AustCham SINGAPORE
Your Australian Business Connection

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Sent by email
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AustCham - the Australian Chamber of Commerce (Singapore) - is pleased to accept the invitation for submissions in relation to the Ministry of Manpower's current review of the Employment Act.

The Chamber presently represents approximately 600 members. Our membership ranges from many small and medium enterprise employers through to some of Australia's largest corporations with their Asian headquarters based in Singapore. On behalf of our members we appreciate the opportunity to attach our submission for your consideration.

We believe we are in a position to compare the Singapore proposals with relevant aspects of the Australian system and experience. Based on that perspective, we urge a cautious approach to the proposed reforms with a case by case analysis of the potentially unintended consequences that may arise.

The Singapore system, built upon constructive tripartite foundations, has an enviable reputation for balancing the need for the statutory protection of economically vulnerable sectors of the workforce, while also enabling the competitive labour market to operate in sectors where more informed, higher paid employees have the resources to seek resolution of claims through common law. By contrast, the Australian system is built on more adversarial foundations with much broader statutory coverage. In some respects, the proposed reforms which significantly extend the statutory coverage of the Singapore system, could disrupt the model that has served Singapore so well.

We would be pleased to elaborate on the attached submission, if requested to do so.

Yours sincerely,

Ian Cummin
President
Australian Chamber of Commerce Singapore

Areas of Review

A. Core provisions

The EA stipulates core provisions such as public holiday and sick leave entitlements, payment of salary and allowable deductions, and redress for wrongful dismissal. These core provisions cover all employees[1] except managers and executives earning more than $4,500[3] per month. Employees not covered by the EA already have access to many of these provisions. MOM would like to invite views on whether such core provisions should be extended to all employees.

Comments:

The Employment Act presently recognises differences in the nature of work and responsibilities between lower level positions, compared with managerial and executive roles. The Employment Act is prescriptive, providing clear, unambiguous standards for employees and employers covered by it. Prescriptive standards are appropriate for highly regulated jobs and work patterns. However, as recognised by the current Employment Act "one size doesn't fit all". Jobs of a managerial or executive nature are subject to varying demands and employment conditions for such roles and need to be more flexible than those governing more regulated roles.

Furthermore, the trend in the nature of work is changing towards more family friendly, flexible arrangements. The Singapore Government has done a great job in alerting industry to the challenges and opportunities presented by this trend, and also by technologies such as artificial intelligence, the internet, and the overall digital transformation of how we live, work and play. We are encouraged to innovate or face external disruption to our businesses. Such transformation is being supported by many skills upgrade programs to ensure workers will be able to adapt to the future of work and thrive. To do this, we will need to be flexible and recognise the many changing ways of working.

Equally, it is important that the Employment Act seeks to be flexible in the way that it supports and protects workers as the nature of work innovates and transforms in line with the growth in technology adoption and new business models. Increasing the coverage of prescriptive regulation is at odds with trends in contemporary workplace environments. A significant expansion of the coverage of the Employment Act seems to be counter to recent, progressive Singapore Government initiatives which encourage more flexible work arrangements.

For these and other reasons, a review of the Employment Act may be timely. However, the present model has served employees and companies well up to now. While proposals for more universally standard conditions may be well-intentioned, productivity risks will arise if the current model of employment governance is disrupted. Therefore, a cautious case-by-case review of the merits of each change needs to take place in the context of the potential for unintended consequences arising from the change.

For example, there are unlikely to be any "unintended consequences" associated with extending parental leave coverage to all. As a developed economy it is important that Singapore is able to unequivocally show that it supports contemporary international standards for working parents. Contemporary parental leave standards are widely recognised in employment contracts and company policies for those not covered by the Employment Act. If not, they should be. Therefore, it would be appropriate to extend statutory coverage of parental leave to all.

Another example is annual leave. Presently, this is not a core provision. It is submitted that extending the statutory right to annual leave would be an appropriate and positive step.

On the other hand, extending the Employment Act's dismissal provisions as a universal entitlement is fraught with the potential for unintended consequences. Experience under the Australian system, which has a broader coverage than the present Singapore Employment Act, is a useful point of reference. Notwithstanding rules to

ease the burden on small businesses and exclude non-industrial instrument covered employees earning more than approximately A$12,000 per month, and a limit to the amount that can be awarded for unfair dismissal, the Australian Fair Work Commission still deals with around 14,000 unfair dismissal applications each year. The Australian workforce is much larger than Singapore's and it can therefore be anticipated that dismissal claims will be a lot less here, even if access to the statutory system is significantly expanded beyond similar coverage in Australia and compensation is uncapped. Nevertheless, an estimate of 3,000 applications per year for Singapore is not unreasonable, if the Employment Act's dismissal provisions are extended universally. Government resources (and cost) could be overwhelmed by claims from higher income earners in a "one size fits all" system.

Higher remuneration packages compensate for higher flexibility to meet changes in business activity, and to recognise the more serious consequences for a business in the event of misconduct and poor job performance. Contractual protections under the common law provide appropriate redress for those not presently covered under the Employment Act. Under Singapore's common law there is an implied duty of mutual trust and confidence in all employment relationships, which works both ways. Higher income earners who believe they have been treated unfairly already have the right to seek redress through the court system.

Another concern relates to the termination of employees covered by expatriate contracts. Presently, in the event of the termination of employment of an expatriate, contract law and the employment pass rules provide clarity about the process. Extending the dismissal provisions under the Employment Act to include employees on expatriate contracts could complicate the interaction between rights and obligations under the expatriate employment contract, the primary "home" employment contract, employment pass provisions and the Employment Act.

It is noted that the Employment Act currently excludes from its coverage persons "employed in a managerial or executive position" earning in excess of the prescribed salary threshold (S$4,500/month). The MOM regards managerial and executive employees as including "professionals with tertiary education and specialised knowledge or skills whose employment terms are like those of managers or executives". However, this is not actually reflected in the wording of the Act. It is respectfully submitted that the Act should be amended to align with MOM policy.

Finally, "transition to retirement" and "family friendly" part-time employment arrangements could be encouraged by the introduction of a pro-rata assessment of monthly salary for the purposes of the coverage test for managers and executives. Currently, higher paid managers and executives who work part-time hours can fall under the threshold merely because it is not pro-rated against full-time hours. It is respectfully submitted that this anomaly should be addressed.

B. Additional protection for more vulnerable employees

Beyond the core provisions enjoyed by all employees covered under the EA, additional protection for more vulnerable employees is currently stated in Part IV of the EA and relate to time-based provisions such as annual leave, hours of work, overtime pay and rest day. These cover non-workmen[4] earning a monthly salary of up to $2,500, and workmen[5] earning a monthly salary of up to $4,500. MOM would like to invite views on the appropriate level for these salary thresholds.

Comments:

Provisions under Part IV such as sick leave, overtime and rest days are presently covered in the Employment Act in a highly prescriptive way. Work demands in an administrative environment are often variable, and the aim is often to encourage more flexible work arrangements, not highly prescriptive ones. In addition, bonus plans often compensate for and reward flexibility, individual performance and productivity.

The present maximum of $2,500 per month for non-workmen provides appropriate protection in light of the

differences between more structured work environments in a factory, compared to much less structured arrangements in an office. If the current review of the EA determines there is the need for an increase in Part IV coverage, the Act should be modified to allow consideration of remuneration and benefits other than non-regular salary, which are or would be paid in lieu of the prescriptive entitlements under Part IV. In other words, the question would be whether employees are "better off overall" under the alternative remuneration and benefits package compared with a Part IV arrangement. This would recognise and encourage participation in productivity bonus and incentive plans that provide fair and appropriate reward for flexible work patterns.

Transition to retirement and family friendly part-time employment arrangements for employees under Part IV could also be encouraged by the introduction of a pro-rata assessment of monthly salary for the purposes of the Part IV coverage test. Currently, employees who work part-time hours can fall under the Part IV threshold (and corresponding provisions of the *Employment (Part-Time Employees) Regulations*) merely because it is not pro-rated against full-time hours. It is respectfully submitted that this anomaly should be addressed.

C. Enhance dispute resolution services

Currently, statutory and contractual salary-related disputes are heard by the Employment Claims Tribunals (ECT), while wrongful dismissal claims are heard by the Minister for Manpower. Given that dismissal-related claims are usually coupled with salary issues, the affected employee has to go to two different parties for their issues to be resolved, rather than just one party. MOM is reviewing this process to make it more streamlined for employees and employers and would like to invite views on how we can do so.

Comments:

Changes that streamline access to rights and protections are positive. Employees should not need to go to two different jurisdictions to resolve related matters in dispute. However, compensation through the ECT is capped at S$20,000 or S$30,000. Unfair dismissal compensation through the Ministry of Manpower is uncapped. The details of how the two avenues would be merged need to be considered. We will be better placed to comment when the details are available.

It is also important that the Chamber takes account of the changes to the Employment Act which could arise from the review, before offering an opinion about the proposal above. For example, if access to uncapped dismissal provisions is opened to all, the best practical means of managing the workload may influence the options.

Finally, the Chamber is aware that some stakeholders have called for a review of section 18A of the Employment Act, which deals with transfer of undertakings. Further details of any proposed reform would need to be considered but it is generally submitted that the existing transfer provisions operate effectively. What actually constitutes a "transfer of undertaking" for the purposes of the provisions could be clarified, but otherwise the Chamber does not see a case for change at this stage.

Yours sincerely,

Ian Cummin
President
Australian Chamber of Commerce Singapore