

Get Ready: 2014 Brings Significant Employment Act Changes in Singapore.

Following Singapore's new measures announced in September 2013 that employers ought to consider Singaporeans fairly for job opportunities¹, a bill effecting significant changes to the Singapore Employment Act (Cap. 91) (the "Act") was passed in Parliament on 12 November 2013. Most of these changes are due to take effect on **1 April 2014**.

The intentions behind these changes are to:

- (i) extend better protection rights to more employees (**Better Protection for Employees**);
- (ii) accord flexibility to employers where desirable from a business perspective (**Flexibility for Employers**); and
- (iii) enhance enforcement and compliance with the Act (**Enhancing Compliance by Employers**).

In particular, professionals, managers and executives ("**PMEs**") earning a salary of up to S\$4,500 per month who are currently awarded limited protection under the Act, as well as a greater number of low-paid employees, will gain extended statutory protection rights.

Better Protection for Employees: more employees covered

PMEs - PMEs earning a salary not exceeding S\$4,500 per month currently only benefit from salary protection under the Act. With effect from 1 April 2014, they will be covered under the general provisions of the Act, gaining statutory protection against unfair dismissal, unlawful deductions from wages, minimum termination notice requirements, as well as statutory sick leave, maternity and childcare leave benefits. The Ministry of Manpower ("**MOM**") estimates that these changes will benefit approximately 300,000 PMEs in Singapore. However, the provisions of Part IV of the Act relating to rest days and hours of work will, as is currently the case, continue not to apply to PMEs.

Non-workmen - In line with the increase in salary levels in Singapore, the salary threshold for employees other than workmen (e.g. clerical staff and

¹ As a reminder, please note that with effect from **1 January 2014**, the qualifying salary threshold for new employment pass applications was raised from S\$3,000 to S\$3,300 per month. For further details, please read our October 2013 alert entitled *Employers to consider Singaporeans fairly before hiring Employment Pass holders*.

Contents

Better Protection for Employees: more employees covered.....	1
Redress for unfair dismissal for PMEs	2
Flexibility for Employers: employment benefits.....	2
Better Protection for Employees: retrenchment benefits.....	2
Pay	3
Better Protection for Employees: collective agreements in a business transfer	3
Enhancing Compliance by Employers: employment standards..	3
Enhancing Compliance by Employers: CPF	4

frontline service staff) to benefit from the provisions of Part IV of the Act relating to relating to rest days and hours of work (including the maximum working hours prescribed for such employees) will be raised from a basic monthly salary of S\$2,000 to S\$2,500. According to MOM, an additional 150,000 employees will be covered by those provisions of the Act.

Redress for unfair dismissal for PME

Flexibility for Employers: PMEs earning a salary of up to S\$4,500 per month will need to have served with the same employer for at least 12 months in any position (whether or not in a managerial or an executive position) to be eligible to seek redress against unfair dismissal under the Act, where notice or payment in lieu of notice is given. The rationale behind this is to provide employers time to assess suitability of the PMEs for their jobs.

Better Protection for Employees: However, please note that the length of service requirement will not apply to PMEs earning up to S\$4,500 per month if they are dismissed without notice and without salary in lieu of notice. Accordingly, if employers decide to invoke gross misconduct or summary termination provisions, PMEs covered by the Act may, in the future, be able to bring a complaint before MOM regardless of their length of service with the employer in question if they feel that they have been dismissed without just cause or excuse.

Flexibility for Employers: employment benefits

- **Time-off in-lieu for PMEs:** Employers will be allowed the additional option to grant time-off in-lieu for PMEs earning a salary of up to S\$4,500 per month who are required to work on public holidays, subject to mutual agreement. In the absence of mutual agreement, at least half a day off in-lieu will have to be granted by their employer if the PME has worked for up to four hours on such public holiday.
- **Flexible family-friendly leave rights:** A new formulae will be implemented under both the Act and the Child Development Co-Savings Act (Cap. 38A) to compute the minimum number of days of maternity, paternity, shared parental or adoption leave an employee is entitled to take in the situation where there is mutual agreement between the employer and employee for the leave to be taken flexibly by days instead of by block week.
- **Medical benefits:** Employers will not be obliged to grant paid sick leave or to bear medical examination expenses incurred by employees for cosmetic consultations and procedures. The assessment of whether or not a treatment is cosmetic will be based on the opinion of the medical practitioner performing the examination and providing the medical certificate. Guidance provided by the Ministry of Manpower provides that procedures such as mole removals or nose jobs would usually be cosmetic surgery. However, this may not necessarily always be the case and will have to be reviewed in the particular circumstances.

Better Protection for Employees: retrenchment benefits

The non-eligibility period for retrenchment benefits for employees (excluding PMEs) will be reduced from three years to two years, in line with shorter

employment tenures. This will take effect on **1 April 2015**. Interestingly though, it was decided that, in line with current practice, no minimum statutory quantum for retrenchments benefits would be imposed and that the preferred alternative remained for quantum to be discussed between employers, employees and unions.

Pay

- **Better Protection for Employees in relation to deductions from pay:** A 25% sub-cap will be imposed for deductions from salary for accommodation, amenities and services of employees covered by the Act, to prevent excessive deductions being made. This will also fall within the existing 50% overall cap for authorised deductions. Deductions from pay for income tax, property tax or goods and service tax payable by employees will only be permitted in circumstances where the Comptroller of Income Tax has either declared that employers will be agents for recovery of any such tax or directed employers to make such deductions in relation to employees' emoluments and/or pensions.
- **Flexibility for Employers in relation to overtime pay:** Currently, employees earning a salary up of to S\$2,000 per month and workmen earning a salary of up to S\$4,500 per month can claim overtime pay. Though the salary threshold of employees will be increased to S\$2,500 per month with effect from 1 April 2014, the overtime rate payable to them will be capped by reference to a maximum salary of S\$2,250 per month to help employers manage increased employment costs.

Better Protection for Employees: collective agreements in a business transfer

At present, in the event of a business transfer, unions can only represent employees transferred to the new employer if the pre-existing collective agreement with their original employer remains valid. With effect from 1 April 2014, any such pre-existing collective agreement will remain in force and be deemed to be recognised by the new employer in relation to employees transferred for at least 18 months after the date of transfer or if later, until the date of expiry of the collective agreement. This amendment will also be reflected in the Industrial Relations Act (Cap. 136) for consistency.

Enhancing Compliance by Employers: employment standards

To enhance the enforcement and compliance with employment standards in Singapore, greater penalties will be imposed in connection with breaches of the provisions of the Act relating to the **payment of salary** (both during employment and on termination):

- > first-time offences will give rise to fines of between **S\$3,000** and **S\$15,000** and/or an **imprisonment term of up to six months**; and
- > subsequent offences will trigger fines of between **S\$6,000** and **S\$30,000** and/or an **imprisonment term of up to 12 months**.

Directors or other officers of body corporates will also be made more accountable for offences under the Act committed by the body corporate itself. If such individuals are primarily liable for the act or omission which

constitutes the offence and have failed to exercise reasonable supervision or oversight, they will be **presumed to be negligent and held liable** unless they can prove that they had exercised reasonable supervision or oversight to avoid commission of the offence.

In line with providing employees with greater protection under the Act, employment inspectors will be granted the **power to arrest** any person whom they reasonably believes is guilty of failures to pay salary as well as the **power to enter any workplace to conduct employment audit checks** without prior notice during reasonable office hours. It will be interesting to understand how often and in what circumstances these rights will be called upon in practice.

Employers will also be encouraged to provide **payslips** to all employees and to keep employment records for their employees. MOM will be issuing a set of Tripartite Guidelines on this matter in the first half of 2014. In addition, to assist employers comply with these requirements, MOM will make payslips booklets, downloadable payslip and employment record templates available on its website by 1 April 2014.

Enhancing Compliance by Employers: CPF

Finally, changes to the Central Provident Fund Act (Cap. 36) ("**CPF Act**") were passed on the same day to enhance penalties for employers who breach their obligations under the CPF Act. These include new imprisonment terms not exceeding six months (or 12 months, in the case of repeat offences) and increased fines. The date on which such changes are due to become effective has yet to be announced.

If you would like to discuss the above, its implications for your existing practices and procedures and any steps which ought to be taken as a result, feel free to contact **Laure de Panafieu** or **Denise Bryan** or, alternatively, any of your other existing contacts in our Singapore office.

This communication is confidential and may be privileged or otherwise protected by work product immunity.

Linklaters Singapore Pte. Ltd. (Company Registration No. 200007472C) is a qualifying foreign law practice, incorporated with limited liability in Singapore. Linklaters Singapore Pte. Ltd. is affiliated with Linklaters LLP, a limited liability partnership registered in England and Wales with registered number OC326345. Linklaters LLP is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP together with a list of those non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ, England or on www.linklaters.com and such persons are either solicitors, registered foreign lawyers or European lawyers.

Please refer to www.linklaters.com/regulation for important information on our regulatory position.

Contacts

For further information please contact:

Laure de Panafieu
Managing Associate

(+65) 6692 5791

laure.de_panafieu@linklaters.com

Denise Bryan
Associate

(+65) 6692 5845

denise.bryan@linklaters.com

Linklaters Singapore Pte. Ltd.

One George Street #17-01

Singapore 049145

Tel: (65) 6692 5700

Fax: (65) 6692 5708

Linklaters.com

