

# EMPLOYMENT LAW UPDATE

5 December 2014

## NEW TRIPARTITE GUIDELINES ON EXTENDING THE SCOPE OF UNION REPRESENTATION FOR EXECUTIVES

### INTRODUCTION

On 26 November 2014, the Ministry of Manpower (“**MOM**”), together with its tripartite partners, the Singapore National Employers Federation and the National Trades Union Congress, released a new set of guidelines on extending and expanding the scope of union representation for executives (“**Guidelines**”).

### Background to the review of the Industrial Relations Act

A tripartite workgroup was first formed in 2013 to review and update the Industrial Relations Act (Cap. 136), and propose amendments to reflect Singapore’s changing workforce profile and workplace norm, in particular, the growing proportion of professionals, managers and executives (“**Tripartite Workgroup**”).

Following the Tripartite Workgroup’s review, proposed amendments to the Industrial Relations Act were introduced in Parliament on 3 November 2014. The Industrial Relations (Amendment) Bill may be accessed [here](#).

Ahead of those amendments coming into effect, the Tripartite Workgroup has released the

Guidelines in order to allow unions and employers to adapt early to the changes.

The amendments to the Industrial Relations Act and the Guidelines are expected to be effective on or after 1 April 2015.

### Extended scope of union representation for executives

The proposed amendments and Guidelines provide that executives and managers (“**Executive Employees**”) will be eligible for collective representation by rank-and-file trade unions. This expands the scope of union representation that Executive Employees may enjoy as they are currently only entitled to be represented by trade unions on a specific list of industrial matters on an individual basis, and not collectively.

However, senior management and specific categories of executives (eg Executive Employees with access to confidential information, such as in-house legal counsels) with substantive managerial responsibilities will be statutorily excluded from enjoying such collective representation. The Guidelines also state that senior professionals with considerable autonomy, who exercise a high degree of independent judgment and initiative, and whose work has an impact on the strategic direction of an organisation, may not be suitable for collective representation.

Significantly, once trade unions have been accorded recognition by employers, they may negotiate with the employers in relation to any industrial matters with a view to arriving at collective agreements. However, this does not include matters that relate to the management’s prerogative, such as promotion, transfer, employment, termination by reason of redundancy, dismissal and reinstatement of an employee or assignment of duties.

The Guidelines provide that employers and unions may mutually agree to further determine the eligibility of these Executive Employees by using their salary levels as a proxy for eligibility, and/or by using the proportion of executives within the organisation as a parameter for eligibility. This is in addition to the eligibility criteria under the proposed amendments and may serve as a quick means for employers to determine the executives who may enjoy the expanded scope of union representation.

## Memoranda of understandings

The Guidelines propose that employers and unions may adopt memoranda of understandings (“**MOUs**”) on the categories of executives who may be represented by the unions. These MOUs may include the following details:

- (a) the classes of executives eligible for limited and/or collective representation;
- (b) a provision to allow employers and unions to conduct appropriate review to the MOUs;
- (c) the sharing of information between employers and unions to facilitate discussion on matters relating to the representation of executives; and
- (d) a provision to refer disputes to MOM for conciliation, in the event the dispute related to the implementation of the MOU cannot be resolved at the organisational level.

Employers may wish to consider signing such MOUs with their trade unions as this may serve to better define the classes of employees whom the trade unions represent, and also clarify the terms of the working relationship between the employers and the trade unions.

The full text of the Tripartite Workgroup’s Guidelines may be accessed [here](#).

## PRACTICAL IMPLICATIONS

After the changes come into force, employers may expect to receive claims for recognition for trade unions to represent the Executive Employees in the company. Once a trade union has been recognised in this capacity, it may negotiate with the employer to arrive at a collective agreement. The Guidelines and the Bill do not indicate if existing collective agreements for rank-and-file employees should be extended to cover Executive Employees, or if new collective agreements for Executive Employees should have similar terms to existing rank-and-file collective agreements. It is common for collective agreements of rank-and-file employees to contain provisions on matters such as working hours and overtime,

minimum salary and negotiations on increments and annual wage supplements, which may not be suitable for inclusion in relation to Executive Employees.

In view of the impending changes, employers with Executive Employees in unionised sectors may wish to engage the trade unions early to understand and discuss their intended approach as part of the MOU discussions.

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If you have any questions or wish to discuss how these changes affect your organisation, please contact:



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