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TRIPARTITE GUIDELINES FOR FLEXIBLE WORK ARRANGEMENTS

The Tripartite Guidelines for Flexible Work Arrangements (“Guidelines”) were released on 16 April 2024.

The Guidelines aim to shape the right norms and expectations around flexible work arrangements (“FWAs”) and establish how formal FWA requests should be made, how employers should properly consider such requests, and the requirement to communicate decisions on such requests in a transparent and timely manner.

FWAs may fall into one or more of these three broad categories:

- ·Flexi-place: where employees work flexibly from different locations aside from the office
- ·Flexi-time: where employees work flexibly at different timings, with no changes to total work hours and workload
- ·Flexi-load: where employees work flexibly with different workloads and with commensurate remuneration

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In summary, employees should make FWA requests responsibly, with consideration to the impact of their workload and performance, and the impact on their team and clients. Employers should then properly consider the requests based on their business needs. Each request should be evaluated on a case-by-case basis and be viable from the business point of view, and employers should communicate their decision within 2 months of receiving the FWA requests. Rejections should be based on reasonable business grounds, such as costs, detrimental productivity or feasibility, and employees should be informed of the reason for the rejection. Grounds such as preferring to have employees work in office despite having consistent satisfactory work performance or wishing to maintain a tradition of not allowing FWAs are not reasonable business grounds to reject FWA requests. Employers should explore ways to accommodate FWA requests and discuss alternatives with employees if their FWA request is rejected.

The Guidelines will come into effect on 1 December 2024. While they do not have force of law, the Ministry of Manpower ("MOM") has stated that "[e]mployers are expected to abide by the Guidelines". The MOM may take action against non-compliance with guidelines, for example, by curtailing work pass privileges. Employees may also seek assistance from the Tripartite Alliance for Fair and Progressive Employment Practices, the National Trades Union Congress or their respective unions should their employer not adhere to the Guidelines.

NEW CASE LAW ON RESTRICTIVE COVENANTS IN EMPLOYMENT CONTRACTS: MONEYSMART SINGAPORE PTE LTD V ARTEM MUSIENKO [2024] SGHC 94

This case reiterates the difficulty in enforcing restrictive covenant clauses in employment contracts.

Mr Artem Musiek ("Musienko"), a former employee of MoneySmart Singapore Pte Ltd ("MoneySmart"), resigned and joined a competitor of MoneySmart in the digital insurance industry. The non-competition clause in the employment contract restrained Musienko from engaging with, inter alia, any business in South-East Asia which provides online financial product comparison services and engages in competition with MoneySmart. The confidentiality clause restricted the use of all information of MoneySmart unless consent was obtained, without limiting the restriction to confidential information only.

The court had granted two injunctions to MoneySmart to prevent Musienko from working for their competitor on the basis of the non-competition and confidentiality clauses, with the caveat that the injunctions were not to be enforced until the court heard the defendant at an inter partes hearing. At the hearing, the court set aside the two injunctions.

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We set out some of the key takeaways from this case below:

- Restrictive covenants must protect a legitimate proprietary interest to be enforceable. The courts have recognised trade secrets, stable and trained work force and trade connections as legitimate proprietary interests in past cases.
    - If trade secrets are already protected by a separate confidentiality clause in the employment contract, then the other restrictive covenants (such as the non-competition or non-solicitation clauses) must protect a legitimate proprietary interest over and above the protection of trade secrets to be enforceable.
    - The court will consider the size of the relevant industry and whether it is a specialised one, along with the amount of specialised training the employee received from the employer, when considering whether there is a stable and trained work force to protect.
- Restrictive covenants must also not be wider than is reasonably necessary to protect the legitimate proprietary interest to be enforceable. The courts will consider the activity, geographical and temporal scope of the restriction when determining its reasonableness.
    - The activity and geographical scope should correlate to the employee's scope of work for the employer to be reasonable. If the employee had only performed work in relation to Singapore, it would not be reasonable to restrict him from working for businesses in other South-East Asian countries. If the confidentiality clause does not pertain to confidential information and covers all information belonging to the employer, this would likely be unreasonably wide and unenforceable.
    - The temporal scope should be clear and reasonable. Restrictions drafted in a cascading manner are unlikely to be reasonable as they "[leave] the vulnerable employee uncertain as to which cascading restriction binds him in law until the issue is actually determined by a court".

NEW SUPPORT SCHEME FOR INVOLUNTARILY UNEMPLOYED JOBSEEKERS

On 27 April, the Minister for Manpower mentioned in his May Day Message that the government will be announcing a new support scheme for involuntarily unemployed jobseekers, due to the increasing speed of change in the economy which leads to workers finding themselves displaced. The details of this support scheme, which the government first announced in Prime Minister Lee Hsien Loong's National Day Rally speech in 2023, are anticipated to be released later this year.

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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