



Employment Update¹

The New Employment Claims Tribunal

I. Introduction

The Employment Claims Act 2016 (No. 21 of 2016) (the “**Act**”) has now come into effect on 1 April 2017. The Act establishes Singapore’s first Employment Claims Tribunal (the “**Tribunal**”) under the jurisdiction of the State Courts of Singapore. Prior to this and aside from our civil courts, an employee has recourse only to the labour court set up by the Ministry of Manpower. Even so, such employee must first be covered by the Singapore Employment Act (CAP 91, 2009 Rev Ed). Other than replacing the labour court, the Tribunal also expands an employee’s access to low cost employment dispute resolution scheme.

II. The Tribunal, an overview.

2-step Process

This new avenue to resolve employment dispute is structured as a 2-step process: mediation before access to Tribunal. Under the Act and upon an employment dispute arising, all parties have to first attempt mediation conducted by mediators approved by the Commissioner of Labour.

If mediation resolves the dispute, parties will sign a settlement agreement, and such agreement can be registered as an order of a District Court, thereby making it immediately binding and enforceable on parties.

If mediation is unsuccessful, the mediator will then issue a claim referral certificate, which is needed for the claimant to lodge a claim in the Tribunal.

The Tribunal proceedings will be judge-led, but informal.

Jurisdiction- Subject Matter, Applicant and Claim Limit

Subject Matter

The Tribunal has jurisdiction over the following 2 types of claims:

- 1) Statutory claims arising out of the Employment Act (CAP 91, 2009 Rev Ed), Child Development and Co-Savings Act (CAP 38A, 2002 Rev Ed) and Retirement and Re-employment Act (CAP 274A, 2012 Rev Ed); and
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- 2) Contractual claims with a defined monetary value arising out of an employment contract (or contract of service) between parties.

Applicant

As the Tribunal's name suggests, the 2 parties to the dispute must have a contract of service subsisting between them. Further, the Tribunal can also hear purely contractual claims of employees not covered by the Employment Act (CAP 91, 2009 Rev Ed). Previously, the labour court will only hear claims of employees covered by the Employment Act (CAP 91, 2009 Rev Ed).

For both types of claims, there is a claim limit of either amount:

- a. S\$30,000 if the employee is represented by a union officer during the mandatory mediation as required by the Act (i.e Tripartite Alliance for Dispute Management mediation) or if prior to the Tripartite Alliance for Dispute Management mediation, parties had attempted mediation under the Tripartite Mediation Framework or any other mediation assisted by or involving a recognised union²; or
- b. S\$20,000 in all other cases.

Timeline

Mediation

Upon a dispute arising, either party has within a year to commence mediation, or if the employment relationship has come to an end, 6 months from the termination of the employment agreement.

Tribunal

Thereafter, if mediation fails, either party has up 6 months to file a claim at the Tribunal from the issuance of the claim referral certificate.

Representation

Parties are unfortunately disallowed from having legal representation at both the Tripartite Alliance for Dispute Management mediation³ of the and the Tribunal.

Status of Tribunal's Decisions

The Tribunal's decisions are binding and enforceable on parties, like any order of Court. They can be appealed against to the High Court with leave from a District Court.

III. Advantages of the Tribunal for Employees and Implications for Employers

²This refers to unions that are recognized by the employer pursuant to the Industrial Relations Act (CAP 136, 2004 Rev Ed)

³There is an exception in the very limited circumstance where the Commissioner is of the opinion that an individual is unable to present his case by reason of illiteracy or infirmity of mind or body not amount to a lack of legal capacity.

It is clear that more types of employment dispute can now be heard, and all levels of employee have recourse to this low-cost adjudication process. Third, cost is unlikely to become disproportionate such that it is a prohibitive factor, unlike in a civil case. Even though mediation is made a mandatory precondition, this process was nevertheless designed to ensure that it will be faster and simpler. In respect of the substantive hearing, the informal nature and the general prohibition against lawyers representing parties make it less daunting for low level employees to participate.

Other than an employee benefiting, an employer now has recourse to the Tribunal to claim against an employee for any contractual sum. The most common claim would be for payment in lieu of notice if an employee resigns suddenly without giving sufficient notice. As this process is low cost, cost also becomes lesser of a consideration for an employer to initiate a claim.

Last, as it is now easier and cheaper for all level of employees to claim against their employers for certain statutory entitlements or for contractual sums, an employer should be prudent in ensuring that its relationships with its employees are managed appropriately.

IV. Conclusion

In all, the Act has brought about much welcome changes, especially for employees. As with all things new, it remains to be seen if the envisioned advantages of the Tribunal will materialise. Importantly, mid-level employees, who find the cost of bringing a civil claim disproportionate to their employment claims, would be relieved to know that there is now a solution for them. As for employers, while employees remain minimally protected at law compared to other countries, the greater scope for enforcing their contractual claims through the Tribunal reinforces the need for an employer to prudently manage all of its employment contracts.

This article is intended to highlight the salient issues relating to the passing of the Employment Claims Act (No. 21 of 2016) in Singapore, and it is not intended to be comprehensive nor should it be construed as legal advice. Please approach the writer if you need any legal assistance due to this new legislation.



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