Tripartite Alliance for Fair Employment Practices ("**TAFEP**").

Aside from tripartite guidelines, the tripartite partners also establish 'tripartite advisories' (which outline progressive workplace practices for employers to adopt) and 'tripartite standards' (which help organisations with good practices distinguish themselves).

The Ministry of Manpower is empowered to take action against errant employers for non-compliance with tripartite guidelines and employment law-related statutes.

As a starting point, the key employment-related statute in Singapore is the Employment Act (Cap. 91) ("**Employment Act**"). The Employment Act set outs basic employee rights and contractual minimums for all employees in Singapore except for:

- Managers or executives with a monthly basic salary of more than $4,500. It is to be noted that the Employment Act is going to be amended come April 2019. From April 2019, it is contemplated that the salary cap of $4,500 would be removed.
- Seafarers.
- Domestic workers.
- Statutory board employees or civil servants.

Under the Employment Act, if a term of the employment contract is less favourable to an employee than those prescribed in the Employment Act, that term shall be illegal, null and void to the extent that it is less favourable. Further, Part IV of the Employment Act extends additional basic employee rights and contractual minimums to more vulnerable classes of employees, namely those who either (i) earn a monthly basic salary not exceeding $2,500 (to be increased to $2,600 come April 2019), or (ii) are 'workmen' who are involved in manual labour and earn a monthly salary not exceeding $4,500 ("**Part IV Employees**"). There is no minimum wage concept implemented in Singapore.

An important facet of labour law in Singapore is the Central Provident Fund ("**CPF**"), which is a comprehensive social security system that enables working Singapore Citizens and Permanent Residents to set aside funds for retirement. Under the CPF scheme, employees and employers make mandatory monthly CPF contributions at rates established by the CPF Board.

Foreign employment is heavily regulated under the Employment of Foreign Manpower Act, with various types of work passes issued to different classes of employees. While CPF contributions are not required for foreign employees, a foreign worker levy and quota may be imposed for certain classes of foreign employees.

As for retirement, while the statutory retirement age is 62, up to 65 in the first instance, all employers must offer re-employment to eligible employees up to the age of 67 and also comply with the Tripartite Guidelines on Re-employment of Older Employees.

Apart from the Employment Act, there are other important sources of labour law, such as those regulating workplace safety, workplace injuries and foreign manpower, found in the following statutes and tripartite guidelines:

- Central Provident Fund Act (Cap. 36).
- Child Development Co-Savings Act (Cap. 38A).
- Employment of Foreign Manpower Act (Cap. 91A).
- Industrial Relations Act (Cap. 136).
- Personal Data Protection Act 2012.
- Retirement and Re-employment Act (Cap. 274A).
- Trade Disputes Act (Cap. 331).
- Trade Unions Act (Cap. 333).
- Workplace Safety and Health Act (Cap. 354A).
- Work Injury Compensation Act (Cap. 354).
- Tripartite Guidelines on Fair Employment Practices.
- Tripartite Guidelines on Issuance of Key Employment Terms in Writing.
- Tripartite Guidelines on Re-employment of Older Employees.
- Tripartite Guidelines on Expanding the Scope of Limited Representation for Executives.
- Tripartite Guidelines on Extending the Scope of Limited Representation for Executives.
- Tripartite Guidelines on Mandatory Retrenchment Notifications.

While employment litigation in Singapore appears to be increasing, mediation for smaller salary-related claims can be requested to be conducted at the Tripartite Alliance for Dispute Management, with an Employment Claims Tribunal set up as a fast and low-cost dispute resolution forum to resolve such salary-related disputes (whether under statute or contract), alongside the Court process. The Ministry of Manpower also typically refers unfair dismissal disputes brought under the Employment Act for mediation with the aim of reaching a fair and amicable settlement.

The Employment Claims Tribunal has jurisdiction to hear claims up to S$20,000 or S$30,000 (via the Tripartite Mediation Framework or mediation assisted by unions recognised by the Industrial Relations Act), although parties are required to attempt mediation with the Tripartite Alliance for Dispute Management beforehand. Under this process, a signed settlement agreement reach by parties may be registered with the Singapore Courts for enforcement purposes. Lawyers are not allowed to represent any party in proceedings before the Employment Claims Tribunal. From April 2019 onwards, the Employment Claims Tribunal will also be able to hear eligible unfair dismissal claims under the Employment Act as well. Since the launch of the Employment Claims Tribunal in April 2016, there were 1,190 claims filed in the first year of its operation and this number is expected to increase.

In terms of employment litigation trends, we expect that when the Employment Act has general application, this may bring an increase in wrongful termination claims. This is because the Employment Act contains a specific provision allowing employees to challenge the termination of their contract. The term ‘dismissal’ includes a situation where the

employment was terminated (whether for misconduct or otherwise) and will be extended from April 2019 onwards to instances where the employee has been 'forced' to resign because of any conduct or omission engaged in by the employer.

Redundancies, business transfers and reorganisations

In Singapore, redundancies, business transfers and reorganisations are generally subject to contract.

There is no statutory process for redundancies under the Employment Act. The Industrial Relations Act also excludes an agreed process for redundancies in collective agreements with trade unions. While the quantum of retrenchment benefits (if any) may be agreed upon in the employment contract or collective agreement, the Employment Act disentitles Part IV Employees who have worked for two years or less from being entitled to retrenchment benefits (if any).

That said, the Tripartite Guidelines for Fair Employment Practices requires (i) the selection of employees for retrenchment to be based on objective criteria, (ii) for the retrenchment exercise to be carried out in consultation with the trade union (if the employer is unionised), or with the employees affected (if the employer is not unionised), and (iii) reference to the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment for alternatives to avoid or minimise the need for retrenchments.

Separately, under the Tripartite Guidelines on Mandatory Retrenchment Notifications, employers who employ at least 10 employees are legally required to notify the Ministry of Manpower if five or more employees are retrenched within any six-month period.

As for business transfers and reorganisations, employees covered by the Employment Act have a legal right to: (i) receive notification of the transfer and related matters to the transfer; (ii) enjoy no break in employment during the transfer; (iii) consult the employer; and (iv) receive the same terms and conditions of employment under the new employer, failing which either party has the right to terminate the employment with notice if new terms cannot be successfully negotiated.

While trade unions may consult with the employer prior to the business transfer, the Industrial Relations Act prevents trade unions from objecting under a collective agreement insofar as the transfer does not entail a detrimental change to the employee's terms of employment. Once the business transfer is completed, the new employer will also have to take over the previous employer's rights, powers, duties and liabilities which are part of any contract or agreement with the employees' trade union before the transfer.

Business protection and restrictive covenants

In Singapore, restrictive covenants are generally *prima facie* unenforceable unless the employer is able to show that it has a legitimate proprietary interest to be protected by the restricted covenant. In addition, the employer must also show such covenants are reasonable. This is a two-step process.

First, the Court will determine what the employer's legitimate interests are (if any). In this regard, Singapore courts have accepted the following as 'protectable legitimate interests' that merit protection in appropriate circumstances:

- trade secrets;
- trade connections; and/or
- workforce stability.

Typically, the protectable legitimate interest is either stated in the employment agreement or inferred by the Court based on the surrounding circumstances (if unstated). The Court will also consider the position and seniority of the particular employee in question and may give greater weight to the employer's interests depending on the employee's role in the organisation.

Second, the Court will then determine whether the covenant, as drafted, does not go further than is necessary to protect such interests. In this regard, the scope, area and duration of restraint should be co-extensive with the protection of the legitimate interests of the employer, and the clause must be reasonable both in the interests of the parties concerned, and in the interests of the public.

To determine these two points, the Court will generally consider the duration, subject matter scope, and geographical range of the restrictive covenants, as well as the existence of confidentiality clauses, negotiations/additional payments between parties and public interest considerations. No one factor is decisive, and, in each case, the Court will examine all the circumstances as a whole and decide accordingly.

As for confidentiality obligations, duties of confidence may be express or implied, depending on the circumstances. While there is no general duty of good faith presently recognised under Singapore law, it is generally implied that an employee will serve his employer with good faith and fidelity during the employment.

Discrimination protection

Article 12 of the Constitution of the Republic of Singapore guarantees equal protection against discrimination towards Singapore citizens on the ground of religion, race, descent or place of birth, but does not invalidate employment restrictions connected with the religious affairs or of religious institutions. Further protections against discrimination are found in the Sedition Act (Cap. 290) and to a lesser extent, in the Protection against Harassment Act (Cap. 256A). Elsewhere, age-related discrimination is prohibited under the Retirement and Re-employment Act, while pregnant mothers cannot be dismissed without sufficient cause during their pregnancy under the Employment Act or the Child Development Co-Savings Act.

Further, under the Tripartite Guidelines for Fair Employment Practices, all employers must implement fair employment practices that are open, merit-based and non-discriminatory. Selection criteria should be stated clearly in job advertisements and be primarily based on qualifications, skills, knowledge and experience. There are no statutory equal pay requirements in Singapore.

While there is no office of the ombudsman in Singapore, the Ministry of Manpower may take action against employers who do not comply with the Tripartite Guidelines for Fair Employment Practices, which may result in curtailment of work pass privileges of employers. Workplace discrimination or harassment, including discriminatory job advertisements or practices, may also be reported directly to the Tripartite Alliance for Fair & Progressive Employment Practices.

For completeness, the Ministry of Manpower implements a 'Fair Consideration Framework' ("**FCF**"), which requires employers to advertise job vacancies on an online jobs bank before it can apply to the Ministry of Manpower for employment passes. The purpose of the FCF is to set out clear expectations for companies to consider Singaporeans fairly for job opportunities and is part of the Singapore Government's overall effort to strengthen the Singaporean core in the workforce.

Generally, this advertisement must be made at least 14 calendar days in advance, be open to Singaporeans and comply with the Tripartite Guidelines for Fair Employment Practices. If changes are made to the advertisement, the advertisement must be further extended for an additional 14 calendar days. An employer may be exempted from the FCF in limited scenarios, such as when the employer has fewer than 10 employees or when the proposed job pays a fixed monthly salary of at least S$15,000. In line with the FCF, employers with a disproportionately low concentration of Singaporeans at the professional, executive and managerial level compared to industry peers, or who are repeatedly subject to discrimination-based complaints may also be called upon to furnish information to the Ministry of Manpower.

Protection against dismissal

Under the Tripartite Guidelines on Fair Employment Practices, a decision to dismiss an employee should be based on documented poor performance or misconduct. An inquiry should be conducted to allow the employee to present his or her case before any decision is made with regard to dismissing the employee.

If an employee covered under the Employment Act considers that he has been dismissed without just cause or excuse by his employer, he may, within one month of the dismissal, make representations in writing to the Minister to be reinstated. If the employee is found to have been dismissed without just cause or excuse, the employer may be directed to reinstate the employee and pay all wages up to the time of reinstatement, or pay a determined amount of wages as compensation. From April 2019 onwards, unfair dismissal disputes under the Employment Act will be dealt with by the Employment Claims Tribunal instead, with the employer bearing the burden of proven that the employee was dismissed with just cause or excuse.

In addition, the current definition of 'dismissal' under the Employment Act will be widened in April 2019 – this presently refers to the termination of a contract of service by an employer, with or without notice and whether for misconduct or otherwise. It will be expanded to include resignations if the employee can show, on a balance of probabilities, that such resignation was not voluntarily but was 'forced' because of any conduct or omission engaged in by the employer. On this issue, there will likely be a new set of Tripartite Guidelines released in due course regarding wrongful dismissal and what constitutes the same.

Employed mothers also receive specific protections against dismissal, and cannot be dismissed while they are away on maternity leave. From April 2019 onwards, if a pregnant employee protected under the Employment Act or Child Development Co-Savings Act is dismissed by her employer for 'sufficient cause' and disputes this, she will have the right to lodge a claim with the Employment Claims Tribunal to challenge her dismissal and seek either reinstatement or compensation, with the employer bearing the burden of proving that she was dismissed with sufficient cause.

Statutory employment protection rights (such as notice entitlements, whistleblowing, holiday, parental and maternity leave, etc.)

Generally, the majority of the statutory employment protection rights in Singapore may be found in the Employment Act. For those employees covered under the Employment Act (including Part IV Employees), these protections include the following:

- **Notice period**: The minimum statutory notice period is one day for employees who have worked for less than 26 weeks and up to four weeks' notice for employees who have worked for five years or more.

- **Right to terminate by paying salary *in lieu* of notice**: Employees also have the right to terminate their employment by paying salary *in lieu* of a notice period, as well as a right to have the same notice period for both employer and employee.
- **Salary deductions**: Employers are prohibited from making deductions from their employee's salary except in specific scenarios set out under the Employment Act.
- **Holidays**: Employees are entitled to paid holidays on 11 gazetted public holidays. If the public holiday falls on a rest day, the next working day will be a paid holiday. If the public holiday falls on a day when the employee is not required to work, the employer must either pay the employee or give the employee a day off in substitution.
- **Sick leave**: Employees who have worked for at least three months are entitled to five days of paid sick leave and up to 15 days of paid hospitalisation leave, which may be reduced by employee's consumed paid sick leave for that year. This gradually increases up to 14 days of paid sick leave and up to 60 days of paid hospitalisation leave after the employee has worked for at least six months. Employers are also generally required to bear the medical consultation fees for such employees who are placed on sick leave.

As for parental leave and rights, these protections are provided for under the Employment Act or the Child Development Co-Savings Act depending on whether the child is a Singapore citizen, and include the following:

- **Maternity leave**: Maternity leave is conferred on mothers who have worked for at least three continuous months prior to the day of her confinement, pursuant to the Employment Act or the Child Development Co-Savings Act.
- **Parents of Singapore citizens**: Maternity, paternity, government-paid childcare leave, unpaid infant-care leave and adoption leave is provided under the Child Development Co-Savings Act.
    - Eligible mothers are entitled to 16 weeks of paid maternity leave for their first two children, which is equally borne by the employer and the Singapore Government. For their third and subsequent child, mothers receive 16 weeks of paid maternity leave which is fully paid for by the Singapore Government. Up to four weeks of such maternity leave may be shared with eligible fathers.
    - Eligible fathers are separately entitled to two weeks of government-paid paternity leave, which also applies to adopted children.
    - In addition, eligible parents are also entitled to six days of government-paid child-care leave and six days of unpaid infant-care leave under the Child Development Co-Savings Act.
    - Eligible mothers of adopted children are entitled to 12 weeks of adoption leave, which is partially government-paid. Up to four weeks of such adoption leave may be shared with eligible fathers.
- **Parents of non-Singapore citizens**: Maternity leave is provided under the Employment Act. Eligible mothers are entitled to 12 weeks of maternity leave, of which the first 8 weeks are employer-paid for her first two children, and the last four weeks are unpaid. As for child-care leave, parents receive two days of such leave under the Employment Act.

Part IV Employees receive additional protection under the Employment Act, including the following:

- **Rest days**: Part IV Employees generally cannot be required to work more than six consecutive hours without a mandatory break and are entitled to at least a 45-minute break for meals if they are required to work for up to eight hours. They must also be provided with one rest day per week.

- **Working hours**: Contractual working hours of Part IV Employees are determined by contract and commonly range from eight to nine hours a day, depending on the length of the workweek. However, working hours are ultimately subject to a daily cap of 12 hours a day or limits over a continuous two-week or three-week period.
- **Overtime**: Overtime pay is mandatory and is payable at 1.5 times the hourly basic rate of pay, with Part IV Employees allowed to work up to 72 overtime hours monthly unless an exemption has been granted by the Ministry of Manpower. Overtime is also payable for work done on rest days, at either 1.5 times of 2 times the hourly basic rate of pay, depending on the work scenario.
- **Annual leave**: Under the Employment Act, Part IV employees who have worked for at least three months are entitled to a minimum of seven days of annual leave for their first year of service, which increases proportionately up to a minimum of 14 days in their eighth and subsequent years of service. We would highlight that the entitlement to annual leave would be moved from Part IV come April 2019, and would therefore be of general application to all employees covered under the Employment Act.

Worker consultation, trade union and industrial action

In Singapore, trade union activities and industrial action are regulated under the Trade Unions Act, Industrial Relations Act and Criminal Law (Temporary Provisions) Act (Cap. 67) ("**CLTPA**").

Trade union membership generally consists of ordinary members and general members. Ordinary members are typically those whom the trade union is granted recognition over during the collective bargaining process. Typically, the trade union will then represent its ordinary members in wage negotiations and workplace issues, whereas general members generally do not enjoy such representation rights.

In order to represent its members in collective bargaining, a trade union must first be accorded recognition by the employer under the Industrial Relations (Recognition of a Trade Union of Employees) Regulations. Once recognition has been accorded by the employer over a specified class of employees, the employer and trade union will then have to commence negotiations to enter into a collective agreement in respect of that class of employees, which is valid for a minimum period of two years and a maximum period of three years. However, the Industrial Relations Act excludes certain matters from negotiation such as such as promotion, transfer, employment, termination by reason of redundancy, dismissal and reinstatement of an employee or assignment of duties.

In the situation where the employer has only accorded recognition to a trade union over its non-executive employees or limited classes of executive employees only (i.e. those employed in a managerial or an executive position), excluded executive employees may be individually represented by the union for a limited set of matters, including dismissal, negotiating the retrenchment benefit quantum and disputes relating to a breach of contract.

That said, union representation does not extend to all 'executive employees', as executive employees who hold senior management positions, and exercise decision-making powers on employment and termination, are excluded from the recognition process under the Industrial Relations Act.

In the event of a trade dispute, such disputes are first to be resolved through a conciliatory process with the assistance of the Ministry of Manpower, and subsequently to the Industrial Arbitration Court for arbitration if the dispute remains unsolved.

While strikes or lock-outs are a rarity in Singapore, such activities are not prohibited under Singapore law. However, all strikes or lock-outs must adhere to the provisions of the CLTPA. Under the CLTPA, it is illegal to strike or lock-out employees in respect of essential services involving water, gas or electricity services. For non-essential services, the CLTPA requires 14 days' advance notice to be given to the employer/employees of any such intended action and further notified to the Commission of Labour within three days, failing which the strike or lock-out will be deemed illegal.

Employee privacy

Employee privacy is not specifically protected under statute or common law in Singapore, but an employee's personal data receives some protection under the Personal Data Protection Act 2012 ("**PDPA**"). The PDPA is a consent-based regime for the collection, use and/or disclosure of an individual's personal data in Singapore.

Employers should generally obtain prior consent and inform employees of the purpose for the collection, use and disclosure of their personal data. This is typically achieved by inserting the appropriate term in the employment contract or establishing a relevant data protection policy. While exceptions for employers could apply in limited circumstances, such as for evaluative purposes (e.g. a job reference or performance records) or for managing or terminating the employment relationship, these are nonetheless restricted to what a reasonable person would consider appropriate in the circumstances.

Where workplace surveillance is concerned, in order to comply with the PDPA, employers who utilise Closed-Circuit Television Cameras ("**CCTVs**") should indicate in an accessible notice that CCTVs are operating on the premises, and state the purpose of the CCTVs (e.g. security). In addition, if the CCTVs deployed record both video and audio, employers should further indicate that both video and audio recordings are in place. However, they do not need to notify individuals of the precise location of each CCTV camera.

As for job applicants, while employers are not required to obtain the consent of job applicants when collecting their personal data which is publicly available or his/her business contact information, such job applicants have the right to obtain access and request corrections to their personal data, as well as to submit a request to be informed of the ways their personal data was used in the past year. As a means of conducting background checks on such applicants, some employers occasionally request job applicants to obtain a Certificate of Clearance from the Singapore Police Force at the pre-employment stage.

For completeness, while employers may potentially rely on the concept of 'deemed consent' under the PDPA (e.g. when the employee voluntarily provides his personal data for a purpose), the onus is on the employer involved to ensure that the employee was aware of the purpose for which his personal data would be collected, used or disclosed.

Separately, employers in Singapore typically do not require their employees to undergo mandatory health checks unless this is a legal requirement under workplace safety regulations. In this regard, employers have a legal duty to send their employees engaged in specific hazardous occupations for pre-placement and periodic medical examinations (depending on the type of hazardous exposure).

Other recent developments in the field of employment and labour law

From April 2019, the Employment Act will be extended in scope to include all employees, including all professionals, managers and executives regardless of their salary. This would be the widest expansion of the Employment Act in its history.

However, the protections under Part IV of the Employment Act remain available only for a narrower section of employees (i.e. the Part IV Employees). That said, the number of eligible Part IV Employees in Singapore will be increased, as the eligible salary threshold will be increased from $2,500 to $2,600.

Dispute resolution will also be better streamlined from April 2019 onwards, with all unfair dismissal claims initiated pursuant to the Employment Act (which is presently adjudicated by the Ministry of Manpower) and the Child Development Co-Savings Act will be transferred to the Employment Claims Tribunal, as a 'one-stop' solution for the hearing of both salary and unfair dismissals at the same time. We expect employees would still be able to elect whether they want their claims determined by the Employment Claims Tribunal or through the civil courts.

Retrenchment is also expected to receive heavier scrutiny, as there are forthcoming legislative amendments which will require employers to furnish specific information to the Commissioner of Labour on the retrenchment of any employee.

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