

## CLIENT UPDATE 2015 JANUARY

### EMPLOYMENT

## Recent Updates In Employment Law

### Introduction

On 19 January 2015, the Industrial Relations (Amendment) Bill (Bill No. 42/2014) was passed and is expected to take effect from 1 April 2015.

Concurrently, the MediShield Life Scheme Bill (Bill No. 3/2015) (“**Medishield Bill**”) was read for the first time in Parliament. This bill seeks to implement the new MediShield Life Scheme (the “**Scheme**”), which will replace the current MediShield scheme and provide a baseline healthcare insurance for all Singaporean citizens and permanent residents (“**PRs**”). More details on this will be provided when the Bill is brought to Parliament for its second reading on 29 January 2015.

In this client update, we discuss the key changes that businesses can expect as a result of the above.

### Wider Union Representation of Executive Employees

Once the Industrial Relations (Amendment) Bill is in force, recognised rank and file trade unions will be allowed to provide a wider scope of representation for executive employees, except for those that hold specific roles and responsibilities which are likely to give rise to conflicts of interest and will undermine the effective operations of the business.

Executive employees who will be excluded from this wider representation are those that:

1. Hold senior management positions or perform such duties;
2. Exercise decision-making powers on any industrial matters;
3. Represent their employer in the negotiation of industrial matters;
4. Have access to confidential information relating to budget or finances; or
5. Perform any other function, duty or power which may give rise to a real or potential conflict of interest if he/she is represented by the trade union.

Apart from the executive employees listed above, rank and file trade unions will be able to represent all other executive employees in negotiations for collective bargaining, and on an individual basis for disputes relating to retrenchment benefits, dismissal, breaches of employment contracts, victimisation and re-employment.

On the other hand, employers can now require, as a condition of the appointment or promotion of a person to a position with the aforementioned responsibilities, that the person not be an officer or a member of any rank and file trade unions.

Given the wider scope of representation available to executive employees, employers may wish to review their current employment arrangements and policy on unions for relevancy, and decide if changes are necessary.

### Liability Of Employers Under The Medishield Bill

Under the new Scheme, Singaporean citizens and PRs, whether residing locally or abroad, will be required to pay regular premiums, and will face potential sanctions if they fail to do so.

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A key change that will affect employers is the introduction of a provision that allows the designated regulatory authority, or “Recovery Body,” as it is called in the Medishield Bill, to recover outstanding premiums from the employers of persons who have defaulted on the payments.

Section 12(1)-(2) of the Medishield Bill will allow the Recovery Body to declare any person to be an agent of the defaulter, and to seek payment of the outstanding premium from that agent. The Medishield Bill specifically envisages the situation where such payment can come from the “earnings” that the agent owes the defaulter, which will be defined to include the wages or salary, including any fees, bonus, commission, overtime pay or other emoluments in addition to the wages or salary payable under a contract of service.

Employers should note that failures to comply with the above would mean exposing themselves to being sued by the Recovery Body under a specially endorsed writ of summons.

As stated in the Explanation Note to the Bill, this mirrors Section 57 of the Income Tax Act, whereby the Inland Revenue Authority of Singapore is empowered to declare an employer to be the agent of an employee and to recover any outstanding tax of the employee from the wages or remuneration due to that employee.

With this increased liability, employers should prepare internal protocols and procedures to deal with such situations if they arise. Employers should also note that under Section 12(4) of the Medishield Bill, they can object to the declaration within 14 days of receipt of the notice, failing which, they may lodge an appeal, although the appeal process has not yet been set out.

### **Increase in Employer’s Contributions to Medisave from 1 January 2015**

As a corollary to the introduction of the Scheme, and to help employees meet their premiums payments, employers are required to increase their contribution to the Medisave accounts of their employees by 1% from 1 January 2015 onwards.

Employers should be aware of this change and act accordingly.

### **Adjustment to Employee’s Medical Benefits**

As the Scheme will be universal and mandatory for all Singapore citizens and PRs, persons who previously opted out of the MediShield scheme as they were covered by their employee medical benefits will no longer be able to do so and may potentially find themselves with a duplicity in the level of healthcare coverage.

In view of this, the MediShield Life Review Committee (“MLRC”) and the National Wage Council, in its 2014/2015 Guidelines, recommends that employers restructure their employee medical benefits such that employees can enjoy portable medical benefits that ride on the coverage afforded by the Scheme or provide additional Medisave contributions to help their employees pay for premiums under the Scheme or under the Integrated Shield Plan.

In this regard, employers can take advantage of the tax incentives given to businesses that provide options for portable medical benefits to their employees. Employers utilising this portable medical benefits scheme will enjoy higher tax deductions for medical expenses of up to 2% of the total employees’ remuneration. Potentially, this affords businesses an opportunity to defray operating costs arising from the provision of healthcare benefits whilst not compromising on the level of coverage provided to employees.

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### Policy Statement On Maternity Benefits For Single Mothers

Separately, a question was posed in Parliament on 19 January 2015 regarding the sufficiency of the existing maternity benefits for single mothers, and whether the paid maternity leave for single mothers could be extended from 8 weeks to 16 weeks as is available to married mothers.

In answering the question, then Minister for Social and Family Development, Mr Chan Chun Sing, acknowledged that currently, there is a discrepancy between the maternity benefits enjoyed by single and married mothers, such as the 8 additional weeks of paid maternity leave as well as other tax incentives.

However, the Minister noted that as these additional benefits were given to encourage and support parenthood within the context of marriage, which remains the prevailing societal norm in Singapore and one which is intended to be preserved for now, it would be unlikely to see any change to this policy at the moment.

### Policy Shift

From an employment law perspective, prior to the Scheme, the provision of medical benefits was not mandatory and was left to the discretion of the employer, resulting in differing levels of healthcare benefits and coverage provided to employees, with some possibly not being entitled to any. The Scheme now provides a baseline level of healthcare coverage for employees, albeit a government implemented one.

Further, 2014 has seen a focus on tripartite-led initiatives in Singapore, such as the amendments expanding the scope of the Employment Act, the introduction of the Fair Consideration Framework and the Tripartite Guidelines on Fair Employment Practices. Similarly, the passing of the Industrial Relations (Amendment) Bill this year reflects the recognition of the continued need to strengthen the tripartite partnership between the Ministry of Manpower, the National Trade Union Congress and the Singapore National Employers Federation. This is because Parliament views tripartism as being instrumental in addressing the needs of Singapore's evolving workforce, which is seeing a greater number of employees equipped with better skills and higher educational qualifications and a corresponding increase in the number of professionals, managers and executives.

However, an observation should be made that although widespread pro-employee changes have been made, there appears to be certain areas which the policymakers have left alone, or have approached on a sectorial or issue basis. For instance, policymakers in Singapore have been largely resistant to the idea of imposing minimum wage levels, only doing so in industries where the employees are deemed exceptionally vulnerable, such as for security guards and cleaners.

### Concluding Words

We have highlighted above the key changes and other developments in employment law that businesses should consider and take note of moving into 2015. It is recommended that businesses review their operational and internal policies to ensure that they are not adversely affected by the changes.

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