

TRIPARTITE GUIDELINES FOR TERM CONTRACT EMPLOYEES- LEAVE BENEFITS AND NON-RENEWAL NOTICE¹

Introduction

On 20 June 2016, the Tripartite Guidelines on the Employment of Term Contract Employees (“Guidelines”) was jointly released by the tripartite alliance of the Ministry of Manpower, National Trades Union Congress and the Singapore National Employers Federation (“Tripartite Alliance”)². According to the Ministry of Manpower, these guidelines were jointly developed to give greater clarity on paid leave benefits and notice period for Term Contract Employees who have a long-term working relationship with a particular employer.

Background

Term Contract Employees are those hired on fixed term contracts by companies. Such employment contract will terminate upon the expiry of a specific term unless it is renewed. Besides this however, the Singapore Employment Act applies equally to Term Contract Employees as it does to normal employees. As such, requirement of minimum continuous length of service that must be met before one is entitled to mandated paid leave benefits applies similarly to Term Contract Employees. In this respect, an employee must work for a continuous period of 3 months before he is entitled to certain paid leave benefits. They are annual leave, sick leave, maternity leave, paternity leave, adoption leave, childcare and extended childcare leave.

Consequent to the aforesaid, some employers have learnt to structure their workforce to include more of Term Contract Employees with duration of 3 months or less. With a break of 1 day or more before the Term Contracts are renewed, employers need not provide paid leave benefits for these employees as they would not have served for 3 months continuously. The Tripartite Alliance wishes to

¹ The writers would like to extend their heartfelt gratitude to Bryan Soon Wei for assisting in the drafting of this article.

² Tripartite Guidelines on the Employment of Term Contract Employees. (2016, June 20). Retrieved from <http://www.mom.gov.sg/~media/mom/documents/employment-practices/guidelines/tripartite-guidelines-on-the-employment-of-term-contract-employees.pdf?la=en>.

plug this loophole by introducing the Guidelines.

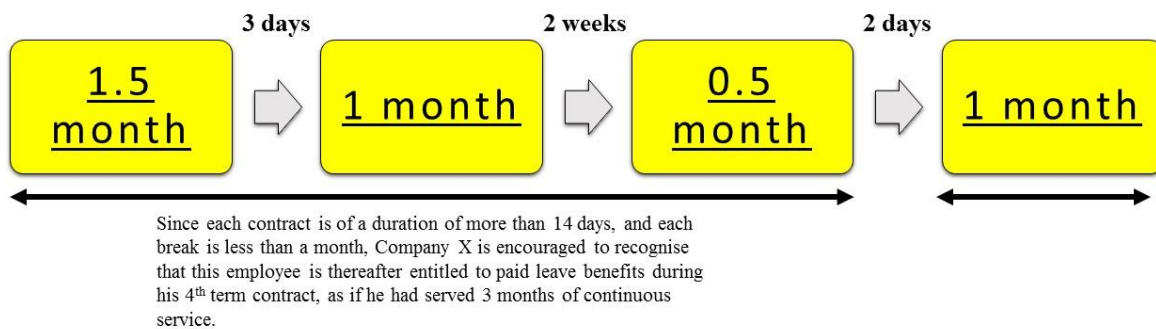
Guidelines

A. Granting of Paid Leave Benefits to Term Contract Employees with Long Term Working Relationships³

Employers are encouraged to treat term contracts of 14 days or more that are renewed within 1 month of the termination date as continuous, when determining whether such employee is entitled to paid leave benefits. In other words, the length of service pursuant to past fixed term contract(s) should be added to the length of service already served by the employee pursuant to the present term contract, notwithstanding there being a break of a few days between the past and the present term contract.

Graphical Illustration:

An employee is employed on multiple fixed term contracts by Company X as follows:



Legend



B. Notifying in Advance of Intention not to Renew Contracts⁴

³ Section A, Tripartite Guidelines on the Employment of Term Contract Employees. (2016 June 20). Retrieved from <http://www.mom.gov.sg/~media/mom/documents/employment-practices/guidelines/tripartite-guidelines-on-the-employment-of-term-contract-employees.pdf?la=en>.

For term contract on a recurrent basis with a particular employee (i.e. contract which is renewed multiple times), it is encouraged that either party gives sufficient notice before the contract's expiry on whether the contract will be renewed. This is to provide sufficient time for either party to make alternative arrangements.

Implication of Guidelines - Force of Law?

It must be clarified that the Guidelines does not have the force of law. Nevertheless, considering the strong persuasive power of the Tripartite Alliance producing the Guidelines, and the Ministry of Manpower's huge discretionary power in key areas of employment law, especially foreign manpower, we encourage employers to remain in the good books of the authorities. In fact, the tripartite partners have indicated that they will actively promote the adoption of the good practices recommended in the Guidelines⁵. If past examples were to be any indicator, it would not be surprising if sufficient resources are committed to encourage and ensure compliance.

A good analogous example of the length the Tripartite Alliance will go is clear in the area of workplace discrimination. In this respect, there is likewise no express legislation prohibiting workplace discrimination. Nevertheless the same partners have banded together to specifically form the Tripartite Alliance for Fair Employment. In this iteration, they have produced guidelines for fair employment practices⁶ and committed sufficient resources and manpower to create an infrastructure to ensure that the guidelines are abided by. It includes a hotline to report guidelines violation and engagement with the concerned employers⁷. Furthermore, in the exercise of its discretionary power, the Ministry of Manpower had in the past banned employers found to have breached the guidelines for fair employment practices from hiring foreign labour⁸.

⁴ Section B, Tripartite Guidelines on the Employment of Term Contract Employees. (2016, June 20). Retrieved from <http://www.mom.gov.sg/~media/mom/documents/employment-practices/guidelines/tripartite-guidelines-on-the-employment-of-term-contract-employees.pdf?la=en>.

⁵ [8], Tripartite Guidelines Developed for Employers to Give Greater Clarity on Leave Benefits and Notice Period for Term Contract Employees. (2016, June 20). Retrieved from <http://www.mom.gov.sg/newsroom/press-releases/2016/0620-tripartite-guidelines-developed-for-employers-to-give-greater-clarity-on-leave-benefits-and-notice-period-for-term-contract-employees>.

⁶ Tripartite Guidelines On Fair Employment Practices. (2014, April). Retrieved from https://www.tafep.sg/sites/default/files/Publications%20-%20Tripartite%20Guidelines%20on%20Fair%20Employment%20Practices%20%28English%29%20as%20of%20March%202014_1.pdf.

⁷ See <https://www.tafep.sg>

⁸ MOM takes action against 10 more companies for discriminatory job advertisements. (2013, September 25). Retrieved from <http://www.mom.gov.sg/newsroom/press-releases/2013/mom-takes-action-against-10-more-companies-for-discriminatory-job-advertisements>.

Conclusion

Notwithstanding that the Guidelines does not have the force of law, considering the moral persuasive power of the document and past precedent as to the potential consequence of not complying, employers should take the Guidelines in their stride and endeavour to comply with it.

This update is intended to only introduce the guidelines and hence does not serve nor should it be construed as legal advice. Please do not hesitate to contact your usual contacts at our firm if you need proper and comprehensive legal advice regarding Singapore's employment law.



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