

**TRIPARTITE GUIDELINES
ON EXPANDING THE SCOPE OF LIMITED REPRESENTATION FOR
EXECUTIVES
(Updated March 2017)**

Introduction

1. Under the Industrial Relations Act, rank-and-file unions can represent eligible executives on an individual basis for specific industrial matters. The Industrial Relations Act was amended in 2015 to expand the scope of individual representation for executives to include re-employment.

2. To guide employers and unions, the tripartite partners have issued the following set of Tripartite Guidelines on Expanding the Scope of Limited Representation for Executives. This set of Tripartite Guidelines covers the scope of limited representation, eligibility of executives for limited representation, union membership and leadership as well as representation of executives by rank-and-file unions at the workplace.

Scope of Limited Representation for Executives

3. A rank-and-file union which has been accorded recognition to collectively represent rank-and-file employees, may represent its executive members individually, and not as a class, for any of the following purposes:
 - a. Retrenchment benefits - to negotiate with the employer to resolve any dispute relating to the retrenchment benefit payable to the executive employee upon retrenchment;
 - b. Dismissal - to make representations to the Minister for Manpower under section 35(3) of the Industrial Relations Act for dismissal without just cause or excuse;
 - c. Breach of individual contract - to negotiate with the employer to resolve any dispute relating to a breach of contract of employment by the executive employee or the employer;
 - d. Victimisation - to represent the executive employee in proceedings before a Court if the executive employee is being victimised by the employer for participating in union related activities in circumstances arising out of a contravention of section 82; and
 - e. Re-employment dispute - to negotiate with the employer to resolve any re-employment dispute as defined in section 8A(4) of the Retirement and Re-employment Act, and to represent the executive employee in proceedings before the Commissioner for Labour.

Eligibility of Executives for Limited Representation

4. An employer may object to limited representation on the ground that the executive employee:
 - a. is in a senior management position or who:
 - has control and supervision of major business operations;
 - is accountable for operational performance;
 - does the planning of business policies and strategies; and
 - provides leadership to other employees;
 - b. has decision making powers on any industrial matter including the employment, termination of employment, promotion, transfer, reward or discipline of other employees;
 - c. represents the employer in negotiation with the union on any industrial matter;
 - d. has access to confidential information relating to the budget and finances of the employer, any industrial relations matter or the salaries and personal records of other employees; or
 - e. is in a role which may give rise to a conflict of interest if he is represented by a trade union.

5. In addition to the above, employers and unions may mutually agree to adopt the following parameters to determine the eligibility:
 - a. Salary level as a proxy; and/or
 - b. Proportion of executives within the organisation.

Sharing of Information

6. Employers and unions should work closely in the spirit of cooperation to reach an agreement on the issue of eligibility. To facilitate this, employers and unions could mutually share relevant information.

Dispute

7. If there is a dispute on eligibility, parties are strongly encouraged to approach the Ministry of Manpower for assistance to resolve the dispute early through conciliation. If no agreement is reached through conciliation, union and employer shall then submit a joint application for arbitration by the Industrial Arbitration Court.

Retrenchment Benefit

8. A union may represent an executive employee in negotiations with the employer on matters relating to the amount of retrenchment benefit payable.
9. In determining the amount, employers, unions and employees should exercise flexibility, taking into consideration the following:
 - a. the market norm, the employer's financial position, the reason for retrenchment, and labour market conditions, among other relevant factors;
 - b. the need to help individuals tide over the transition period before they secure alternative employment; and
 - c. that the formula adopted for computing the retrenchment payment for an executive does not have to be based on that used for a rank-and-file employee.

Dispute

10. If the dispute on the payment of retrenchment benefit cannot be resolved at the organisational level, it may be referred to the Ministry of Manpower for conciliation. If no agreement could be reached through conciliation, union or employer may make a request in writing to the Registrar for arbitration.

Dismissal

11. A union may make representation to the Minister for Manpower under section 35(3) of the Industrial Relations Act on behalf of an executive employee who considers that he has been dismissed without just cause or excuse. The representation must be in writing and made within one month of the dismissal.
12. A dismissal which occurs in circumstances arising out of a contravention of section 82 of the Industrial Relations Act, where an executive employee is victimised by the employer for participating in union related activities, section 31(e) of the Act allows Minister for Manpower to direct such a dispute for arbitration.
13. For dismissal disputes under section 35(3) and 82 related to dismissal without just cause or excuse by the employer or victimisation of the executive employee for participating in union related activities, the union and employer are encouraged to resolve them through informal negotiation and conciliation. Arbitration should be the last resort.

Breach of Individual Contract of Employment

14. A union may represent an executive employee in negotiations with the employer on matters relating to a breach of individual contract arising from the following circumstances:

- a. When terms of employment stated in an executive employee's letter of appointment are not honoured;
- b. When there is non-compliance in the provision of benefits by the employer; and
- c. When there is any other breach of the employment terms which affect executive employees individually.

15. To minimise disputes, employers are encouraged to state clearly the terms of employment in their executive employees' letters of appointment.

Dispute

16. Where a dispute relating to a breach of an individual contract of employment could not be resolved amicably at the organisational level, either union or employer could refer the dispute to the Ministry of Manpower for conciliation. If no agreement could be reached through conciliation, union or employer may make a request in writing to the Registrar for arbitration.

Victimisation or Serious Disciplinary Action with a View to Dismissal

17. A union may represent an executive employee in proceedings before the Court on matters arising from the following circumstances:

- a. where, based on an alleged misconduct, an employer takes serious disciplinary action against an executive with a view to dismissal¹; or
- b. where an executive employee considers that he/she has been victimised and the victimisation is likely to lead to his/her dismissal.

18. Discussion with the union and employer on disputes relating to alleged victimisation or serious disciplinary action with the view to dismissal should end at conciliation. To facilitate the resolution of such disputes, employers are strongly encouraged to put in place a set of grievance and appeal procedures to enable grievances or disputes to be resolved amicably at the organisational level.

¹ For example, the executive employee has been issued with a final warning letter and he/she is likely to face dismissal.

19. Where the dispute relating to alleged victimisation or serious disciplinary action cannot be resolved, and the affected executive employee is subsequently dismissed, the dispute should be handled in accordance with Paragraphs 10 to 12 of the guidelines.

Re-employment

20. A union may represent an executive employee in negotiations with the employer on any of the following matter relating to re-employment:

- a. the denial of re-employment to an employee on the ground that the employee does not satisfy the re-employment eligibility criteria;
- b. the denial of re-employment to an employee on the ground that the employer is unable to find a vacancy in his establishment which is suitable for the employee;
- c. the reasonableness of the terms and conditions of any re-employment offer made by an employer; or
- d. the reasonableness of the amount of any employment assistance payment offered to an employee.

21. Unions and employers are urged to refer to the Tripartite Guidelines on the Re-employment of Older Employees in their negotiations².

Dispute

22. Where a dispute relating to re-employment of an executive employee could not be resolved amicably at the organisational level, either union or employer could refer the dispute to the Ministry of Manpower for conciliation. If no agreement could be reached through conciliation, the employee may lodge an appeal/claim with the Ministry of Manpower provided for under the Retirement and Re-employment Act.

Union Membership and Leadership

23. Depending on the union's constitution, executive employees who are individually represented by unions may stand for election and hold office. As office bearers, they may represent the unions and engage employers in the following:

- a. collective bargaining in respect of terms and conditions affecting the rank-and-file and/or executive members; and

² <http://www.mom.gov.sg/~media/mom/documents/employment-practices/guidelines/tripartite-guidelines-on-re-employment-of-older-employees-gazetted.pdf>

- b. limited representation on an individual basis on specified matters affecting executive members.

Participation in Industrial Action

24. A union or any of their members shall not commence, promote, organise or finance any strike or any form of industrial action in connection with any dispute between an executive employee on limited representation and his/her employer.

25. An executive employee on limited representation shall not commence, promote, organise or participate in any strike or industrial action taken by the union.

Representation of Executives by the Union at the Workplace

26. In discussing options for executive employees' representation at the workplace, it is important for unions and employers to establish good labour-management-relations. This will ultimately lead to a harmonious workplace environment for all which can enhance workforce productivity.

27. Since the introduction of limited representation in 2002, some employers may already have an understanding or agreement on the scope of representation of executive employees with their unions. With the introduction of the additional option of collective representation for executive employees, employers and unions may wish to retain the current arrangement if it continues to be relevant or mutually agree to review and adopt a new arrangement.

Memoranda of Understandings (MOUs) on limited representation

28. Employers and unions may draw up MOUs on matters relating to the representation of executive employees by rank-and-file unions.

29. The MOUs may include the following:

- a. the categories of employees eligible for limited representation;
- b. a provision to allow employers and unions to conduct appropriate review to the MOUs;
- c. an appeal or grievances procedures to enable grievances to be settled expeditiously at the organisational level;
- d. the sharing of information between employers and unions to facilitate discussion on matters relating to the representation of executives; and

- e. a provision to refer disputes to the Ministry of Manpower for conciliation, in the event the disputes related to the implementation of the MOU cannot be resolved at the organisational level.

For Assistance

30. Employers or unions who need assistance may approach SNEF, NTUC or MOM.

Singapore National Employers Federation (SNEF)
Duty Consultant, Tel: (65) 6290 7692
Email: ir@snef.org.sg

National Trades Union Congress (NTUC)
Industrial Relations Department, Tel: (65) 6213 8008
Email: ntucird@ntuc.org.sg

Ministry of Manpower (MOM)
MOM Contact Centre, Tel: (65) 6438 5122
Online Enquiry via this link (www.mom.gov.sg/feedback/)
Website: www.mom.gov.sg