

WORKPLACE FAIRNESS

The Workplace Fairness Act 2025 (Act 8 of 2025) is a landmark legislation which sets out for the first time a set of binding norms on workplace equality in Singapore. This article considers the current state of workplace equality law and practice in Singapore, and some possible uncertainties and issues that can arise under the new Act.

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I. Introduction

1 The Workplace Fairness Act 2025¹ (the “Act”) which was passed on 8 January 2025 has been many years in the making. The idea for a workplace fairness legislation was first announced by the former Prime Minister during the National Day Rally 2021,² around which time the Tripartite Committee on Workplace Fairness was formed to explore legislative and other ways to strengthen workplace fairness in Singapore.³ The Tripartite Committee, which comprised high level representatives from the trade unions, government and industry, conducted several surveys and held multiple engagements with a broad range of stakeholders from both industry and non-governmental organisations, before releasing a final report setting out 22 recommendations in August 2023.⁴ The recommendations, which mostly relate to the content

1 Act 8 of 2025.

2 Prime Minister’s Office Singapore, “National Day Rally 2021” (29 August 2021) <<https://www.pmo.gov.sg/Newsroom/National-Day-Rally-2021-English>> (accessed 5 May 2025).

3 Ministry of Manpower, “Formation of Tripartite Committee on Workplace Fairness” (27 July 2021) <<https://www.mom.gov.sg/newsroom/press-releases/2021/0727-tripartite-committee-on-workplace-fairness>> (accessed 5 May 2025).

4 “Building Fairer & More Harmonious Workplaces: Tripartite Committee on Workplace Fairness Final Report” (4 August 2023). See pp 40–41 for the composition of committee and stakeholder groups that were consulted.

and parameters of the proposed workplace fairness legislation, were accepted by the government in full.⁵

2 Due to additional time required to work out the intricacies of the mechanism for individuals to make private compensation claims, the decision was taken to introduce the new workplace fairness legislation in two parts.⁶ The first Workplace Fairness Bill⁷ (“Bill”), which addresses the substantive rights and obligations of employers, was passed by Parliament on 8 January 2025. A second bill, which will deal with private compensation claims by victims of workplace discrimination, is expected to be introduced in late 2025. The government’s intent is for the entire Act, incorporating the second bill (assuming it is passed by Parliament), to enter into force in 2026 or 2027.⁸ The status quo will therefore remain for the immediate future. Moreover, even after the implementation of the Act, the Tripartite Alliance for Fair and Progressive Employment Practices (“TAFEP”) will continue to play an important role in combating workplace discrimination and promoting fair employment practices.⁹ Part II of this article therefore gives an overview of the existing legal and extra-legal framework on workplace fairness and equality, including the current and future roles of TAFEP. Part III goes on to consider the contours of the Act.

3 Unless otherwise stated, all provisions referred to in this article are with reference to the Act. This article does not address the matters which will be covered in the second bill relating to private compensation claims.

II. Existing legal and extra-legal framework

A. Constitution and other legislation

4 To be clear, the Act is neither the first nor the only applicable law which deals with workplace fairness in Singapore. Article 12(2)

5 Ministry of Manpower, “Government Accepts Tripartite Committee’s Final Recommendations for WFL” (4 August 2023) <<https://www.mom.gov.sg/newsroom/press-releases/2023/0804-government-accepts-tripartite-committee-final-recommendations-for-wfl>> (accessed 5 May 2025).

6 Singapore Parl Debates; Vol 95; [7 January 2025] (Tan See Leng, Minister for Manpower).

7 Bill No 50/2024.

8 Singapore Parl Debates; Vol 95; [7 January 2025] (Tan See Leng, Minister for Manpower).

9 “Building Fairer & More Harmonious Workplaces: Tripartite Committee on Workplace Fairness Final Report” (4 August 2023) at p 3; Singapore Parl Debates; Vol 95; [7 January 2025] (Tan See Leng, Minister for Manpower).

of the Constitution of the Republic of Singapore¹⁰ (“Constitution”) provides that:

Except as expressly authorised by this Constitution, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

5 While Art 12(2) is important in enshrining the principle of equality in public appointments and the administration of law relating to the carrying on of profession, vocation or employment, it is immediately apparent that Art 12(2) is not meant to set out a comprehensive set of norms on workplace fairness and equality.¹¹ For instance, it is silent on workplace discrimination on the basis of age. Further, while Art 12(2) refers specifically to “appointment”, discrimination can also manifest in decisions relating to termination and promotion, among a myriad of other things.

6 Aside from the Constitution, on the specific matter of termination, a termination on discriminatory grounds could justify a claim for wrongful dismissal under the Employment Act 1968,¹² Industrial Relations Act 1960¹³ or Retirement and Re-employment Act 1993,¹⁴ depending on whether the employee in question falls within the protected class of the particular legislation.¹⁵ However, as mentioned, discrimination can manifest in many employment-related decisions beyond just termination. According to the Ministry of Manpower (“MOM”)’s Fair Employment Practices Survey 2023, dismissal and retrenchment are ranked only 12th and 13th in the list of most commonly reported forms of unfair treatment at work.¹⁶

7 The upshot is that, until the recent passage of the Act, there was a distinct lack of legislation which comprehensively dealt with workplace fairness.

10 2020 Rev Ed.

11 For a discussion on the scope of Art 12(2) of the Constitution of the Republic of Singapore (2020 Rev Ed) in respect of workplace harassment, see Ravi Chandran, *Employment Law in Singapore* (LexisNexis, 2019) at paras 4.283–4.289.

12 (2020 Rev Ed) s 14(2).

13 (2020 Rev Ed) s 35(3).

14 (2020 Rev Ed) ss 8 and 8B.

15 For instance, an employee who holds a managerial or executive position must have worked for the employer for at least six months before he or she can make a claim under s 14(2) of the Employment Act 1968 (2020 Rev Ed).

16 Ministry of Manpower, “Fair Employment Practices Survey 2023” (September 2024) at p 9.

B. *TAFEP and the Fair Consideration Framework*

8 The hitherto absence of a comprehensive workplace fairness legislation¹⁷ is deliberate. The government's longstanding preference has been to resolve workplace discrimination complaints in a less adversarial and legalistic manner,¹⁸ in the belief that a more flexible approach will lead to better employment outcomes.¹⁹ To this end, TAFEP was formed in 2006 with the mandate to promote the adoption of fair, responsible and progressive employment practices.²⁰ The tripartite partners which comprise the "T" in TAFEP are the MOM, the National Trades Union Congress and the Singapore National Employers Federation.

9 A key function of TAFEP is to investigate complaints of workplace discrimination and other unfair employment practices. For less serious cases, TAFEP may engage with the employer to review and improve its employment practices. In more serious cases, or cases where the employer is recalcitrant or non-cooperative, TAFEP may refer the matter to MOM for administrative actions to be taken.²¹ The administrative actions can include a formal warning, requirement for mandatory corrective training, and debarment from applications for work passes for foreign employees.²² The debarment extends to non-renewal of work passes for existing foreign employees and can be a potent enforcement tool given

17 Aside from legislation, it could be argued that workplace discrimination will constitute a breach of the implied term of mutual trust and confidence in employment contracts. However, the existence of such an implied term is presently uncertain under Singapore law: see *Dong Wei v Shell Eastern Trading (Pte) Ltd* [2022] 1 SLR 1318 and *Dabbs, Mathew Edward v AAM Advisory Pte Ltd* [2024] SGHC 260 at [89].

18 Prime Minister's Office Singapore, "National Day Rally 2021" (29 August 2021) <<https://www.pmo.gov.sg/Newsroom/National-Day-Rally-2021-English>> (accessed 5 May 2025).

19 Singapore Parl Debates; Vol 95; [1 September 2020] (Josephine Teo, Minister for Manpower).

20 TAFEP, "About Us" <<https://www.tal.sg/tafep/about-us>> (accessed 5 May 2025).

21 Ministry of Manpower, "How Complaints of Workplace Discrimination and Discriminatory Hiring Practices are Dealt With" (25 September 2013) <<https://www.mom.gov.sg/-/media/mom/documents/press-releases/2013/press-release-on-discrimination-cases--annex-d--250913.pdf>> (accessed 5 May 2025).

22 Singapore Parl Debates; Vol 95; [3 April 2024] (Tan See Leng, Minister for Manpower). The power to debar is found in s 7(5)(d) of the Employment of Foreign Manpower Act 1990 (2020 Rev Ed). Under reg 20A(1)(b) of the Employment of Foreign Manpower (Work Passes) Regulations 2012, the matters which the Controller of Work Passes can consider when making a debarment order include (but is not limited to) whether the person has made reasonable efforts to provide fair employment opportunities to citizens of Singapore.

the realities of the Singapore labour market,²³ though it is likely to be carried out only in the more egregious cases.²⁴

10 Another important function of TAFEP is in norm-setting, through the issuance of tripartite guidelines and advisories, including most notably the Tripartite Guidelines on Fair Employment Practices²⁵ (“TGFEP”). While the TGFEP does not have force of law,²⁶ the MOM has on multiple occasions stated that all employers are expected to comply with the TGFEP.²⁷ In practice, the TGFEP guides the work of TAFEP and the MOM in assessing complaints of workplace discrimination and other unfair practices,²⁸ and can be considered a soft law or quasi-binding instrument with an established enforcement mechanism that is backed by the administrative powers of the MOM.

11 Related to the TGFEP, the MOM has in place a Fair Consideration Framework, which mandates the fair consideration of Singapore citizens and permanent residents before an application can be submitted for an Employment Pass or “S Pass” for a foreigner.²⁹ This was introduced in 2014 to address discriminatory hiring practices that unfairly exclude locals from good quality jobs.³⁰ Among other things, before making an application for an Employment Pass or “S Pass”, employers are required to advertise their job vacancies on “MyCareersFuture”, an online job portal maintained by Workforce Singapore. Just as importantly, employers are then required to give fair consideration to all applications received from the MyCareersFuture portal. The Fair Consideration Framework also expressly requires employers to adhere to the TGFEP. Like the TGFEP, the Fair Consideration Framework does not have force of law, but is enforced

23 Singapore Parl Debates; Vol 95; [1 September 2020] (Josephine Teo, Minister for Manpower).

24 Singapore Parl Debates; Vol 95; [18 September 2023] (Tan See Leng, Minister for Manpower).

25 For other guidelines, standards and advisories issued by the Tripartite Alliance for Fair & Progressive Employment Practices, see <<https://www.tal.sg/tafep/>> (accessed 5 May 2025).

26 See *Kallivalap Praveen Nair v Glaxosmithkline Consumer Healthcare Pte Ltd* [2023] 3 SLR 922 at [154].

27 See, eg, Singapore Parl Debates; Vol 95; [3 October 2023] (Tan See Leng, Minister for Manpower).

28 Ministry of Manpower, “How Complaints of Workplace Discrimination and Discriminatory Hiring Practices Are Dealt With” (25 September 2013) <<https://www.mom.gov.sg/-/media/mom/documents/press-releases/2013/press-release-on-discrimination-cases--annex-d--250913.pdf>> (accessed 5 May 2025).

29 See Ministry of Manpower, “Fair Consideration Framework (FCF)” <<https://www.mom.gov.sg/employment-practices/fair-consideration-framework/>> (accessed 5 May 2025).

30 Singapore Parl Debates; Vol 90 [21 October 2013] (Tan Chuan-Jin, Acting Minister for Manpower).

through the MOM's administrative powers, including the rejection of work pass applications for roles which are not properly advertised on the MyCareersFuture portal, and debarment in the case of discrimination.³¹

C. *Continued relevance of TAFEP*

12 The Act is not meant to replace the TGFEP or displace the work of TAFEP. As noted by the Minister for Manpower during the second reading of the Bill:³²

... we have designed this Bill knowing it cannot be the only tool to tackle all forms of workplace discrimination. Instead, this Bill starts on a more scoped and surer footing to ensure that we can preserve the precious workplace and social harmony that we enjoy today, while remaining open to future updates to the list of protected characteristics. The Bill complements TGFEP, which will enable TAFEP to tackle workplace discrimination based on all other characteristics.

Internationally, this approach of having a law to cover certain protected characteristics with a more flexible tool to cover all other characteristics is quite unique. It enables any employee who faces discrimination to seek support and is only made possible because of good tripartite relations and strong institutions, like TAFEP. We will also update TGFEP in tandem with the WFL's implementation to ensure alignment. Sir, I would like to reiterate to all employees: if you are facing workplace discrimination, MOM and TAFEP will support you. You will not be turned away simply because it is not a protected characteristic. TGFEP will continue to cover all forms of workplace discrimination.

13 TAFEP will therefore continue to play an important role in combatting workplace discrimination and promoting fair employment practices. To this end, there are plans to update the TGFEP to extend coverage to platform workers and individuals who are on contracts for services.³³ The Tripartite Committee on Workplace Fairness had also

31 See Ministry of Manpower, "Consider All Candidates Fairly Before You Apply for An Employment Pass" <<https://www.mom.gov.sg/passes-and-permits/employment-pass/consider-all-candidates-fairly/>> (accessed 5 May 2025) and Ministry of Manpower, "Fair Consideration Framework (FCF)" <<https://www.mom.gov.sg/employment-practices/fair-consideration-framework/>> (accessed 5 May 2025).

32 Singapore Parl Debates; Vol 95; [7 January 2025] (Tan See Leng, Minister for Manpower). See also "Building Fairer & More Harmonious Workplaces: Tripartite Committee on Workplace Fairness Final Report" (4 August 2023) at p 33.

33 Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower). See also "Building Fairer & More Harmonious Workplaces: Tripartite Committee on Workplace Fairness Final Report" (4 August 2023) at p 26. Such persons are not covered by the Workplace Fairness Act 2025 (Act 8 of 2025): see para 16 below.

proposed to increase the arsenal of enforcement measures available to TAFEP for breaches of the TGFEF.³⁴

14 It is with this context in mind that this article now turns to the Act, which, as noted in the above extract, is a carefully “scoped” piece of legislation.

III. The Act

15 The Act serves two broad aims.³⁵ The first is to protect individuals from certain discriminatory employment practices. The second is to establish certain other fair employment practices, through giving legislative effect to the existing advertisement requirements in the Fair Consideration Framework and making it mandatory for employers to put in place formal grievance handling processes.

A. *Persons covered under the Act*

16 As the name of the Act itself suggests, the Act applies only in the workplace context and does not confer protection in non-workplace settings such as discrimination in university admission or in the provision of public services.³⁶ Moreover, the Act does not confer protection in non-employment situations, such as in the case of a person who is engaged on a contract for services or in the case of a person who is engaged under a platform work agreement.³⁷ Even within the category of “employment”, certain categories of employees such as seafarers, domestic workers and employees of the Government and statutory authorities are excluded.³⁸ Nonetheless, as stated earlier, some categories of excluded workers (such as gig workers who are discriminated) may still be able to approach TAFEP for help.³⁹

34 “Building Fairer & More Harmonious Workplaces: Tripartite Committee on Workplace Fairness Final Report” (4 August 2023) at p 22.

35 See also s 3 of the Workplace Fairness Act 2025 (Act 8 of 2025).

36 Compare Equality Act 2010 (c 15) (UK) and for instance, Sex Discrimination Act 1984 (Cth).

37 Workplace Fairness Act 2025 (Act 8 of 2025) s 4(3). As to the definition of “platform work agreement”, see s 2 of the Platform Workers Act 2024 (Act 30 of 2024). Compare s 41 of the Equality Act 2010 (c 15) (UK) and for instance, s 16 of the Sex Discrimination Act 1984 (Cth).

38 Workplace Fairness Act 2025 (Act 8 of 2025) s 2. See also Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower) on the exclusion of public officers.

39 See Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower).

17 The Act also generally⁴⁰ does not impose obligations on employers⁴¹ who employ less than 25 individuals, or such other number of individuals as may be prescribed.⁴² The purpose of this exemption is to give smaller businesses more time to get used to the requirements of the Act.⁴³ The term “employee” is defined in s 2 of the Act and since the definition does not exclude part-time employees, such part-timers are included. That aside, it is possible to envisage a situation where the number of employees hovers around 25, at times crossing 25 and at other times falling below 25. In such a situation, it would appear that the Act could apply intermittently. In this regard, it is suggested that what is material is if the prescribed number was satisfied at the time of the alleged infringement, and not at the time when a complaint is eventually lodged.

B. Protection against discrimination

18 Unless an exception stated in the Act applies, Pt 4 of the Act protects individuals from adverse “employment decisions” on the ground of a “protected characteristic”. These two terms are defined in Pts 2 and 3 of the Act and will now be examined.

(1) Employment decisions

19 The protection on individuals from being discriminated against by employers on the ground of protected characteristics applies not only to hiring and firing decisions, but also to other key decisions spanning the entire employment life cycle. The details of the relevant employment decisions that are covered are set out in ss 5–7.

20 Beginning with hiring, s 5(2) comprehensively sets out all stages of the pre-employment process, from asking for information,⁴⁴ to

40 See s 26(3)(b) of the Workplace Fairness Act 2025 (Act 8 of 2025) for an exception.

41 Each entity in a corporate group, as opposed to the corporate group as a whole, will be treated as an employer for this purpose: see Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower).

42 Workplace Fairness Act 2025 (Act 8 of 2025) ss 4(1)–4(2).

43 There are plans to widen the coverage of the Workplace Fairness Act 2025 (Act 8 of 2025) by reducing the prescribed number over time: see Singapore Parl Debates; Vol 95; [7 January 2025] (Tan See Leng, Minister for Manpower).

44 However, a mere request for information itself without proof that an adverse employment decision has been made will not amount to discrimination under the Workplace Fairness Act 2005 (Act 8 of 2005) (the “Act”). Thus, if the employer asks in the application form whether the applicant is suffering from any mental health condition or in an interview whether the applicant has children, that in itself will not amount to discrimination under the Act, unless it can be proved that an adverse employment decision was made based on the information provided (for instance, it can be proven the employee was not hired as a result of that the protected
(cont'd on the next page)

conducting the interview, to making the offer (whether it is accepted). Thus, if the employer makes an offer, but before it is accepted, withdraws the offer upon learning the applicant is pregnant, there could be a finding of discrimination.⁴⁵ However, s 5 seems only to relate to the hiring process, and not the terms upon which employees are hired.⁴⁶ Thus, if the employer hires females at a lower pay than males, that may not constitute a relevant “employment decision” under s 5.⁴⁷

21 As for decisions made while the individual is engaged as an employee, s 6(1) provides that the only relevant decisions are in respect of appraisals,⁴⁸ promotions, reduction in rank or status,⁴⁹ and the provision of training opportunities. If a decision does not fall under one of these four matters, then the decision will not be governed by the Act. The term “appraise” is not defined, so it is not clear if this refers to the performance grade received by the employee or whether it extends to the amount of performance bonus or other benefits awarded to the employee. It is suggested that the latter should be preferred, as some businesses do not have formal performance review procedures and, in those businesses, the quantum of the bonus or other benefits reflects the employer’s assessment of the performance of the particular employee. Further, the mere giving of a grade without benefits being affected may not amount to an *adverse* employment decision as required by s 17(1).

22 In respect of “promotion”, s 6(2) clarifies that this means an increase in the rank or status of the employee. Therefore, a change of title from “manager” to “senior manager”, or an increase in the job grade

characteristic): see s 17(1) of the Act and Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower).

45 See also *Noorfadilla bt Ahmad Saikin v Chayed bin Basirun* [2012] 1 MLJ 832.

46 Compare s 3 of the Equality Act 2010 (c 125) (UK), s 14(1) of the Sex Discrimination Act 1984 (Cth) and s 11(1) of the Sex Discrimination Ordinance (Cap 480) (Hong Kong), all of which specifically state that the terms of the employment are relevant.

47 This omission is somewhat curious, as unfair treatment in respect of salary is the most commonly reported form of unfair treatment among employees who experienced discrimination at work. See Sugidha Nithiananthan & Rayner Tan, “The Workplace Fairness Act Must Go Further If We Are to Stamp Out Discrimination”, *The Straits Times* (16 January 2025) at p B3.

48 More accurately, the phrase used in s 6(1)(a) is “appraises, evaluates or measures”. In addition, the appraisal, evaluation or measurement must relate to the “performance of any employee”. It is not clear if the performance must relate to the formal job responsibilities or if it can extend to other matters. For instance, if the employer only offers existing foreign employees incentives for referring new foreign employees, it is not clear if that will be considered an employment decision for the purposes of the Workplace Fairness Act 2025 (Act 8 of 2025).

49 An example could be an airline-employer stating that female employees will have to stop flying after three months of pregnancy and will be offered a ground job instead. Arguably that may amount to a “reduction in status”.

within the same rank, will clearly be a promotion. However, it is unclear if pay increments within the same rank and job grade are considered promotions. For instance, if female employees are systematically given lower pay increments than male employees of the same rank and status, that might not be discrimination in the matter of promotion, though it may be discrimination in the matter of appraisal.

23 Notably, the allotment of work tasks and provision of non-performance-based employment benefits are not decisions which are subject to scrutiny under the Act. Thus, for instance, if an employer-bank decides that only female employees should meet certain clients and not male employees, or that only female employees can work from home and not men, those decisions would not be caught under the Act.⁵⁰ This is so even if the former decision later leads to female employees getting more and better opportunities, which then translate into better performance appraisals compared to male employees. Similarly, if married employees are given additional days of leave, that would not amount to discrimination under the Act as the employer's leave policy does not fall under any of the four categories mentioned above. Likewise, if there is a policy to only roster non-Hindu employees to be on duty during Deepavali, this will not give rise to discrimination as rostering decisions are not relevant employment decisions for the purposes of the Act.

24 Moreover, there is no obligation under the Act to enact policies which are sensitive to the needs or feelings of employees with protected characteristics. Therefore, even though a Caucasian employee might feel discriminated against working in an environment where formal meetings are held in Mandarin, this alone does not amount to actionable discrimination under the Act. Similarly, there will be no contravention of the Act if a Muslim employee complains that the employer does not provide halal food options at the staff canteen or does not allow prayer breaks.⁵¹ However, importantly, some of these issues may come under the purview of TAFEP, even if not covered by the Act.⁵²

25 Further, even though suggestions were previously made by various stakeholders that the Act should also address workplace harassment,⁵³ the current Act does not actually prohibit the employer

50 Compare the UK position: see for instance, *Ndebele v A Bubble Company Ltd* 23022428-2016 (UK Employment Tribunal).

51 See Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower).

52 See Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower).

53 "Building Fairer & More Harmonious Workplaces: Tripartite Committee on Workplace Fairness Final Report" (4 August 2023) at p 23.

from harassing the employee on the ground of protected characteristics. Thus, even if the employer regularly humiliates a disabled employee about his or her disability, or any employee about his or her race or religion, without such harassment amounting to any of the four specified categories of employment decisions in s 6(1), there would be no contravention of Pt 4 of the Act.⁵⁴ The legislative intent is instead for the errant employer to be subject to proceedings under the Protection from Harassment Act 2014⁵⁵ and Penal Code 1871,⁵⁶ which may result in criminal consequences instead of the administrative or civil penalties under the Act.⁵⁷ Nonetheless, if there is harassment⁵⁸ the employee can raise a grievance⁵⁹ under s 27. Further, the employer is prohibited by s 28(1) (read with s 28(2)(e)) from harassing the employee in retaliation to the employee raising a grievance. Therefore, if the disabled employee in the earlier example raises a grievance against the employer, and the employer responds by further mocking the disabled employee about his or her disability, then somewhat oddly, the employer may be found to have contravened s 28(1) even though the initial harassment did not amount to a contravention of the Act.

26 In respect of ending the employment relationship, the decisions covered are dismissal, termination and retrenchment.⁶⁰ The term “retrench” is defined in s 7(2), while s 2 provides that the term “dismiss” shares the same definition as that under the Employment Act 1968. However, “terminate” is not defined and the question might arise whether a non-renewal of a contract amounts to termination. Given that non-renewals are not covered by the Employment Act 1968,⁶¹ it is

54 Compare s 26 of the Equality Act 2010 (c 15) (UK).

55 2020 Rev Ed.

56 2020 Rev Ed.

57 Singapore Parl Debates; Vol 95; [7 January 2025] (Tan See Leng, Minister for Manpower). For an exposition on the civil consequences for workplace harassment under the Protection from Harassment Act 2014 (2020 Rev Ed), see Ravi Chandran, “Workplace Harassment – Persons Liable and Damages Payable under the Protection from Harassment Act 2014” (2015) 27 SAclJ 286.

58 The term “harassment” is defined with reference to the Protection from Harassment Act 2014 (2020 Rev Ed): see s 25 of the Workplace Fairness Act 2025 (Act 8 of 2025).

59 The term “grievance” includes harassment: see s 25 of the Workplace Fairness Act 2025 (Act 8 of 2025).

60 Workplace Fairness Act 2025 (Act 8 of 2025) s 7. The suspension of an employee is not an employment decision for the purposes of the Act. Compare the UK position: *G-Day-Davies v United Learning Trust* 2424560/2017 (UK Employment Tribunal).

61 Ravi Chandran, *Employment Law in Singapore* (LexisNexis, 2019) at para 6.199. See also Singapore Parl Debates; Vol 94; [19 March 2018] (Josephine Teo, Minister for Manpower). See further, Singapore Parl Debates; Vol 95; [7 January 2025] (Patrick Tay), where a Member of Parliament observed in passing that not offering re-employment is an adverse employment decision only if it is attributable to retaliation.

unlikely that Parliament intended non-renewals to be covered by this Act. On the other hand, constructive dismissal is clearly covered, since the definition of the term “dismiss” under the Employment Act 1968 clearly allows for that. Thus, for instance, if an employer unreasonably overloads a pregnant employee with work, in the hope that she resigns on her own accord so that the employer does not have to pay maternity benefits, and she does resign, that can amount to discrimination under the Act. In the specific context of maternity benefits, she may also have remedies under s 84 of the Employment Act 1968.⁶²

27 What if the contract states that the employee must resign upon becoming pregnant?⁶³ It is suggested that, if the contract has a provision that the employee must resign upon becoming pregnant, and the employer insists on the implementation of that provision, the employer is effectively carrying out a termination on the ground of a protected characteristic. Alternatively, such a provision arguably purports to exclude or limit the operation of the Act, and hence may be invalidated under s 41(a).

28 If the employee alleges that he or she has been dismissed on a discriminatory ground (such as disability or pregnancy), but the employer in turn alleges that the performance of the employee has gotten worse as a result of the protected characteristic (for instance, reduced output due to higher sick-leave absenteeism), it is not clear if that will provide a valid justification for the dismissal. It should be highlighted in this regard that under the Retirement and Re-employment Act 1993, the employer can clearly dismiss an older employee if performance is an issue.⁶⁴ However, unlike the Retirement and Re-employment Act 1993, the Act specifically provides that it is discrimination if an adverse employment decision is based on a protected characteristic, even if that is not the only reason.⁶⁵

29 Finally, as alluded to earlier, in order for there to be actionable discrimination under the Act, there must be an *adverse* employment decision on the ground of a protected characteristic which affects an individual.⁶⁶ Thus, for instance, if the employer asks in an application form whether the applicant is suffering from any mental health condition or in an interview how many children the applicant has, since it does

62 See *Longitude 101 Pte Ltd v Navinea Kanapathy Pillai* [2024] SGDC 47, though the case did not involve constructive dismissal.

63 See also *AirAsia Bhd v Rafizah Shima bt Mohamad Aris* [2014] 5 MLJ 681.

64 See Singapore Parl Debates; Vol 61; [12 April 1993] (Lee Boon Yang, Minister for Manpower) and *Noor Mohamed bin Mumtaz Shah v Apollo Enterprises Ltd* [2000] 1 SLR(R) 670.

65 Workplace Fairness Act 2025 (Act 8 of 2025) s 17(1)(b).

66 Workplace Fairness Act 2025 (Act 8 of 2025) s 17(1).

not automatically mean that the applicant will not be hired as a result of any particular answer, the request for information is not an adverse employment decision in itself and hence not considered discrimination under the Act.⁶⁷ Such questions may nevertheless contravene the TGFEP⁶⁸ and invite the intervention of TAFEP.

(2) *Protected characteristics*

30 The protected characteristics are set out in s 8, and they are: age,⁶⁹ nationality, sex,⁷⁰ marital status, pregnancy, caregiving responsibilities, race,⁷¹ religion,⁷² language ability,⁷³ disability⁷⁴ and mental health condition. These 11 characteristics are said to cover more than 95% of discrimination complaints received by TAFEP and the MOM.⁷⁵

67 See Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower).

68 Tripartite Alliance for Fair & Progressive Employment Practices, “Tripartite Guidelines on Fair Employment Practices” (August 2024) at pp 10–11.

69 If an employee is dismissed on the grounds of age, besides the breaching the Workplace Fairness Act 2025 (Act 8 of 2025), there could be an offence committed under s 4(3) of the Retirement and Re-employment Act 1993 (2020 Rev Ed).

70 For instance, if a female employee is terminated because she refused to wear a skirt or put on lipstick when male employees were under no such obligation, that could amount to sex-based direct discrimination (see, for *eg*, *Smith v Rees* 2501040/2012 (UK Employment Tribunal)).

71 The term “race” is not defined (*cf*, s 9 of the Equality Act 2010 (c 15) (UK) and s 8(1) of the Race Discrimination Ordinance (Cap 602) (Hong Kong)). Thus, it is not clear if it includes ethnicity and caste.

72 Unlike s 10(1) of the Equality Act 2010 (c 15) (UK), it is not expressly provided that religion includes the lack of a religion. Nevertheless, it is suggested that the Workplace Fairness Act 2025 (Act 8 of 2025) implicitly considers the lack of a religion to be a protected characteristic: see, *eg*, s 20(2) of the Act, which uses the phrase “has (or does not have) the protected characteristic”.

73 This characteristic is presumably included to forestall any attempt to use language ability as a proxy for racial discrimination.

74 Disability is defined as autism, intellectual disability, physical disability and sensory disability, see s 15 of the Workplace Fairness Act 2025 (Act 8 of 2025). While sensory disability can include hearing or sight impairment, it is unlikely matters such as dyslexia or attention deficit hyperactivity disorder (ADHD) are covered (see also Singapore Parl Debates; Vol 95; [7 January 2025] (Denise Phua)). As for physical disability, while it can cover birth-related or accident-related physical disability, it is not clear if it covers disease-related physical disability. For instance, if an employee is undergoing cancer treatment and regularly takes sick leave as he is very weak and is dismissed because of that, it is not clear whether this would be covered (*cf*, s 2(1) of the Disability Discrimination Ordinance (Cap 487) (Hong Kong) and Sch 1 of the Equality Act 2010 (c 15) (UK), which have much more detailed definitions of disability).

75 Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower).

31 Certain characteristics such as physical traits (for instance, being overweight) or medical conditions (for instance, having Acquired Immune Deficiency Syndrome (AIDS)) are not covered. Thus, for instance, if a job advertisement states that candidates must be “well groomed” or have a “pleasant demeanour”, that will not be covered by s 19. Similarly, if the contract provides that employees are not to have any tattoos or dyed hair, that too would not be prohibited, as it relates to physical traits. If potential candidates are requested to submit a photo of themselves, unless it can be shown that this request is linked to an adverse employment decision on the ground of sex, age or race, the request in itself would not amount to discrimination.

32 The protected characteristics also do not include prior criminal convictions or political affiliations. National service liability is another notable omission, though there are already provisions under the Enlistment Act 1970⁷⁶ to protect against the dismissal of employees on account of their national service liability. Furthermore, a Singaporean male employee who is discriminated against on account of his national service liability may be able to invoke the protected characteristics of sex and nationality. One’s educational qualification is also not a protected characteristic. Thus, if an employer promotes those with degrees but not those with diplomas, or if the employer shortlists candidates for a job based on the class of the degree, both decisions would not be covered under the Act.

33 In relation to “sex”, it does not cover sexual orientation or the gender one identifies with⁷⁷ as opposed to what is recorded in official records.⁷⁸ This is somewhat unfortunate, given that discrimination or purported discrimination on such grounds does occur.⁷⁹ Nevertheless, if the individual is formally diagnosed with gender dysphoria by a registered medical practitioner, that could be a mental health condition which is a protected characteristic. In relation to “marital status”, it has been widely defined to include not only whether a person is married, but also whether the person is divorced or widowed.⁸⁰ Presumably an adverse decision based on a fact that an employee has a child out of wedlock amounts to a decision based on marital status. The term “pregnancy” is also defined widely to not only include actual pregnancy,

76 (2020 Rev Ed) s 22.

77 Workplace Fairness Act 2025 (Act 8 of 2025) s 10(2) (*cf*, s 12 of the Equality Act 2010 (c 15) (UK) in relation to sexual harassment).

78 As to the where the official gender can be gathered from, see s 10(3) of the Workplace Fairness Act 2025 (Act 8 of 2025).

79 See, *eg*, *Wee Kim San Lawrence Bernard v Robinson & Co (Singapore) Pte Ltd* [2014] 4 SLR 357.

80 Workplace Fairness Act 2025 (Act 8 of 2025) s 11.

but also precedent or post-natal matters like the desire or intent to have children, going on maternity leave or breastfeeding.⁸¹ Likewise, the term “caregiving responsibilities” is defined widely not only to cover a spouse, children and parents, but also a range of other relatives.⁸²

(3) *Matters the employer should not do*

34 Section 17(1) provides that it is discrimination for the employer⁸³ to make an employment decision that adversely⁸⁴ affects an individual on the ground of the protected characteristic of that individual, or on two or more grounds at least one of which is a protected characteristic. Thus, the protected characteristic does not have to be the sole or even dominant reason for the decision.⁸⁵ So long as it is one of the reasons, that will

81 Workplace Fairness Act 2025 (Act 8 of 2025) s 12. Pregnancy is defined specifically in relation to women, so it appears not to cover discrimination against a man based on his right to go on paternity leave. That said, such discrimination will likely infringe upon the protected characteristic of caregiving responsibilities.

82 Workplace Fairness Act 2025 (Act 8 of 2025) s 13.

83 This includes agents or managers of the employer; see s 2 of the Workplace Fairness Act 2025 (Act 8 of 2025) (the “Act”). Thus, even if not directly authorised by the employer, the employer can face liability for actions of agents or managers. See also s 28(1)(a)(iii) of the Act. See further, *Tower Boot Co Ltd v Jones* [1997] ICR 254. There is no defence even if the employer had taken reasonably practicable measures to prevent such discrimination (*cf*, s 109(4) of the Equality Act 2010 (c 15) (UK)). That aside, where an employment agency is used to hire an employee and the employment agency is the actual employer as opposed to the organisation in which the employee actually works at (see, *eg*, *Gate Gourmet Canada Inc v Teamster Local Union 647* (2014) CanLII 1163), then the employment agency will face liability as the employer if it made an employment decision that adversely affects the individual on the ground of the protected characteristic. On the other hand, if the actual decision was not made by the agency, but the client company to which the employee is posted to, then the client company could be liable as the definition of “employer” in s 2(d) includes “the person who owns or is carrying on or for the time being responsible for the management of the profession, business, trade or work, in which the employee is engaged”. In the case of a franchise arrangement, if the franchisee engages in discriminatory practices (see, *eg*, Joanna Seow, “Yogurt Chain to Raise Hiring Standards After Shunning Woman ‘For Not Speaking Mandarin’”, *The Straits Times* (15 January 2015)), it is unlikely the franchisee would be considered the agent of the franchisor (see, *eg*, *Patterson v Domino’s Pizza* (2014) 2d Civil No B235099) and this would usually be made clear in the franchising agreement as well. The word “agent” is also likely to refer to a legal person and hence if the discriminatory practices were carried by an artificial intelligence software, without the employer’s active involvement in setting the rubrics, it is unlikely the employer would be liable. The definition of the term “employer” referred to above can also include discrimination against seconded employees, if any.

84 See para 29 above.

85 See para 28 above. Similarly, if the contract provides that if employees go on maternity leave, the amount of bonus will be prorated based on the period of absence, s 17(1) may be triggered.

suffice.⁸⁶ Thus, if an employer chooses not to hire a particular woman candidate partially because she has far less experience and partially because she is pregnant, that would be caught under the Act, even if pregnancy was only a small factor. As alluded to earlier, such adverse employment decisions can relate to pre-employment, in-employment or end-employment matters as set out in ss 5, 6 and 7, respectively.⁸⁷ Further, s 17(2) provides that it is not necessary to prove that the individual was treated or affected differently compared to any other individual. Thus, for instance, if the employer declines to send a female employee for overseas training on the ground that it is “not appropriate” for a female to travel alone, it does not matter that no male employee has ever been sent for overseas training alone either. By not having a need to show how a comparator is treated,⁸⁸ the Act probably makes it easier to prove a breach.

35 On the other hand, s 17(3) provides that an employment decision made on the ground of a protected characteristic of a relative or associate of an individual is not discrimination. Thus, for instance, if a male employee is refused an overseas training opportunity as his wife who is working for the same employer is pregnant and is due to deliver during the training period, that is not discrimination against the man. While in the example above, the wife is working for the same employer, the wording of s 17(3) does not seem to be restricted to relatives or associates working for the same employer. Thus, if an employer discriminates against an employee because she has a transgender son, that would not be caught. Similarly, the Explanatory Statement to the Bill states that it is not discrimination under the Act even where the employer dismisses the employee on the ground of the race of the employee’s spouse.⁸⁹

86 Since ss 17(1)(a) and 17(1)(b) of the Workplace Fairness Act 2025 (Act 8 of 2025) both refer to “a protected characteristic” [emphasis added], the question may arise, what if the termination is based on a combination of two protected characteristics (eg, pregnancy while not being married), each of which individually would not have resulted in termination. It is arguable that this will still qualify as discrimination, as there would not have been a termination in the absence of either of the protected characteristics. See also Toh Yong Chuan, “Compensate Woman Fired for Adultery, Church Told”, *The Straits Times* (20 August 2013).

87 Workplace Fairness Act 2025 (Act 8 of 2025) s 2.

88 Compare s 5(1) of the Sex Discrimination Ordinance (Cap 480) (Hong Kong) and s 13 of the Equality Act 2010 (c 15) (UK).

89 It was clarified by the Minister during the parliamentary debates that even though this does not constitute actionable discrimination under the Act, such behaviour is unacceptable, and the employer may likely be subject to administrative action under the Tripartite Alliance for Fair & Progressive Employment Practices framework: see Singapore Parl Debates; Vol 95; [7 January 2025] (Tan See Leng, Minister for Manpower). An action for wrongful dismissal may also be possibly brought under s 14(2) of the Employment Act 1968 (2020 Rev Ed).

36 As discrimination is a prejudice which manifests in the mind of the wrongdoer, whether the employee actually possesses the protected characteristic is not relevant to the analysis on whether there is discrimination. Therefore, if the employer makes an adverse decision on the suspicion that the employee is affected by a protected characteristic when that is not actually the case, that will still be caught.⁹⁰ For instance, if a female interviewee has a bulging tummy and the employer suspects that the candidate is pregnant when she is actually not, but makes statements like how there is a lot of disruption when employees go on maternity leave, and it can be proven the candidate was eventually not hired on the basis of her pregnancy, that could amount to discrimination under s 17. Conversely, if it can be established that the employer did not know the employee had the protected characteristic (*ie*, being pregnant) at the time the employment decision was made, s 17 will not be triggered.⁹¹

37 Section 18(1) provides that it is discrimination for the employer⁹² to issue, communicate or publish any discriminatory direction, instruction or policy, in writing⁹³ that directs, instructs or influences any officer, member, partner, employee or agent of the employer to make on behalf of the employer, any employment decision⁹⁴ on the ground of any protected characteristic. Though it would be easier as a matter of proof if the policy or instruction is in writing, it is not clear why verbal policies or instructions are not covered. As for the term “agent” in s 18(2), if the employer hires through an employment agency and issues a policy or instruction, for instance, that pregnant candidates should not be hired or only candidates below 40 years of age should be hired, that could be caught. This is the case even if the employment agency is considered the employer at law,⁹⁵ as the definition of “employer” under s 2 includes “the person who owns or is carrying on or for the time being responsible for the management of the profession, business, trade or work, in which the employee is engaged”. That said, in the latter situation, the employment agency can also face liability under s 17(1), for discriminatory hiring decisions, as being “forced” to engage in such practices is not expressly stated to be a defence under the Act. This matter aside, it should also be

90 Workplace Fairness Act 2025 (Act 8 of 2025) s 17(4).

91 See, *eg*, *Ramdoolar v Bycity Ltd* [2005] ICR 368.

92 This includes agents or managers of the employer: see s 2 of the Workplace Fairness Act 2025 (Act 8 of 2025). Thus, even if not directly authorised by him, the employer can face liability for actions of his agents or managers.

93 As to the term “writing”, see s 2(1) of the Interpretation Act 1965 (2020 Rev Ed). Since the definition is wide, for instance, an instruction via a WhatsApp or SMS message too, would suffice.

94 The employment decision must relate to that set out in ss 5–7 of the Workplace Fairness Act 2025 (Act 8 of 2025): see s 2.

95 See, *eg*, *Gate Gourmet Canada Inc v Teamster Local Union 647* (2014) CanLII 1163.

highlighted that so far as instruction or policy has been issued, it does not matter that no adverse employment decision based on the protected characteristic has actually been made.⁹⁶

38 Finally, under s 19(1), the employer should not publish in Singapore or cause to be published in Singapore,⁹⁷ an advertisement or description relating to possible employment in Singapore by the employer that mentions (either expressly or by implication) a protected characteristic as a condition, criterion, requirement, advantage, disadvantage or disqualification for employment. The inclusion of implicit references is significant, as this covers a much wider range of descriptors which can be used (whether intentionally or otherwise) as a proxy for protected characteristics. For instance, an international school which places an advertisement for “native French speakers” to take on a teaching job may be in breach of s 19, as this requirement implicitly excludes most Singapore citizens, and it is unlikely that the exception in s 20(2)(a) can be made out. Similar considerations may arise should the advertisement state that the job is only open to recent graduates. As for what constitutes an “advertisement” or “description”, s 19(3) suggests that the two terms ought to be interpreted broadly as it extends to every form of advertisement or description, whether directed or communicated to the public at large or to particular individuals. Thus, arguably, even an application form could amount to a description (even if not an advertisement), if it includes a checklist that refers to one or more protected characteristics as qualifying or disqualifying conditions, though it is unlikely for application forms to state so in practice.⁹⁸ Though there is no equivalent of s 18(3) in this context, it is still likely that even if no adverse employment decision is actually made in breach of the Act, that would not matter.

39 Before moving on, it should be noted that the Act generally⁹⁹ only covers direct discrimination, and a deliberate decision was taken

96 Workplace Fairness Act 2025 (Act 8 of 2025) s 18(3).

97 An electronic advertisement will be covered if it originates in Singapore (for instance, it is produced in Singapore) regardless of whether it is accessible by those physically present in Singapore (s 19(2)(a) of the Workplace Fairness Act 2025 (Act 8 of 2025) (the “Act”)), or if it is accessible by those physically present in Singapore and is published or caused to be published by a Singapore-connected person (s 19(2)(b) of the Act). Thus for instance, if a Singapore company asks an agency overseas to publish an advertisement about hiring in Singapore, that could be caught if the advertisement is accessible by persons physically present in Singapore, by virtue of s 19(2)(b) (but not by virtue of s 19(2)(a) in this example).

98 On the other hand, if the application form merely collects information in a neutral manner, then there might be no breach: see para 29 above.

99 Some forms of indirect discrimination are covered. For example, language ability is made a protected characteristic to prevent employers from using language as a proxy
(*cont'd on the next page*)

to *not* cover indirect discrimination.¹⁰⁰ This is unlike the position in many other jurisdictions with similar anti-discrimination legislation.¹⁰¹ Direct discrimination occurs when individuals are targeted based on their protected characteristics, whereas indirect discrimination occurs when employees are all treated the same, but certain employees are disadvantaged as a result of a practice of the employer. Thus, if the hotel-employer states that all employees are not to have beards, and one employee wants to retain his beard due to religious reasons, that would be indirect discrimination and would not be covered by the Act.¹⁰² Likewise, if an employer states that employees should not wear head scarves or religious symbols to work,¹⁰³ that too would not *per se* be caught. Similarly, if the employer mandates that Sunday would be a workday, and that requirement disproportionately affects employees of a particular religion, or if a secular employer includes religious symbols or quotes in official meetings or communications, those actions would not be caught. Nonetheless again, some of these matters may still come under the purview of TAFEP even if they are not covered by the Act.

40 Another notable and deliberate¹⁰⁴ omission as compared to other jurisdictions¹⁰⁵ is the absence of any duty on the employer to make reasonable accommodations¹⁰⁶ to the job or work environment for the benefit of those with disabilities. Therefore, the employer has no obligation under the Act to make the workplace accessible to employees who are or become wheelchair-bound, though it has been said there

for race. Moreover, the prohibition on discriminatory advertisement in s 19 of the Workplace Fairness Act 2025 (Act 8 of 2025) covers advertisements that implicitly refer to a protected characteristic.

100 Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower).

101 See, eg, s 19 of the Equality Act 2010 (c 15) (UK); s 6 of the Disability Discrimination Act 1992 (Cth); and s 6(b)(i) of the Disability Discrimination Ordinance (Cap 487) (Hong Kong).

102 Compare *Sethi v Elements Personnel Services Ltd* 2300234/2018 (UK Employment Tribunal) under the Equality Act 2010 (c 15) (UK) which covers indirect discrimination.

103 See, eg, Natasha Meah, “TAFEP Investigating Incident at Tangs Dept Store Where Promoter at Pop-up Booth Was Told to Remove Hijab” *Today* (18 August 2020).

104 Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower).

105 See, eg, s 20 of the Equality Act 2010 (c 15) (UK) and s 5(2) of the Disability Discrimination Act 1992 (Cth).

106 Reasonable accommodations are adjustments made by employers to make it possible for employees with protected characteristics (usually disabilities) to perform their jobs.

will be a tripartite advisory encouraging reasonable adjustments to be made.¹⁰⁷

(4) *Exceptions*

41 The duties of the employer as set out above are subject to exceptions contained in Pt 5 of the Act.

42 Section 20(1) provides that it is not discrimination to do any act mentioned in s 17(1), 18(1) or 19(1) on the ground of or in relation to a protected characteristic, if the protected characteristic is a genuine requirement of the job. What is considered a genuine requirement of the job is set out in s 20(2). Under s 20(2)(a), if having regard to the nature of the job, the job cannot be reasonably performed, unless the individual has (or does not have) the protected characteristic, that would not be discrimination. Thus, for instance, if a Chinese language tuition centre states that it is looking for Chinese language teachers and candidates must be able to speak Mandarin, that will not amount to discrimination.¹⁰⁸ As to the phrase “reasonably performed”, it has been said in Parliament that guidelines will be provided.¹⁰⁹ Additional clarity on this point, preferably by way of subsidiary legislation which has force of law, will be greatly welcomed. For instance, if an advertisement states that candidates must be able to speak Mandarin to meet the needs of clients, would that be reasonable if only 10% of the hirer’s clientele can converse in Mandarin only?

43 Under s 20(2)(b), it is not discrimination if the job needs to be performed by an individual who has (or does not have) the protected characteristic to preserve the health and safety of that individual or any other individual. Thus, for instance, if a private security firm which provides firearms to its security personnel chooses not to hire a jobseeker

107 Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower). Unlike tripartite guidelines like the Tripartite Guidelines on Fair Employment Practices, even the Ministry of Manpower (“MOM”) does not consider it mandatory for employers to abide by tripartite advisories. Nevertheless, the MOM and the Tripartite Alliance for Fair & Progressive Employment Practices do actively engage with employers who do not comply with tripartite advisories; see, eg, Singapore Parl Debates; Vol 95; [15 October 2024] (Zaqy Mohamad, Senior Minister of State for Manpower) and Singapore Parl Debates; Vol 95; [5 February 2024] (Tan See Leng, Minister for Manpower).

108 However, the mere fact that other employees speak in a particular language, is not a justification for imposing a requirement that the potential employee must be able to speak that language: see s 20(3) of the Workplace Fairness Act 2025 (Act 8 of 2025).

109 Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower).

with a mental health condition that might impair his ability to carry arms safely, that may fall within the above exception.

44 Under s 20(2)(c), it is not discrimination if the job needs to be performed by an individual who has (or does not have) the protected characteristic to preserve the privacy of the individual or any other individual. Unlike the other subsections of s 20(2),¹¹⁰ subs-s (c) expressly states that it does not matter whether the standards of privacy are reasonable. Thus, if a foot massage establishment advertises that only female masseuses will be considered for employment, to preserve the privacy of its predominantly female clientele, that advertisement would not contravene s 19, even if a reasonable person might consider it excessively conservative for even a foot massage therapist to be of the same gender as the customer.

45 Finally, s 20(2)(d) renders the Act subject to any written law which requires that a job must be performed by an individual who has (or does not have) the protected characteristic.¹¹¹

46 It should also be highlighted that the wording of the exception in s 20(1) is, on the whole, quite restrictive. If the protected characteristic (or absence thereof) is not a genuine requirement of the job, even if the employer has a legitimate reason, that will not suffice. For instance, if the employer issues a new diversity, equity and inclusion written policy which aims to increase the number of new hires from traditionally underrepresented races, that may be considered discrimination under s 18.¹¹² Similarly, an advertisement for a senior executive role which states that “Applications from women are particularly welcomed” may fall foul of s 19, even if the intent is to remediate a gender imbalance at the management level. In fact, if an employer decides to offer an employee who is nearing the statutory retirement age a re-employment contract for a reduced job scope or evaluates the performance of the employee and offers less beneficial terms upon re-employment, technically speaking, that may run afoul of the Act, as such decisions would have been made

110 For instance, if it is established that a preschool did not hire a teacher on the ground that he was male because the preschool had previously received feedback from parents that they were concerned about the safety of their children in the case of male employees, it is not clear if the exception in s 20(2)(b) will be met, if it is established that such concerns about safety were unreasonable.

111 For instance, taxi drivers are subject to the statutory age limit of 75 years old under the Road Traffic (Public Service Vehicles) (Vocational Licences and Conduct of Drivers, Conductors, Trishaw Riders and Passengers) Rules (1990 Rev Ed), though taxi drivers are unlikely to be employees and hence are unlikely be covered by the Act in any event.

112 Compare s 159 of the Equality Act 2010 (c 15) (UK).

on account of the employee's age. This is even though s 7A(4) of the Retirement and Re-employment Act 1993 and the Tripartite Guidelines on Re-employment of Older Employees¹¹³ clearly allow for re-employment on such terms. It will be good if the second bill, or subsidiary legislation, can clarify that decisions made in the context of re-employment are not relevant employment decisions for the purposes of the Act.

47 That said, the Act does allow for positive discrimination in certain situations. For instance, s 21 clarifies that it is not discrimination for an employer to decline to hire an individual because the individual is less than the "prescribed age",¹¹⁴ or to issue, communicate or publish any direction, instruction or policy to the similar effect. Section 21(3) also clarifies that it is not discrimination if the advertisement expressly or by implication mentions that being older than the "prescribed age" is a condition or advantage. This is in line with the national policy of supporting the employment of older workers.¹¹⁵ Similarly, and in line with the express purpose of the Act to ensure that Singapore citizens and permanent residents continue to form the core of the workforce, s 22 effectively clarifies it is not a breach to positively discriminate in favour of Singapore citizens or permanent residents. Thus, for instance, if only Singapore citizens and permanent residents are chosen to be sent for training as government funding is available only for them, that will not run afoul of the Act. Likewise, and for obvious policy reasons, s 24 effectively clarifies it is not a breach to positively discriminate in favour of persons with disabilities. Thus, if an advertisement states that only persons with disabilities should apply¹¹⁶ (or for that matter, only Singapore citizens or permanent residents should apply),¹¹⁷ then there would be no breach.

113 <<https://www.mom.gov.sg/-/media/mom/documents/employment-practices/guidelines/tripartite-guidelines-on-re-employment-of-older-employees.pdf>> (accessed 5 May 2025).

114 The prescribed age will be defined in the subsidiary legislation and is likely to be set at 55 years old. See Singapore Parl Debates; Vol 95; [8 January 2025] (Saktiandi Supaat & Kwek Hian Chuan Henry) and "Building Fairer & More Harmonious Workplaces: Tripartite Committee on Workplace Fairness Final Report" (4 August 2023) at p 30.

115 Singapore Parl Debates; Vol 95; [7 January 2025] (Tan See Leng, Minister for Manpower).

116 On the other hand, if the advertisement states that only persons with certain sorts of disabilities can apply but not others, that may be discrimination unless s 20 of the Workplace Fairness Act 2025 (Act 8 of 2025) applies.

117 On the other hand, if the advertisement states, only Singapore citizens will be considered (as opposed to permanent residents as well), that may be discrimination unless s 20 of the Workplace Fairness Act 2025 (Act 8 of 2025) applies. See also s 9.

48 Aside from accommodating genuine business needs and positive discrimination in the limited contexts of ss 21, 22 and 24, s 23 clarifies that the duties under ss 17–19 do not apply to religious organisations. This exception can be relied upon not only when it comes to those employed to practice or propagate the religion but also others, such as those involved in the administration of the religious organisation. However, this exception is only applicable in relation to the protected characteristic of religion.¹¹⁸ Thus, if the religious organisation terminates the contract of an administrative staff on the ground that she is pregnant without being married, as alluded to earlier, that possibly may still be discrimination based on the protected characteristic of marital status and the exception in s 23 will not apply.¹¹⁹

49 As previously mentioned,¹²⁰ under s 17(1)(b), it is discrimination if an adverse employment decision is based on a protected characteristic, even if that is not the sole or even dominant reason for the decision. Thus, the question might arise, what if an adverse employment decision is made against a person on the ground of two or more protected characteristics, one of which falls within an exception under Pt 5 of the Act? For instance, the employer might have chosen a male Singaporean for a job, over a female foreigner who is pregnant. It is suggested that notwithstanding the general wording of s 22 (“It is not discrimination ...”), each exception relates only to the particular protected characteristic and does not provide cover for discrimination based on other protected characteristics. Therefore, in the example just mentioned, if it can be established that the pregnancy of the female foreigner was one of the reasons for not hiring the female, the employer could still be found to have contravened s 17(1), even if the employer was primarily motivated by the desire to hire a local in line with s 22 (or even s 26 discussed below).

C. *Fair employment practices*

50 Part 6 of the Act sets out requirements in respect of the implementation of other fair employment practices.

51 Based on the existing Fair Consideration Framework, s 26 requires the employer to advertise job opportunities in the prescribed manner, and give fair consideration to all applicants, before applying

118 Workplace Fairness Act 2025 (Act 8 of 2025) s 23(1).

119 See also Toh Yong Chuan, “Compensate Woman Fired for Adultery, Church Told”, *The Straits Times* (20 August 2013).

120 See para 29 above.

for a work pass¹²¹ in respect of foreigners. While the provision refers to all applicants, the purpose is clearly to promote the fair consideration of Singapore citizens and permanent residents specifically.¹²² Assuming that the current position under the Fair Consideration Framework is maintained, s 26 will apply to employers with at least ten employees, instead of the 25-employees threshold which applies to the rest of the Act.¹²³ A breach of s 26 can not only result in administrative or civil penalties under the Act, but also criminal liability under the Employment of Foreign Manpower Act 1990,¹²⁴ if there is any false declaration in the work pass application that fair consideration had been given to local candidates.¹²⁵

52 Section 27 requires the employer to develop a grievance handling process in respect of any allegation or complaint of discrimination¹²⁶ by the employer, or harassment¹²⁷ by the employer or its employees. The process must comprise a written commitment to inquire and review grievances, inform the complainant of the outcome of the review, keep records of the inquiry and review, and maintain the confidentiality (unless reasonably necessary to do otherwise) of the complainant, inquiry and review. The employer also has to inform all employees in writing of the grievance handling process.¹²⁸ Besides the requirement to develop and inform employees of the grievance handling process, the Act does not stipulate any timeline in relation to any of the matters comprised within the grievance handling process.¹²⁹ Furthermore, the Act does not expressly require the employer to comply with its own

121 The prescribed categories of work passes to which s 26 of the Workplace Fairness Act 2025 (Act 8 of 2025) applies are likely to be limited to Employment Pass and “S Pass”, assuming the current position under the Fair Consideration Framework is retained in the subsidiary legislation.

122 See s 3(c) of the Workplace Fairness Act 2025 (Act 8 of 2025).

123 Workplace Fairness Act 2025 (Act 8 of 2025) s 26(3)(b).

124 (2020 Rev Ed) s 22(1)(d).

125 See, eg, Fiona Lam, “Singapore Logistics Firm Fined S\$18,000 for Lying About Fair Hiring”, *The Business Times* (10 March 2020).

126 The discrimination must relate to that set out in ss 17–19 of the Workplace Fairness Act 2025 (Act 8 of 2025); see s 2.

127 “Harassment” means the act or conduct proscribed in ss 3, 4, 5 and 7 of the Protection from Harassment Act 2014 (2020 Rev Ed). The harassment does not have to relate to the protected characteristics or be discrimination at all – see the definition of “grievance” in s 25 of the Workplace Fairness Act 2025 (Act 8 of 2025).

128 Workplace Fairness Act 2025 (Act 8 of 2025) s 27(2).

129 Though the Tripartite Alliance for Fair & Progressive Employment Practices has published detailed resources, including a Grievance Handling Handbook and the Tripartite Standard on Grievance Handling.

grievance handling process, and there is no prescribed consequence even for deliberate non-compliance.¹³⁰

53 Section 28 prohibits the employer from carrying out any retaliatory actions against an employee who has done various things such as having raised a grievance to the employer or having brought a compensation claim under the Act.¹³¹ Retaliation is defined broadly to include not only dismissal but also any other detriment in relation to employment. Harassment can also amount to retaliation as provided in s 28(2)(e) even though, as mentioned, harassment does not *per se* amount to discrimination under the Act.¹³² It should be noted that because the term “grievance” is defined in a very specific manner in s 25, the protection against retaliation does not extend to a complainant who has alleged conduct that does not amount to “discrimination”¹³³ or “harassment”¹³⁴ under the Act. Thus, if the employer has a grievance handling process which is wider in scope than that required by the Act (for instance, employees can complain of discrimination based on sexual orientation), an employee who so lodges a complaint will not be protected from retaliation. This gap was acknowledged by the Minister during the parliamentary debate on the Bill, and it is anticipated that there may be future law reform to better protect all types of complainants from retaliation.¹³⁵

54 Finally, it should also be mentioned, it is not possible to contract out of the duties under the Act.¹³⁶

D. Consequences for contravention

55 Breaching the various key sections, namely, s 17(1), 18(1), 19(1), 26(1), 27(1) or 28(1) results in a civil contravention pursuant to s 29. The Commissioner for Workplace Fairness (“Commissioner”) (or his officers) may then issue a contravention notice providing for the payment

130 See ss 29(e)–29(f) of the Workplace Fairness Act 2025 (Act 8 of 2025), which are limited in scope.

131 Workplace Fairness Act 2025 (Act 8 of 2025) s 28.

132 See para 25 above.

133 The discrimination must relate to that set out in ss 17–19 of the Workplace Fairness Act 2025 (Act 8 of 2025): see s 2.

134 “Harassment” is defined in s 25 of the Workplace Fairness Act 2025 (Act 8 of 2025) to mean the act or conduct proscribed in ss 3, 4, 5 and 7 of the Protection from Harassment Act 2014 (2020 Rev Ed).

135 Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower).

136 Workplace Fairness Act 2025 (Act 8 of 2025) s 41.

by the employer of an administrative penalty of up to \$10,000.¹³⁷ In lieu of being given a contravention notice or in addition to such notice, the employer may also receive directions to remedy, mitigate or eliminate the contravening act and prevent its future recurrence.¹³⁸ Further, in the case of a serious civil contravention as defined in s 30 (for instance, where there has already been a previous civil contravention of the Act, and another one occurs), the Commissioner may apply to the court for the imposition of enhanced civil penalties as set out in s 34(2).¹³⁹ In the case of a body corporate, not only the body corporate but also the officers¹⁴⁰ concerned can be liable for the civil penalty as provided in s 36(1). On the other hand, the Act does not provide for any consequence for an ordinary employee who is not an officer as defined in the Act, who may have engaged in any prohibited discriminatory act.¹⁴¹ Aside from the sanctions under the Act as mentioned above, it is not clear if the MOM will still continue to take administrative actions such as debarment from applications for work passes.

56 The issue of burden of proof is not addressed the Act. Under the UK Equality Act 2010, the employee has to establish a *prima facie* case and thereafter the burden shifts to the employer to prove otherwise.¹⁴² The Tripartite Committee on Workplace Fairness appears to have recommended a similar approach,¹⁴³ though the Minister for Manpower had mentioned during the second reading of the Bill that the burden of proof will be placed on the person claiming discrimination, without any reference to the *prima facie* standard.¹⁴⁴ Further, in the UK, even if there is no direct evidence of discrimination, but where it is indirect and can be inferred, that may suffice.¹⁴⁵ In this regard, questions asked during the interview,¹⁴⁶ statements made during the interview¹⁴⁷ and statistics, if

137 Workplace Fairness Act 2025 (Act 8 of 2025) s 44(2)(a).

138 Workplace Fairness Act 2025 (Act 8 of 2025) s 33(1).

139 The enhanced civil penalties can be up to \$50,000 where the employer is an individual, and up to \$250,000 where the employer is not an individual.

140 As to definition of the term “officer”, see s 2 of the Workplace Fairness Act 2025 (Act 8 of 2025).

141 Compare s 110 of the Equality Act 2010 (c 15) (UK).

142 See s 136 of the Equality Act 2010 (c 15) (UK) and *UK Royal Mail Group Ltd v Efobi* [2021] 1 WLR 3863.

143 “Building Fairer & More Harmonious Workplaces: Tripartite Committee on Workplace Fairness Final Report” (4 August 2023) at p 33.

144 See Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower). The Minister also referred to taking the same approach as the UK, Australia and Hong Kong, though see Allen Dominique, “Reducing the Burden of Proving Discrimination in Australia” (2009) 31 *Sydney Law Review* 579 on the differences in the approaches taken in the UK and Australia.

145 *King v Great Britain-China Centre* [1991] IRLR 513.

146 *Sauders v Richmond-upon-Thames London Borough Council* [1977] IRLR 362.

147 *Brennan v J H Dewhurst Ltd* [1983] IRLR 357.

available, may all be relevant.¹⁴⁸ In relation to proving the exceptions set out in Pt 5 of the Act, it is likely that since the employer is trying to make use of it, the burden of proof will be on the employer.¹⁴⁹

57 The second bill relating to private compensation claims may bring further clarity to the issue of burden of proof. However, in relation to the authorities, if it appears to an authorised officer that there has been a contravention, a contravention notice may be issued under s 31. There is no need for the officer to prove anything, nor is there a formal standard of proof to which the officer must satisfy himself before he can conclude that there has been a contravention. Similarly, no formal burden or standard of proof applies to an internal reconsideration under s 32(1)(a). However, should the employer appeal under s 32(1)(b) or 32(4), it may be that the burden would be on the employer to prove there is no contravention, since the employer is the one appealing. On the other hand, s 32(1)(b) or 32(4) both state that the General Division of the High Court shall hear and determine the matter afresh. Therefore, it may be that the court will adopt the approach taken in relation to a serious civil contravention proceeding under s 34, *ie*, to require the Commissioner to prove the contravention on a balance of probabilities.¹⁵⁰

IV. Conclusion

58 The Act is a welcome addition to the workplace fairness and equality landscape in Singapore. It represents a courageous departure from decades of aversion to legislating for binding norms in this area. The omission of protection against indirect discrimination, and the lack of a duty to make reasonable accommodations in the case of disability, might lead to unsatisfactory outcomes in some cases, but both decisions are judgment calls that rightly belong to Parliament alone. During the second reading of the Bill, the Minister for Manpower repeatedly emphasised that the current form of the Act was “just the start” and that the government remained open to future reviews to include other protected characteristics or forms of discrimination.¹⁵¹ Legislators from government and opposition benches alike have also advocated for stronger protections against certain types of discrimination in future

148 *West Midlands Passenger Transport Executive v Singh* [1988] IRLR 186. See also Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower).

149 See also *Reed, Michael v Bellingham, Alex* [2022] 2 SLR 1156 at [45], though the context was different.

150 Workplace Fairness Act 2025 (Act 8 of 2025) s 34(2).

151 See Singapore Parl Debates; Vol 95; [8 January 2025] (Tan See Leng, Minister for Manpower).

iterations of the Act.¹⁵² That said, it is unlikely that the Act will morph into an omnibus legislation like the UK Equality Act 2010. Instead, assuming that the current labour peace and tripartite partnership is maintained, TAFEP and the TGFEP will continue to play key roles in combatting workplace discrimination and promoting fair employment practices.

152 See *eg*, Singapore Parl Debates; Vol 95; [7–8 January 2025] (Pritam Singh, Patrick Tay, He Ting Ru, Saktiandi Supaat & Denise Phua).