SUMMARY OF RESPONSES TO KEY FEEDBACK FROM PUBLIC CONSULTATION ON THE EMPLOYMENT ACT (18 January – 15 February 2018)

1. In January 2018, the Ministry of Manpower (MOM) invited members of the public to provide feedback on the proposed changes to the Employment Act (EA) and the Employment Claims Act (ECA).

2. In total, we received about 250 suggestions from over 160 stakeholders, including employees, employers, legal experts, chambers of commerce, and non-government organisations (NGOs). This paper summarises feedback related to the areas of review, as well as feedback related to other areas of the EA, workplaces in general, and MOM's responses.

FEEDBACK RELATED TO THE AREAS OF REVIEW

Core Provisions

3. We received a wide range of feedback on which employees the core provisions of the EA should cover. A majority of the respondents felt that the current monthly basic salary threshold of $4,500 for managers and executives (M&Es) is too low and that the EA's core provisions should cover all M&Es. There were also suggestions for the EA to extend its core provisions to domestic workers and public servants.

4. Conversely, we also received feedback that the current coverage was sufficient and that there was no need to extend it to M&Es with monthly basic salary above $4,500, as this might have a negative impact on business cost.

MOM's response

5. After further consultation with our tripartite partners, there was consensus to remove the salary threshold for M&Es so that core provisions will cover all employees (except for domestic workers, public servants and seafarers).

6. We considered the suggestion to cover domestic workers and public servants. For domestic workers, the nature of their work is quite different, making it difficult to regulate certain aspects of their employment, such as overtime work. Moreover, a vast majority of domestic workers in Singapore are foreigners and are already given appropriate protection under the Employment of Foreign Manpower Act (EFMA). As for public servants, they are already covered separately by the Government Instruction Manual which lays out stringent employment standards. The Public Service regularly reviews and updates the Instruction Manual, including to take the lead in national initiatives to promote progressive employment standards.

Additional protection for more vulnerable employees (Part IV of the EA)

7. There was a wide range of views regarding the employees which additional protection under the EA should cover. We received feedback that the salary thresholds for workmen and non-workmen should be increased, with the proposed monthly basic salary thresholds ranging from $3,500 to $12,000. However, we also received feedback that any increase to the salary threshold would have significant impact on business cost, which could affect the employability of workmen and non-workmen. There was also feedback to remove the distinction between workmen and non-workmen such that the monthly basic salary threshold is the same for both types of employees.

8. A respondent commented that any increase would impact SMEs more, and proposed a cap on the maximum overtime (OT) payable. There was also feedback to remove the cap for the salary used to calculate OT or to increase this cap to align with the salary threshold for non-workmen.

9. We also received feedback for employers to pay the same rate regardless of who requested for the employee to work on a rest day, so as to ensure that employers could not pay a lower rate if the work was deemed to have been done on the employee's initiative. There was also feedback that the line between M&Es and non-M&Es will increasingly be blurred, and rather than exclude M&Es completely, eligibility for additional protection should be determined by salary alone and not by occupation type. This is especially as some respondents felt that M&E designations might not accurately reflect their duties, and those who are lower-paid should also be compensated if they worked OT and/or on rest days/weekends.

MOM's response

10. We have considered the diverse feedback together with our tripartite partners, and established tripartite consensus on the various issues. First, we intend to increase the salary threshold for non-workmen from $2,500 to $2,600. We also intend to increase the cap on the salary used to calculate OT from $2,250 to $2,600. With this change, half of the workforce will be covered by additional protection under the EA.

11. Second, on the different salary caps for workmen and non-workmen in order to qualify for Part IV benefits, there was consensus among the tripartite partners that such binary differentiations have become less useful as workers are increasingly required to multi-task with some employees taking on a mix of manual labour and non-manual white collar roles in the same job. We will monitor this trend further as the blurring of occupational differentiations is expected to continue.

In the meantime, the $4,500 salary threshold for workmen will be left unchanged. At this threshold, 99% of workmen will be covered.

12. Third, there was tripartite consensus that employers should continue to pay a higher OT rate if they request employees to work on a rest day. This is to protect workers from having to work excessively. Employees who were asked by their employers to work on a rest day but paid as if the work was on their own initiative should approach MOM for assistance. Similarly, employees who are denied additional protection such as OT because their job titles sound like M&E but in fact do not exercise M&E functions should approach MOM so that the matter can be determined conclusively. MOM will take reference from the recent High Court ruling in Hasan Shofiqul v China Civil (Singapore) Pte Ltd and evaluate eligibility for additional protections under Part IV of Employment Act accordingly.

Enhance dispute resolution services

13. Most respondents agreed that it would be more expedient for the Employment Claims Tribunals (ECT) to hear both salary-related and dismissal claims. Some called for the ECT to also hear denial of re-employment claims under the Retirement and Re-employment Act (RRA).

MOM's response

14. After consultation with the tripartite partners, there was consensus to shift the adjudication of wrongful dismissal claims to the ECT. MOM will consider shifting the adjudication of unreasonable denial of re-employment claims to the ECT when the RRA is next reviewed. In the meantime, employees who encounter such RRA disputes continue to have the avenue of appeal to MOM.

OTHER FEEDBACK RELATED TO THE EA

Leave Entitlements and Public Holidays

15. Recognizing that annual leave should be a core provision, a respondent suggested moving the provision out of Part IV of the EA. A number of respondents also commented that the current annual leave entitlement of 7 days was too low and proposed that this be increased. Some also proposed removing the condition of at least 3 months' service to qualify for annual leave, and to mandate that employees be allowed to carry forward and/or encash unused leave. There were also suggestions to legislate for eldercare and study leave, and to have a "leave in lieu" if a public holiday falls on a Saturday. However, there were equal calls to limit the number of leave days allowed to be carried forward.

MOM's response

16. MOM would like to clarify that under the current EA, an employer is already required to carry over any unused leave to the next year. As for the suggestion to have a "leave in lieu" for public holidays that fall on a Saturday, an employee is already entitled under the EA to another day off or one extra day's salary in lieu of the public holiday at the gross rate of pay, if a public holiday falls on a non-working day.

17. With regard to moving annual leave entitlements out of Part IV of the EA, there was tripartite consensus for annual leave to be extended like other core provisions to cover all employees (except for domestic workers, public servants and seafarers). With regard to increasing the current minimum annual leave entitlement, and expanding the types of leave to also include study leave or eldercare leave, there was tripartite consensus that it is not desirable nor necessary to impose this on all employers. The current approach of stipulating a reasonable minimum

entitlement that all employers have to provide, combined with employers competing to offer more generous leave benefits as a strategy to attract good workers, has worked well for workers and employers and should continue.

Sick Leave Entitlements and Medical Benefits

18. We received feedback calling for removing the qualifying condition of 3 months' service for paid sick leave, as one could fall sick at any time. Some also proposed to mandate that employers pay their employees' medication bills, capped at a certain amount to manage business cost. This would be easier to administer as opposed to having to differentiate consultation fees from medication fees.

MOM's response

19. There was tripartite consensus that a qualifying period for sick leave has the practical effect of facilitating the hiring of employees regardless of pre-existing medical conditions. If the qualifying period is removed, employers would either incur the cost of extensive medical examination of their candidates before hiring, or to be less likely to hire a candidate in poorer health. Such unintended consequences remain highly likely. As for the suggestion for employers to also cover medication bills, today there is no requirement for employers to provide additional mandatory medical benefits for their employees, beyond reimbursing their medical consultation fees. This is so that job seekers in poorer health or with pre-existing illnesses would not face more hurdles than other job seekers in finding employment.

Timely Payment of Salary

20. There were suggestions to fine or more harshly penalize companies that pay salaries late. On the other hand, we also received feedback to allow more flexibility in paying salaries for start-ups that might face cash-flow issues. There was also a suggestion to require employers to communicate the salary payment date to their employees.

MOM's response

21. The EA already stipulates the salary due date, and it is already an offence for an employer to pay salary late. We also only recently, in April 2014, stiffened penalties for failure to pay salaries on time. A first-time offender can be fined up to $15,000, up from the previous maximum fine of $5,000, or imprisoned up to 6 months or both. Repeat offenders could be fined up to $30,000, up from the previous maximum of $10,000, or imprisoned up to one year or both. On allowing more flexibility for employers with cash-flow issues to pay salary, we note that this cannot be acceded to because employees are dependent on their salaries for their livelihood and for managing their financial needs and commitments.

22. On ensuring that employers communicate salary payment dates clearly to their employees, all employers are required to make and keep employee records, give written records of key employment terms (KETs), which would include date of salary and overtime payments, and give itemized pay slips to employees covered under the EA. This allows employees to better understand how their salary is calculated and their employment terms and benefits.

Termination and Retrenchment

23. There were numerous suggestions on wrongful dismissal, including:

a. Being clearer about what constitutes wrongful dismissal;

b. Requiring employers to give a reason for dismissing their employees; and

c. Legislating the factors for determining the compensation amount for wrongful dismissal claims.

24. On the other hand, some cautioned against covering higher-earning M&Es for wrongful dismissal protection, as this might lead to a significant increase in the number of unsubstantiated wrongful dismissal claims. We also received calls to mandate minimum retrenchment benefits.

MOM's response

25. The tripartite partners agreed to provide further guidance and clarity on what constitutes wrongful dismissal and the factors for determining the compensation amount. With regard to requiring employers to provide a reason for dismissal, in most employment contracts, the employee may resign with notice and not provide reasons for doing so. The same applies to employers – they can dismiss with notice and not provide reasons. However, this does not stop an employee from taking up the matter with MOM (and TADM, after EA amendments are approved and come into effect next year) if he believed that his dismissal was wrongful.

26. With regard to mandating minimum retrenchment benefits, the tripartite partners deliberated extensively on this issue and there was consensus that it might not be beneficial to both employees and employers. A mandated level of minimum retrenchment benefit will likely become the norm, and would not benefit the workers in cases where the employers are able to pay higher amounts. Conversely, setting it too high might overburden companies that are already downsizing

under difficult conditions. It would also negatively impact the remaining workers in the company as they strive to restructure and turn around the business. In the longer term, it could also make businesses more reluctant to hire more workers. As such, the current approach where the tripartite partners issue guidelines that stipulate the prevailing norms for retrenchments benefits quantum, has worked well and should continue.

Notice Period

27. We received varied suggestions, including:

a. Allowing the notice period to be served by an employee to be different from that of his or her employer;

b. Having a cap on the length of the notice period; and

c. Disallowing employees serving notice from taking their unused leave as employers might need the employee around while they look for new hires.

MOM's response

28. There were contrasting suggestions arguing both for the EA to be more prescriptive and more flexible. We consider the current provisions in the EA to provide the right balance between granting flexibility to employers and being fair to employees. The EA mandates a minimum period of notice for situations where the notice period is not part of the terms of the contract of employment. To ensure parity, the EA mandates that the length of the notice period should be the same for both employees and employers.

OTHER FEEDBACK

29. We also received suggestions related to workplace issues in general. There were calls for greater protection of older workers and disabled persons at the workplace, and to have laws against discrimination, harassment, and abuse in the workplace. There were also recommendations to further liberalize maternity benefits to include parents of adopted children and parents of non-Singaporean children.

MOM's response

30. We take a serious view of age discrimination at the workplace. Under the RRA, it is unlawful for employers to dismiss employees who are below 62 years old on grounds of age. Employees who feel that they have been unfairly treated in the workplace can approach TAFEP for advice and assistance. To protect individuals against harassment, including workplace harassment and abuse, the Government introduced the Protection from Harassment Act in 2014. Employees who face workplace harassment should seek help promptly and can report such incidents to MOM or TAFEP. They can also seek civil remedies directly through the Courts, or report egregious cases to the Police.

31. Currently, adoptive mothers are already entitled to 12 weeks of paid adoption leave. The provision of maternity leave under the EA is not dependent on the nationality of the child.

CONCLUSION

32. MOM would like to thank all respondents who have taken the time and effort to provide valuable feedback, and who have contributed towards strengthening our policy review process for the EA.

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