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STRAITS LAW



Singapore

Employer Guide

2024

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INTRODUCTION

With the upcoming introduction of the Workplace Fairness Legislation (WFL) in 2024, Singapore's employment law landscape is set to move forward, enhancing employees' protection against workplace discrimination, providing employers with increased clarity when addressing discriminatory practices, while strengthening fair employment practices and outcomes for Singapore's future workforce.

Despite the falling number of workplace discrimination complaints over the years, 300 discrimination complaint reports are still being received by the Ministry of Manpower (MOM) each year. Employees entering the workforce can expect the new legislation to provide protection against these most commonly reported grounds of discrimination.

Apart from employment legislation, the MOM has also recently implemented the Complementarity Assessment Framework (COMPASS). COMPASS will increase the transparency of employment pass applications and, at the same time, also ensures the quality of foreign manpower into Singapore. Employers will be provided with improved guidance to identify individuals that are capable, talented, and diverse. Through these changes, employers will benefit from a more productive and engaged workforce and be able to attract and retain top talent, while still having access to a complementary foreign workforce, ensuring stronger business outcomes in the years ahead.

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EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers must ensure employees who are not Singapore citizens or permanent residents have a valid work pass or requisite approvals allowing them to work in Singapore.

One of the more common work passes is the Employment Pass (EP), which allows foreign professionals, managers, and executives (PMETs) to work in Singapore. Since 1 September 2022, new EP applicants who are not employed in the financial services sector have needed to earn a fixed monthly salary of at least S\$5,000, while new EP applicants in the financial services sector will need to earn a fixed monthly salary of at least S\$5,500. The minimum qualifying salary increases progressively with age, as older, more experienced applicants are expected to command higher salaries to qualify, in line with their qualifications, work experience, and skill sets. Note that the aforementioned minimum qualifying salaries applies to renewal EP applications from 1 September 2023.

Employers must apply for an EP on behalf of a job candidate. Any change of employer will require a new application, except in limited circumstances. Employers applying for an EP from 1 September 2023 have needed to ensure that their EP candidates are awarded at least 40 points under COMPASS.

Other work passes and approvals include:

- The Overseas Networks & Expertise Pass (ONE Pass) for top talent in business, arts and culture, and sports, as well as academia and research.
- The Tech.Pass for established technology entrepreneurs, leaders or technical experts from around world that satisfy at least two of the following conditions: (i) have a last drawn fixed monthly salary (in the last year) of at least S\$22,500, (ii) have at least five cumulative years of experience in a leading role in a technology company with a valuation of at least US\$500 million or at least US\$30 million funding raised, or (iii) have at least five cumulative years of experience in a leading role in the development of a technology product that has at least 100,000 monthly active users or at least US\$100 million in annual revenue.
- The Personalized Employment Pass for high-earning existing EP holders (earning more than S\$12,000 per month) or overseas foreign professionals (with a fixed monthly salary of at least S\$18,000 last drawn no more than six months prior to application). From 1 September 2023, the fixed monthly salary criteria for both existing EP holders and overseas foreign professionals was raised to S\$22,500.
- The EntrePass (for eligible foreign entrepreneurs wanting to start and operate a new business in Singapore).
- The S Pass (for midlevel skilled staff not employed in the financial services sector who earn a fixed monthly salary of at least S\$3,150 or for midlevel skilled staff employed in the financial services sector who earn a fixed monthly salary of at least S\$3,650 and meet certain assessment criteria). Note that the aforementioned minimum qualifying salaries apply to new applications from 1 September 2023 and will apply to renewal S Pass applications from 1 September 2024.
- The Work Permit (for semiskilled foreign workers in the construction, manufacturing, marine shipyard, process, or services sector).
- The Letter of Consent (for eligible spouses or unmarried children under the age of 21 of Singapore citizens or Singapore permanent residents who hold a Long-Term Visit Pass/Long-Term Visit Pass Plus issued by the Immigration and Checkpoints Authority).

Reference/Background Checks

An employer is generally permitted to contact a prospective employee's referees and previous employers to gather and verify information. It is also common to expressly provide for this right in an employment agreement. However, employers owe a duty of care to both former and present employees to prepare a reference that is true and accurate. The reference, taken as a whole, must not be unfair or misleading.

Verification Proof of Employees' Qualifications

From 1 September 2023, Employers submitting EP applications have been required to provide verification proof on the authenticity of their applicants' educational qualifications for diploma-level and above qualifications. The MOM has selected 12 background screening companies to provide services for employers to verify educational qualifications. Current details of these companies can be found on the MOM website.

Apart from background screening companies, verification proof can also be obtained through online verification portals of the relevant countries' government or educational institutions, or digital certificates issued by educational institutions and verified through the OpenCerts portal.

Employers who are renewing EPs for their employees will be required to submit verification proof from 1 September 2024.

COMPASS

Under COMPASS, the MOM will assess each EP candidate on four foundational criteria and two bonus criteria (criteria). The four foundational criteria include: C1. salary, C2. qualification, C3. diversity, and C4. support for local employment, while the two bonus criteria include: C5. skills (that are not readily available in Singapore) and C6. strategic economic priorities (which create jobs for Singaporeans).

The assessment of each criteria and point scoring systems are as follows:

- If an assessment exceeds the MOM's expectations, 20 points will be awarded for that criteria.
- If an assessment meets the MOM's expectations, 10 points will be awarded.
- However, if an assessment fails to meet the MOM's expectations, 0 points will be awarded.

C1. Salary

All EP candidates (those not in the financial sector) must meet the qualifying fixed monthly salary of S\$5,000, while those EP candidates (those from the financial sector) must meet the qualifying fixed monthly salary of S\$5,500.

For an EP candidate to be awarded points under this criteria, the candidate's fixed monthly salary should be equal or greater than the 65th percentile of that sector's PMETs salaries in Singapore. If the EP candidate's salary is equal or greater than the 90th percentile of that sector's PMETs salaries in Singapore, the candidate would be awarded 20 points under this criteria.

C2. Qualification

In line with the new verification proof requirements, EP candidates who have verification proof of a bachelor's degree and above qualifications from a top-tier institution will be awarded 20 points under this criteria. Top-tier institutions would include:

- The top 100 universities based on QS World University Rankings and other highly reputed universities in Asia.
- Singapore's autonomous universities.

- Institutions that are highly recognized in a particular field and endorsed by a relevant agency.

For EP candidates that possess degree-equivalent qualifications with the relevant verification proof, MOM will award these candidates 10 points under COMPASS. Degree-equivalent qualifications refer to:

- Foreign qualifications that are assessed to be comparable to a bachelor's degree in the United Kingdom's system. (This is determined with reference to international recognition bodies, such as the UK National Information Centre for recognition and evaluation of international qualifications and skills.)
- Professional qualifications that are well-recognized by the industry and endorsed by a relevant sector agency.

EP candidates that do not possess degree-equivalent qualifications or verification proof of their qualifications will not be awarded points under this criteria.

C3. Diversity

COMPASS also awards points where the EP candidate's nationality forms a small share of the firm's PMET employees. If the employer has fewer than 25 PMET employees, the EP candidate will be awarded 10 points by default. For employers with more than 25 PMET employees, the EP candidate will be awarded points based on the share of the candidate's nationality among the nationality of the PMET employees.

- If the candidate's nationality forms less than 5% of the total share of PMETs' nationalities, 20 points will be awarded,
- If the candidate's nationality forms between 5% and 25% of the total share of PMETs' nationalities, 10 points will be awarded.
- If the candidate's nationality forms more than 25% of the total share of PMETs' nationalities, 0 points will be awarded.

The EP candidate's nationality is assessed based on the nationality indicated on their passport.

C4. Support for Local Employment

The MOM will also award points to EP candidates if their employer (or their organization) creates opportunities for the local workforce and builds complementary teams with both local and foreign professionals.

Employers applying for EPs for their prospective employees with less than 25 PMETs in their employ would be granted 10 points by default. If more than 25 PMETs have been employed, the points awarded will depend on the employer's local PMET share relative to the relevant sector.

- If the organization's local PMET share relative to its sector is 50th percentile and above, 20 points will be awarded to the EP candidate for that application.
- If the organization's local PMET share relative to its sector is between the 20th and 50th percentile, 10 points will be awarded to the EP candidate for that application.
- If the organization's local PMET share relative to its sector is below the 20th percentile, 0 points will be awarded to the EP candidate for that application.

C5. Skills

EP candidates who possess highly specialized skills, which are in shortage in the local workforce, will also be awarded points under COMPASS. The determination of whether a highly specialized skill is in

shortage is based on the Shortage Occupation List (SOL) created by the MOM and the Ministry of Trade and Industry.

For the EP candidate to receive 20 points under this criteria, (i) the candidate's occupation should fall within the SOL, and (ii) the candidate's nationality should form less than one-third of the total (PMETs) nationalities in their organization.

If the EP candidate's nationality forms more than one-third of the total (PMETs) nationalities in their organization, but the candidate's occupation falls within the SOL, only 10 points will be awarded under COMPASS.

If the EP candidate's occupation does not fall within the SOL under this criteria, 0 points will be awarded.

C6. Strategic Economic Priorities

COMPASS recognizes firms that are undertaking ambitious investment, innovation, and internationalization activities in partnership with economic agencies or have been endorsed by the National Trades Union Congress as a strong partner on workforce transformation. EP applications of these firms will be awarded 10 points under this criteria. Such firms should also have the scale or potential to provide good jobs for locals.

To qualify, firms must be participants of selected economic programs run by the government agencies in Singapore or meet the specific assessment criteria and show commitment to strengthening Singapore's local workforce.

Exemptions From COMPASS

Candidates who (i) earn a fixed monthly salary of at least S\$22,500, (ii) are applying as an overseas intra-corporate transferee, or (iii) filling a role on a short-term basis of one month or less, are exempted from COMPASS.

COMPASS is summarized in the table below.

INDIVIDUAL ATTRIBUTES		EMPLOYER/FIRM'S ATTRIBUTES		
FOUNDATIONAL CRITERIA	C1. Salary Assessed relative to local PMET salary norms for sector	Points awarded	C3. Diversity Share of candidate's nationality among firm's PMETs	Points awarded
	90th percentile and above	20	Less than 5%	20
	65th percentile to 89th percentile	10	5% to 24%	10
	Below 65th percentile	0	25% or more	0
	C2. Qualifications Based on candidate's qualifications	Points awarded	C4. Support for Local Employment Firm's local PMET share relative to its sector	Points awarded
	Top-tier institution	20	50th percentile and above	20
	Degree-equivalent qualification	10	20th to 49th percentile	10
	No degree-equivalent qualification	0	Below 20th percentile	0
	C5. Skills Jobs with skills shortages	Points awarded	C6. Strategic Economic Priorities Partnership with government on workforce transformation activities	Points awarded
BONUS CRITERIA	Job on the SOL Share of candidate's nationality among firm's PMETs is less than one-third	20	Firm meets specific assessment criteria on innovation or internationalization activities	10 (max)
	Share of candidate's nationality among the firm's PMETs is more than one-third	10		

II. TYPES OF RELATIONSHIPS

Employee

Individuals can be employed on a full-time or part-time basis, on a fixed-term or ongoing contract, or on a casual basis.

Effective from 1 April 2019, the Employment Act 1968 (the Act) applies to all employees regardless of their salary and position who are under a contract of service except:

- Any seafarer.
- Any domestic worker.

- Any person belonging to any other class of persons who the minister may, from time to time by notification in the government gazette, declare not to be an employee for the purposes of the Act, which currently includes any person employed by a statutory board or the government.

Independent Contractor

Businesses often engage independent contractors on a fee-for-service basis. A business will usually engage the individual by means of a service agreement with the individual or with the individual's business.

Workmen

A “workman” includes the following classes of persons:

- Any person, skilled or unskilled, who has entered into a contract of service with an employer to which he or she is engaged in manual labor, including any artisan or apprentice, but excluding any seafarer or domestic worker.
- Any person, other than clerical staff, employed in the operation or maintenance of mechanically propelled vehicles used for the transport of passengers for hire or for commercial purposes.
- Any person employed partly for manual labor and partly for the purpose of supervising any workman in and throughout the performance of his or her work.
- Any person specified in the first schedule to the Act.
- Any person who the minister may, by notification in the government gazette, declare to be a workman for the purposes of the Act.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Employers will be required to issue Key Employment Terms (KETs) and itemized pay slips to their employees (covered by the Act). These KETs must be included as part of an employee's employment contract.

KETs must include items such as:

- Full name of employer.
- Employer's trade name, if different from its full name.
- Full name of employee.
- Job title, main duties, and responsibilities.
- Start date of employment.
- Duration of employment (if employee is on a fixed-term contract).
- Working arrangements, such as daily working hours, number of working days a week, and rest days.
- Salary period.
- Basic salary, fixed allowances, and fixed deductions.
- Overtime payment period (if applicable).
- Overtime rate of pay (if applicable).
- Other salary-related components, such as bonuses and incentives.
- Leave entitlement (e.g., annual leave, sick leave, maternity leave, child care leave, paternity leave, adoption leave, shared parental leave, infant care leave)
- Other medical benefits (e.g., insurance, medical, dental benefits).
- Probation period (if applicable).
- Notice period.

- Place of work, if the work location is different from the employer's address (optional, but recommended to include).

Employers must also issue itemized pay slips to all their employees covered by the Act at least once a month. Employers may issue these itemized pay slips electronically. Employers must also keep a record of all pay slips issued.

Policies

Policies that should be in place include those relating to discrimination, harassment, bullying, and workplace health and safety.

IV. ENTITLEMENTS

Minimum Employment Rights

The Act provides for certain minimum employment rights. A contract of service that contains less favorable terms than those prescribed by the Act is illegal, null, and void to the extent that it is less favorable. Some of these rights are contained in Part 4 of the Act, which only applies to:

- Workmen earning not more than S\$4,500 basic monthly salary.
- Other employees (other than workmen) earning less than S\$2,600 basic monthly salary.

(Note: Basic salary excludes overtime, bonus, annual wage supplement, productivity incentive payment, reimbursement for special expenses, and any allowances.)

Hours of Work

There are maximum hours of work provided for employees covered by Part 4 of the Act. Generally, an employee is not allowed to work more than 12 hours a day. However, an employer can ask an employee to work more than 12 hours a day in the following circumstances:

- An accident or threat of accident.
- Work that is essential to the life of the community, national defense, or security.
- Urgent work to be done to machinery or the plant.
- An interruption of work that was impossible to foresee.

If an employer requires employees to work more than 12 hours a day (up to a maximum of 14 hours), they must apply for an overtime exemption. While an employee should only work up to 72 overtime hours in a month (as stipulated by the Act), employers can apply for an exemption if they require employees to work more than 72 hours of overtime in a month. Certain work activities, however, will not be granted any such exemption.

Annual Leave

An individual employed for a period of three months or more is statutorily entitled to paid annual leave of seven days in the first 12 months of continuous service with the same employer and an additional one day of paid annual leave for every subsequent 12 months of continuous service with the same employer (up to a maximum of 14 days of leave). Such leave is in addition to the rest days, holidays, and sick leave to which the employee is entitled and is calculated on a pro rata basis.

An individual employed for a period of not less than three months, but who has not completed 12 months of continuous service, is entitled to paid annual leave in proportion to the number of completed months of service.

Maternity Protection and Benefits/Child Care Leave for Parents

Maternity leave, adoption leave, child care leave, paternity leave, shared parental leave, and infant care leave are provided for either under the Act or under the Child Development Co-Savings Act 2001 (CDCSA). For all the leave entitlements set out below (with the exception of shared parental leave), the individual must be employed for a minimum of three continuous months or self-employed for at least three months to be eligible.

In general, a female individual is entitled to paid maternity leave, with such paid maternity leave period being either eight or 16 weeks (depending on whether the child is a Singapore citizen and certain other criteria), which must be taken within 12 months of the child's date of birth (inclusive of the date of birth). Where the female individual is only entitled to eight weeks of paid maternity leave, she is entitled to claim a further four weeks of unpaid maternity leave. Employers cannot contract out of this entitlement.

An individual who has a child below the age of seven is entitled to child care leave of six days per annum if the child is a Singapore citizen and two days of child care leave per annum where the child is not a Singapore citizen. In total, an individual is only entitled to 42 days of child care leave in respect to any qualifying child.

In general, a male individual is entitled to two weeks paid paternity leave if the child is a Singapore citizen and the male is or has been lawfully married to the child's mother between conception and birth. Note that the aforementioned paid paternity leave will be increased to four weeks for children born on or after 1 January 2024. Adoptive fathers who adopt a Singapore citizen child will also be entitled to two weeks of paid paternity leave.

An individual who has a Singapore citizen child below the age of two years old is entitled to six days a year of unpaid infant care leave, over and above any child care leave entitlement he or she may have.

Subject to eligibility criteria, a female individual may be entitled to 12 weeks of paid adoption leave. A working father can apply to share up to four weeks of his wife's maternity or adoption leave entitlement, subject to his wife's agreement. The wife's maternity leave will then be reduced by the corresponding amount. To be able to share parental leave, the child must be a Singapore citizen, the father must be lawfully married to the child's mother, and the child's mother must qualify for maternity leave.

Sick Leave

Individuals employed for a period of three months or more are entitled to paid sick leave. Employees who have worked for a period of more than six months are entitled to the full entitlement of paid sick leave, including:

- If no hospitalization is necessary, 14 days in each year.
- If hospitalization is necessary, the lesser of the following:
 - Sixty days in each year.
 - The aggregate of 14 days plus the number of days they are hospitalized.

A medical certificate from a medical practitioner is required in order to claim the entitlement. Failure to obtain such a certificate or failure to inform, or attempt to inform, the employer of such sick leave within 48 hours is deemed to be an absence from work without permission and without reasonable excuse.

Medical Insurance

Mandatory medical insurance for Work Permit (including migrant domestic workers) and S Pass holders was enhanced from 1 July 2023 through a co-payment scheme. The insured medical

expenses for these workers increased from S\$15,000 to S\$60,000. Insurers pay 100% up to S\$15,000 and co-pay 75% up to S\$60,000 of medical expenses for these workers.

Note that from 1 July 2025, other enhancements such as the standardization of allowable exclusion clauses, age-differentiated premiums, and direct reimbursement by insurers will be applied to the mandatory medical insurance for these workers.

- **Standardization of allowable exclusion clauses**
Insurers can only exclude certain medical conditions or treatments from their medical insurance coverage for Work Permit and S Pass holders.
- **Age-differentiated premiums for those age 50 and above**
Work Permit and S Pass holders that are below the age of 50 will have more affordable insurance premiums.
- **Direct reimbursement by insurers**
The medical expenses of Work Permit and S Pass holders will be paid by the medical insurers to the hospital directly. Employers will not need to pay their workers' medical expenses upfront before seeking reimbursement from insurers.

Public Holidays

Employees are entitled to 11 paid public holidays a year. Employees that are required to work on a public holiday should be entitled to an additional day's salary or receive another day off, in lieu of that public holiday.

Notice of Termination

Either party to a contract of service may, at any time, give to the other party notice of their intention to terminate the contract.

The length of such notice is the same for both employer and employee and is determined by the relevant contractual provision or, in the absence of such provision, the following minimum notice:

- One day's notice if employed for less than 26 weeks.
- One week's notice if employed for 26 weeks or more, but less than two years.
- Two weeks' notice if employed for two years or more, but less than five years.
- Four weeks' notice if employed for five years or more.

Both parties must have the option to pay salary in lieu of serving out the notice period.

Discretionary Benefits

Bonuses

Employers may choose to incentivize employees by including bonus provisions in employment contracts. Bonuses are usually dependent on individual department or business performance and are usually paid at the employer's discretion.

Paid Parental Leave

Some employers offer paid parental leave schemes that either supplement the income provided by the legislated parental leave pay scheme or offer additional periods of paid parental leave.

TERMINATION OF EMPLOYMENT

I. GROUNDS

Termination can be brought about by mutual agreement, upon expiry of a fixed-term contract, termination by the employer with or without notice, or termination (or resignation) by the employee.

II. MINIMUM ENTITLEMENTS

Notice

Under the Act, when either party terminates the employment for reasons other than a willful breach of a condition of service by the other, they must provide the requisite notice of termination (see “Notice of Termination” section above).

Notice does not need to be provided when a party terminates the contract for willful breach of a condition of the contract of service by the other party.

Where an employer intends to dismiss an employee without notice on the grounds of misconduct (misconduct being a failure to fulfill the conditions of employment in the contract of service), the employer should conduct an inquiry before deciding whether to dismiss the employee or to take other forms of disciplinary action. If, however, the obligation is to make “due inquiry” (whether under the employment contract or by operation of the Act), the employee must be accorded an opportunity to present his or her case and defend himself or herself. Further, the more informal the process, the greater the risk that “due inquiry” may be viewed as not having been sufficiently undertaken.

III. REDUNDANCY

Payment

Under the Act, employees who have more than two years’ continual service and are covered under Part 4 of the Act are entitled to retrenchment benefits on their dismissal on the ground of redundancy or by reason of any reorganization of the employer’s profession, business, trade, or work.

Where the employee is entitled to retrenchment benefits, the amount of compensation is not fixed by law. It will have to be negotiated between employee and employer.

Notification

For retrenchment exercises taking place on or after 1 November 2021, employers who employ at least 10 employees must notify the MOM of all retrenchments, regardless of the number of employees affected. Failure to provide the notification may result in a fine of up to S\$2,000 per contravention.

IV. REMEDIES

Claims, Complaints, and Investigations

The Employment Claims Tribunals (ECT) can hear the following types of claims:

For employees:

- Statutory salary-related claims from all employees covered under the Act, the Retirement and Re-employment Act 1993, and the CDCSA.
- Contractual salary-related claims by all employees covered by the Act.
- Wrongful dismissal claims from all employees covered by the Act and the CDCSA.

For employers:

- Claims for salary in lieu of notice.

Parties with any dispute should first register their claims with the Tripartite Alliance for Dispute Management, which will provide advisory and mediation services. Claims that cannot be resolved through mediation will then be referred to the ECT.

The maximum claim amount for disputes before the ECT is S\$20,000, or up to S\$30,000 if relevant parties go through the Tripartite Mediation Framework or mediation assisted by their recognized unions under the Industrial Relations Act 1960.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

Under the Act, in a transfer-of-business scenario, where a transferring employee (covered by the Act) moves to another employer, continuity of service will not be broken by the transfer. The transfer of business from the previous employer to the new employer does not terminate the contract of service of the transferring employee. Rather, there will be an automatic transfer of employment pursuant to the Act with identical terms before the business is transferred.

On the completion of such a transfer, the new employer is required to fulfill the previous employer's duties and liabilities that are a part of the transferring employee's employment contract. Actions done by the previous employer will be deemed by the Act to have been done by the new employer.

In addition, the Act requires that employers who are taking over a previous employer's duties and liabilities inform the relevant employees:

- The fact that a transfer is going to take place.
- The approximate date on which the transfer is to take place.
- The reasons for the transfer.
- The implications of the transfer.
- The measures (in relation to the employees) that the employer envisages will be taken.

As such, employers who are taking over from a previous employer should request all necessary information to (i) perform their requisite duties and liabilities to their new employees, and (ii) inform these relevant employees of the changes/transfer details.

Penalties for Non-Compliance

Employers should take note that entering into a contract of service or collective agreement that is contrary to the requirements (e.g., the requirement to fulfill the previous employer's duties and liabilities, or the requirement to inform employees of the transfer details) as set out under the Act is an offense.

The penalties for such an offense include a fine not exceeding S\$5,000 or imprisonment for a term not exceeding six months or both, and for a subsequent offense under the same section to a fine not exceeding S\$10,000 or to imprisonment for a term not exceeding 12 months or to both.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the confidentiality of an employer's confidential information, including intellectual property, clients, and the business's employees.

If an employee breaches his or her obligations of confidence, employers will have recourse under the employment contract. Generally, the remedies available to employers for their employees' breach of confidentiality obligations include account of profits, damages, and an injunction. An interim injunction can be sought to prevent an employee threatening to disclose their employer's confidential information from making such disclosure.

II. CONFIDENTIAL RESTRAINTS AND NON-COMPETES

Confidentiality provisions restrict employees from using confidential information for anything other than their duties. These provisions typically restrain employees from using confidential information during, and for a period of time after, termination of employment.

It is not uncommon for executive employment contracts to contain non-compete provisions that protect an employer's legitimate business interests, which can be enforced if reasonable under the circumstances. The reasonableness of the non-compete provisions in an employment contract would depend on several factors, including:

- The scope of the non-compete provision (i.e., whether the activities that the employee is being restrained from would protect the employer's legitimate business interest).
- The duration of the non-complete provision.
- The geographical scope of restraint.

All of these factors should serve the purpose of protecting the employer's legitimate business interest, rather than being arbitrarily determined by the employer.

III. PRIVACY OBLIGATIONS

Under the Personal Data Protection Act 2012 (PDPA), all employers need to be able to demonstrate their compliance in relation to the data processing operations that they implement with regard to their employees. Employment records and other employee-related data should only be kept for as long as it is necessary for business or legal purposes.

Companies in Singapore are required to appoint a data protection officer if they process employees' data in Singapore, namely a person in charge of overseeing PDPA compliance, with sufficient legal and technical knowledge to implement the PDPA.

The PDPA requires that a sufficient legal basis justifies personal data processing operations, and employers have a general obligation to inform their employees and obtain consent for the purposes in which they collect, use, and disclose their employees' personal data.

For several employment-related circumstances, the PDPA grants employers sufficient legal basis to process their employees' data in Singapore.

- **Deemed Consent**
Individuals who voluntarily provide their personal data to a firm for a job application would have been deemed to have consented to the firm using the individual's data for assessment of

job suitability. Information that is publicly available would also not require the firm to obtain consent from the individual.

- **Business Contact Information**
Information such as an individual's name, position, or title, business telephone number, business address, business electronic email address, or fax number not provided for personal purposes are exempted from the general data protection obligations under the PDPA.
- **Evaluative Information**
Information that is collected, used, or disclosed for the purposes of determining the suitability, eligibility, or qualifications of an individual for employment, promotion, or continued employment. The Personal Data Protection Commission has given examples of such information to be:
 - References from a prospective employee's former employer.
 - Performance records or other relevant information or opinions of that employee.

When faced with issues managing their employees' personal data, employers can consult the Advisory Guidelines on the Personal Data Protection Act for Selected Topics (the Selected Topics Advisory Guidelines) and the Advisory Guidelines on Key Concepts in the PDPA (the Key Concepts Advisory Guidelines). Both the Selected Topics Advisory Guidelines and the Key Concepts Advisory Guidelines have examples and explanations provided for by the Personal Data Protection Commission on the manner in which employers in Singapore are to manage their employees' personal data.

Relevant data protection regulations in Singapore for employers would include:

- The PDPA.
- The Personal Data Protection Regulations 2021.
- The Personal Data Protection (Notification of Data Breaches) Regulations.
- The Key Concepts Advisory Guidelines and Selected Topics Advisory Guidelines issued by the Personal Data Protection Commission.

IV. WORKPLACE SURVEILLANCE

Under the PDPA, employers should inform the employees of the purposes for the collection, use, and disclosure of their personal data (which includes any closed-circuit television surveillance footage at the workplace) and obtain their consent prior to the collection, use, and disclosure (as the case may be).

One exception (as alluded to in the section above) is that the collection by employers of personal data from their employees for the purpose of managing or terminating their employment relationships, and the use or disclosure of such personal data for consistent purposes, would not require the consent of their employees. However, the PDPA still requires employers to inform their employees of the purposes of such collection, use, or disclosure, even though their consent is not required.

V. WORKPLACE INVESTIGATIONS

Employers use workplace investigations as a management and conflict resolution tool to determine policy breaches, misconduct, or misuse of confidential information. The conduct of these investigations is determined by policy. Outcomes of workplace investigations are often used to manage employees or to determine whether to terminate an employee's employment.

WORKPLACE BEHAVIORS

I. MANAGING PERFORMANCE AND CONDUCT

Employment contracts, policies, and agreements provide for management of employee performance and conduct.

Employee misconduct may warrant a warning, disciplinary action, or, if the conduct is serious, termination of employment. Employees terminated for serious misconduct do not receive the usual notice and other entitlements.

II. BULLYING AND HARASSMENT

Bullying

Workplace bullying, and the sanctions thereof, is usually covered in the employer's policy documents and differ from workplace to workplace.

Harassment

The Protection from Harassment Act 2014 prescribes a range of civil remedies and criminal sanctions to protect people from harassment and related antisocial behavior. The Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP) has also issued a Tripartite Advisory on Managing Workplace Harassment, which sets out some guidelines to employers on managing workplace harassment.

Increasingly, workplace policies also specifically address the issue of harassment at the workplace and the sanctions therefor.

III. DISCRIMINATION

Under Article 12 of the Constitution of Singapore, all persons must be guaranteed equality and equal protection under the law. More specifically, there must not be discrimination against a Singapore citizen on the ground of religion, race, descent, or place of birth.

Furthermore, under the Tripartite Guidelines on Fair Employment Practices (Tripartite Guidelines), employers are required to adopt fair employment practices.

It is also common (and indeed good practice) for employers to implement anti-discrimination policies at the workplace.

IV. UNIONS

Representation

The Trade Unions Act 1940 and the Industrial Relations Act 1960 govern the registration, operation, and recognition of trade unions in Singapore.

Industrial Disputation

It is only lawful to take industrial action (e.g., strikes, lockouts, slowdowns) under certain circumstances, which are prescribed by the Trade Disputes Act 1941.

V. REMOTE/HYBRID WORK

With the COVID-19 pandemic accelerating the global shift toward digital transformation, remote working arrangements and hybrid working arrangements have become increasingly widespread among employers in Singapore.

Under Singapore law, there is generally no obligation on employers to grant remote or hybrid working arrangement options to employees. This means that any such options must be mutually agreed upon between employers and employees.

As an employee's place of work is recommended to be included as a Key Employment Term in an employee's employment contract, any remote or hybrid working arrangements that require or enable an employee to work from a place other than his or her employer's address should be set out in his or her employment contract.

UPCOMING DEVELOPMENTS

I. NEW WORKPLACE FAIRNESS LEGISLATION

The government has accepted the recommendations by the Tripartite Committee on Workplace Fairness (Tripartite Committee) for the WFL. The WFL aims to strengthen protection for workers that face discrimination, maintain a productive and engaged workforce, and develop positive workplace norms in Singapore. The government and the Tripartite Committee will implement the WFL in 2024.

Protection Against Workplace Discrimination

The Tripartite Committee has defined “discrimination” as an employer making an adverse employment decision because of any protected characteristics. To address workplace discrimination, the new WFL will prohibit employers from discriminating workers on the grounds of protected characteristics.

Employers should be aware that protected characteristics include: (i) age; (ii) nationality; (iii) sex, marital status, pregnancy status, and caregiving responsibilities; (iv) race, religion, and language; and (v) disability and mental health conditions.

Under the WFL, employers will be prohibited from:

- Discriminating against workers during all stages of employment. This covers the recruitment stage, in-employment stage, and dismissal stages.
- Using words or phrases in job advertisements that indicate preference for a protected characteristic.
- Retaliating against employees who report cases of workplace discrimination or harassment.

The WFL will also require EP and S Pass applications to be submitted under the existing Fair Consideration Framework. This framework requires employers to advertise job vacancies on MyCareersFuture.gov.sg for a specified period and fairly consider all candidates that apply, prior to submitting EP or S Pass applications.

Support for Firms With Specific Organizational Needs and National Objectives

Employers are permitted to consider employees based on protected characteristics, if such characteristics constitute a genuine and reasonable job requirement. Where a protected characteristic is a reasonable job requirement, the employer or recruiter must state the job requirement instead of the protected characteristic.

- An example of a protected characteristic constituting a job requirement: An employer hiring a language teacher discriminating against prospective employees based on language proficiency. This would be permitted due to the protected characteristic, “language,” constituting a job requirement, the “language ability” of the prospective employee.

Small firms with less than 25 employees will be exempted from compliance with the WFL. The exemption for these small firms will be reviewed in five years. During this exempted period, these small firms will get support from TAFEP, the Singapore National Employers Federation, the Institute for Human Resource Professionals, the Singapore Human Resource Institute, and the Association of Small and Medium Enterprises to ramp up their capabilities so as to implement the WFL in the future.

Religious organizations are permitted to make employment decisions based on religious requirements. This is so even where such an employment decision would discriminate prospective

employees on the grounds of a protected characteristic. However, such discrimination would require a religious basis, and discrimination on a non-religious basis by religious organizations would still be breaching the WFL.

Development of Resolution Processes for Workplace Grievances and Disputes

Under the new WFL, employers will be required to establish grievance-handling processes. The proposed grievance-handling processes to be legislated will include:

- Putting in place a proper inquiry and documentation process.
- Informing employees of the firm's grievance-handling procedures.
- Communicating the outcome of the inquiry to the affected employee.
- Protecting the confidentiality of the person's identity that reported workplace discrimination and harassment where possible.

In addition to grievance-handling processes, the Tripartite Committee, together with the Tripartite Alliance for Dispute Management (the Tripartite Dispute Management Alliance) and the unions will continue to facilitate employees' access to redress, while preventing frivolous claims. To do so, the Tripartite Committee will require a potential claimant to provide documentary evidence or verbal accounts from witnesses to support the claim.

- The claimant should cite the incident(s) that led him or her to believe that he or she suffered an adverse employment outcome because of a protected characteristic.
- The cited incident(s) should show how the consideration of the protected characteristic led to the adverse employment outcome.

The latest development to the workplace grievance resolution process will include compulsory mediation for discrimination claims at the Tripartite Dispute Management Alliance with adjudication at the ECT only as a last resort. Through the compulsory mediation process, the Tripartite Committee seeks to preserve the employment relationship while maintaining a low-cost dispute resolution process.

Providing Redress for Victims of Workplace Discrimination and Penalties for Breaches

Mediation conducted by the Tripartite Dispute Management Alliance will focus on educating employers on correct practices and mending the employment relationship where practicable. Employers should be aware that the following non-monetary remedies may be considered at mediation:

- Reinstatement of an employment offer.
- Apology by the employer.
- Reconsideration of the employee.

If mediation fails, the dispute goes before the ECT. The ECT can order the payment of monetary compensation from employers of up to:

- S\$5,000 for preemployment (recruitment) claims. This employment claims acknowledges the discriminatory act affecting the applicant.
- S\$20,000 for non-union members and S\$30,000 for union-assisted claims, in recognition of the role of a union in the claims, for in-employment and end-employment claims. These amounts mirror the ECT's existing limits for wrongful dismissal claims.

The ECT is also empowered to (i) strike out frivolous or vexatious claims, and (ii) award costs of up to S\$5,000 to be paid by the claimant to the employer, if the claimant's claim was struck out in these

situations. The awarding of costs by the ECT will be on a case-by-case basis with consideration not to deter workplace fairness claims in general.

Employers may also take appropriate disciplinary action against claimants where the ECT has struck out the claim or awarded the costs to the employer due to frivolous or vexatious claims brought against it.

Enforcement Action Against Workplace Fairness Breaches

Where the ECT claim involves a serious breach of the WFL, the state may concurrently investigate with a view of taking enforcement action against the firm.

The Tripartite Committee has provided a range of penalties, including:

- Corrective orders issued by the MOM.
- Administrative penalties (e.g., work pass curtailment).
- Civil penalties (e.g., financial penalties, action brought against errant employer in the courts).

These penalties will be calibrated based on the severity of breach (e.g., low to high severity), and they may be applicable to the firm or to the individual person responsible for breaching the WFL.

II. TRIPARTITE GUIDELINES

Protection Against Workplace Discrimination

The Tripartite Guidelines will be updated to clarify that corporate service buyers and intermediaries should not discriminate based on characteristics that are not related to the job.

The Tripartite Committee has recommended including additional guidance in the Tripartite Guidelines to provide greater clarity that corporate service buyers, such as property management companies and their platform operators, should not discriminate based on non-essential characteristics not related to the job. The Tripartite Guidelines will specify that work opportunities are to be fair and merit-based.

- For example: Buyers of security services should not specify discriminatory requirements in their tenders (e.g., security guards younger than a certain age) unless such a requirement is related to the job.


Persons With Disabilities

In addition to prohibiting workplace discrimination, the Tripartite Committee will also issue a Tripartite Advisory providing guidance to employers about providing reasonable accommodations to persons with disabilities. Reasonable accommodations will be deemed reasonable when they help the person with disability perform essential job functions without imposing heavy burdens on the employer. Examples of such reasonable accommodations set out by the Tripartite Committee include:

- Providing a hearing loop system for hard-of-hearing employees.
- Installing ramps for employees needing wheelchairs.

III. CONCLUSION

The employment laws of Singapore are undergoing a significant period of change. Through the upcoming implementation of the new WFL, the Tripartite Committee seeks to uphold workplace fairness to benefit employers, employees, and society at large. In spite of all the fair employment standards set and recommendations proposed by the Tripartite Committee, a coordinated and sustained effort by all stakeholders is still required to advance fair and progressive employment practices in Singapore.



Employers should continue to adhere to the fair employment standards that they have adopted. Doing so not only ensures compliance with the WFL, but it also allows firms to maintain a workplace culture that is harmonious and productive, which will be mutually beneficial to employers as well as their employees.

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