Employment Law – Key Changes to Take Note of in 2017

Introduction

2016 saw a number of changes introduced to Singapore’s employment legislation, with most, if not all, of these changes coming into effect in 2017. In addition, against a backdrop of economic uncertainty, there was an increased focus by the Ministry of Manpower (“MOM”) on ensuring that retrenchment exercises were carried out in a responsible manner. This started with the release of the revised ‘Tripartite Guidelines on Managing Excess Manpower and Responsible Retrenchment’ on 24 May 2016 (which we wrote about here), and culminated in the introduction of mandatory retrenchment notifications on 25 November 2016 (which we wrote about here).

To assist businesses as we move into 2017, we provide a summary of some key changes. Businesses must keep abreast of these developments and make the necessary changes to their employment documents to avoid falling foul of the regulations, particularly since it is the start of the new year now. HR managers are also encouraged to take a more proactive role in managing the termination of employees, particularly in the face of increased retrenchments. We would be very happy to assist with any query or review you may have.

Mandatory Retrenchment Notifications from 1 January 2017

With effect from 1 January 2017, any employer (which employs at least 10 employees) must provide written notification to the MOM if it retrenches more than 5 employees within a 6 month period. This requirement applies to all permanent employees, including foreign employees, and contract employees whose term of employment is at least 6 months. It is also pertinent to note that the requirement to notify the MOM does not only apply to the retrenchment of all employees who fall within the ambit of Singapore’s Employment Act (Cap. 91) (“EA”), but also applies to the retrenchment of employees who fall outside the ambit of the EA, such as professional, managerial or executive employees who earn a fixed monthly base salary which exceeds S$4,500.

This notification must be made within 5 working days of the 5th employee being notified of the retrenchment and must be made using the prescribed notification form on the MOM’s website. On this, the information that must be provided to the MOM includes the residential status and job title of the affected employees. In addition to the information requested for in the prescribed form, the company must inform the MOM of the exact number of local and foreign workers employed by the company prior to the retrenchment.

While the requirement to notify the MOM of retrenchment exercises was already in place previously, this marks the first time that this requirement has been made compulsory and penalties imposed for failure to do so. It is important, therefore, for businesses to comply as failure to do so may result in penalties being imposed by the MOM, including a fine of up to S$5,000.
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Changes to Family Leave Entitlements in 2017

From 1 January 2017, all working fathers, whose child is a Singapore citizen and who is lawfully married to the mother of his child, will be entitled to 2 weeks of Government paid paternity leave (up from 1 week previously). This is one of a number of changes to employees’ family leave entitlements introduced by the Singapore Government in 2016. In addition to the increased paternity leave, from 1 July 2017, working fathers will also be allowed to share up to 4 weeks (up from 1 week currently) of the eligible mother’s maternity leave entitlement.

In addition to the increase in paternity leave entitlements for working fathers, the paid maternity leave entitlement will also extend to unwed working mothers (none previously). With effect from 1 January 2017, unwed working mothers whose child is a Singapore citizen and who has worked for her employer for at least 3 months prior to the birth of the child will be entitled to 16 weeks of Government paid maternity leave. Where the child is not a Singapore Citizen, the working mother will be entitled to 12 weeks of paid maternity leave.

Given these changes, businesses are well advised to review their employment documents, including their employment handbooks to ensure that these increases in family leave entitlements are provided for.

Re-Employment Age Increased to 67 from 1 July 2017

One legislation that is less often talked about is the Retirement and Re-employment Act (Cap. 274A), which mandates that businesses must offer re-employment to Singapore Citizen or Permanent Resident employees up to the statutorily prescribed age. From 1 July 2017, this statutorily prescribed age will be increased to 67 (up from 65 currently). In other words, so long as the employee has satisfactory work performance and is medically fit to continue working, the employer has a statutory obligation to offer the employee re-employment up to 67 years old.

On this, if the employer is unable to provide employment, the employer can either choose to pay an Employment Assistance Payment or transfer the employee to another employer, provided the transferee company is willing to take on the re-employment obligations and the transferred employee is agreeable to such a transfer.

In light of Singapore’s aging population, it is likely that there will be greater emphasis on the re-employment of older workers by the Singapore Government. Hence, businesses should take note of and comply with this statutory obligation in the new year.

As a further note, businesses should note that the minimum retirement age prescribed by statute remains at 62 years old, i.e. businesses cannot compel any Singapore Citizen or Permanent Resident employee to retire before the employees reaches this statutory retirement age.

Increase in EP Salary Qualifying Criteria

In light of the Singapore Government’s overarching policy to ensure that more Singaporeans are employed in professional, managerial or executive positions, the MOM announced that with effect from 1 January 2017, the qualifying fixed monthly salary for Employment Pass applications will be increased to S$3,600 from S$3,300.
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(which was put in place on 1 January 2014). More interestingly, in its announcement, the MOM stated that the salary applicable to an applicant must be commensurate with the applicant’s work experience and skillset. This serves to highlight the fact that the MOM continues to advocate a Singaporean First approach in its policies, and companies seeking to employ foreign employees over local ones will continue to be the subject of the MOM’s scrutiny.

This follows from the announcement in October 2016 by the Minister for Manpower in Parliament that the MOM is currently subjecting about 300 Employment Pass applications from 250 companies to closer scrutiny as these companies were found to be weak in the Singaporean core, weak in commitment to nurturing the Singaporean core, and weak in relevance to the economy.

The development here highlights that there is no abatement in the Singapore Government's overall effort to ensure compliance with the Fair Consideration Framework, which requires businesses in Singapore to consider Singaporeans fairly for job opportunities, particularly for managerial or executive positions.

Additional Dispute Resolution Forum for Employees from 1 April 2017

With effect from 1 April 2017, all employees (including professionals, manager or executives earning a monthly base salary of more than S$4,500) will be able to approach the Employment Claims Tribunal (“ECT”) for resolution of salary-related claims, whether statutory or contractual. There is, however, a claim limit of S$20,000 or S$30,000 (if the employee first goes through the Tripartite Mediation Framework (“TMF”) or attends trade union assisted mediations). Prior to the establishment of the ECT, employees, particularly employees who fall outside the ambit of the EA, can only proceed by way of a civil action in courts, which is tedious and costly.

In addition to the Employment Claims Tribunal, 1 April 2017 also sees the establishment of the Tripartite Alliance for Dispute Management (“TADM”), which seeks to provide advisory or mediation services in the event of a dispute between employers and employees. On this, it should also be noted that prior to approaching the ECT to adjudicate a salary dispute, the employee must first register the salary dispute at the TADM; it is only when the salary dispute cannot be resolved through mediation at the TADM that the dispute will be referred to the ECT for adjudication.

Apart from the establishment of the ECT and the TADM, the TMF will also be enhanced from 1 April 2017 to benefit all professional, managerial or executive employees and rank-and-file employees, who are union members in non-unionised companies. Currently, only professional, managerial or executive employees who earn a fixed monthly salary of up to S$4,500, who are union members in non-unionised companies can benefit from tripartite mediation at the TMF. In addition to benefiting a wider group of employees, the coverage of the TMF will also be expanded to include claims related to statutory benefits and re-employment issues (currently, only disputes relating to salary arrears, breach of employment contracts and payment of retrenchment benefits can be mediated under the TMF).

Given these new processes, employees, particularly professionals, manager or executives earning a monthly base salary of more than S$4,500 will have a lower cost alternative to bringing actions against their employers.
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Given this, businesses are well advised to manage their HR processes in a fair manner to reduce the risks of employees raising such claims, which needless to say is an opportunity cost to the company.

**Duty of Care in Preparing Employment References**

In *Ramesh s/o Krishnan v AXA Life Insurance Singapore Pte Ltd* [2016] SGCA 47, the Singapore Court of Appeal held that AXA Life Insurance Singapore Pte Ltd had breached its duty of care when providing employment references to a prospective future employer of its ex-employee. In assessing the applicable standard of care, the Court of Appeal reviewed cases in various jurisdictions and held that an employer owes its ex-employee a duty to exercise reasonable care to ensure that facts stated in the reference are true, and that any opinions expressed in such reference are based on and supported by facts which are true. In addition, the employer must also exercise reasonable care to ensure that the reference given does not give an unfair or misleading impression of the employee, even if the discrete pieces of information which gives rise to the unfair or misleading impression are factually correct. Interestingly, the Court of Appeal stated that the employer should not include in the reference any complaint or allegation against the employee which the employee had no knowledge of and had not been given an opportunity to explain or defend himself. In summing up, the Court of Appeal, taking into account the general inclination that an employer may have to damage the prospects of an employee that is about to join a competitor, held that it was just and fair to impose the above duty of care on employers as a negligently prepared reference may result in material harm to the employee concerned.

This case marks the first time that the Singapore court has set out in detail the duty of care owed by an employer to its ex-employee in preparing an employment reference. Businesses should take heed of the standard of care enunciated by the Court of Appeal to avoid a lengthy litigation process which may result in the ex-employer having to pay damages for lost of employment opportunities.

**Clarity on Payment Provisions**

2016 also saw a number of cases relating to claims by employees for unpaid commissions. In *Joseph Ramanthan v Stratech Systems Ltd* [2016] SGHC 216, the plaintiff was successful in claiming for unpaid commissions amounting to S$89,470.70. In *Hewlett-Packard Singapore (Sales) Pte Ltd v Chin Shu Hwa Corrina* [2016] SGCA 19, the respondent was initially successful in claiming for compensation for unpaid commissions at first instance. However, this was overturned on appeal, and the Update on this decision can be accessed here.

Without going into the facts of these 2 cases, the key issue arising out of these 2 cases relates to ambiguity over the relevant provisions relating to payment of the claimed amounts. Hence, businesses are well advised to review their relevant policies relating to payment of salary, commission and other amounts to ensure that the provisions clearly set out the circumstances under which such payments are to be made. More importantly, businesses should ensure that the circumstances under which such payments will not be made are clearly set out, and do not give rise to uncertainty.
Conclusion

In light of the slew of changes that have already / will come into effect in 2017, this year promises to be a very busy year for HR professionals. In addition to ensuring that their employment documents remain updated and in line with the legislative changes, there will likely be increased focus by the MOM in ensuring that Singaporeans are not unfairly discriminated against in retrenchment / termination exercises and there will likely be an increase in the number of claims by disgruntled employees. Businesses must therefore take steps to prepare themselves to avoid prolonged claims in the new year.

If you have any questions or wish to discuss any of the above, or require a refresher training to be undertaken, please feel free to contact any of our team members at the details set out below.
Please feel free to also contact Knowledge and Risk Management at eOASIS@rajahtann.com

ASEAN Economic Community Portal

The launch of the ASEAN Economic Community ("AEC") in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch "Business in ASEAN", a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN's business landscape. Of particular interest to businesses is the "Ask a Question" feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at http://www.businessinasean.com.
Our Regional Contacts

RAJAH & TANN | Singapore
Rajah & Tann Singapore LLP
T +65 6535 3600
F +65 6225 9630
sg.rajahtannasia.com

Christopher & Lee Ong | Malaysia
Christopher & Lee Ong
T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

R&T Sok & Heng | Cambodia
R&T Sok & Heng Law Office
T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN | Myanmar
Rajah & Tann NK Legal Myanmar Company Limited
T +95 9 73040763 / +95 1 657902 / +95 1 657903
F +95 1 9665537
mm.rajahtannasia.com

G&G Law | Philippines
Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)
T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977
F +632 552 1978
www.cagatlaw.com

RAJAH & TANN | China
Rajah & Tann Singapore LLP
Shanghai Representative Office
T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

RAJAH & TANN | Indonesia
Assegaf Hamzah & Partners
Jakarta Office
T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office
T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | Thailand
R&T Asia (Thailand) Limited
T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN | Vietnam
Rajah & Tann LCT Lawyers
Ho Chi Minh City Office
T +84 8 3821 2382 / +84 8 3821 2673
F +84 8 3520 8206

Hanoi Office
T +84 4 3267 6127
F +84 4 3267 6128
www.rajahtannlct.com

Rajah & Tann (Laos) Sole Co., Ltd.
T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

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