



UPCOMING CHANGES TO SINGAPORE'S EMPLOYMENT LEGISLATION: TAFEP'S RECOMMENDATIONS, AND WHAT THEY MEAN FOR YOU

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During Prime Minister Lee Hsien Loong's National Day Rally on 29 August 2021, it was announced that the Tripartite Alliance for Fair & Progressive Employment Practices (TAFEP) guidelines would be enshrined in law. This is anticipated to broaden the enforcement mechanisms available to address the behaviour of errant employers.

TAFEP's Interim Report was published on 13 February 2023. In TAFEP's Interim Report, four key thrusts were pushed for, namely:

- (a) strengthen protections against workplace discrimination;
- (b) provisions to support business/organisational needs and national objectives;
- (c) processes for resolving grievances and disputes while preserving workplace harmony; and

(d) ensuring fair outcomes through redress for victims of workplace discrimination and more appropriate penalties for breaches.

As part of these strengthened protections, TAFEP's Interim Report recommends greater safeguards against workplace discrimination based on an employee's age, nationality, sex, marital status, race, religion or mental health condition (to name a few). These apply across the various stages of the employment process, including the key phases of job advertising, job application forms, job interviews, grievance handling and termination.

Some salient and noteworthy points

<p>Job Advertisements</p>	<p>In a bid to encourage fair job advertisements, TAFEP has provided guidelines on practices that employers should be careful to avoid. For example, stating that the workplace has a “<i>youthful working environment</i>” may be seen as a form of age-based discrimination. Instead, employers should focus on the envisioned job scope, such as “<i>workers are expected to handle heavy machinery and equipment</i>”. At the same time, age-related restrictions are permissible if this is due to legal or regulatory requirements – for instance, bartenders that are 18 years or older, or pilots who are below 65 years old.</p> <p>It is perhaps also noteworthy that while it is permissible to advertise a position that is open to “<i>only Singaporeans</i>”, saying that “<i>work passes will be applied for successful candidates</i>” may be seen as discrimination based on nationality.</p>
<p>Job Application Forms</p>	<p>In a bold move towards focusing only on a candidate's merits, TAFEP has recommended that firms which require job application forms remove fields such as age, gender, race, religion, marital status and even photographs from such forms.</p> <p>Additionally, TAFEP has also endorsed the use of other types of identification, such as an applicant's passport number, over their NRIC number (which may reveal their age).</p>
<p>Job Interviews</p>	<p>Generally, employers should be cautious about asking sensitive or personal questions of candidates during job interviews. Therefore, the question “<i>are you planning on having children soon?</i>” whether addressed to a female or male candidate should be avoided to ensure the interview process remains unbiased and non-discriminatory.</p> <p>Likewise, TAFEP promotes transparency in a job's requirements prior to a prospective employee's acceptance, for example, if the job has irregular working hours or requires frequent overseas travel. Should a specific dress code be required, such as protective headgear and uniforms at work sites, this should be told to the applicant in a clear and sensitive manner, especially if the employer is unable to accommodate religious practices such as headwear owing to these operational requirements.</p>
<p>Grievance Handling</p>	<p>TAFEP's recommendations would require employers to put in place proper grievance handling processes, with a view towards resolving the dispute amicably within the organisation. Such processes include (a) implementing a proper inquiry and documentation process, (b) informing employees of the firm's grievance handling procedures, (c) communicating the outcome of the inquiry to the affected employee and (d) protecting the confidentiality of the persons who report workplace discrimination and harassment.</p> <p>Any employees who remain dissatisfied may file a claim at the Tripartite Alliance for Dispute Management. At this stage, focus is placed on reaching an amicable settlement, through potential non-conventional remedies, for instance, an apology from the employer, or the reinstatement of an employment</p>

	offer. As a last resort, the Employment Claims Tribunal may award remedies such as monetary compensation of up to \$5,000 for successful pre-employment (e.g., recruitment) claims, \$20,000 for non-union members, \$30,000 for union-assisted claims, or reinstatement to the job, for end-of-employment claims.
Termination of Employment	Both employer and employee have the right to contractually terminate their employment relationship. However, navigating the waters of proper dismissal may be tricky. Per the Tripartite Guidelines on Wrongful Dismissal, poor performance does not warrant employee dismissal without notice, unless this rises to the level of misconduct. Additionally, dismissing an employee to deprive them of the benefits or entitlement they would otherwise have received (such as maternity benefits) is wrongful.

Key Takeaways

TAFEP is due to release its final report towards the end of 2023, with legislation being anticipated to be tabled in Singapore's parliament in 2024.

Employers are encouraged to take the opportunity to now review and examine their current employment processes and HR policies to identify any areas that can, and should, be amended and improved to remain fair to its employees and aligned with TAFEP's recommendations for anti-discriminatory practices.

For more information, or should you have any queries or require assistance, please feel free to contact our Partner, Aaron Kok at akok@bihlilee.com.sg or your usual contact at our firm.



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