

LEGAL UPDATE

A DREW & NAPIER PUBLICATION

LEGISLATION UPDATE

PROPOSED CHANGES TO THE WORKMEN'S COMPENSATION ACT

Executive Summary

The Workmen's Compensation (Amendment) Bill (the "**Bill**") was introduced in Parliament on 12 November 2007. The Bill seeks to amend the Workmen's Compensation Act (Cap. 354) (the "**Act**") to, among other things, expand the coverage of the Act to include all employees (regardless of salary), increase the compensation amounts for claims in relation to injuries which result in death or permanent incapacity, enhance the powers of the Commissioner for Labour (the "**Commissioner**"), reform the compensation process and clarify certain legal ambiguities.

In line with these objectives, the Act is also proposed to be re-named the "Work Injury Compensation Act".

A summary of the key proposed changes introduced by the Bill is set out below.

Expanded coverage of the Act to all employees

Currently, the Act principally covers all manual workers as well as non-manual workers earning not more than S\$1,600 a month.

Under the proposed amendments, a new definition of "employee" will replace the existing definition of "workman" under the Act. The term "employee" is defined to mean "*any person who has entered into or works under a contract of service or apprenticeship with an employer, whether (a) by way of manual labour or otherwise; (b) the contract is express or implied or is oral or in writing; and (c) the remuneration is calculated by time or by work done, but does not include any class of persons specified in the Fourth Schedule*". The Fourth Schedule provides that domestic workers, members of the Singapore Armed Forces and officers of the Singapore Police Force, the Singapore Civil Defence Force, the Central Narcotics Bureau and the Singapore Prisons Service will not be covered under the Act.

With this amendment, all employees (regardless of salary), other than members of the uniformed services and domestic workers referred to the Fourth Schedule, will be entitled to claim compensation for personal injury caused by accidents arising out of and in the course of employment.

Total exemption from liability in accidents directly attributable to alcohol or drugs

It is proposed to amend Section 3(5)(a) of the Act and to introduce a new Section 3(5A) to completely exempt an employer from liability to compensate an employee in respect of any injury resulting from an accident if it is proved that the employee's injury is directly attributable to the employee having been,

MAIN OFFICE

20 Raffles Place
#17-00 Ocean Towers
Singapore 048620

t +65 6535 0733

f +65 6535 4906

mail@drewnapier.com

www.drewnapier.com

Co. Reg. No. 200102509E

at the time of the accident, under the influence of alcohol, a controlled drug (as defined by the Misuse of Drugs Act (Cap. 185)) or a “prescription only” drug specified for the purposes of Section 29 of the Medicines Act (Cap. 176) that is not prescribed by a medical practitioner for the employee’s use. The employer would be free from liability even if the employee’s injury results in his death or permanent incapacity causing a loss of 50% or more of that employee’s earning capacity.

Computation and Payment of Compensation

Revised Third Schedule

The Bill also proposes the insertion of new provisions to deal with the computation of the compensation payable. Under the new Section 7, the amount of compensation payable in respect of any personal injury suffered by an employee in an accident arising out of and in the course of his employment is to be calculated in accordance with a new proposed Third Schedule. The new proposed Third Schedule sets out, among other things, new multiplying factors to be used for employees aged 14 and below to 39. The minimum and maximum compensation payable in the case of death is proposed to be raised to \$47,000 and \$140,000 respectively. The minimum and maximum compensation payable in the case of permanent total incapacity is proposed to be raised to \$60,000 and \$180,000 respectively.

Computation of earnings

Section 8 of the Act provides for the manner in which the earnings of an employee are to be computed. Presently, a workman can only claim compensation in respect of his earnings under different contracts of service only if he was employed in the same occupation for each contract of service. Under the proposed amendments, where an employee is employed under contracts of service with two or more employers, his monthly earnings will be computed as if his earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident, but excluding earnings from contracts of service that the last-mentioned employer is not aware of.

Payment of compensation

Under the proposed amendments to Section 9(1A) of the Act, the Commissioner will be permitted to authorise direct payment of compensation not only where an injury has resulted in permanent partial incapacity of the employee (as is the case now), but also where injury has resulted in the death or permanent total incapacity of the employee. Such direct payments may be made to the employee (if he is at least 18 years of age), the employee’s dependants (where the employee is deceased), or any committee of the employee and estate of the employee appointed under the Mental Disorders and Treatment Act (Cap. 178) (where the employee has become mentally incapacitated).

Compensation for medical treatment

Section 14 of the Act is proposed to be amended to make it clear that costs for medical treatment are payable *as part of* compensation. Under the new proposed paragraph 5 of the Third Schedule, any compensation payable by an employer for an employee’s medical treatment in relation to his

injury will be the lower of: (a) the cost of the medical treatment received within a year after the accident; or (b) \$25,000 per accident per employee. If the employee has paid for the cost of any medical treatment which an employer is liable to pay under the Act, the employee is entitled to recover such cost from the employer.

Compensation for temporary incapacity

The Bill also proposes the inclusion of a new Section 14A on compensation for injury caused by an accident arising out of and in the course of employment which results in the temporary incapacity of an employee. Such compensation is payable not later than the same day that earnings would have been payable to the employee under the contract of service or apprenticeship, even though no claim for compensation has been made under the Act or a claim for compensation in respect of that injury has not been assessed or determined by the Commissioner.

However, the Commissioner may, in certain circumstances, order the employee to refund to the employer any such payment made, eg. if the employee fails to claim for compensation, if the employee withdraws his claim for compensation, if the Commissioner determines that no compensation should be paid to the employee or if the employee has made a false claim.

Employer's right to be indemnified

Presently, Section 18 of the Act gives an employer who has paid compensation under the Act a right to claim an indemnity against a third party if the injury for which compensation was payable was caused under circumstances that create a legal liability in the third party to pay damages in respect thereof.

Section 18 is proposed to be amended to limit the indemnity by such third party to such part of the total compensation paid or payable by the employer as the court may determine to be appropriate to the degree to which the injury is attributable to the act, default or negligence of such third party.

Commissioner's powers to determine claims and conduct pre-hearing conferences and hearings

The Bill also introduces provisions that give the Commissioner new powers to determine claims and conduct pre-hearing conferences and hearings.

Under the new proposed Section 25A, the Commissioner may, at any time after a claim for compensation has been made, direct any person in relation to the claim to appear before him. If any party fails to comply with the Commissioner's direction, the Commissioner may dismiss the claim or make such other order as he thinks fit, including an order as to costs.

The new proposed Sections 25B and 25C relate to pre-hearing conferences. Section 25B provides that, at any time after a claim for compensation has been made, the Commissioner may direct parties to attend a pre-hearing conference. At the pre-hearing conference, the Commissioner will have the power to give directions as necessary or desirable for the determination of any issue for hearing. If parties are agreeable to a settlement, the Commissioner will also have the power to record the settlement and make an order to give effect to the

settlement. Under Section 25C, the Commissioner may make a decision concerning the claim and an order as to compensation or costs if one or more parties fail to appear at a pre-hearing conference.

The new Section 25D provides that the Commissioner may conduct a hearing of the case and hand down a decision accordingly, and make any order for the payment of compensation as he thinks just at or after the hearing.

Limitations on an employee's right of action under common law

The Bill also proposes an amendment to Section 33(2) of the Act which deals with limitations on an employee's right of action under common law if he makes a claim for compensation under the Act. The proposed amendments provide that no claim for damages may be maintained in any court by an employee against his employer in respect of any injury if:

- (i) such employee already has a claim for compensation for the same injury under the provisions of the Act and does not withdraw such claim within 28 days after service of the notice of assessment of compensation of that claim;
- (ii) the employee and his employer have agreed or are deemed to have agreed to the notice of assessment of compensation stating the Commissioner's assessment of the compensation payable in respect of that injury; or
- (iii) the employee has already recovered damages for that injury in any court from any person.

However, an employee may still commence a court action against his employer for damages in respect of an injury even where a claim for compensation under the Act is made for that injury if:

- (i) there is no objection by the employee to the notice of assessment in respect of that claim;
- (ii) the compensation ordered by the Commissioner in respect of that claim is less than the amount stated in the notice of assessment of compensation;
- (iii) within 28 days after the making of the Commissioner's order, the employee notifies the Commissioner and the employer in writing that he does not accept the compensation so ordered, and has not received or retained any part of the compensation earlier paid (if any) by the employer; and
- (iv) no appeal under Section 29 (which deals with appeals from the Commissioner's decision) is made against the Commissioner's order.

A court action may also be brought independently of the Act to recover damages for injury even where a claim for compensation is made under the Act if the Commissioner assesses that no compensation is payable because such injury did not arise out of and in the course of employment or that the injured person was not an employee, or where an appeal to the High Court under Section 29 from the Commissioner's order has failed for the same reasons.

References

Please click on the following link to access a copy of the Bill:

[Workmen's Compensation \(Amendment\) Bill](#)

If you would like more information about this proposed legislation or wish to discuss how it may potentially affect you or your business, please feel free to contact the litigation and dispute resolution lawyers in Drew & Napier LLC (please refer to the Directors' Profiles on our website), or:

Indraneel Rajah, SC
Director (Litigation & Dispute Resolution)
T: +65 6531 4100
E: indraneel.rajah@drewnapier.com

The contents of this update are only intended to provide general information on the subject covered. Nothing in this publication should be treated as specific professional legal advice concerning any particular business, operational or other situations with which you might be faced. Drew & Napier LLC accepts no liability for, and does not guarantee the accuracy of, the information contained in this publication, and does not accept any liability for any loss or damage arising from any reliance thereon.

OUR BUSINESS GROUPS AND PRACTICE AREAS

BANKING/GENERAL FINANCE

David Ang
T +65 6531 2236
F +65 6535 4864
E david.ang@drewnapier.com

Valerie Kwok

T +65 6531 2222
F +65 6535 4864
E valerie.kwok@drewnapier.com

BIOMEDICAL SCIENCES

Tony Yeo
T +65 6531 2512
F +65 6220 0324
E tony.yeo@drewnapier.com

BUILDING & CONSTRUCTION

Tan Liam Beng
T +65 6531 4139
F +65 6533 3591
E liambeng.tan@drewnapier.com

CAPITAL MARKETS

Sin Boon Ann
T +65 6531 2206
F +65 6535 4864
E boonann.sin@drewnapier.com

CHINA BUSINESS GROUP

David Chin
T +86 21 6335 1628
F +86 21 6335 0638
E david.chin@drewnapier.com

COMPETITION LAW

Lim Chong Kin (non-contentious)
T +65 6531 4110
F +65 6535 4864
E chongkin.lim@drewnapier.com

Cavinder Bull (contentious)

T +65 6531 2416
F +65 6533 3591
E cavinder.bull@drewnapier.com

CORPORATE

David Ang
T +65 6531 2236
F +65 6535 4864
E david.ang@drewnapier.com

Gary Pryke

T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

Yeo Wee Kiong

T +65 6531 2500
F +65 6535 4864
E weekiong.yeo@drewnapier.com

CORPORATE INSOLVENCY & RESTRUCTURING

Sushil Nair
T +65 6531 2410
F +65 6532 7149
E sushil.nair@drewnapier.com

Manoj Sandrasegara

T +65 65314156
F +65 65327149
E manoj.sandra@drewnapier.com

EMPLOYMENT & IMMIGRATION

Indranee Rajah, SC
T +65 6531 4100
F +65 6532 7149
E indranee.rajah@drewnapier.com

FAMILY & MATRIMONIAL

Randolph Khoo
T +65 6531 2418
F +65 6532 7149
E randolph.khoo@drewnapier.com

FUND MANAGEMENT, REIT & PRIVATE EQUITY

Petrus Huang
T +65 6531 2208
F +65 6533 0694
E petrus.huang@drewnapier.com

INFO-COMMUNICATIONS, MEDIA & TECHNOLOGY

Lim Chong Kin
T +65 6531 4110
F +65 6535 4864
E chongkin.lim@drewnapier.com

INSURANCE & REINSURANCE

Gary Pryke
T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

INTELLECTUAL PROPERTY

Morris John (Patents)
T +65 6531 2503
F +65 6533 0694
E mj@drewnapier.com

Redar Singh Gill (Trade Marks)

T +65 6531 2507
F +65 6533 0694
E dedar.singh@drewnapier.com

LITIGATION & DISPUTE RESOLUTION

Jimmy Yim, SC
T +65 6531 2504/2505
F +65 6533 3591
E jimmy.yim@drewnapier.com

PROJECT FINANCE

Gary Pryke
T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

PROPERTY

Chua Bee Lan
T +65 6531 2302
F +65 6535 1952
E beelan.chua@drewnapier.com

SHIPPING & INTERNATIONAL TRADE

Ian Koh
T +65 6531 2436
F +65 6533 3591
E ian.koh@drewnapier.com

TAX, TRUSTS, ESTATE PLANNING & PROBATE

Teoh Lian Ee
T +65 6531 2248
F +65 6535 4864
E lianee.teoh@drewnapier.com

TRANSNATIONAL & CROSS-BORDER WORK

Julian Kwek
T +65 6531 2485
F +65 6532 7149
E julian.kwek@drewnapier.com

OTHER OFFICES

Shanghai Office
#2501 Office Tower
Bund Center
222 Yan An Road East
Shanghai 200002
China
T +86 21 6335 1628
F +86 21 6335 0638
E china@drewnapier.com

Drewmarks Patents & Designs (Malaysia) Sdn Bhd
9th floor
Bangunan Getah Asli (Menara)
148 Jalan Ampang
50450 Kuala Lumpur, Malaysia
T +603 2162 2522/2162 2529
F +603 2162 2804
E drewmark@tm.net.my

PT Drewmarks Konsultama
Correspondence address:
20 Raffles Place
#17-00 Ocean Towers
Singapore 048620
T +65 6531 2503/6531 2504
F +65 6533 0694
E ip@drewnapier.com

DrewCorp Services Pte Ltd
20 Raffles Place
#09-01 Ocean Towers
Singapore 048620
ROC No. 200102492H
T +65 6531 2266
F +65 6533 1542/6533 7649
E services@drewcorpservices.com