

LEGISLATION UPDATE



EMPLOYMENT CLAIMS TRIBUNAL AND TRIPARTITE ALLIANCE FOR DISPUTE MANAGEMENT

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Introduction

1. In Singapore, industrial relations are based on a tripartite system in which the state, employers and unions are collectively involved in the decision-making process.
2. On 1 April 2017, the Employment Claims Tribunal ("ECT") under the Employment Claims Act 2016 ("Act") became operational. This is in conjunction with the establishment of the Tripartite Alliance for Dispute Management ("TADM").
3. The TADM will conduct mediation for salary-related claims and advisory services for employees. Should mediation fail, the claims will be heard by the ECT.
4. The consequential amendments to the Industrial Relations Act ("IRA") have also expanded the coverage of the Tripartite Mediation framework to professionals, managers and executives as well as union members in non-unionised companies.
5. The ECT is designed to allow employees to resolve more types of salary-related disputes with their employers. A key component of the ECT is the compulsory usage of mediation in resolving disputes.

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Key Features

6. Who can lodge a claim with the ECT?
 - An employee (including professionals, managers and executives)
 - An employer
7. Claim(s) limits
 - \$20,000/-; or
 - \$30,000/- for claimants who go through mediation assisted by Trade Unions
8. Type of Claim(s) (Please refer to the Annex for the full list)

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Employers

- Item 17 in the First Schedule of the Act or Item 14 or 16 in the Second Schedule of the Act (i.e. a claim for salary in lieu of notice of termination)

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Employees

- As set out in the First and Second Schedule of the Act. The types of claims covered are wide ranging and would cover most employment related disputes. These would include an employee's claims against his employer for allowances, bonus payments, commission, salary in lieu of termination etc.

Procedure to lodge a claim with the ECT

9. What to do before lodging a claim with the ECT

- Lodge a mediation request with the Commissioner of Labour (section 3(1) of the Act)
- Ensure the mediation request contains material facts of the claim and the claim comes within the category found in the First and Second Schedule of the Act (section 3(3) of the Act) (See Annex)
- The Commissioner of Labour decides whether to accept the claim and refers parties to mediation (section 3(4) of the Act)
- Attend mediation. Parties cannot be represented by lawyers/agents at the mediation and must act in person or be represented by an officer of the Company (as the case may be) (section 5 of the Act)
- If parties reach a settlement, a settlement agreement signed by all parties (in prescribed form) will be entered into (Second Schedule of Employment Claim Rules 2017)
- This settlement agreement may be registered with the Court within 4 weeks after the settlement agreement is signed by all parties (Rule 38 of Employment Claim Rules 2017)

10. When must the mediation request be filed

60 Days

- For workman's claim(s) against principals, contractors and subcontractors, within 60 days from the date on which the salary became due (See section 65 of Employment Act read with section 3(2)(a) of the Act)

6 months

- For re-employment disputes relating to reasonableness (i) of terms and conditions of any re-employment offer made, or (ii) of the amount of employment assistance payment, not later than 6 months after the last day of employment (See sections 8A(3), 8A(4(c) and 8A(4(d)) of Retirement and Re-employment Act read with section 3(2)(b) of the Act)
- For specified employment dispute where the employment relationship has ended, not later than 6 months after the last day of employment (section 3(2)(d) of the Act)

1 year

- For any other specified employment dispute, not later than 1 year after the date on which the material facts giving rise to the earliest specified employment dispute occurred (section 3(2)(e) of the Act)

11. The Claimant lodges the claim(s) with the ECT if mediation fails

- The Mediator issues a claim referral certificate in respect of every unresolved claim(s) (section 6 of the Act)

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- The Claimant lodges the claim(s) with the Registrar of the ECT using the prescribed form (section 13 of the Act)
- The Claimant pays a filing fee of \$30 (where the total value of claim \leq S\$10,000/-) or \$60 (where the total value of claim \geq S\$10,000/-) (See Employment Claim Rules 2017)

12. Hearings in the ECT

- The hearing is conducted in a private/informal manner (sections 18 and 20 of the Act)
- The Claimant (employee/employer) cannot be represented by lawyers/agents before the tribunal and must act in person or be represented by an officer of the Company (as the case may be) (section 19 of the Act)
- Costs orders (if any) made by the tribunal takes into account whether the Respondent attended mediation (section 22 of the Act)

13. Orders that the ECT can make

- The ECT can make orders for (i) the payment of money, and/or (ii) the dismissal of the whole/part of the claim, and/or (iii) the payment of costs (section 22 of Act)

14. Appeals to the High Court from a decision of the ECT

- Only with leave obtained from the District Court (section 23 of Act)
- Only for (i) point(s) of law, or (ii) claim(s) outside the jurisdiction of the tribunal (section 23 of Act)
- The High Court's decision is final (section 26 of Act)

Comments

15. The ECT provides a cost effective method for employees to pursue salary related disputes with their employers.
16. As for employers/HR professionals/legal counsels, when faced with such claims, they should first assess whether these claims fall within the categories of claims as well as whether such claims are filed within the prescribed time limit. Likewise, when an employee terminates his/her employment without serving the requisite notice period, an employer may wish to consider whether to claim for the salary in lieu of notice of termination in the ECT.

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ANNEX

FIRST SCHEDULE

Specified Contractual Matters

1. Allowance (however described in the contract of service)
2. Annual wage supplement
3. Bonus payment
4. Commission
5. Deduction from salary
6. Employment assistance payment
7. Incentive payment (however described in the contract of service)
8. Medical benefit
9. Overtime payment
10. Pay for extra work
11. Pay for public holiday or paid leave
12. Pay for work on public holiday
13. Pay for work on rest day
14. Payment in lieu of unconsumed leave
15. Reimbursement for expenses incurred while carrying out official duties
16. Salary
17. Salary in lieu of notice of termination
18. Termination benefit (including retrenchment benefit or retirement benefit)

SECOND SCHEDULE

Specified Statutory Dispute Matters

Matters under Child Development Co-Savings Act

1. Female employee's entitlement to paid maternity leave, and payment for working during benefit period before her confinement, under section 9(1), (1A), (1B), (1C), (1D), (1E), (1F) and (2) of the Child Development Co-Savings Act
2. Female employee's entitlement to paid adoption leave under section 12AA(1), (2) and (4) of the Child Development Co-Savings Act
3. Employee's entitlement to paid childcare leave under section 12B(1) and (9) of the Child Development Co-Savings Act
4. Employee's entitlement to paid extended childcare leave under section 12B(1A) and (9) of the Child Development Co-Savings Act
5. Male employee's entitlement to paid shared parental leave under section 12E(1) and (2) of the Child Development Co-Savings Act
6. Male employee's entitlement to paid paternity leave under section 12H(1) and (2) of the Child Development Co-Savings Act

Matters under Child Development Co-Savings (Part-Time Employees) Regulations 2008

7. Female part-time employee's entitlement to paid maternity leave under regulation 4(1) and (2) of the Child Development Co-Savings (Part-Time Employees) Regulations 2008
8. Part-time employee's entitlement to paid childcare leave under regulation 5(1), (2) and (3) of the Child Development Co-Savings (Part-Time Employees) Regulations 2008
9. Part-time employee's entitlement to paid extended childcare leave under regulation 5A(1) and (2) of the Child Development Co-Savings (Part-Time Employees) Regulations 2008
10. Female part-time employee's entitlement to paid adoption leave under regulation 7(1) and (2) of the Child Development Co-Savings (Part-Time Employees) Regulations 2008
11. Male part-time employee's entitlement to paid shared parental leave under regulation 8(1) and (2) of the Child Development Co-Savings (Part-Time Employees) Regulations 2008
12. Male employee's entitlement to paid paternity leave under regulation 9(1) and (2) of the Child Development Co-Savings (Part-Time Employees) Regulations 2008

Matters under Employment Act

13. Employee's entitlement to payment under section 11(1) of the Employment Act (Cap. 91), if the employer terminates the contract of service without notice or without waiting for the expiry of that notice
14. Employer's entitlement to payment under section 11(1) of the Employment Act, if the employee terminates the contract of service without notice or without waiting for the expiry of that notice
15. Employee's entitlement to payment under section 16 of the Employment Act, if the employer breaks, or is deemed under section 13(1) of that Act to have broken, the contract of service
16. Employer's entitlement to payment under section 16 of the Employment Act if the employee breaks, or is deemed under section 13(2) of that Act to have broken, the contract of service
17. Employee's entitlement to payment of salary in accordance with section 21, 22 or 23 of the Employment Act
18. Employee's entitlement to recover from the employer any deduction made by the employer from the salary of the employee that is prohibited under section 26 of the Employment Act
19. Employee's entitlement to payment under section 37(2) of the Employment Act for working, at the employee's own request, for the employer on a rest day
20. Employee's entitlement to payment under section 37(3) of the Employment Act for working, at the employer's request, on a rest day
21. Employee's entitlement to payment under section 38(4) of the Employment Act for extra work carried out at the employer's request (overtime pay)
22. Entitlement of employee to whom section 40 of the Employment Act applies to payment under section 40(4) of that Act for extra work carried out at the employer's request
23. Employee's entitlement to paid annual leave under section 43(1), (2), (6) and (7) of the Employment Act
24. Entitlement, under section 57 of the Employment Act but subject to section 63 of that Act, of employee who is a workman to recover salary that has not been actually paid to the employee in legal tender
25. Entitlement, under section 65 of the Employment Act, of employee who is a workman to recover salary from a principal, contractor or subcontractor referred to in that section
26. Female employee's entitlement to paid maternity leave, and payment for working during benefit period before her confinement, under section 76(1), (1A) and (3) of the Employment Act
27. Entitlement of person nominated by female employee under section 80(4) of the Employment Act, or personal representative of female employee, to receive payment from the employer under section 79(1) or (2) of that Act, on the death of the female employee
28. Employee's entitlement to paid childcare leave under section 87A(1) and (5) of the Employment Act
29. Employee's entitlement to paid holiday (on a public holiday) under section 88(1) of the Employment Act
30. Employee's entitlement under section 88(4) of the Employment Act to be paid an extra day's salary, if required by the employer to work on a public holiday
31. Employee's entitlement to paid sick leave under section 89(1) and (2) of the Employment Act, and to have the fees of any medical examination under section 89(1) or (2) of that Act borne by the employer

Matters under Employment (Part-Time Employees) Regulations

32. Part-time employee's entitlement to payment under regulation 4(1) of the Employment (Part-Time Employees) Regulations (Cap. 91, Rg 8) for working, at the employee's own request, for the employer on a rest day
33. Part-time employee's entitlement to payment under regulation 4(2) of the Employment (Part-Time Employees) Regulations for working, at the employer's request, on a rest day
34. Part-time employee's entitlement to payment under regulation 5(1) of the Employment (Part-Time Employees) Regulations for extra work (overtime pay)
35. Part-time employee's entitlement to paid holiday (on a public holiday) under regulation 6(1) of the Employment (Part-Time Employees) Regulations
36. Part-time employee's entitlement under regulation 6(2) of the Employment (Part-Time Employees) Regulations to be paid a sum at the part-time employee's basic rate of pay for one day's work, if required by the employer to work on a public holiday
37. Part-time employee's entitlement to allowance under regulation 6(4) of the Employment (Part-Time Employees) Regulations, if the part-time employee agrees to relinquish the part-time employee's entitlement to paid holidays (on public holidays)
38. Part-time employee's entitlement to paid annual leave under regulation 7(1) and (2) of the Employment (Part-Time Employees) Regulations
39. Part-time employee's entitlement to allowance under regulation 7(3) of the Employment (Part-Time Employees) Regulations, if the part-time employee agrees to relinquish the part-time employee's entitlement to paid annual leave
40. Part-time employee's entitlement to paid sick leave under regulation 8(1) and (2) of the Employment (Part-Time Employees) Regulations
41. Part-time employee's entitlement to paid childcare leave under regulation 8A(1) and (2) of the Employment (Part-Time Employees) Regulations
42. Female part-time employee's entitlement to paid maternity leave under regulation 9(1) and (2) of the Employment (Part-Time Employees) Regulations

Matters under Retirement and Re-employment Act

43. Employee's entitlement to employment assistance payment under section 7C(1) of the Retirement and Re-employment Act (Cap. 274A)