

# GATEWAY<sub>LAW CORPORATION</sub>

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## **NEW CASE ON THE MEANING OF “EMPLOY” UNDER THE EMPLOYMENT OF FOREIGN MANPOWER ACT 1990 (“EFMA”): ALKA V PUBLIC PROSECUTOR [2024] SGHC 193**

This case provides clarity on what amounts to employing a person under the EFMA.

Ms Alka had applied for a work permit to work as a foreign domestic worker for Mr Anil Tripathi but was later arrested for working as a sales assistant without a valid work pass.

Ms Alka was charged and convicted under section 22(1)(d) of the EFMA for making a false declaration in her work permit application that she was employed as a foreign domestic worker by Mr Anil Tripathi “when [she] did not have the intention to be employed as such”. Evidence provided during the trial showed that Ms Alka had cooked for Mr Anil Tripathi on an ad-hoc basis.

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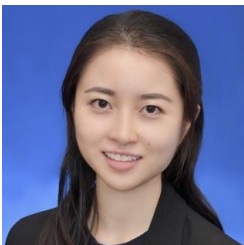
On appeal, the judge noted that the EFMA defines “employ” as engaging or using the service of any person for the purpose of any work or providing any training for that person, whether under a contract of service or otherwise, and with or without salary. As the definition is drafted broadly to include any work without specifying characteristics of the work, such as the duration or degree of supervision, the judge opined that the definition is capable of covering occasional cooking or other minor work, done for no pay.

The judge allowed the appeal against the conviction that Ms Alka had made a false declaration that she was employed as a foreign domestic worker by Mr Anil Tripathi. The judge declined to substitute the charge as he was of the opinion that it is for the prosecution to determine if another charge should be substituted.

Key takeaway: “Employ” is defined broadly to cover any work. As it is an offence to provide false or misleading information in work pass applications, or to employ persons without a valid work pass, employers and employees should note that a person is considered to be employed even if the person is only engaged to do occasional work, minor work or work for no pay.

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*Should you have any queries as to how this update may affect you or your organisation or require further information, please do not hesitate to email us.*



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*This newsletter is intended to discuss the Employment Law Updates, and it is not intended to be comprehensive nor should it be construed as legal advice. This newsletter is updated as of 01 August 2024*

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