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Landmark changes to the Employment Act in Singapore

Singapore News

Since 1 April 2016, employers are required to issue itemised payslips and written key employment terms (KETs) to employees covered under the Employment Act. Employers must also maintain detailed employment records. In addition, there will be a new framework to treat less severe breaches of the Employment Act.

The recent amendments to the Employment Act shall avoid misunderstandings regarding the terms of employment and, by doing so, enable employees to better understand how their salary is calculated, what benefits they are entitled to and how to enforce their rights. These changes are the latest ones in a series of other changes to the Employment Act made in the preceding years, with the intention to extend better protection to employees. Employers should review their practices, handbooks and other guidelines to ensure compliance with the various changes.

What are the new obligations of the employer?

Employers have the following new obligations:

Itemised Payslips

Employers must issue written itemised payslips to all employees covered under the Employment Act at least once a month. The payslips shall be given to the employee together with the payment (or, at latest within three working days after the payment). In case of termination of the employment, the payslip must be given to the employee together with the last outstanding salary. The payslip can be issued as soft or hardcopy and can also be handwritten.

There are a number of items to be included on the payslips in so far as they are applicable. If, for example, overtime pay does not apply then this need not be stated. The items to be shown on the payslip are the following: full name of employer; full name of employee; date of payment; basic salary and, in case of hourly or other special rates, the rate per hour or respective other criteria; allowances; other additional payments such as bonus, rest day pay or public holiday pay; deductions made e.g for CPF or no-pay leave; overtime hours worked, overtime pay and total paid net salary.

A sample of such a payslip may be found under the following link.

<http://www.mom.gov.sg/~media/mom/documents/employment-practices/payslip/single-blank-payslip-form.pdf>

KETs in Writing

Until the end of March 2016, employment agreements could still be concluded verbally or impliedly, as there is no written form requirement for such agreements. Since 1 April 2016, however, it is now required that the main terms of the employment are given to the employees covered under the Employment Act in writing, whereby such provisions are referred to as KETs. Common KET's applicable to all or certain groups of employees can be provided in an employee handbook or company intranet.

The following items are KET's and must therefore be issued in written form where applicable: full name of employer, full name of employee, job title, main duties and responsibilities, start date of employment, duration of employment (for fix-term contracts), working arrangements such as daily working hours and rest days, salary period, basic salary, fixed allowances, fixed deductions, overtime payment period, overtime rate of pay, other salary related components (i.e. bonuses), type of leave, other medical benefits, probation period and notice period.

Employment Records

Employers are required to maintain and keep detailed employment records of employees covered under the Employment Act in soft or hard copy, including handwritten records. The records to be kept include employee and salary records, whereby the salary records include those that are relevant for the items to be stated on the payslip. Employee records include: address of the employee, NRIC or FIN with expiry date, date of birth, gender, date of starting and leaving employment, working hours including duration of meals and breaks, dates and other details of public holidays and leave taken.

For current employees, the records must be kept for the latest two years. For ex-employees, the records of the last two years of employment must be maintained for one year after the employment ended.

By when must these new requirements be met?

The new requirements came into force on 1 April 2016 and generally must be met by then. Despite this, in view of feedback from employers (particularly small businesses who will be most affected by the changes), the Ministry of Manpower (“MOM”) stated that it is giving employers a one-year grace period during which MOM will focus on assisting employers to implement the aforementioned requirements and will adopt a “light-touch” enforcement approach. Nevertheless, action will be taken on a case by case basis if employers do not comply with the new requirements.

Who does this apply to?

The changes apply to all employees covered under the Employment Act. In short, generally all employees (local and foreign) working for an employer in Singapore are covered under the Act, unless they are in a managerial or executive position with a basic monthly salary exceeding 4,500, are a seafarer, domestic worker, statutory board employee or a civil servant.

With respect to the requirement to issue KETs, employers must only provide such terms to employees with whom a contract of service has been entered into on or after 1 April 2016 and who are employed for 14 days or more.

What are the consequences of breaches?

In the past, all breaches of the Employment Act were treated as criminal offences. Less severe breaches can, however, now be treated as “civil contraventions” subject to administrative penalties based on the Administrative Penalties Framework. The following breaches are treated as such “civil contraventions”:

- Failure to issue itemised payslips to all employees covered under the Employment Act;
- Failure to issue KETs, such as working arrangements, main duties and fixed salary deductions in writing to all employees covered under the Employment Act;
- Failure to maintain detailed employment records; and
- Provision of inaccurate information without fraudulent intent to the Commissioner for Labour or inspecting officers.

Initial penalties range from S\$ 100 to S\$ 200 per employee or occurrence and the employer may also be requested to rectify the breach. In cases of non-compliance, the breach becomes a criminal offence with fines of up to S\$ 10,000 or imprisonment for up to 12 months.

What other significant changes to the Employment Act providing better protection to employees were recently made?

With effect of 1 April 2014, the possibility for employees to appeal against an unfair dismissal was significantly widened. In cases of termination of the employment contract with notice or without notice on grounds of misconduct; employees covered under the Employment Act can, since 1 April 2014, appeal to the Minister of Manpower to be reinstated if they feel that the dismissal was unfair. The appeal must be received by MOM within one month from the date of dismissal. If the Minister is satisfied that the employee was unfairly dismissed, he may do one of the following:

- Order reinstatement to your former job; or
- Order a sum of money as compensation.

Managers and executives (only those with salaries of up to S\$ 4,500 are covered under the Employment Act and can therefore appeal) must have served their employer for at least 12 months before they are entitled to appeal against a dismissal where contractual notice was given. For dismissals without notice for cause, PME’s are afforded the same protection as the other employees covered by the Employment Act.

Previously, the possibility to appeal against an unfair dismissal under the Employment Act was not at all provided to professionals, managers and executives (“PME’s”).

Previously the appeal was also only possible in cases of dismissal for cause without notice. Now, an appeal is possible also in case of termination with proper notice or payment in lieu of notice.

While employers still do not have to state grounds for a termination when terminating an employment with notice or payment in lieu of notice, employers should however be able to show to MOM that the termination was not unfair in case the termination is challenged by the employee. Employers should therefore maintain records to show that a termination was fair. Such records could, for example, be a track record of breaches of the employment terms by the employee (e. g. constantly coming late) or warnings and requests for improvements of certain behaviour given to the employee.

What other significant changes are expected to be implemented in the near future?

An Employment Claims Tribunal (“ECT”) will be set up in 2016. The ECT shall provide an expeditious and affordable forum for the resolution of salary-related disputes. It is not intended that the ECT will deal with other claims such as unfair dismissal or harassment for which employees may turn to other avenues under the Employment Act, or the civil courts.

Currently, the Labour Court administered by the MOM is the competent court to resolve salary-related claims between employers and employees covered under the Employment Act. However, those not covered by the Employment Act (including professionals, managers and executives – PMEs; and earning more than \$4,500/month) would have to file their claims with the civil courts, which can be a lengthy and costly process.

Based on the ECT Consultation Paper issued by MOM, the key features of the ECT are expected to be the following:

- The ECT will only handle salary related-disputes;
- The ECT is open for claims by all employees regardless of salary and not only by those covered under the Employment Act, with a few exceptions (public servants, domestic workers and seafarers);
- The ECT is also open for claims by employers against employees, such as for unpaid salary in lieu of notice;
- The ECT will be part of the Singapore court system and will replace MOM’s Labour Court;
- Mediation will be mandatory before the ECT hears a claim;
- Claims will be capped at S\$20,000 or S\$30,000 depending on the mediation forum used.
- Claims must be brought within certain time limits: 12 months of the dispute arising, or 6 months following termination of employment.

What should employers do?

To avoid disputes and to be able to defend claims, we suggest employers comply with the requirements to issue itemised payslips and written key employment terms (KETs) regardless of whether their employees are covered under the Employment Act or not. Should employers already have issued payslips in the past, we suggest reviewing such to ensure they contain all the required items. As regards employment agreements with new employees, these should be made in writing and should contain the KETs. Some of the KET’s can alternatively be covered in a separate standardized document, i.e. an employee handbook issued to all employees. Lastly, employers should

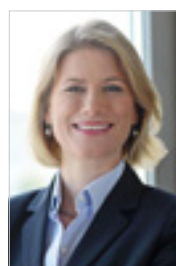
instruct their human resource/administrative department to keep records of all employee data as outlined above.

Keeping proper employment records and having in place clear employment terms and processes for hiring, career development and grievances is also relevant in view of the Fair Consideration Framework, introduced a while ago to strengthen the “Singaporean Core” in the workforce, and the possibility to appeal against unfair dismissals.

The employment records should enable the employer to show that there were grounds for dismissal and that the employer has fair hiring/termination processes as well as discriminatory hiring and career development processes in place. If a company comes under the scrutiny of the MOM, it might be asked to provide MOM with documents such as organisation charts with nationality information, recruitment processes, staff grievance handling procedures, a framework for staff progression, plans to develop local internal staff to take on higher roles or reduce reliance on EP holders, the number of applications submitted by Singaporeans and whether Singaporeans were interviewed for the vacancies. Employers should be able to provide such documents.

For further guidance, information and assistance please feel free to contact us anytime

Luther LLP



Birgitta von Dresky
Attorney-at-Law, Partner
Luther LLP
Singapore
Phone +65 6408 8008
birgitta.von.dresky@luther-lawfirm.com



Nicole Furrer, MLaw
Attorney-at-Law, Associate
Luther LLP
Singapore 049908
Phone +65 6408 8000
nicole.furrer@luther-lawfirm.com

Imprint

Luther Rechtsanwaltsgesellschaft mbH, Anna-Schneider-Steig 22,
50678 Cologne, Phone +49 221 9937 0, Fax +49 221 9937 110,
contact@luther-lawfirm.com

Editor: Birgitta von Dresky, Lawyer, Partner, Luther LLP, 4 Battery Road,
Bank of China Building, #25-01, 049908 Singapore, Phone +65 6408 8008,
Fax +65 6408 8001, Birgitta.von.Dresky@luther-lawfirm.com

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