EMPLOYMENT ACT REVIEW

Posted on February 23, 2018

Category: CNPupdates

Date Published: 23 February 2018

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In a press release by the Ministry of Manpower ("**MOM**") on 18 January 2018, the MOM highlighted three areas of review of the Employment Act ("**EA**") where they would like to seek public feedback. The public consultation was open to members of the public from 18 January 2018 to 15 February 2018.
The press release along with the annex on their public consultation released by MOM can be found here.

CORE PROVISIONS UNDER THE EA.

Protection afforded to "employees" under the EA.

The first area of the review deals with what the MOM deems to be "core provisions". These core provisions include public holiday and sick leave entitlements, payment of salary and allowable deductions, and redress for wrongful dismissal.

Briefly, under the EA, "employees" are entitled to a paid holiday at his or her gross rate of pay on a public holiday that falls during the time that he or she is employed. The employer is entitled to make alternative arrangements should the employee be required to work on a public holiday, subject to the confines of s 88(2) to s 88(7) of the EA.
Employees who have served the employer for more than 3 months are entitled to paid sick leave under the EA depending on the amount of duration of their employment.
The provisions dealing with the payment of salary require the employer to pay an employee its salary before the 7th day after the last day of the salary period. The EA also provides for limited situations by

which deductions can be made from an employee's salary.

Lastly, an employee who considers that he or she has been dismissed without just cause or excuse by his employer has a right to make representations in writing to the Minister of Manpower ("**Minister**"). The Minister then has the right to request the Commissioner to inquire into the dismissal and if after considering the report by the Commissioner, believes that there was wrongful dismissal either direct the employer to reinstate the employee or to pay such amount of wages as compensation.

"Employees" under the EA.

Currently, under the EA, these core provisions are available to an "employee" as defined under the EA. "Employee" is defined as:
"…a person who has entered into or works under a contract of service with an employer and includes a workman, and any officer or employee of the Government included in a category, class or description of such officers or employees declared by the President to be employees for the purposes of this Act or any provision thereof, but does not include —

- any seafarer;
- any domestic worker;
- subject to subsection (2), any person employed in a managerial or an executive position; and
- any person belonging to any other class of persons whom the Minister may, from time to time by notification in the Gazette, declare not to be employees for the purposes of this Act

…
(2) Any person who is employed in a managerial or an executive position and is in receipt of a salary not exceeding $4,500 a month (excluding overtime payments, bonus payments, annual wage supplements, productivity incentive payments and any allowance however described), or such other amount as may be prescribed in substitution by the Minister, shall be regarded as an employee for the purposes of this Act except the provisions in Part IV."

The effect of s 2 of the EA is that managers or executives earning more than $4,500 a month do not receive protection from the EA as regards public holidays, sick leave, payment of salary and allowable deductions and wrongful dismissal.

As such, MOM's public review invites views on whether the definition of "employees" under the EA should be expanded, and the core provisions extended to all employees.

ADDITIONAL PROTECTION FOR VULNERABLE EMPLOYEES.

The second area of the review deals with additional protection afforded to certain categories of employees under Part IV of the EA.
Employees, as defined under Part IV of the EA who have served 3 months of service with the employer, are

afforded paid annual leave of 7 days when they have served 12 months of continuous service. In situations where they have not completed 12 months of service, annual leave in proportion to the number of completed months of service in that year.

Subject to certain situations, these employees are also not required to work more than 6 consecutive hours without a period of leisure and more than 8 hours a day or more than 44 hours in a week. The amount of overtime hours is also capped at 72 hours a month. Under Part IV of the EA, employees are also afforded a rest day each week without pay.

At the moment, these additional protections are only available to certain categories of employees under Part IV of the EA. These categories of employees are set out as follows:
"Application of this Part to certain workmen and other employees

1. The provisions of this Part shall apply —

- to workmen who are in receipt of a salary not exceeding $4,500 a month (excluding overtime payments, bonus payments, annual wage supplements, productivity incentive payments and any allowance however described) or such other amount as may be prescribed by the Minister; and
- to employees (other than workmen) who are in receipt of a salary not exceeding $2,500 a month (excluding overtime payments, bonus payments, annual wage supplements, productivity incentive payments and any allowance however described) or such other amount as may be prescribed by the Minister."

The MOM now requests for views on the appropriate levels for these salary thresholds in relation to these employees as defined under Part IV of the Employment Act.

DISPUTE RESOLUTION SERVICES.

As mentioned above, an employee who is of the opinion that he has been unfairly dismissed can make a complaint to the Minister who then has the discretion to refer it to the Commissioner. At the present moment, this is not available to professionals, managers and executives earning more than $4,500 per month.

Separately, an employee can also turn to the Employment Claims Tribunal ("ECT") to seek redress. However, it must be noted that before an employee can lodge a claim against a respondent, he or she must first submit a mediation request to the Tripartite Alliance for Dispute Management. If the claims brought remain unsettled, the claims can then be brought to the ECT.

Briefly, under the scheme set out by the Employment Claims Act 2016, an employee can bring statutory and contractual claims against the employer. A full list of the matters within the ECT's jurisdiction can be found under s 12 and the First and Second Schedule of the Employment Claims Act 2016 or at the State Courts' website.

The public review by the MOM seeks opinion on whether these provisions and processes for dispute resolution can be more streamlined for employees and employers.

FEEDBACK RECEIVED THUS FAR

Patrick Tay, Assistant Secretary-General to National Trade Union Congress ("NTUC") published a blog post on 19 January 2018 responding to the Press Release by the MOM. In his post, he stated that the NTUC hopes to see first, an expansion of the scope of the EA to cover professionals, managers and executives, second, an extension of the protection afforded by Part IV of the EA to cover non-workmen beyond the $2,500 limit and third, enhancements to the existing dispute resolution framework. In addition, he also flagged s 18A of the EA ("**18A**") as being due for amendments so as to provide employers and employees with greater clarity on the scope of s 18A. s 18A provides for the transfer of employees from one employer to another when the organization is being restructured.

There is a good reason for the MOM to propose the changes and to conduct a review of the EA given that a greater number of employees now fall out of the scope of the EA. Statistics provided by NTUC have shown that for professionals, managers, executives and technicians, their gross monthly salaries at the 50th percentile mark is now at $5,910 and they now comprise a larger part of the workforce.

However, as mentioned by the president of the Association of Small and Medium Enterprises, Kurt Wee, if a decision is made to expand the scope of the EA, it must be done carefully such that employers are not loaded with "additional compliance or indirect costs because that may erode their competitiveness further".