

LEGAL UPDATE

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LEGISLATION UPDATE

WIDE-RANGING CHANGES TO EMPLOYMENT ACT PROPOSED

The Ministry of Manpower (the “**MOM**”) is introducing a number of key changes to the Employment Act (the “**existing Act**”).

The changes seek to keep pace with changes in the labour market while taking a “*balanced approach between employment protection for workers and the need to maintain Singapore’s labour market flexibility and competitiveness*”.

The more significant changes are summarised below.

Revised Coverage of the Employment Act

Confidential staff to be covered | Persons employed in a confidential position such as accounts assistants, human resource clerks and secretaries had been excluded from the existing Act, to minimise potential conflicts of interests and to deny unions an unfair bargaining advantage. However, as highly-sensitive matters are now typically handled by senior management and the majority of confidential staff earn less than the national median gross monthly income, the changes proposed under the bill will confer such staff the benefits under the Employment Act.

Junior managers / executives’ salary payments to be protected | Managers and executives had been excluded from the existing Act because they were deemed capable of protecting their own interests. However, as civil claims can be protracted and costly, the bill will give junior managers and executives who earn a basic monthly salary of \$2,500 or less protection against non-payment of salaries. They will be able to pursue claims in the Labour Court. Failure to pay their salaries will be an offence.

Part IV salary ceiling for non-workmen employees raised to \$2000 | The salary ceiling for Part IV of the existing Act is proposed to be raised from \$1,600 to \$2,000 to reflect the overall increase in salaries.

New Part IV basic monthly salary threshold of \$4,500 for workmen | Part IV of the existing Act deals with rest days, work hours, holidays and other conditions of service. Presently, the benefits set out in Part IV apply to all workmen regardless of their pay. The bill seeks to introduce the basic monthly salary threshold of \$4,500 for workmen to address employers’ concerns that Part IV restricts their flexibility to set overtime and rest day payment rates for high-salaried workmen.

Revised Employment Standards and Benefits

Paid public holiday / sick leave entitlements for all employees | The existing Act only prescribes paid public holiday and sick leave for persons covered under Part IV (*ie.* workmen and employees earning not more than \$1,600 a month). However, as such benefits are well-established industry norms, it is proposed to apply these benefits across the board to all workers covered under the Employment Act.

Qualifying period for paid sick leave shortened to 3 months | The qualifying period for paid sick leave is proposed to be reduced from 6 to 3 months to be consistent with that for paid annual leave. However, sick leave entitlement between the 4th to 6th months of employment will be pro-rated.

Recognition of medical certificates (“MCs”) from public medical institutions | At present, MCs from public healthcare institutions such as restructured hospitals will be recognised if the company does not have a company-appointed medical practitioner. However, as most employers grant paid sick leave upon production of MCs from company-appointed general practitioners or any public medical institutions, it is proposed to allow MCs from all public medical institutions to be recognised for the purposes of paid sick leave and reimbursement of medical consultation fees.

Recognition of Portable Medical Benefits Scheme or other plans | Under the proposed amendments, the Employment Act will recognise employers who implement the Portable Medical Benefits Scheme and other medical insurance Shield Plans as alternatives to the statutory obligation to bear in-patient consultation fees.

“Part-time employee” re-defined | Under section 66A of the existing Act, the term “*part-time employee*” refers to an employee who works less than 30 hours a week. To encourage employers to offer part-time working arrangements, it is proposed that “*part-time employees*” will now refer to employees working 35 hours or less a week.

Review of Penalties and Streamlining of Administrative Procedures

Increased penalties for infringements | The maximum financial penalties and composition amounts will be increased to keep pace with inflation and the higher penalties for similar offences in other Acts.

Powers of Employment Inspectors enhanced | Employment Inspectors will have greater powers to search and examine premises, take photographic and videographic evidence and issue warrants of arrest to secure attendance of witnesses. Obstruction of their investigations will be an offence under the Employment Act instead of the Penal Code. Employment Inspectors will also have greater flexibility to conduct investigations beyond workplaces.

Dispute resolution processes | It is proposed to permit alternative service of Labour Court summonses (eg. by post instead of only by hand) and to remove the minimum notice period of 12 days in order to allow urgent cases to be heard sooner.

Amendments to section 62 | In order to allow a defendant to defend himself without having to pin blame on a third party, the MOM proposes to remove the requirement under section 62 of the existing Act which allows the employer to be exempted from penalty under Part V (Truck System) if he charges another person – and that person is convicted – as the actual offender.

Repeal of section 105(2) | It is proposed to repeal section 105(2) which provides that any information divulged by a person during examination will not be used against him in any criminal proceedings (except on a prosecution for giving false information).

Other Proposed Amendments

Other miscellaneous amendments include:

- *Dissolution of Employment Exchange* | This Government-administered employment exchange (which was set up to assist individuals to obtain employment) will be dissolved as its functions are now being performed by private employment agencies and the Singapore Workforce Development Agency.
- *Repeal of Part XI (Health, Accommodation and Medical Care)* | Part XI of the existing Act is no longer needed because accommodation and related issues are being regulated by other agencies and statutory boards.
- *Removal of restriction on collective agreements offering more favourable maternity benefits* | This restriction was introduced in 1973 to curb population growth. This rationale no longer applies.
- *Revised definition of “medical officers”* | The term “medical officers” will be revised to include doctors employed in polyclinics and specialty institutes administered by the Government.
- *“Termination” and “dismissal” to be defined* | It is proposed to define “dismissal” to mean an act by an employer in terminating employment (with or without notice). “Termination” would be defined more broadly to refer to the cessation of employment initiated by either the employer or the employee.
- *Maximum shift work hours may be exceeded in exceptional circumstances* | It is proposed to allow the maximum working hours by shift workers to be exceeded in exceptional circumstances where urgent work involving defence or security or work essential to the life of the community is required. This is in line with the position currently applicable to regular employees.

Public Consultation and References

The MOM is inviting public feedback on the proposed amendments from **2 to 22 September 2008**. Please click [here](#) to view the e-consultation paper.

If you would like more information about the above or wish to discuss how the changes may potentially affect you or your business, please feel free to contact the lawyers in [Drew & Napier LLC](#) (please refer to the [Directors' Profiles](#)), or:

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