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COMMITTEE OF SUPPLY DEBATE ON 4 MARCH 2024

The Committee of Supply had their annual debate to scrutinise each Government Ministry's budget, and proposed expenditure and programmes. Several announcements were made during the debate, and we summarise some of the key employment-related announcements below:

a. Retirement and Re-employment Age

The Retirement and Re-employment Act 1993 protects senior employees from age-related dismissal before they reach the statutory retirement age and requires employers to offer re-employment to eligible senior employees up until the statutory re-employment age.

The retirement and re-employment ages will be raised from 63 and 68 to 64 and 69 respectively, in 2026. This is in line with the Government's goal of setting the retirement and re-employment ages at 65 and 70 respectively by 2030.

b. Central Provident Fund Contribution Rates

The Central Provident Fund ("CPF") is a mandatory social security savings scheme in Singapore. Both employers and employees are required to the employee's CPF account at a specified rate.

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The CPF contribution rates will be increased for employees between the ages of 55 and 65 from 1 January 2025. For employees aged 55 to 60, the employer CPF contribution rate will be increased from 15% to 15.5% while the employee CPF contribution rate will be increased from 16% to 17%. For employees between the ages of 65 and 70, the employer CPF contribution rate will be increased from 11.5% to 12% while the employee CPF contribution rate will be increased from 10.5% to 11.5%.

c. Foreign Workforce Policies

For all sectors except financial services, the Minimum Qualifying Salary ("MQS") for Employment Passes ("EP") will be increased from S\$5,000 to S\$5,600 per month (the MQS will continue to increase progressively with age from age 23, up to S\$10,700 at age 45 and above). For applicants working in the financial sector, the MQS for EPs will be increased from S\$5,500 to S\$6,200 per month (the MQs will continue to increase progressively with age from age 23, up to S\$11,800 at age 45 and above). These revisions will apply to new EP applications from 1 January 2025, and to renewal applications from 1 January 2026.

The Dependency Ratio Ceiling ("DRC") is the maximum permissible proportion of S Pass and Work Permit holders that a company may employ. The DRC for the marine shipyard sector will be reduced from 77.8% to 75% (i.e. from a ratio of 1 local employee to 3.5 Work Permit Holders ("WPHs"), to 1 local employee to 3 WPHs). The levies for 'Basic Skilled' R2 WPHs and 'Higher Skilled' R1 WPHs will be increased from S\$400 to S\$500 and S\$300 to S\$350 respectively. This will take effect from 1 January 2026.

The Local Qualifying Salary ("LQS") determines the number of local employees who can be used to calculate a firm's S Pass and Work Permit quota entitlement. Each local employee who is paid at least the LQS is counted as 1 local worker, and each local employee who is paid at least 50% of the LQS but less than the LQS is counted as 0.5 local worker, for the purposes of calculating the dependency ratio. The LQS will be raised from S\$1,400 to S\$1,600 per month for local employees (S\$10.50 per hour for part-time local employees).

d. Enhanced Career Conversion Programmes

The Career Conversion Programmes ("CCPs") are existing programme whereby Workforce Singapore, a statutory board under the Ministry of Manpower ("MOM"), co-shares costs with employers who reskill their workers for new or enhanced job roles. The MOM will be enhancing CCPs to provide greater support to employers through the following methods:

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- For mature or long-term unemployed workers who are eligible for up to 90% salary support, the salary support cap will be raised from S\$6,000 to S\$7,500 per month. For other CCP participants who are eligible for up to 70% salary support, the salary support cap will be raised from S\$4,000 to S\$5,000 per month. After these enhancements, employers can receive up to S\$45,000 of salary support for each trainee for a typical six-month programme.
- The enhanced CCPs will no longer be limited to employees in at-risk or vulnerable job roles, and will now support reskilling of any existing employee taking up growth jobs identified under the Industry Transformation Maps or Jobs Transformation Maps.
- The MOM will incorporate Structured Career Planning (“SCP”) workshops for employers and their human resources departments (“HR”) to better support their employees embarking on CCPs, such as conducting one-to-one career conversations with existing employees identified to undergo reskilling into new growth job roles. This will allow line managers and HR to support their workers in developing career development plans.
- The MOM will continue to refine CareersFinder, an integrated jobs and training recommender which helps jobseekers to identify potential career opportunities, to expand the suite of support for workers and employers.
- In addition to the above, the Government is working with various other organisations, including the National Trades Union Congress (“NTUC”), Singapore National Employers Federation (“SNEF”) and various Trade Associations and Chambers to establish more Company Training Committees, implement structured career guidance workshops and develop practical solutions to support skills-based hiring and workforce agility.

e. Upcoming Guidelines/Programmes and Updates to Regulatory Frameworks

Other announcements include that:

- The Tripartite Partners, which consist of the MOM, NTUC and SNEF, are developing a Tripartite Advisory to guide employers on modifying jobs and workplaces to support persons with disabilities;
- The Tripartite Partners are working together to finalise the Tripartite Guidelines on Flexible Work Arrangement Requests, which is anticipated to be released soon;

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- The MOM will update regulatory frameworks to strengthen protections for platform workers, including in the areas of housing, retirement adequacy, work injury compensation and representation;
- The MOM will introduce a bill on Workplace Fairness in Parliament later this year; and
- The Government will introduce the Global Business Leaders Programme to support businesses that send local middle to senior managers with leadership potential on overseas postings. The Government will also introduce the Overseas Markets Immersion Programme to encourage businesses with overseas expansion plans to send employees with little to no overseas market experience for overseas postings by providing financial support to such businesses. More details on these two programmes will be announced in the upcoming months.

LABOUR MARKET REPORT FOR THE FOURTH QUARTER OF 2023

On 14 March 2024, the MOM released the Labour Market Report for the fourth quarter of 2023. The key findings are set out below:

- Total employment expanded for the ninth consecutive quarter, by 7,500. However, this increase has moderated significantly in the fourth quarter of 2023 for both residents and non-residents compared to the third quarter of 2023;
- Unemployment and long-term unemployment rates remained low in December 2023, at 2.0% and 0.7% respectively;
- The number of retrenchments fell to 3,460 (or 1.5 per 1,000 employees) from 4,110 (1.9 per 1,000 employees) in the third quarter of 2023;
- The re-entry rate (6 months post retrenchment) among retrenched workers declined slightly to 61.5% from 65.3% in the third quarter of 2023; and
- The number of job vacancies rose slightly in December 2023 (79,800), from September 2023 (78,200), after six consecutive quarters of decline.

The full report may be accessed at this link: https://stats.mom.gov.sg/iMAS_PdfLibrary/mrsd-Labour-Market-Report-4Q-2023.pdf

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CASE LAW ON BREACH OF A HANDOVER CLAUSE AND UNFAIR DISMISSAL: LONGITUDE 101 PTE LTD V NAVINEA KANAPATHY PILLAI AND ANOTHER MATTER [2024] SGDC 47

Longitude 101 Pte Ltd ("Longitude") brought claims against its former employee, Ms Pillai, for, inter alia, breaching a handover clause. The issue of her potential breach of a confidentiality clause or an equitable duty of confidence also arose. Ms Pillai counterclaimed against Longitude and its sole shareholder, Mr Haeusler, for unfair dismissal and conspiracy by unlawful means to cause damage or injury to her.

Breach of a Handover Clause, and Alleged Breach of a Confidentiality Clause or an Equitable Duty of Confidence

A clause in Ms Pillai's employment contract required her to deliver to the Company all "Returnable Items" such as books and company property upon the termination of her appointment ("Handover Clause"). Although the court held that Ms Pillai breached the Handover Clause between 27 April 2021 to 24 August 2021 as she had only returned some Returnable Items on 24 August 2021 after proceedings were commenced against her, Longitude failed to show how it had suffered any loss due to Ms Pillai's breach. The court held that "there was hence no basis for an award of compensatory damages even though Ms Pillai was in breach".

The court further held that Longitude failed to establish that Ms Pillai had breached the confidentiality clause in her employment contract as: (a) "Longitude was unable to identify the confidential information that it was relying on"; and (b) "there was no evidence that Ms Pillai failed to surrender any confidential information". The court also held that Longitude failed to establish a breach of an equitable duty of confidence as Longitude "failed to specify the information that it relied on for this cause of action of a breach of an equitable duty of confidence, let alone how such information was confidential in nature".

Unfair Dismissal due to Pregnancy

A notice of dismissal given by an employer without sufficient cause does not deprive a female employee of any maternity benefits that she would have otherwise been entitled to under the Employment Act 1968, provided that she had served the employer for at least 3 months preceding the day that the notice is given.

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The court held that Ms Pillai had made out her counterclaim for wrongful dismissal on the basis of her pregnancy and is entitled to payment for, inter alia, maternity benefits and salary in lieu of notice. We set out some key takeaways on unfair dismissal due to pregnancy below:

- Although the Employment Act 1968 does not specifically reference the Tripartite Guidelines on Wrongful Dismissal, the court was of the opinion that there is no reason why the courts should not take the said guidelines into account. Based on the Tripartite Guidelines, the court stated that there were “a few non-exhaustive categories that [do] not constitute sufficient cause for the dismissal of a pregnant employee”: (a) “relying on a contractual notice period or paying salary in lieu of notice does not by itself constitute sufficient cause, and an employer must show something more”; (b) “retrenchment would not be sufficient cause”; (c) “dismissal without notice on the ground of misconduct would not constitute sufficient cause if the employer has not conducted “due inquiry” into the alleged misconduct”; (d) “dismissal due to discrimination...would not be sufficient cause”; and (e) “dismissal to punish an employee for exercising an employment right...would not constitute sufficient cause”.
- For proceedings under the Employment Claims Act 2016 (“ECA”), the burden would fall on the employer to show that the pregnant employee was dismissed with sufficient cause. However, as the counterclaim was not a proceeding under the ECA, the burden instead falls on Ms Pillai. The “initial evidential burden falls on [Ms Pillai] to adduce some (not inherently incredible) evidence that her dismissal was due to pregnancy. Thereafter, the evidential burden shifts to Longitude to rebut Ms Pillai’s position – this would involve Longitude adducing evidence to show the purported reasons for the dismissal.” Ms Pillai discharged her burden due to: (a) the fact that she was not given any reason for her termination; (b) the fact that the only reason she could think of for the termination was her pregnancy; and (c) Mr Haeusler’s negative reaction when he found out that she was pregnant. Longitude failed to rebut Ms Pillai’s position, as Mr Hausler’s evidence at trial suggested that “Ms Pillai’s employment was being terminated based on the Termination With Notice Clause rather than for performance related reasons”. Assertions that Longitude faced difficulties with Ms Pillai were not sufficiently elaborated on, and Ms Pillai’s suggestion that she may have been terminated due to not following instructions to commit certain acts that “were in breach of statutory and regulatory requirements” did not constitute sufficient cause.

ABOUT GATEWAY LAW CORPORATION:

Gateway Law is an Asia-Pacific regional full service legal practice with strengths in the areas of intellectual property, franchising, technology, media (and entertainment), telecommunications, data protection and cybersecurity as well as employment and immigration. In addition to our niche areas, Gateway also provides services in the general areas of litigation and dispute resolution, corporate and commercial law, real estate conveyancing and advisory, medical and family law.

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