

Changes to the Employment Act with effect from 1 April 2019

An implementation guide for employers
and HR practitioners



Note: All information is correct as of 29 November 2018. However, this guide is not a complete statement of the law and may not cover the requirements in other legislation on a particular issue. It should also be noted that the information is written in general terms as a guide for employers and employees and may not be applicable in a specific situation. For specific legal advice, you should seek professional legal assistance. While every effort has been made to ensure that the information provided is correct and up-to-date, no warranty is given that it is free from error or omission.

About the Employment Act

The Employment Act is Singapore's main employment law. It provides for the basic terms and working conditions for employees through **core provisions** and **Part IV provisions** that provide additional protection.

Core Provisions

Core provisions refer to employee entitlements such as:

Salary payment	Payment to be made within 7 days after the end of salary period
Paid annual leave	Minimum of 7-14 days per year (depending on length of service)
Paid sick leave	14 days per year; and up to 60 days if hospitalisation is required (including full reimbursement for medical consultation fees)
Paid public holidays	11 gazetted holidays
Employment records	Requirement for employers to maintain proper employment records, and to issue written key employment terms and itemised pay slips to employees
Dismissal	Recourse for wrongful dismissals

Note: Eligibility requirements continue to apply where relevant (e.g. to have served the employer for 3 months for sick or annual leave).

Part IV Provisions

Part IV provisions apply to selected workmen and non-workmen, collectively known as Part IV employees. They do not apply to managers and executives. Part IV provisions generally refer to:

Normal hours of work	<ul style="list-style-type: none">• Up to 8 hours a day, or 44 hours a week, if employees are required to work more than 5 days a week; or• Up to 9 hours a day, or 44 hours a week if employees are required to work 5 days or less a week
Payment for overtime work	At least 1.5 times the hourly basic rate of pay
Rest day	1 day per week

Explanatory notes

Employee An individual who has a contract of service that establishes an employment relationship with an employer; including those who are on term contracts and part-time arrangements.

Workman A rank-and-file employee engaged in manual labour (e.g. cleaner and construction worker).

Non-workman A rank-and file white-collar employee (e.g. clerk and receptionist).

Manager and executive An employee with executive and supervisory functions, whose duties and authority may include one or all of the following:

- Making decisions on issues such as recruitment, discipline, termination of employment, performance assessment and reward; or
- Formulating strategies and policies of the enterprise; or
- Managing and running a business

This includes professionals with tertiary education and specialised knowledge or skills, or have employment terms similar to managers and executives (e.g. chartered accountants, practising doctors and dentists).

Reasons for Change

The Ministry of Manpower (MOM) regularly reviews the Employment Act together with our tripartite partners, the National Trades Union Congress (NTUC) and the Singapore National Employers Federation (SNEF).

The Employment Act was last reviewed in 2012. We assessed that it is timely to review and update the Act given the changing:

- **Labour force profile** – the proportion of managers and executives in our workforce has increased over the years; and
- **Employment and dispute resolution landscape**, especially with the set-up of the Employment Claims Tribunals (ECT)¹.



¹The ECT was set up in April 2017 under the State Courts to provide an affordable and expeditious avenue to resolve salary-related disputes.

Key Changes at a Glance

1
Core provisions will be extended to cover all managers and executives.

2
Salary threshold for non-workmen to qualify as Part IV employees will be raised from \$2,500 to \$2,600.

3
Wrongful dismissal claims will be heard by the **Employment Claims Tribunals** instead of the Minister for Manpower.

4
Medical certificates from all **registered doctors and dentists** will be recognised for paid sick leave.

Key Changes Explained

Core provisions will be extended to cover **all** managers and executives



Before 1 April 2019

Core provisions cover all employees, except managers and executives earning more than \$4,500

From 1 April 2019

Core provisions will cover all employees

What this means

- The monthly basic salary threshold of \$4,500 for managers and executives will be removed.
- All employees, whether managers and executives, workmen and non-workmen, will be covered by the core provisions under the Employment Act.
- Seafarers, domestic workers and public servants will continue to be excluded, due to their nature of work, and separate coverage by other Acts and regulations.



1 >> **Are there provisions in the Act which will still not apply to managers and executives?**

Managers and executives will continue to be excluded from additional protection under Part IV, which covers hours of work, rest day and overtime payments. This takes into consideration that their work is generally outcome-based rather than time-based.

2 >> **Will managers and executives be able to carry forward unused annual leave entitlements?**

Managers and executives will need to refer to their employment contracts on the treatment of unused annual leave entitlements.

The Act, however, requires employers to allow Part IV employees to carry forward unused annual leave entitlements for another 12-month period.

3 >> **How should employers compensate managers and executives for work done on a public holiday?**

Employers must compensate their employees if they request employees to work on a public holiday.

For Part IV employees, employers must compensate them with an extra day's salary, or full day off.

For non-Part IV employees, including managers and executives, employers will have additional flexibility to offer time-off (e.g. based on hours worked), instead of an extra day's salary or full day off.

4 >> **Do the Employment Act changes apply to existing employees, or only those who are newly hired?**

The changes will apply to existing and newly hired employees.

Employers should start to identify employees impacted by the changes and update existing practices, where applicable. Employers should ensure that their employment terms and conditions are compliant with the revised law from 1 April 2019.

Salary threshold for non-workmen to qualify as Part IV employees will be raised from \$2,500 to \$2,600



Before 1 April 2019

Non-workmen earning up to \$2,500 are protected by Part IV provisions, with overtime rate payable capped at the salary level of \$2,250



From 1 April 2019

Non-workmen earning up to \$2,600 will be protected by Part IV provisions, with overtime rate payable capped at the salary level of \$2,600

What this means

- Non-workmen earning more than \$2,500 to \$2,600 will enjoy protection under Part IV provisions.
- The cap for overtime rate payable for non-workmen covered under Part IV will be raised to \$2,600, up from \$2,250, to be aligned with the raised salary threshold.
- There will be no change to the Part IV coverage of workmen earning a monthly basic salary of up to \$4,500.



1 >> Are managers and executives earning up to \$2,600 considered as Part IV employees?

All managers and executives are not Part IV employees as the nature of their work is more outcome-based. Such employees should refer to their employment contracts on the terms and conditions of employment pertaining to working hours and rest day.

2 >> How would the overtime rate payable to non-workmen be computed with the changes?

- For non-workmen earning a monthly basic salary of \$2,500

Before 1 April 2019

$1.5 \times \text{number of hours of overtime worked} \times (12 \times \$2,250) / (52 \text{ weeks} \times 44 \text{ hours})$

From 1 April 2019

$1.5 \times \text{number of hours of overtime worked} \times (12 \times \$2,500) / (52 \text{ weeks} \times 44 \text{ hours})$

- For non-workmen earning a monthly basic salary of \$2,600

Before 1 April 2019

Not covered under Part IV.
Not eligible for overtime pay.

From 1 April 2019

$1.5 \times \text{number of hours of overtime worked} \times (12 \times \$2,600) / (52 \text{ weeks} \times 44 \text{ hours})$

Wrongful dismissal claims will be heard by the Employment Claims Tribunals



Before 1 April 2019

Wrongful dismissal claims heard by MOM

From 1 April 2019

Wrongful dismissal claims will be heard by the Employment Claims Tribunals (ECT)

What this means

- MOM will no longer hear wrongful dismissal claims under the Employment Act and Child Development Co-savings Act. Such claims will be heard by the ECT, following mediation by the Tripartite Alliance for Dispute Management (TADM).
- This change will provide a “one-stop service” to employees with both salary-related and wrongful dismissal claims. Employees who had both claims previously had to seek recourse separately.
- While employers and employees have the right to contractual termination, employees can still submit a dismissal claim if they believe and can substantiate, as required, that their dismissal is wrongful. This includes employees who feel that they were forced to resign for wrongful reasons.
- For managers and executives, the minimum service period they must fulfil before they can submit a dismissal claim (for dismissals with notice) will be reduced from 1 year to 6 months. There is no change for non-managers and executives for whom no minimum service period is required.



1 » What are some legitimate reasons for dismissal?

Employers can legitimately dismiss their employees with notice, or salary in lieu of notice in situations such as:

- **Poor performance** – If their employee does not do his/her job to the required standards.
- **Redundancy*** – For example, the employer has excess manpower, the company is undergoing restructuring, or the employee's job scope has changed and the old job scope no longer exists.

Employers can legitimately dismiss their employees without notice due to:

- **Misconduct** – For example, after due inquiry, their employee was established to have committed theft, engaged in dishonest or disorderly conduct at work, was insubordinate, or brought the company into disrepute.

*For redundancy, employers who are retrenching employees must do so responsibly and fairly. Please refer to the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment for more information.

2 » What are some wrongful reasons for dismissal?

- **Discrimination** based on the employee's age, gender, disability, family responsibilities, nationality, pregnancy, race or religion.
- **Deprivation of benefits/entitlements** such as deprivation of statutory maternity benefits; deprivation of bonus entitlements.
- **Employer's desire to punish an employee for exercising a right** such as an employee being dismissed after whistleblowing on employer's non-compliance with the Employment Act.



3 » Which party is the burden of proof on?

For dismissals without notice, the burden of proof is on the **employer** to show the dismissal was not wrongful i.e. there was cause to dismiss the employee without notice, failing which the dismissal would be considered wrongful.

For dismissals with notice or salary in lieu of notice, i.e. contractual termination:

- Where a reason is given that affects the employee's employability (e.g. poor performance, misconduct), the burden of proof is on the **employer** to substantiate the reason, failing which the dismissal would be considered wrongful.
- Where no reason is given, the burden of proof is on the **employee** to show that his or her dismissal is wrongful, failing which the dismissal would not be considered wrongful.

4 » What can the ECT award if the employer is found to have wrongfully dismissed his employee?

If an employer is found to have wrongfully dismissed his employee, the ECT can:

- Order the employer to reinstate the employee to his/her former employment and pay the employee an amount that is equivalent to the wages that the employee would have earned had he/she not been dismissed by the employer; or
- Order the employer to pay compensation.

The ECT will take reference from a prescribed compensation framework in determining the compensation order.

5 » My company dismissed a manager earning above \$4,500 before 1 April 2019. Would he be able to file a wrongful dismissal claim against my company?

No. Managers and executives earning above \$4,500 will be able to file wrongful dismissal claims only if they were dismissed on or after 1 April 2019.

Medical certificates from all registered doctors and dentists will be recognised for paid sick leave



Before 1 April 2019

Only medical certificates (MCs) issued by:

- Government doctors and dentists; or
- Company-approved doctors and dentists

are recognised for granting paid sick leave



From 1 April 2019

MCs issued by doctors registered under the Medical Registration Act and dentists registered under the Dental Registration Act will be recognised for granting paid sick leave

What this means

- Employers will be required to recognise MCs from all registered doctors and dentists for the purposes of granting paid sick leave.
- Employees will have the flexibility to see general practitioners (GPs) nearer to their homes.
- However, there is no change to the policy on reimbursement of medical consultation fees – employers will still be required to reimburse medical consultation fees only for consultation with government doctors; or company-approved doctors, if the medical consultation entitles the employees to paid sick leave.



1 » An employee visited a Traditional Chinese Medicine (TCM) Practitioner. Is he eligible to paid sick leave?

Only MCs issued by doctors registered under the Medical Registration Act or dentists registered under the Dental Registration Act are recognised for the purposes of granting paid sick leave.

Employers have the discretion to determine if they recognise MCs issued by TCM practitioners.

2 » An employee was unwell and consulted a doctor on a non-working day. He was issued with MC for that day by a registered doctor. Is the employer required to reimburse his medical consultation fees?

As the employee's visit to a registered doctor did not entitle him to paid sick leave, his employer will not be required to reimburse his medical consultation fees.

3 » An employee was unwell and sought treatment from the Accident & Emergency (A&E) Department in a Government hospital. Must the employer fully reimburse the A&E bill?

Yes. The A&E fee is a standard fee that covers a basic set of emergency services. The fee is the same for everyone who seeks treatment at the A&E regardless of the actual services used, and it is not possible for the hospital to break down the charges.

4 » An employee visited a registered doctor that is not a Government or company-approved doctor. Must the employer reimburse the consultation fee?

No. The employer is only required to reimburse the consultation fee if his employee visited a Government or company-approved doctor.

Notwithstanding this, employers are encouraged to consider the circumstances of the employee visiting a private doctor and consider reimbursing, in full or in part, on a compassionate basis.

Key employment policies which employers and HR practitioners should review to ensure compliance with the Act

FOR MANAGERS AND EXECUTIVES EARNING MORE THAN \$4,500



Employment records Employers must maintain proper employees' records, and issue their employees with –

- Key employment terms; and
- Itemised payslips

Salary payment Employers must pay salaries to their employees within 7 days after the end of each salary period.

Leave and public holidays Employers must provide their employees with –

- Paid leave (i.e. annual leave, sick leave, maternity leave, childcare leave); and
- Paid public holidays.

FOR NON-WORKMEN EARNING \$2,600 AND BELOW



Normal hours of work

- Up to 8 hours a day, or 44 hours a week, if employees are required to work more than 5 days a week; or
- Up to 9 hours a day, or 44 hours a week, if employees are required to work 5 days or less a week.

Overtime payment Employers must calculate overtime rate payable according to their employees' basic monthly salary.

Rest day Employers must provide their employees with 1 rest day per week.

FOR ALL EMPLOYEES



Paid sick leave Employers must provide paid sick leave, up to 14 days, or 60 days if hospitalisation is required, to their employees if they are issued with a medicate certificate by any registered doctor or dentist indicating that they are unfit for work.

Salary deductions Apart from authorised deductions², employers may make other deductions (e.g. for insurance plans extended to employees' family) if the employee willingly consents in writing and is able to withdraw the consent at any time without penalty.

²Employers may deduct their employees' salary without their consent if the deduction arose from – i) employees' absence from work, ii) damage or loss of goods or money that employees are responsible for, iii) recovery of any advances, loan or unearned employment benefit, iv) adjustment of overpayment of salary, or v) contributions payable by employers on behalf of their employees and in accordance with the provisions of the Central Provident Fund Act.

Next Steps for Employers and HR Practitioners



- Identify employees impacted by the changes.
- Ensure existing contracts as well as key employment terms are compliant with the revised laws.
- Communicate changes through appropriate channels and platforms, including informing relevant supervisors and updating company handbooks.
- Contact the following organisations if you need more information or have any clarifications.

Ministry of Manpower

www.mom.gov.sg

Tripartite Alliance for Dispute Management

www.tadm.sg

Tripartite Alliance for Fair and Progressive Employment Practices

www.tafep.sg

Singapore National Employers Federation (for SNEF members)

www.snef.org.sg

National Trades Union Congress (for employees)

www.ntuc.org.sg

- All employers are expected to comply with the revised Employment Act requirements with effect from 1 April 2019.