

UPCOMING AMENDMENTS TO THE EMPLOYMENT ACT

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In our [CNPupdate of 9 May 2018](#), we highlighted that the proposed changes to the Employment Act (“EA”) likely to be implemented by 1 April 2019 would include the following areas:

- Extending the core provisions of the EA to all workers (including all professionals, managers and executives (“**PMEs**”) regardless of salary thresholds) except for public servants, domestic workers and seafarers;
- Affording additional protection to vulnerable employees by extending Part IV of the EA (which relates to Rest Days, Hours of Work and Other Conditions of Service) to more non-workmen and increasing the salary cap on overtime rate payable for non-workmen; and
- Streamlining the dispute resolution services provided by the Employment Claims Tribunals (“**ECT**”) by empowering it to hear both salary-related disputes and wrongful dismissal claims. The ECT is a branch of the State Courts that provides employees and employers with an expeditious and low-cost forum to resolve specific types of employment-related disputes. Appeals against the ECT’s order in a wrongful dismissal claim would be to the High Court and an appeal may only be made on any ground involving a question of law or that the claim was outside the jurisdiction of the ECT.

The above amendments to the EA have been confirmed when the Employment (Amendment) Bill was passed in Parliament on 20 November 2018. In addition to the above amendments, the EA will also be amended to:

- Expand the definition of “dismiss” to cover inter alia, a situation where an employee did not resign voluntarily but was forced to do so because of conduct or omissions by the employer;

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- Enhance the flexibility of employers in relation to management of employees, e.g. allowing for deduction of salary by mutual consent; and
- Extend the provisions in the EA relating to paid annual leave to all employees.

Some of the key amendments to the EA, which will take effect from 1 April 2019, are summarised below.

Scope of the EA

	Pre-Amendment	Post-Amendment
Salary cap applicable to PMEs	The provisions in the EA (save for Part IV of the EA) do not apply to PMEs earning a monthly salary above S\$4,500.	The provisions in the EA (save for Part IV of the EA) will apply to all PMEs (regardless of salary thresholds).
Scope of Part IV of the EA	Part IV of the EA does not apply to non-workmen earning a monthly salary above S\$2,500.	Part IV of the EA will apply to non-workmen earning a monthly salary of up to S\$2,600.

Statutory benefits for employees

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	Pre-Amendment	Post-Amendment
Paid annual leave	Employees who fall within the scope of Part IV of the EA are entitled to at least 7 to 14 days of paid annual leave.	All employees (regardless of salary thresholds) will be entitled to at least 7 to 14 days of paid annual leave.
Certification of paid sick leave	Only a registered medical practitioner employed by the Government or appointed by the employer may certify an employee's entitlement to paid sick leave.	Any registered medical practitioner may certify an employee's entitlement to paid sick leave.
Hospitalisation leave	An employee is deemed to be hospitalised if the employee is certified by a registered medical practitioner employed by the Government or appointed by the employer to be ill enough to need to be hospitalised.	An employee is deemed to be hospitalised if: (a) the employee is warded in an approved hospital; and (b) following the employee's discharge from the approved hospital, the employee is certified by a registered medical practitioner employed by the hospital to be ill enough to need to be hospitalised or to need to rest in order to recover.
Overtime rate payable for non-workman under Part IV of the EA	The overtime rate is calculated based on the employee's monthly salary or S\$2,250, whichever is the lower.	The overtime rate is calculated based on the employee's monthly salary, subject to the cap at S\$2,600.

Salary deductions

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	Pre-Amendment	Post-Amendment
Deductions to employee's salary	Salary deductions are only allowed in prescribed situations.	<p>Salary deductions will generally be allowed if the employee consents to the deduction in writing before the deduction is made.</p> <p>Employers will be required to obtain their employees' written consent before making any deductions from their salary in relation to certain prescribed categories of deductions such as deductions for house accommodation, amenities and services supplied by the employer.</p> <p>Where a deduction is by consent, an employee is allowed to withdraw his consent to the deduction at any time without penalty..</p>
Working on public holidays	<p>If an employee falling within the scope of the EA is required to work on a public holiday, he shall be compensated with an extra day's salary in addition to his gross rate of pay for that day or be given a day off in substitution for that holiday.</p> <p>Notwithstanding the above, an employer may, only in respect of PME's falling within the scope of the EA, choose to compensate them with part of a day off instead, comprising such number of hours as may be agreed, or if there is no such agreement:-</p> <p>(a) 4 hours if the employee worked on that holiday for a period not exceeding 4 hours; or</p> <p>(b) A whole day if he worked for more than 4 hours on that holiday.</p>	The flexibility to compensate employees with part of a day off (as described in the second paragraph on the left) is extended to all employees except those falling within the scope of Part IV of the EA.

Wrongful dismissal claims

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	Pre-Amendment	Post-Amendment
Definition of dismissal	Dismissal means the termination of the employee's employment with the employer, with or without notice and whether on grounds of misconduct or otherwise.	Dismissal will include the involuntary resignation of an employee by any conduct or omission engaged in by the employer, relying on the common law concept of constructive dismissal where an employee is compelled to resign as a result of an employer's conduct which is tantamount to a fundamental breach of the terms of employment.
Length of employment required to bring a claim against dismissal	PMEs must have served the employer for at least 12 months to bring a claim under the EA for wrongful dismissal where they receive notice or payment in lieu of notice.	PMEs need only to have served the employer for at least 6 months to bring a claim under the EA for wrongful dismissal where they receive notice or payment in lieu of notice.
Adjudication of dismissal claims	Claims that dismissal is without just cause or excuse are to be brought to the Ministry of Manpower.	An employee may claim either reinstatement or compensation. Claims that dismissal is without just cause or excuse are to be first registered at the Tripartite Alliance for Dispute Management (TADM) for compulsory mediation before they can be brought to the ECT. ¹

¹Note: The ECT can only hear claims up to S\$20,000. However, for eligible executives who go through the Tripartite Mediation Framework (for mediation assisted by their union recognised under the Industrial Relations Act to collectively represent rank-and-file employees), the claim limit is S\$30,000. If a party's claim exceeds the monetary limit, but the party still wishes the ECT to hear the claim, the excess amount of the claim can be abandoned. Alternatively, an employee may still bring their claim to Court. For a wrongful dismissal dispute under section 14(2) of the EA, the claim must be filed not later than 1 month after the date of dismissal of the employee. For any wrongful dismissal dispute under section 84(2) of the EA (under the section on maternity protection and benefits), the claim must be filed within 2 months after the date of the employee's confinement.

Suspension during inquiry prior to dismissal

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	Pre-Amendment	Post-Amendment
Duration of suspension period	For the purpose of an inquiry of employee's conduct, the employer may suspend the employee from work for a period not exceeding one week, but shall pay him not less than half of his salary for such period. If the inquiry does not disclose any misconduct on the part of the employee, the employer shall immediately restore to the employee the full amount of the salary so withheld.	The employer may suspend the relevant employee from work for a period exceeding one week by applying and obtaining approval from the Ministry of Manpower, but shall pay him not less than half of his salary for such period.

Information on retrenchment

	Pre-Amendment	Post-Amendment
Information on retrenchment	<i>No equivalent provision</i>	An employer may be required by the Commissioner for Labour to provide information on the retrenchment of any employee.

Power for Minister to regulate the conduct of an employer towards an employee

	Pre-Amendment	Post-Amendment
Regulation of the conduct of an employer towards an employee	<i>No equivalent provision</i>	The Minister may regulate the conduct of an employer towards an employee, to protect the employee from any employment practice that may adversely affect the well being of the employee.

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Conclusion

In view of the above upcoming amendments to the EA, it is useful for employers to note the following:

- The expanded coverage of the EA and ensure that the terms of employment of all employees (especially those affected by the wider coverage) comply with the amended EA;
- All employees will have recourse to the ECT if they consider themselves to have been wrongfully dismissed. In this regard, a set of tripartite guidelines on wrongful dismissal will be published to provide further clarity and to illustrate what would amount to wrongful dismissal; and
- If not already the current practice, proper records of retrenchment exercises should be maintained, as any failure to furnish information on the retrenchment of any employee would be a breach of the EA for which an administrative penalty may be imposed.

We will be updating our CNP Employment Law guide to reflect the amendments to the EA and the updated guide will be made available on our website in due course.

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