

Employment Update

Upcoming Changes to the Employment Act: In a Nutshell

Overview of the Current Act

The Employment Act (Cap 91) (the “Act”), as it exists now, does not cover Professionals, Managers and Executives (PMEs) who earn more than \$4,500 a month. Section 2(1) of the Act provides that a relevant ‘employee’ under the Act does not include any person employed in a managerial or an executive position. The Ministry of Manpower’s (MOM) website further clarifies that, generally, managers and executives are employees with executive and supervisory functions whose duties and authorities may include influencing or making decisions on issues such as:

- recruitment, discipline, termination of employment, performance assessment and reward;
- formulating strategies and policies of the enterprise; and
- managing and running the business.

Section 2(2) of the Act further provides that PME’s who earn not more than \$4,500 a month shall be regarded as an employee for the purposes of the Act, with the exception of Part IV of the Act.

Proposed changes to the Act

During the parliamentary debate for the Annual Budget¹, Manpower Minister Lim Swee Say announced that a series of changes to the Act will be proposed to come into effect by 1 April 2019. The proposed amendments cover:

- (a) Scope of persons covered by the Act;
- (b) Protection of working hours and overtime pay; and
- (c) Available avenues for dispute resolution.

In this update, we provide a brief overview of these new developments and seek to highlight the key changes to the Act.

- (a) Scope of persons covered by the Act

When the amendments to the Act come into effect come April next year, the salary cap of the Act will be removed and all employees will fall under the Act indiscriminately, regardless of how much they earn monthly, and whether they are a PME. However, public servants, domestic workers and seafarers will continue to be excluded from the Act as these group of employees and workers will be covered separately in other acts due to the nature of their work.

The current blanket exclusion of PME’s from core employee benefits under Part IV of the Act such as annual leave, sick leave and paid hospitalisation leave will also be removed such that these benefits will soon apply to all PME’s as well. It is expected that this proposed amendment to the Act will extend protection to an additional 430,000 PME’s and was deemed necessary in light of the changes in the workforce profile in Singapore.

¹ Sing., Parliamentary Debates, vol. 94 (5 March 2018)

(b) Protection of working hours and overtime pay

The working hours and overtime pay of employees is currently governed under Part IV of the Act. Part IV of the act in turn applies only to workmen who are in receipt of a salary not exceeding \$4,500 a month and employees (other than workmen) who are in receipt of a salary not exceeding \$2,500 a month. However, with the upcoming amendment of the Act, the salary cap for employees (other than workmen) with respect to working hours and overtime pay, will be raised from \$2,500 per month to \$2,600.

Additionally, the method of calculating overtime pay will also be changed for non-workmen employees who earn more than \$2,250, but less than \$2,600 per month. Currently, non-workmen earning \$2,250 or more are subject to a cap in calculating the hourly basic rate of pay. However, with the new proposed amendments to the Act, the threshold for non-workmen subject to this cap will be raised from \$2,250 to \$2,600.

(c) Available avenues for dispute resolution

The third and final change to the Act concerns dispute resolution relating to salary disputes or wrongful dismissal. Currently, all salary-related disputes are mediated at the Tripartite Alliance for Dispute Management (TADM). If the mediation proves to be unsuccessful, the claims are then heard at the Employment of Claims Tribunals (ECT). However, cases involving wrongful dismissals are not allowed to be heard at the ECT and are adjudicated by the Ministry itself. With the proposed new amendments to the Act, such cases will subsequently be shifted over to the ECT to provide both employers and employee with a "one-stop service". For more information on the existing ECT, you may refer to our publication at the following link: <http://www.gateway-law.com/newsletter/04052017.pdf>.

Conclusion

Without knowing more details about the specific amendments that will be made to the Act, it remains to be seen how and to what extent, the changes to the Act will impact employers and employees alike. However, given that the Minister has proposed for the amendments to come into effect by 1 April 2019, it is expected that more details of the amendments will emerge soon.

Should you have any queries as to how this update may affect you or your organisation or require further information, please do not hesitate to email us.



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