How key changes to the Singapore Employment Act affect business owners

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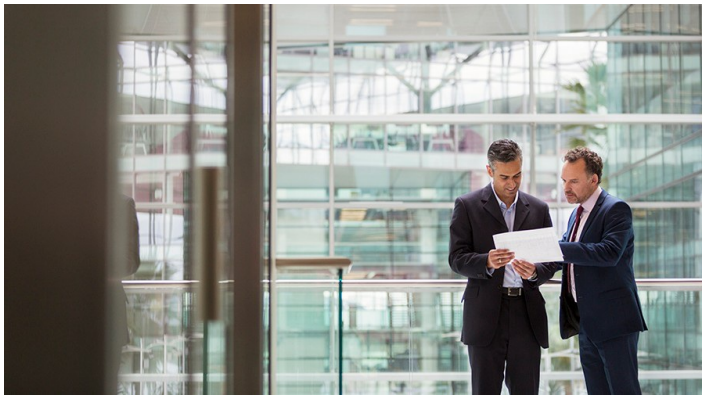

Companies should take note of the substantive changes to the Employment Act (the "EA") that came into effect on 1 April 2019. The EA is the primary legislation governing the employment landscape in Singapore. It was amended to take into account the changing profile or Singapore's labour force and employment practices, providing greater protection to employees.

Significantly, the core provisions of the EA now extend to cover all professionals, managers and executives (" PMEs"), compared with previously limiting protection to only PMEs with a salary of under S$4,500 per month. As a result of the change, an estimated 430,000 more PMEs will now be protected under the fundamental employment benefits offered by the core provisions of the EA, including timely payment of salary, redress for wrongful dismissal and automatic transfers of employment pursuant to business transfers.

While these changes usher in an enhancement of employees' rights, they necessitate an assessment of companies' HR and employment practices to ensure compliance with the new slate of EA provisions.

Payment of salary in lieu of notice

Notably, the amended EA now grants both employers and employees the reciprocal right to pay salary in lieu of notice, giving the employee the right to terminate employment immediately. While employment contracts previously gave the employer the option of paying salary in lieu of notice but not vice-versa, this is now a mutual statutory obligation that employees can ask for.

In theory, this permits all employees, including PMEs, to buy out their notice periods even if their contract does not explictly state they can do so. This may undermine the traditional leeway given to companies to properly facilitate handover and succession planning during the notice period.

For business owners, this situation is exacerbated in cases where senior executives resign. Companies should therefore put in place measures to appropriately deal with handover obligations and succession in such situations to minimise disruption.

Wrongful dismissal claims

The amended EA has also expanded the scope of wrongful dismissal. Whereas dismissal had previously referred only to the termination of employment on grounds of misconduct or otherwise, dismissal now includes "constructive dismissal", which is when the employee is terminated by the conduct or omission of the employer.

Employers should also note that the changes to the EA allow PMEs who have worked at least six months with the company to file for wrongful dismissal compared to one year previously.

The Employment Claims Tribunal ("ECT") is an avenue for both parties to resolve wrongful dismissal and salary-related claims. The ECT, combined with compulsory mediation at the Tripartite Alliance for Dispute Management, aims to offer parties a cost-effective and streamlined dispute resolution mechanism.

Companies should take note that if they dismiss an employee on the basis of poor performance, the burden of proving poor performance is on the employer.

However, if the termination is done with proper notice given and without a reason for termination, the termination is generally considered to be

valid without placing such a burden of proof on the employer. The Tripartite Guidelines on Wrongful Dismissal, issued on 1 April 2019, provides some examples of what might constitute wrongful dismissal.

Companies should take pre-emptive steps to safeguard against wrongful dismissal claims. They should ensure that their end-to-end internal HR policies (including investigation and disciplinary protocols) are sufficiently robust to minimise employee disputes. This should be complemented by training relevant personnel and managers on how to properly conduct termination exercises.

Leave entitlement

Companies should take note that all employees under the EA are now entitled to the following benefits: a minimum of 7 to 14 days of paid annual leave, paid leave on gazetted public holidays, 14 days of sick leave, and maternity protection and childcare leave, where applicable. Employees can encash accrued and unused annual leave upon termination of employment (except in misconduct cases). Companies should ensure that their current benefit provisions take into account these amendments at a minimum.

Enforcement

The changes highlighted above will impact business owners in their conduct of employee relations.

Under the WorkRight initiative by the Manpower Ministry (MOM) and the Central Provident Fund (CPF) Board, companies are now subject to inspections and audits on compliance with the provisions of the EA.

These inspections not only involve a review of the documented procedures, but could also include interviews with individual employees to ensure adherence to the EA.

In light of these sweeping changes, and the MOM's firm stance on enforcement, employers are encouraged to review their existing employment framework and to implement necessary changes in their contracts, handbooks and practices to ensure compliance with the new EA.

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