

FALSE DECLARATION OF SALARIES IN WORK PASS APPLICATIONS

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Offences and punishment under the EFMA

Since 2014, more than 60 employers have been convicted for false salary declaration offences in connection with applications for or to renew work passes under section 22(1)(d) of the Employment of Foreign Manpower Act (“**EFMA**”). Directors and senior management officers should be aware that they would be held personally liable in the event they knowingly perpetrated the falsehood or were otherwise negligent in ensuring that information provided to the Ministry of Manpower (“**MOM**”) was true and accurate. Upon conviction, the company and its directors may be fined up to \$20,000 or jailed for a term not exceeding 2 years, or both for each charge. In addition to statutory punishments, the MOM may also take further punitive actions such as imposing a ban on offenders and companies from hiring new foreign employees or renewing any work passes for their existing foreign workers in the future.

The requirement to hold valid work pass

All employers who intend to hire foreigners to work in Singapore must ensure that their foreign employee holds a valid work pass. To manage foreign workforce numbers, MOM revises the assessment criteria and conditions for work passes from time to time. Unlike the S-pass and Work Permit schemes, no foreign worker levy or quota is imposed for Employment Pass (“**EP**”) applications. Thus, employers often prefer to obtain EPs for their foreign employees, notwithstanding the higher minimum salary requirement of \$3,600.

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Illegal attempts to circumvent the work pass requirements

In order to obtain work passes for their foreign employees, many of the convicted employers have attempted to circumvent the minimum salary requirement to obtain EPs. Such attempts usually involve compelling the foreign employees to return monthly amounts to the employer as reimbursement for the provision of food, accommodation or transport, after paying them the declared salaries. Such repayments are usually paid in cash in order to avoid detection.

This is exemplified in the case of Harry's International Pte Ltd ("**HIPL**"), where the former President and Chief Operating Officer of HIPL instructed her subordinates to declare the monthly salaries of 20 foreign employees as \$3,100 to meet the minimum salary requirement needed to obtain EPs (as it was then). These employees were paid a monthly salary of \$3,100 but were compelled to return cash amounts of \$1,600 to "reimburse" the company for the costs of meals and transportation the day after receiving their salaries. Investigations subsequently revealed that not all foreign employees enjoyed such employee benefits and where provided, the actual cost was less than \$1,600. The convicted director was fined \$40,000.

Ministerial response

The Minister of Manpower has issued a written response to explain the safeguards put in place against EP abuse. When reasonable suspicion is raised, the MOM may seek independent verification of an employee's qualifications and request for additional proof from the employer that it is able to pay the declared salaries. Where necessary, audits may also be conducted to ascertain if the employees were paid the salaries as declared. These extensive investigatory powers of the authorities are provided in the EFMA.

Responsibility of Employees

Employees who are aware of any such instances of false declaration of salaries have a responsibility to report the matter to the MOM.

Employees may similarly be held personally liable should they be found to be aware that their employers would pay them less than the amounts declared in their work pass applications under section 22(1)(d) of the EFMA. In 2014, 22 foreign employees were convicted of false salary declaration offences after being found to have signed declaration forms indicating their salaries to have met the minimum salary requirements for their work passes even though they knew that their employers would pay them less than the amounts declared. These foreign employees were fined between \$5,000 and \$7,000, or in default sentenced to five to seven weeks' imprisonment.

Conclusion

The MOM takes a serious view of false salary declaration offences and proactively conducts checks to detect any instances of false declaration of salaries in work pass applications. All employers are under a

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strict obligation to make accurate, complete and truthful declarations in their work pass applications to MOM. Where the responsibility of submitting such applications is delegated to subordinates, directors and senior management officers should exercise reasonable supervision over the application process and verify the matters declared in the applications.

Members of the public or employees who know of such instances of false declaration of salaries should report the matter to the MOM on a confidential basis.

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