

# Bird & Bird ATMD

## Employment Update



*The New Singapore Employment Act – too much or too little?*

*Significant amendments to the Employment Act ("EA") will take effect from 1 April 2019. With the removal of the qualifying requirements around salary and job grade,<sup>1</sup> every private sector employee in Singapore will be entitled to the rights and protections under the EA.*

*This has far-reaching implications on the approach and practice in relation to termination of employment. Broadly, it means that employees may bring a claim against employers if they consider that they have been dismissed without just cause or excuse (the shorthand of which is "unfair dismissal") or for constructive dismissal (i.e. forced resignations).*

*Despite the Legislature's positive intentions, these changes throw up a few problems in practice.*

### Should companies allow employees to resign?

Under the new EA, if an employee can show on a balance of probabilities, that he/she did not resign voluntarily but was forced to do so by the conduct or omissions of the employer, the employer could be held to have constructively dismissed the employee (without just cause or excuse).

The practice of inviting employees to resign (often for the employee's benefit so he/she may keep an untarnished employment record) now creates statutory risks for the employer. It is not hard to imagine that nearly every employee is, in reality, unwilling to resign (they are only resigning to avoid a worse prospect – termination).

There is therefore concern around allowing employees to resign as an alternative to termination by the employer; there could be cases where an employer's amicable overtures are construed as giving rise to constructive dismissal.

### Bigger financial risks in connection with unfair termination?

It is a settled principle at common law following the Court of Appeal's decision in *Wee Kim San Lawrence Bernard v Robinson & Co (Singapore) Pte Ltd*<sup>2</sup> that the normal measure of damages for wrongful dismissal is the amount of salary payable for the employee's contractual notice period.

Under the new EA, terminating an employee *with* contractual notice could amount to unfair dismissal (since the definition of "dismiss" in the EA encompasses termination with notice).

---

<sup>1</sup> Prior to the amendments, the Employment Act only applied to non-managerial and non-executive employees, and managers and executives earning less than S\$4,500 per month.

---

<sup>2</sup> [2014] 4 SLR 357.

The question of damages payable in such a case is an open one under the new EA; an employee whose employment is terminated with contractual notice would have already been paid all the salary he was entitled during his contractual notice period. Under common law principles, he is generally not entitled to further payment. However, it is unclear whether the statutory regime affords the possibility of claiming further damages e.g. loss of income during unemployment period / back-payment of wages following reinstatement. Notably, the new EA does not set out any compensation limits in the context of unfair dismissal. Reinstatement of employment, which is now available as a remedy to all employees, is also alien to companies which have been operating for decades under the common law principle that reinstatement is generally inappropriate in the employment context given the impracticalities of compelling an unwanted work relationship to continue.

## Termination by payment in lieu of notice

While most employment contracts commonly contain equal notice periods for employer and employee, it is also common to specify the employer's one-sided right to terminate employment earlier by paying salary in lieu of notice. There could be good reasons for this too, e.g. employers have a genuine need to have employees serve out their notice period due to operational needs.

Under the new EA, all employees have the statutory right to "buy out" their notice period and end employment earlier. This means that employers may have less control over planning and transition, and face the unwelcome prospect of employees joining competitors earlier than they could have.

Employers in competitive and fast-moving industries where such mobility afforded under the new EA creates significant business risks will have to address this issue with alternative strategies.

## Minimum labour protections

Under the new EA, all employees are statutorily entitled to minimum annual, maternity, childcare, hospitalisation and sick leave, and paid public holidays / payment for work done on public holidays. All employees are also entitled to be provided with Key Employment Terms in writing and particularised payslips. To the extent that employers already offer competitive employee benefits which are above the statutory minimum and/or are keeping comprehensive employment records, this change is perhaps less significant from a practical viewpoint.

We note that there are still no statutory provisions addressing discrimination, harassment/bullying, retrenchment or employee privacy to complete the suite of employee protections. While the current round of statutory reforms is generally considered a landmark development, there are still gaps in the law on several employment law topics which the Singapore government has preferred to address by way of non-statutory tripartite guidelines.

## Simple steps to mitigate employment law risks under the new EA

- 1 Conduct a self-audit of your employment documentation. This takes no more than 3 hours of review and compliance edits in most cases – a small investment to avoid adverse findings by the Ministry of Manpower in their audits on companies.
- 2 Have a clear HR policy on termination procedures and drafting termination documents. Speak with an employment lawyer for a quick sense check on the relevant risks before proceeding with any termination.

Bird & Bird's employment team will be pleased to walk you through the changes to the EA and provide details on our "EA Audit" service and "Employee Exit" toolkit.

*This is not an exhaustive summary of all the amendments to the EA. Please do not hesitate to contact us if you have any queries and we would be happy to discuss in further detail how the EA amendments will affect your business.*

## Contact Us

For queries or more information, please contact:

**Seow Hui Goh**

Partner

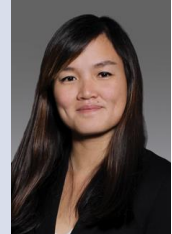
Tel: +65 6428 9419  
seowhui.goh@twobirds.com



**Jacqueline Tang**

Associate

Tel: +65 6428 9405  
jacqueline.tang@twobirds.com



## twobirds.com

Abu Dhabi & Amsterdam & Beijing & Bratislava & Brussels & Budapest & Copenhagen & Dubai & Dusseldorf & Frankfurt & The Hague & Hamburg & Helsinki & Hong Kong & London & Luxembourg & Lyon & Madrid & Milan & Munich & Paris & Prague & Rome & San Francisco & Shanghai & Singapore & Stockholm & Sydney & Warsaw

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses, which include Bird & Bird ATMD LLP as a Singapore law practice registered as a limited liability partnership in Singapore with registration number To8LLOO1K.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.