

Client Alert

October 2018

For more information, please contact:

Celeste Ang
+65 6434 2753
celeste.ang
@bakermckenzie.com

Kelvin Poa
+65 6434 2524
kelvin.poa
@bakermckenzie.com

Aran Alexander
+65 6434 2716
aran.alexander
@bakermckenzie.com

Clarence Ding
+65 6434 2662
clarence.ding
@bakermckenzie.com

Zhao Yang Ng
+65 6434 2701
zhao.yang.ng
@bakermckenzie.com

Jingyi Wang
+65 6434 2306
jingyi.wang
@bakermckenzie.com

Singapore Employment Act changes released - A Brave New World?

Since the Singapore Government announced in February 2018 that the Employment Act would be extended to cover all employees - employers, workers and lawyers alike have been waiting to see what amendments would be made to Singapore's primary employment statute.

On 2 October 2018, the Employment (Amendment) Bill ("**Bill**") was released.

So what questions have been answered?

1. Will the Employment Act now cover everyone?

In short, yes, most parts of the Employment Act ("**EA**") will now cover all employees in Singapore.¹

Part IV of the EA (which generally regulates working hours and overtime) continues to only apply to:

- (i) workmen who earn S\$4,500 and below in basic monthly salary; and
- (ii) all employees who earn S\$2,600 (raised from S\$2,500) and below in basic monthly salary.

("Part IV Employees")

2. Will there be more dismissal claims?

Possibly. EA employees can currently appeal to the Commissioner for Labour if they feel their dismissal is "without just cause or excuse".

Once implemented, the amendments in the Bill will allow all employees to claim against dismissals without just cause or excuse in the Employment Claims Tribunal ("**ECT**"). These claims will be known as "wrongful dismissal claims".

At present, we know that wrongful dismissal claims may include:

- (i) claims where there has been a termination with or without notice (or payment in lieu of notice);
- (ii) termination of employment on the basis of age, prior to the statutory minimum retirement age; and
- (iii) termination of a pregnant employee's employment without sufficient cause.

The Ministry of Manpower ("**MOM**") will be issuing tripartite guidelines on wrongful dismissal which the ECT will be obliged to refer to when determining

¹ Seafarers and domestic workers are excluded and are not referred to for the purposes of this alert



such claim. We understand that the Government will also be releasing further information to clarify the scope of a wrongful dismissal claim.

3. Will employees be able to claim constructive dismissal?

Yes, an employee who resigns could potentially file a wrongful dismissal claim. The Bill picks up the existing common law concept of constructive dismissal (i.e., where an employer's conduct amounts to a fundamental breach of the terms of employment such that the employee had no choice but to resign).

4. Are there any limits on who can file wrongful dismissal claims?

Yes. If the employee filing the claim is in a managerial or executive position at the time of the claim and intends to file a wrongful dismissal claim against a termination that was effected with prior notice or payment in lieu of notice, he/she must have served the employer for at least 6 months in any position (whether or not the position is a managerial or executive one).

5. What remedies are there for wrongful dismissal?

An employee can claim either reinstatement or monetary compensation. If an employee claims reinstatement, the ECT may order reinstatement and back-payment of wages, and if compensation is claimed, that may be ordered.

It is currently unclear from the Bill whether the ECT will have the power to order a remedy that has not been claimed by the employee (e.g compensation if only reinstatement is claimed). We are hoping this will be clarified in due course.

6. Are there any new procedural requirements for terminations or disciplinary action?

The obligation to carry out "due inquiry" prior to taking disciplinary action currently only applies to employees who fall within the scope of the EA. This will be extended to all employees.

The EA and the Bill are silent on what constitutes "due process", so we anticipate that the ECT will take guidance from the common law.

7. Can employers suspend employees?

Yes, but only for the purpose of a disciplinary inquiry and only for up to 1 week (unless the employer applies to the Commissioner for Labour to extend the period).

During the suspension, the employee must be paid at least 50% of his/her usual salary, and if the disciplinary inquiry does not disclose any misconduct on the part of the employee, the full amount of salary must be paid to the employee.

8. Will all employees now be able to "buy out" their notice periods?

Yes. The EA currently permits the employer *or the employee* to terminate the employment contract by making a payment in lieu of notice to the other party.



Once the coverage of the EA is extended, this ability for the employee to buy out their notice period, which is currently the case in Hong Kong, will be available to all employees in Singapore.

9. How are salary deductions impacted by the Bill?

Salary deductions are currently only permitted for certain specific purposes (even if an employee provides consent) but would otherwise require MOM approval.

However, once the Bill comes into force, an employer will generally be permitted to carry out any salary deduction which an employee consents to, without having to seek MOM approval.

There are certain types of salary deductions which are permitted without employee consent, and these have been retained in the Bill.

10. Will all employees now transfer automatically in Singapore?

Yes. In a business sale scenario, if there is the transfer of an undertaking the employees of the transferor will be automatically transferred to the transferee by operation of law.

There is currently limited guidance on what constitutes "the transfer of an undertaking". We are hopeful that further information will be released by the MOM in due course.

Transferor will also have consultation obligations towards the transferring employees and, if applicable, the trade union which has been granted recognition in respect of the transferring employees as soon as is reasonable prior to the transfer.

11. Are all employees now entitled to maternity and childcare leave?

Currently employees are only eligible for maternity leave and childcare leave if:

- (i) they are EA-covered; or
- (ii) their child is (or is likely to be) a Singapore Citizen,

With the extension of EA coverage, all employees will become statutorily entitled to the following maternity leave and childcare leave benefits (subject to certain eligibility conditions):

- (i) 8 weeks of paid maternity leave and 4 weeks of unpaid maternity leave for the first and second confinement; 12 weeks of unpaid maternity leave for the third confinement and after; and
- (ii) 2 days of paid childcare leave per year for children below the age of 7

Other types of parental leave will continue to be available to parents of a Singapore Citizen child (i.e., more generous maternity leave and child care, as



well as paternity leave, adoption leave, shared parental leave, unpaid infant care leave, etc).

12. Any changes to Annual Leave?

Yes. Annual leave is currently only a statutory entitlement for Part IV Employees. The changes mean that all employees will become entitled to this statutory annual leave.

Unused annual leave must be paid out to employees upon termination (unless the termination is on grounds of misconduct). It is unclear whether payment of unused annual leave is required in cases where the employee resigns from employment.

The obligation to carry over unused annual leave for a period of 12 months after the end of every 12 months of continuous service continues to apply, but only to Part IV Employees.

Employers and employees remain able to contractually agree to annual leave entitlements that are more favourable than the EA.

13. Any changes to Sick Leave?

Yes. When the Bill comes into force, all employees will become statutorily entitled to paid sick leave.

Paid sick leave will no longer require certification by either a medical practitioner appointed by the employer or a government doctor / dentist. When the Bill comes into force, paid sick leave can be certified by any Singapore-registered doctor or dentist.

14. Any changes to overtime or public holiday work?

Statutory overtime payments continue to apply only to Part IV Employees.

However, when the Bill comes into force, all employees will be entitled to additional payments for work performed on a public holiday (generally an extra day's salary at the gross rate of pay, regardless of the number of hours worked, subject to certain exceptions).

15. Are there any new administrative obligations for employers?

The existing EA obligations to:

- (i) enter into a written employment contract with the employee which must contain certain prescribed terms of employment; and
- (ii) maintain employment records in a manner and form as determined under the EA,

will be extended to all employees once the Bill comes into force.



In addition to the mandatory retrenchment notification that was recently introduced (Please click [here](#)), the Bill introduces a fresh obligation on employers to provide the Commissioner for Labour with additional information at the Commissioner's request in relation to any retrenchment.

16. Does the Bill affect any other laws?

Apart from introducing significant amendments to the EA, the Bill will also result in consequential amendments being made to the Employment Claims Act, the Retirement and Re-employment Act, the Industrial Relations Act and the Child Development Co-Savings Act, largely for consistency with the changes to be made to the EA.

17. What happens if the employment contract contains terms that are not compliant with the EA?

Any employment term which is less favourable to the employee than the terms prescribed by EA shall be illegal and deemed null and void to the extent that it is less favourable.

18. When will the changes in the Bill take effect?

The Bill will be raised in Parliament for a second reading later this year and, along with any further amendments made at the second reading, is expected to take effect on 1 April 2019.

19. What do employers need to do before then?

The changes introduced by the Bill are wide-ranging. Employers should consider taking the following steps:

1. review existing employee-facing policies and standard employment contract templates to determine if they are in compliance with the amendments contained in the Bill. This is particularly relevant to employers which currently have few or no employees covered under the EA (and would therefore have been paying little attention to the provisions of the EA up to this time);
2. as relevant, consider amending existing policies and existing employment contracts to remedy non-compliant practices and/or to introduce new practices for purposes of complying with the terms of the Bill;
3. review existing internal policies for compliance with the EA, with particular attention paid to the termination procedures and recording-keeping obligations; and
4. provide management, payroll, legal and HR with information and training regarding the changes introduced by the Bill, particularly the changes relating to wrongful dismissal claims.



20. Where will Singapore's employment laws now sit in the context of Asia Pacific?

Prior to the amendments in the Bill taking effect, Singapore and Malaysia were the only jurisdictions to cut the workforce in two between those covered by the main employment legislation and those not covered. Following April 2019, Malaysia will be the only one.

In a regional context:

- With the automatic transfer provisions in the EA now applying to all employees, Singapore will be out of step with the rest of Asia Pacific where employee consent (via a termination and rehire process) is generally required to move employees between entities in a business sale scenario.
- With the ability for all employees to file a wrongful dismissal claim, Singapore now stands closer to its neighbours in Asia Pacific in terms of the difficulty level of carrying out a termination.

www.bakermckenzie.com

Baker McKenzie Wong & Leow
8 Marina Boulevard
#05-01 Marina Bay Financial Centre
Tower 1
Singapore 018981

Tel: +65 6338 1888
Fax: +65 6337 5100

That said, even with the introduction of a wrongful dismissal claim and the enhanced scope of the functions of the ECT, Singapore will still retain the mantle of the most employer-friendly jurisdiction in the Asia Pacific region.

21. How can I find out more information?

Please reach out to any member of our team if you would like to discuss the Bill and how it may impact your business.