Published on 25 April 2019

RECENT CHANGES TO THE EMPLOYMENT ACT – PRACTICAL IMPLICATIONS

[2019] SAL Prac 8

In November 2018, Parliament passed the Employment (Amendment) Bill 2018 to amend the Employment Act. The amendments took effect on 1 April 2019. Generally, all employees in Singapore will enjoy the protections afforded by the Employment Act. This article compares the differences between the Employment Act before and after the amendments, and highlights some of the practical implications for employers.

TAY Yong Seng
MA (Oxford), BCL (Oxford);
Partner, Allen and Gledhill LLP.

ANG Ann Liang
LLB (Hons) (University College London);
Senior Associate, Allen and Gledhill LLP.

Alyssa **P'NG**
BA (Cambridge);
Trainee, Allen and Gledhill LLP.

I. Introduction

1 On 5 March 2018, during the Committee of Supply debate for Budget 2018, the then-Minister for Manpower, Mr Lim Swee Say ("Mr Lim"), announced plans to amend the Employment Act[1] (the "Employment Act"). These amendments to the Employment Act (the "Amendments") can be summarised in the following broad thrusts: to allow more employees to benefit from the Employment Act, to provide additional protections for workers' welfare and to enhance the dispute resolution processes.

1 Employment Act (Cap 91, 2009 Rev Ed).

2 These Amendments were made in response to various developments in the Singapore employment landscape, including rapid changes to the workforce profile, upward movement of median wages, and keeping Singapore's employment laws relevant.[2] Previously, managers and executives with a monthly salary of over $4,500 were not covered by the Employment Act.[3] However, the Ministry of Manpower ("MOM") noted that there was an increasing number of managers and executives in the workforce.[4] Further, the median salaries of Singaporeans were rising, with the gross median salary at $4,056 in 2016.[5] In view of this, the salary cap of $4,500 was too low as it excluded nearly half of the workforce.[6]

3 Parliament therefore sought, *inter alia*, to extend the Employment Act generally to all employees by removing the salary threshold.[7]

4 The Amendments are set out in the Employment (Amendment) Bill 2018[8] (the "Employment (Amendment) Bill"). The Employment (Amendment) Bill was first read in Parliament in October 2018[9] and subsequently passed by Parliament after the second reading in November 2018.[10] The Amendments came into force on *1 April 2019*.

---

2 *Parliamentary Debates, Official Report* (5 March 2018), vol 94 (Lim Swee Say, Minister for Manpower).

3 Employment Act (Cap 91, 2009 Rev Ed) prior to amendments that took effect on 1 April 2019 ("EA (pre-April 2019)") s2(2).

4 This is expected to go up to 65% of the workforce by 2030: *Parliamentary Debates, Official Report* (5 March 2018), vol 94 (Lim Swee Say, Minister for Manpower).

5 *Parliamentary Debates, Official Report* (5 March 2018), vol 94 (Lim Swee Say, Minister for Manpower).

6 *Parliamentary Debates, Official Report* (5 March 2018), vol 94 (Lim Swee Say, Minister for Manpower).

7 With the exception of seafarers, public servants and domestic workers.

8 Bill 47 of 2018.

9 *Parliamentary Debates, Official Report* (2 October 2018), vol 94 (Josephine Teo, Minister for Manpower).

10 *Parliamentary Debates, Official Report* (20 November 2018), vol 94 (Josephine Teo, Minister for Manpower).

5 In this article, we will summarise the salient changes to the Employment Act and highlight their practical implications for employers.

II. Better protections for more employees

6 The Amendments bring all employees[11] within the ambit of the Employment Act, and increase the protections afforded to employees, as illustrated below:

Employment Act (Pre-Amendments)	Employment Act (Present)
The provisions of the Act generally applied to all employees except for persons employed in a managerial or an executive position in receipt of a salary exceeding S$4,500 per month.[12]	The provisions now apply to all employees (save for public servants, domestic workers and seafarers), *ie*, the salary cap of S$4,500 is removed.[13]
Part IV provisions of the Act, which relate to rest days, hours of work, overtime pay, *etc*, only applied to (a) workmen earning not more than S$4,500 per month and (b) employees earning not more than S$2,500 per month.[14]	Part IV provisions now apply to (a) workmen earning not more than S$4,500 per month and (b) employees earning not more than S$2,600 per month.[15]

7 Therefore, generally all employees will enjoy core employment benefits under the Employment Act, including (a) minimum days of annual leave,[16] (b) paid public holidays,[17]

11 With the exception of seafarers, public servants and domestic workers.
12 EA (pre-April 2019) ss2(1) and 2(2).
13 Employment (Amendment) Bill 2018 (No 47 of 2018) cl 2(*f*).
14 EA (pre-April 2019) s 35.
15 Employment (Amendment) Bill 2018 (Bill 47 of 2018) cll 6 and 7.
16 Employment (Amendment) Bill 2018 (Bill 47 of 2018) cl 14.
17 Employment Act (Cap 91, 2009 Rev Ed) s 88.

(c) sick and hospitalisation leave,[18] (d) maternity protection and childcare leave,[19] (e) minimum period of termination,[20] (f) statutory protection against wrongful dismissal[21] and (g) preservation of existing terms in the employment transfer.[22]

8 We highlight the practical implications below.

A. Practical implication 1 – Decreasing efficacy of garden leave provisions and increasing importance of restrictive covenants

9 At common law, unless otherwise stated in the employment agreement, only the *employer* can immediately terminate the agreement and shorten the notice period by making payment in lieu of notice ("PILON"). On the other hand, the *employee* cannot immediately terminate the agreement by making PILON. The *employee* must wait out the expiry of his notice period.

10 This is because the courts, applying the test of business efficacy in relation to implied terms, have found that it was not necessary to imply a right into the agreement for the employee to shorten the notice period by making PILON. As the Singapore Court of Appeal stated in *Goh Chan Peng v Beyonics Technology Ltd*[23] at [90]:[24]

---

18 Employment Act (Cap 91, 2009 Rev Ed) s 89.

19 Employment Act (Cap 91, 2009 Rev Ed) Part IX, ss 76–87A, read with Employment (Amendment) Bill 2018 (Bill 47 of 2018) cll 10 and 11.

20 Employment Act (Cap 91, 2009 Rev Ed) s 10(3).

21 Employment Act (Cap 91, 2009 Rev Ed) s 14, read with Employment (Amendment) Bill 2018 (Bill 47 of 2018) cl 3.

22 Employment Act (Cap 91, 2009 Rev Ed) s 18A.

23 [2017] 2 SLR 592, citing *Heron, Gethin-Jones & Liow v John Chong* [1963] MLJ 310 ("*Heron*"). In *Heron*, the Singapore Court of Appeal took the view that the employment terms in question did not provide for the employee to terminate his agreement by making payment in lieu of notice, and there was no necessity for implying a term to this effect.

24 *Goh Chan Peng v Beyonics Technology Ltd* [2017] 2 SLR 592 at [90]. This clarified the question previously left open by the Singapore High Court as to whether the employee had such an implied right – see *Piattchanine, Iouri v Phosagro Asia Pte Ltd* [2015] 5 SLR 1257 at [269]–[272]. *Cf* the English decision of *Konski v Peet* [1915] 1 Ch 530 at 537 and 538.

> An employer is entitled to terminate a contract of employment by payment of salary in lieu of notice, even where the contract is silent on this and also arguably where it is expressly provided that it is terminable by notice. *However, it seems that the employee is, under common law, not entitled to terminate the contract of employment by payment of salary in lieu of notice* (see Halsbury's vol 9 at para 100.195, citing *Heron, Gethin-Jones & Liow v John Chong* [1963] MLJ 310 at 313, *per* Wee Chong Jin CJ, where this court held that implying a term to enable an employee to terminate his employment by paying salary in lieu of giving and serving the required notice was not necessary to give the employment contract business efficacy). [emphasis added]

11 The prerogative to terminate an employment agreement by making PILON is reserved only for the employer. As stated in *Evotech (Asia) Pte Ltd v Koh Tat Lee*:[25]

> To my mind, the first defendant's counterclaim was unsustainable both legally and factually. *The common law position is that where a contract of employment is silent on the issue of salary in lieu of notice, such as in the present case, the employer is entitled to terminate the contract of employment by paying salary in lieu of notice (see* Beyonics *at [90]). That is a prerogative open only to the employer.* In the instant case, the plaintiff elected to terminate the contract of employment by giving the Notice, which it was entitled to do pursuant to the terms of the contract of employment. It could not be disputed that the first defendant had no entitlement to reject the Notice and to claim for salary in lieu of notice. In order for the first defendant to succeed in his counterclaim for salary during the notice period, he would thus have to show that he was entitled to be paid his salary because he had complied with his contractual obligations as an employee during the notice period. [emphasis added]

12 However, the position under the Employment Act is different. Section 11 of the Employment Act provides the right of termination by making PILON to both the *employer* and the *employee*:[26]

---

25 [2018] SGHC 252 at [79].

26 Employment Act (Cap 91, 2009 Rev Ed) s 11.

> 11.—(1) *Either party to a contract of service may terminate the contract of service* without notice or, if notice has already been given in accordance with section 10, *without waiting for the expiry of that notice, by paying to the other party a sum equal to the amount of salary at the gross rate of pay* which would have accrued to the employee during the period of the notice and in the case of a monthly-rated employee where the period of the notice is less than a month, the amount payable for any one day shall be the gross rate of pay for one day's work. [emphasis added]

13 With the extension of the Employment Act to all employees, including managers and executives earning above S$4,500 monthly salary ("PMEs"), employees can now rely on s 11 of the Employment Act to immediately terminate the employment agreement by making PILON. In other words, now that the Amendments have taken effect, *employees can immediately resign and "buy out" their notice period, instead of having to wait out the notice period.*

14 The implications are wide-ranging, especially for firms in industries which are very competitive, and which rely heavily on a strong stable workforce, trade secrets and/or customer connections. For example, in the inter-dealer broking industry, the nature of the employees' job is to build up good relations with their trader contacts and develop strong client relationships. Employees with such strong client relationships are highly sought after by competitors.[27]

15 In these industries, employers usually take steps to protect their customer connections and trade secrets. Presently, employers rely on two methods, *ie*, to insert into the employment agreement (a) garden leave provisions, and (b) restrictive covenants, *ie*, post-termination non-competes.

16 Garden leave provisions provide an employer with the right to require the employee to remain away from the workplace

27 See, for example, *TFS Derivatives Ltd v Morgan* [2004] EWHC 3181 at [11] and [12].

while the employee is serving out his notice period.[28] Typically, when an employee tenders his notice of resignation, the employer may choose to place the employee on garden leave in order to allow the employee's customer connections to "*cool off*". During the period of garden leave, the employee still owes duties of fidelity to the employer and cannot work for other competitors.[29]

17 The courts can award injunctions to enforce garden leave against employees and restrain them from working for competitors during their notice period (see, for example, *Sunrise Brokers LLP v Rodgers*[30] and *William Hill Organisation Ltd v Tucker*[31]).

18 Many employers prefer to use garden leave over or in combination with restrictive covenants.[32] The advantage that garden leave provisions have over restrictive covenants is that at law, restrictive covenants are very strictly scrutinised. Restrictive covenants are subject to the restraint of trade doctrine,[33] *ie*, they will only be enforced if an employer can show that the restrictive covenant protects a legitimate proprietary interest,[34] which is usually in the form of (a) customer connections, (b) a stable

28 Ravi Chandran, *Employment Law in Singapore* (LexisNexis, 5th Ed, 2017) at paras 3.80 and 3.81.

29 See, for example, *Ogilvy & Mather (New Zealand) Ltd v Turner* [1996] 1 NZLR 641 at 647, citing *Delaney v Staples* [1992] 1 AC 687 at 692 and *Turner v Sawdon & Co* [1901] 2 KB 653 (CA). See also *William Hill Organisation Ltd v Tucker* [1999] ICR 291 at 301, wherein the English Court of Appeal held that an employer will need to expressly stipulate garden leave provisions in the employment agreement in order to have the right to send an employee on garden leave.

30 *Sunrise Brokers LLP v Rodgers* [2014] EWCA Civ 1373 at [11], [41] and [42].

31 *William Hill Organisation Ltd v Tucker* [1999] ICR 291 at 301.

32 *William Hill Organisation Ltd v Tucker* [1999] ICR 291 at 301, wherein the English Court of Appeal observed "there appears to be a trend towards increasing reliance on garden leave provisions in preference to conventional restrictive covenants, no doubt because hitherto the courts have treated the former with greater flexibility than the latter".

33 *Man Financial (S) Pte Ltd v Wong Bark Chuan David* [2008] 1 SLR(R) 663 at [45].

34 *Tan Kok Yong Steve v Itochu Singapore Pte Ltd* [2018] SGHC 85 at [83], citing *Man Financial (S) Pte Ltd v Wong Bark Chuan David* [2008] 1 SLR(R) 663.

trained workforce and (c) trade secrets.[35] Even if the employer can show a legitimate proprietary interest to be protected, the employer must show that the restrictive covenants are reasonable in the interest of the parties and the public,[36] otherwise the restrictive covenants will not be enforced.[37]

19 Given the risks of invalidity of restrictive covenants, employers commonly build garden leave provisions into the employment contracts. As stated in *JM Finn & Co Ltd v Holliday*:[38]

> 56. *There is a distinction between post-termination restraints (self-evidently operating after the contract has been terminated) and garden leave provisions operating during the currency of the employment relationship.*
>
> 57. *During the currency of the employment relationship, when an express negative covenant or the implied duty of good faith apply to prevent an employee working for another employer, the doctrine of restraint of trade will not apply to such a restraint; nor is there a need to justify an express contractual garden leave provision by reference to this doctrine.* However in circumstances where an employer has put an employee on garden leave and then seeks an injunction to restrain the unwilling employee from joining a competitor before the expiry of his notice period, an injunction to enforce or aid that period of garden leave must be considered in light of the restraint of trade doctrine. …
>
> [emphasis added]

35 *Lek Gwee Noi v Humming Flowers & Gifts Pte Ltd* [2014] 3 SLR 27 at [58]; *Man Financial (S) Pte Ltd v Wong Bark Chuan David* [2008] 1 SLR(R) 663 at [81] and [121].

36 *Man Financial (S) Pte Ltd v Wong Bark Chuan David* [2008] 1 SLR(R) 663 at [70].

37 *Tan Kok Yong Steve v Itochu Singapore Pte Ltd* [2018] SGHC 85 at [90]. For more details and explanations on the enforceability of restrictive covenants, see Tay Yong Seng, Ang Ann Liang and Alyssa P'ng, "Restrictive Covenants in Employment Law: When are they enforceable?" [2018] SAL Prac 17.

38 [2013] EWHC 3450. *Cf* the prior decision of the English High Court in *Tullett Prebon plc v BGC* [2010] EWHC 484 at [219]: "The starting point is that the court will approach the enforcement of a period of garden leave by injunction in a similar way in part to that in which it approaches the enforcement of a post termination restraint, often called a restrictive covenant."

20 In *Sunrise Brokers LLP v Rodgers*,[39] the English Court of Appeal made similar observations about the distinction between the treatment of garden leave provisions and restrictive covenants:

> *The obligation of an employee not to work for a competitor during the currency of his employment cannot be equated with an obligation under a clause providing for post-termination restraints; and the principles governing their enforcement by injunction are different. In the former case the obligation arises inherently from the employee's duty of fidelity to the employer; and the court will, rightly, be very ready to enforce it*, subject only to the constraints discussed above deriving from the rule against enforcement of a contract for personal services. *In the latter case the restraint on the employee's activities is prima facie unlawful and requires to be fully justified in accordance with the well-known principles.* The enforceability of these separate obligations should be addressed separately and in their own terms. (I acknowledge that in *William Hill Organisation Ltd v Foster* [1999] ICR 291 Morritt LJ observed that courts should not grant relief to enforce a garden leave clause to a greater extent than would be covered by a justifiable restraint of trade clause: see at pp. 300-1. That is important, but it is not an issue in the present case: there is no suggestion that a six-month restriction on the Appellant working for a competitor was unjustifiable.) I am conscious that this may appear a little artificial, since long notice periods (coupled with the right to put the employee on garden leave) and post-termination restraints may both, from an employer's point of view, be means to the same end, namely delaying the date at which an employee who wishes to leave can go to work for a competitor. *But the distinctions between pre- and post-termination restraint are nevertheless real, and it is liable to lead to confusion and loss of principle if the two streams are mingled.* [emphasis added]

21 However, with the extension of s 11 of the Employment Act to all employees, it is likely that garden leave provisions may lose their practical efficacy. Employees (possibly funded by competitors who hire them) can buy out the notice periods in

39 [2014] EWCA Civ 1373 at [41].

their employment agreements by making PILON under s 11, thereby avoiding any risk of garden leave altogether.

22 At this stage, employers are left with only post-termination restrictive covenants to protect their customer connections and trade secrets, *etc*. It is now even more imperative that employers ensure that their restrictive covenants are properly drafted to increase the chances of enforceability against the employees.

B. Practical implication 2 – All employment agreements must meet basic requirements stipulated in Employment Act

23 Employers should be careful to ensure that the employment agreements for all employees (including PMEs) meet the basic requirements set out in the Employment Act. The consequences for failing to do so may be severe.

24 First, s 8 of the Employment Act states that "[e]very term of a contract of service which provides a condition of service which is less favourable to an employee than any of the conditions of service prescribed by this Act *shall be illegal, null and void to the extent that it is so less favourable*" [emphasis added].[40]

25 This provision was applied in *Monteverde Darvin Cynthia v VGO Corp Ltd.*[41] In that case, the Singapore High Court considered a provision in the employment agreement relating to the employee's working hours. The High Court held that if the contract had required the employee to work a fixed number of 60 hours a week (which is over the statutory maximum under the Employment Act), this would be void and treated as requiring the employee to work no more than the statutory maximum per week.[42]

40 Employment Act (Cap 91, 2009 Rev Ed) s 8.

41 [2014] 2 SLR 1.

42 *Monteverde Darvin Cynthia v VGO Corp Ltd* [2014] 2 SLR 1 at [12].

26 Second, the employer may be criminally liable for employment agreements which fail to accord with certain provisions of the Employment Act.

27 Section 19 of the Employment Act states "[a]ny employer who enters into a contract of service or collective agreement contrary to the provisions of this Part shall be guilty of an *offence*" [emphasis added]. Section 19 falls within Part II of the Employment Act, which deals with the terms of the employment contract, including minimum notice periods and grounds for dismissal.

28 The penalties for such an offence include a fine not exceeding S$5,000 or imprisonment not exceeding six months or both for a first-time offence, and for a subsequent offence under the same section a fine not exceeding S$10,000 or imprisonment for a term not exceeding 12 months or both.[43] Where an offence has been committed by a body corporate, it shall be presumed that the offence is attributable to the neglect of an officer of the body corporate who is (a) primarily responsible for the act which constitutes the offence and (b) has failed to exercise reasonable supervision or oversight as such officer.[44] In such scenario, if unrebutted, the officer as well as the body corporate shall be guilty of the offence.[45]

29 Similarly, s 34(1) of the Employment Act states "[a]ny employer failing to pay salary in accordance with the provisions of this Part shall be guilty of an *offence*" [emphasis added].

30 An employer who is guilty of such an offence under certain specified circumstances may be sentenced to a fine of not less than S$3,000 and not more than S$15,000 or to imprisonment not exceeding six months or both.[46] If the employer is a repeat offender, that employer may be sentenced

43 Employment Act (Cap 91, 2009 Rev Ed) s 112.
44 Employment Act (Cap 91, 2009 Rev Ed) s 113A(5).
45 Employment Act (Cap 91, 2009 Rev Ed) s 113A(1).
46 Employment Act (Cap 91, 2009 Rev Ed) s 34(2)(*a*).

to a fine of not less than S$6,000 and not more than S$30,000, or to imprisonment not exceeding 12 months, or both.[47]

31 It is therefore important for employers to ensure that their employment agreements adhere to the provisions of the Employment Act. We set out some of the more salient provisions below which employers should take special note of.

(1) Minimum notice periods

32 Under common law, if the employment agreement does not specify the notice period for termination, the courts would imply a reasonable notice period. What is reasonable depends on the individual facts of the case.[48] In *Teh Guek Ngor Engelin v Chia Ee Lin Evelyn*,[49] the Singapore Court of Appeal took into account a finding by the High Court that the reasonable notice period was one in which the employee, a lawyer, would require in order to complete and bill all the files which she was involved in.[50] In *Trevor Griffiths v Oceanroutes (SEA) Pte Ltd*,[51] the Singapore High Court found that a three-month period of notice was reasonable, on the basis that the claimant had worked in a managerial position and as a director of the defendant for 17 years.[52] In *Latham Scott v Credit Suisse First Boston*,[53] the Court of Appeal held that one month's notice provided for in the employee director's contract was acceptable as being reasonable.[54]

33 However, now that the Amendments have taken effect, employers should note the following minimum notice periods expressly provided under s 10(3) of the Employment Act.[55] These statutory minimum notice periods are likely to reduce litigation

47 Employment Act (Cap 91, 2009 Rev Ed) s 34(2)(*b*).
48 *Teh Guek Ngor Engelin v Chia Ee Lin Evelyn* [2005] 3 SLR(R) 22 at [21].
49 [2005] 3 SLR(R) 22.
50 *Teh Guek Ngor Engelin v Chia Ee Lin Evelyn* [2005] 3 SLR(R) 22 at [21].
51 [1997] SGHC 206.
52 *Trevor Griffiths v Oceanroutes (SEA) Pte Ltd* [1997] SGHC 206 at [27].
53 [2000] 2 SLR(R) 30.
54 *Latham Scott v Credit Suisse First Boston* [2000] 2 SLR(R) 30 at [72].
55 Employment Act (Cap 91, 2009 Rev Ed) s 10(3).

over the length of notice periods when no notice period is provided for in the employment contract.

> (3) The notice to terminate the service of a person who is employed under a contract of service shall be not less than —
>
> (*a*) *one day's notice* if he has been so employed for less than 26 weeks;
>
> (*b*) *one week's notice* if he has been so employed for 26 weeks or more but less than 2 years;
>
> (*c*) *2 weeks' notice* if he has been so employed for 2 years or more but less than 5 years; and
>
> (*d*) *4 weeks' notice* if he has been so employed for 5 years or more.
>
> [emphasis added]

(2) Payment on dismissal

34 Employees should note that under s 22 of the Employment Act generally, "the total salary and any sum due to an employee who has been dismissed shall be paid on the day of dismissal or, if this is not possible, within 3 days thereafter, not being a rest day or public holiday or other holiday".[56]

(3) Salary to be deducted only under certain circumstances

35 The Employment Act sets out a list of authorised deductions employers may make from an employee's salary, *eg*, deductions for absence from work, for overpayment of salary, *etc*.[57]

36 Where previously the Employment Act exhaustively prescribed the types of authorised salary deductions allowed,[58] the Amendments give employers greater flexibility to make deductions beyond the authorised deductions, as long as the

56 Employment Act (Cap 91, 2009 Rev Ed) s 22.

57 Employment (Amendment) Bill 2018 (Bill 47 of 2018) cl 4.

58 EA (pre-April 2019) s 27(1).

employee consents in writing.[59] However, the employee should be allowed to withdraw this consent at any time before the deduction is made without penalisation.[60]

(4) Statutory annual leave

37 Previously, statutory annual leave was set out in Part IV of the Employment Act (Rest days, Hours of Work and Other Conditions of Service). This applied to only (a) workmen earning not more than S$4,500 per month and (b) employees earning not more than S$2,500 per month.[61]

38 However, under the Amendments, statutory annual leave has been moved out of Part IV and into Part X of the Employment Act (Holidays and Sick Leave Entitlements). This means that now that the Amendments have taken effect, generally all employees will be entitled to statutory annual leave.

39 The Amendments provide for statutory annual leave as follows:[62]

> **88A.**—(1) An employee who has served an employer for a period of not less than 3 months is, in addition to the rest days, holidays and sick leave to which the employee is entitled under sections 36, 88 and 89, respectively, entitled to the following:
>
> (a) 7 days of paid annual leave, for the first 12 months of continuous service with the same employer;
>
> (b) subject to paragraph (*c*), an additional one day of paid annual leave, for every subsequent 12 months of continuous service with the same employer;
>
> (c) a maximum of 14 days of paid annual leave.
>
> (2) An employee who has served an employer for a period of not less than 3 months, but has not completed 12 months of continuous service in any year, is entitled to annual leave in

59 Employment (Amendment) Bill 2018 (Bill 47 of 2018) cl 4.
60 Employment (Amendment) Bill 2018 (Bill 47 of 2018) cl 4.
61 EA (pre-April 2019) s 35.
62 Employment (Amendment) Bill 2018 (Bill 47 of 2018) cl 14.

proportion to the number of completed months of service in that year.

(5) Preservation of employment terms upon transfer

40 Finally, employers should also take note of s 18A of the Employment Act.

41 Under s 18A, employees having their employment contracts transferred to another company (arising from, for example, mergers and acquisitions, sale of business or business restructuring, *etc*) are now entitled to preserve the existing terms and conditions of their previous employment contracts.[63]

42 In addition, such employees are entitled to be consulted before the transfer of their employment agreements takes place, and shall be notified of (a) the fact of the transfer, the approximate date and the reasons for the transfer; (b) the implications of the transfer and the measures which the old employer will take (or the fact that no measures will be taken); and (c) the measures that the new employer will take (or the fact that no measures will be taken).[64]

III. Enhanced dispute resolution procedures

43 Where an employee has been wrongfully dismissed, that employee can commence a claim against the employer in court for wrongful dismissal. At common law, damages for wrongful dismissal are usually confined only to the employee's pay that the employee would have received for the notice period had the employee been dismissed with notice.[65]

63 Employment Act (Cap 91, 2009 Rev Ed) ss 18A(1)–18A(3).

64 Employment Act (Cap 91, 2009 Rev Ed) s 18A(5).

65 *Wee Kim San Lawrence Bernard v Robinson & Co (Singapore) Pte Ltd* [2014] 4 SLR 357 at [25] and [35]. However, in some instances, employees may be able to claim for further damages due to the employer's breach of the implied duty of trust and confidence in terminating the employees, for example, where the breach has affected an employee's future employment prospects. See *Wee Kim San Lawrence Bernard v Robinson & Co (Singapore) Pte*

(*cont'd on the next page*)

44 Previously, dismissed employees who qualified for protection under the Employment Act could, instead of commencing an action in court under common law, make representations to the Minister of Manpower under s 14(2) of the Employment Act.[66] This was so even if the employee had been dismissed with PILON.[67]

45 Under the old s 14(2), an employee who considers that he has been dismissed without just cause or excuse by his employer may, within one month of dismissal, make representations in writing to the Minister to reinstate his former employment. The Minister may request the Commissioner for Labour to investigate the employee's claims.[68] If the Minister is satisfied that the employee has been dismissed without just cause or excuse, the Minister may, "notwithstanding any rule of law or agreement to the contrary — (a) direct the employer to reinstate the employee in his former employment and to pay the employee an amount that is equivalent to the wages that the employee would have earned had he not been dismissed by the employer; or (b) direct the employer to pay such amount of wages as compensation as may be determined by the Minister".[69]

46 The Amendments to the Employment Act have changed the above in the following respects.

47 First, remedies under s 14 of the Employment Act have been extended to all employees generally, including PMEs earning above S$4,500 per month (who previously had only remedies under the common law). Employers should therefore note that all employees will have two avenues for redress for wrongful dismissal, *ie*, either an action under common law or an action under the Employment Act.

Ltd [2014] 4 SLR 357 at [26] and [27] (obiter), citing *Malik v Bank of Credit and Commerce International SA* [1998] AC 20.

66 EA (pre-April 2019) s 14(2).

67 So long as the employee had served for at least 12 months in any position – see EA (pre-April 2019) s 14(2A).

68 EA (pre-April 2019) s 14(3).

69 EA (pre-April 2019) s 14(4).

48 Second, s 14(2) has been amended such that, instead of making representations to the Minister, an aggrieved employee can lodge a claim with the Employment Claims Tribunal ("ECT") for reinstatement or compensation.[70]

49 Previously, the jurisdiction of the ECT was limited to only salary-related claims.[71] The jurisdiction of wrongful dismissal claims instead lay with the MOM.[72] However, this split jurisdiction was difficult in practice as many disputes had elements of both salary and wrongful dismissal. To resolve this, the ECT started handling wrongful dismissal claims on a voluntary basis by parties. Thus, it was thought prudent to formalise this ongoing arrangement by transferring jurisdiction from the MOM to the ECT.[73]

50 The ECT can, despite any rule of law or agreement to the contrary:[74]

(a) In a claim for reinstatement, reinstate the employee and order the employer to pay the employee an amount equivalent to the wages that the employee would have earned, if the employee had not been dismissed.

(b) In a claim for compensation, direct the employer to pay, as compensation to the employee, "an amount of wages determined by the Tribunal". It is presently unclear whether such amount of compensation can exceed the normal measure of damages for wrongfully dismissed employees at common law.[75]

51 Third, the definition of the word "dismiss" is widened under the Amendments:

---

70 Employment (Amendment) Bill 2018 (Bill 47 of 2018) cl 3.

71 EA (pre-April 2019) s 12.

72 *Parliamentary Debates, Official Report* (20 November 2018), vol 94 (Josephine Teo, Minister for Manpower).

73 *Parliamentary Debates, Official Report* (20 November 2018), vol 94 (Josephine Teo, Minister for Manpower)

74 Employment (Amendment) Bill 2018 (Bill 47 of 2018) cl 3(*c*).

75 See para 43 above.

Employment Act (Pre-Amendment)	Employment Act (Post-Amendment)
"dismiss" means the termination of the contract of service of an employee by his employer, with or without notice and whether on the grounds of misconduct or otherwise;	"dismiss" means to terminate the contract of service between an employer and an employee at the initiative of the employer, with or without notice and for cause or otherwise, and includes the resignation of an employee if the employee can show, on a balance of probabilities, that the employee did not resign voluntarily but was forced to do so because of any conduct or omission, or course of conduct or omissions, engaged in by the employer;

52 The practical implication is that even where an employee resigns from his employment, the employee is not precluded from bringing a claim against the employer under the new s 14(2) of the Employment Act, especially in situations where the employee claims that it is the actions of the employer that "forced" the employee's resignation.

53 On the whole, in the light of the Amendments, employers are urged to exercise special care in handling terminations and dismissals.

IV. Conclusion

54 The Amendments to the Employment Act are timely. They are also significant and wide-ranging. The Employment Act will now take centre stage[76] in governing the employment relationship between employers and employees, including PMEs

76 Along with the employment agreement.

who earn more than S$4,500 per month. Parties must take into account the Amendments and provisions of the Employment Act when negotiating employment agreements.