

Employment & Benefits

Singapore Moves Another Step Closer to Workplace Anti-Discrimination Legislation

Introduction

Singapore's journey towards fair workplace practices began over two decades ago. The Tripartite Guidelines on Non-Discriminatory Job Advertisements were introduced in 1999. In 2006 the Tripartite Alliance for Fair and Progressive Employment Practices ("**TAFEP**") was established, and in 2007 the Tripartite Guidelines on Fair Employment Practices ("**TGFEP**") were introduced with the aim of protecting employees against various forms of workplace discrimination. The TGFEP also aims to educate employers as to the best practices to adopt to create fair workplaces. In 2013, the move to couple education with administrative consequences began and the Ministry of Manpower ("**MOM**") started taking action against employers who breached the TGFEP by suspending their work pass privileges. In 2014 the Fair Consideration Framework ("**FCF**") was introduced to set out specific requirements for all employers in Singapore to consider the workforce in Singapore fairly for job opportunities so as to emphasize the importance of a strong Singaporean core. To send a stronger signal against workplace discrimination, in 2020, the penalties for breaching the TGFEP and FCF were enhanced, including increasing the minimum period of mandatory work pass debarments from six months to 12 months against errant employers, and up to a maximum of 24 months.

This workplace fairness framework has enabled Singapore to make headway on addressing workplace discrimination. However, discriminatory work practices still occur. The interim report of the Tripartite Committee on Workplace Fairness highlights that in 2022 TAFEP received approximately 250 complaints relating to workplace discrimination and the most common discriminatory grounds were nationality, age and sex.

Seeking to address how best to create a strong and robust system that will promote workplace fairness, the Tripartite Committee on Workplace Fairness ("**Committee**") was formed in July 2021. The Committee's Terms of Reference were to: (a) Determine if the best policy to enhance workplace fairness is legislation; (b) Review the scope of requirements for employers; (c) Develop the regulatory and claims regime; and (d) Conduct engagements to gather feedback and understand concerns. The Committee's interim report (which can be accessed [here](#)) was released on 13 February 2023 and contains 20 recommendations to enhance workplace fairness.

Notably, the Committee recommends that legislation be enacted to implement its recommendations to tackle workplace discrimination. The proposed legislation will run in unison with the TGFEP. The recently enhanced TGFEP can be accessed [here](#).



Client Update: Singapore

2023 FEBRUARY

Employment & Benefits

Feedback to the recommendations set out in the Committee's interim report can be submitted via <https://go.gov.sg/tcwfinterimfeedback>, by 13 March 2023.

This Update outlines the recommendations made in the Committee's interim report and considers the steps that employers should consider in order to remain fair employers.

Committee's Recommendations

The aims of the Committee's recommendations are to entrench the long-standing fair employment standards and strengthen key areas in the existing workplace fairness framework. The proposed workplace fairness legislation will draw a clear line at unacceptable discriminatory acts by prohibiting specified forms of discrimination. The TGFEP will ensure that the overarching principles of workplace fairness remain, cover forms of workplace discrimination that fall outside the ambit of the legislation, provide guidance on complying with the legislative requirements and capture other important tripartite guidelines on fair employment.

The table below provides a summary of the 20 recommendations from the Committee's interim report. The recommendations are divided under four key areas.

A. Increase protection against workplace discrimination	
1.	Prohibit workplace discrimination in respect of the following characteristics: (i) age; (ii) nationality; (iii) sex, marital status, pregnancy status, caregiving responsibilities; (iv) race, religion, language; (v) disability and mental health conditions (" Protected Characteristics ")
2.	Retain and enhance the TGFEP to work in unison with the legislation
3.	Cover all stages of employment (pre-employment, in-employment and end-employment)
4.	Prohibit job advertisements from using words or phrases that indicate a preference based on any of the protected characteristic
5.	Legislate the job advertisement requirement under the existing FCF for the submission of Employment Pass and S Pass applications
6.	Prohibit employers from retaliating against those who report workplace discrimination or harassment
7.	Enhance the TGFEP to provide protection against discrimination for workers engaged in work through service buyers and intermediaries
B. Provisions to support business/organisational requirements and national objectives	
8.	Allow employers to consider a protected characteristic in employment decisions where there is a genuine and reasonable job requirement
9.	Allow initial exemption of small firms (less than 25 employees) from the legislation, with a view to tighten this exemption in five years

Client Update: Singapore

2023 FEBRUARY

Employment & Benefits

10.	Allow religious organisations to make employment decisions based on religion and religious requirements
11.	Allow employers, in relation to hiring decisions, to favour persons with disabilities and seniors (55 years and above) over others, even when another candidate is equally or more qualified
C. Processes for resolving grievances while safeguarding workplace harmony	
12.	Require employers to have proper internal grievance handling processes. Where possible, employers should also protect the identity of persons who reported the workplace discrimination and harassment
13.	Require compulsory mediation for workplace discrimination claims at the Tripartite Alliance for Dispute Management ("TADM") first. Adjudication at the Employment Claims Tribunals ("ECT") is a last resort
14.	Ensure that the Tripartite Alliance for Fair and Progressive Employment Practices continues to provide advice and assistance to employees who experience discrimination and advise employers on improving employment practices
15.	Ensure that unions continue to play a constructive role in workplace fairness dispute resolution and allow unions to support their members in the claims process
D. Ensuring fair outcomes through remedies for victims of workplace discrimination and appropriate penalties for breaches	
16.	Encourage parties to explore non-monetary remedies
17.	Allow monetary compensation of up to S\$5,000 for pre-employment claims, and for in-employment and end-employment claims, compensation of up to S\$20,000 for non-union members and S\$30,000 for union-assisted claims
18.	Empower the ECT to strike out frivolous or vexatious claims, or award costs against such claimants
19.	Allow the State to concurrently conduct investigations on claims that involve suspected serious breaches of the legislation, with a view to taking enforcement action
20.	Provide a range of penalties that can be imposed against firms and/or culpable persons, depending on the severity of the conduct

Key takeaways from the Committee's recommendations

(a) Scope of proposed workplace fairness legislation

The Committee recommends that the legislation initially apply to all firms who have more than 25 employees. Employers will be prohibited from discriminating against job applicants and employees based on the protected characteristics during all stages of employment (the recruitment phase, in-employment and end-employment).

Client Update: Singapore

2023 FEBRUARY

Employment & Benefits

(b) **Pre-employment practices and exceptions**

The TGFEF requirement for job advertisements to be free from discriminatory words or phrases will be enshrined in the proposed legislation. Additionally, to reaffirm the importance of a strong Singaporean core, the job advertisement requirement under the existing Fair Consideration Framework for the submission of Employment Pass and S Pass applications will also be legislated.

However, the Committee recommends that some exceptions apply during the recruitment phase. Employers will be allowed to make decisions based on the protected characteristics if there is a genuine and reasonable job requirement, and religious organisations will be allowed to make decisions based on religious requirements. Additionally, during the recruitment phase, employers will be allowed to favour seniors (those 55 years or over) and persons with disabilities over another candidate, even if another candidate may be equally or more qualified.

(c) **Resolution of grievances – mediation over litigation**

The Committee recommends that the legislation enshrines non-litigious dispute resolution as the continued preferred method for resolving workplace discrimination grievances and disputes. Hence, employers must have in place adequate internal grievance processes. To ensure employees feel confident to raise workplace discrimination issues, employers should try to protect the identity of those who report workplace discrimination and harassment, and employers cannot retaliate against employees who raise grievances.

In cases where the internal grievance process fails to reach an amicable resolution and the aggrieved party still wishes to seek redress, the legislation will mandate workplace discrimination claims to then be subject to compulsory mediation at TADM. As a last resort, litigation before the ECT is an option. Linked to the amicable resolution of grievances is the recommendation that parties should explore non-monetary remedies, such as an apology letter. Where financial compensation is required, the sum of up to S\$5,000 is allowed for pre-employment claims and, for in-employment and end-employment claims, up to S\$20,000 for non-union members and S\$30,000 for union assisted claims. Further, the State will be allowed to concurrently investigate claims that involve suspected serious breaches of the legislation and take appropriate enforcement action. The range of possible enforcement action is tailored to meet the severity of the legislation breach and includes corrective orders, administrative penalties and civil penalties.

What does this mean for employers?

Now is an opportune time for employers to conduct a hygiene check on their Human Resources and employment processes and documentation to identify risk areas that can be remedied or mitigated.

Client Update: Singapore

2023 FEBRUARY

Employment & Benefits

Possible areas employers may wish to review include:

(a) **Eliminating bias in employment practices**

Employers must ensure their employment practices are crafted to avoid unfair practices. Human Resources personnel involved in the recruitment process, conducting performance appraisals and the end of employment processes should receive appropriate training and adequate documentation. Consideration will also need to be given as to the process to be implemented when assessing applications from persons with disabilities and persons over 55 years of age.

Performance and promotion practices should also be reviewed to ensure that employees are only assessed based on work-related matters and not discriminated against based on any of the protected characteristics. Reporting managers need to base performance reviews on transparent, objective and quantifiable matrices, and as advised in the TGFEP, employers should keep records of their employee's performance and conduct.

In relation to off-boarding, employers should consider good employment practices such as conducting and documenting exit interviews in all cases. Written standard operating procedures, that are free from any discriminatory language, is advisable for all of these practices.

(b) **Grievance Handling**

Employers must set up proper grievance reporting, investigative and disciplinary (GRID) processes as already advised in the TGFEP. The Committee's interim report outlines that grievance handling requirements under the legislation will require a proper inquiry and documentation process, informing employees of the grievance handling procedures, communicating the inquiry outcome to the affected employee, and protecting the identity of the person who reported the workplace discrimination or harassment.

(c) **Harmonious workplaces**

The recent amendment to the TGFEP, made on 13 February 2023, emphasises the importance of workplace harmony and the need to exercise sensitivity in relation to the supporting of non-work-related activities within the workplace. This amendment, plus the Committee's recommendations, emphasise the importance of employers providing their employees, at all levels, with training regarding appropriate workplace behaviour. This will ensure that all employees are aware of the standards expected of them regarding their behaviour towards other colleagues, the types of behaviour that are discriminatory and why that behaviour is discriminatory.

Implementation timeline

The Committee is due to release its final report by the end of 2023. Legislation is predicted to be tabled in Parliament in 2024.

Employment & Benefits

Concluding Words

The recommendations in the Committee's interim report provides a strong indicator of the parameters of the forthcoming workplace fairness legislation. Further details will likely be furnished in the Committee's final report. In the interim, it is advisable for all employers to review their employment practices to ensure they are fair, up to date and tally with the Committee's recommendations for anti-discriminatory practices.

For further queries on the TGFEF and the proposed legislation, or if you wish to submit feedback to the Committee's recommendations, please feel free to contact our team below.

Contacts



Desmond Wee
Head, Employment & Benefits

T +65 6232 0474
desmond.wee@rajahtann.com



Jonathan Yuen
Head, Employment & Benefits
(Disputes)

T +65 6232 0161
jonathan.yuen@rajahtann.com



Luo Qinghui
Deputy Head, Employment &
Benefits (Disputes)

T +65 6232 0587
qing.hui.luo@rajahtann.com



Kala Anandarajah
Partner, Employment & Benefits

T +65 6232 0111
kala.anandarajah@rajahtann.com

Please feel free to also contact Knowledge Management at eOASIS@rajahtann.com

Regional Contacts

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113

F +855 23 963 116

kh.rajahtannasia.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346

F +95 1 9345 348

mm.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

Rajah & Tann Singapore LLP

Shanghai Representative Office

T +86 21 6120 8818

F +86 21 6120 8820

cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32

F +632 8552 1977 to 78

www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800

F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550

F +62 31 5116 4560

www.ahp.co.id

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600

sg.rajahtannasia.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991

F +66 2 656 0833

th.rajahtannasia.com

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239

F +856 21 285 261

la.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673

F +84 28 3520 8206

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919

F +60 3 2273 8310

www.christopherleeong.com

Hanoi Office

T +84 24 3267 6127

F +84 24 3267 6128

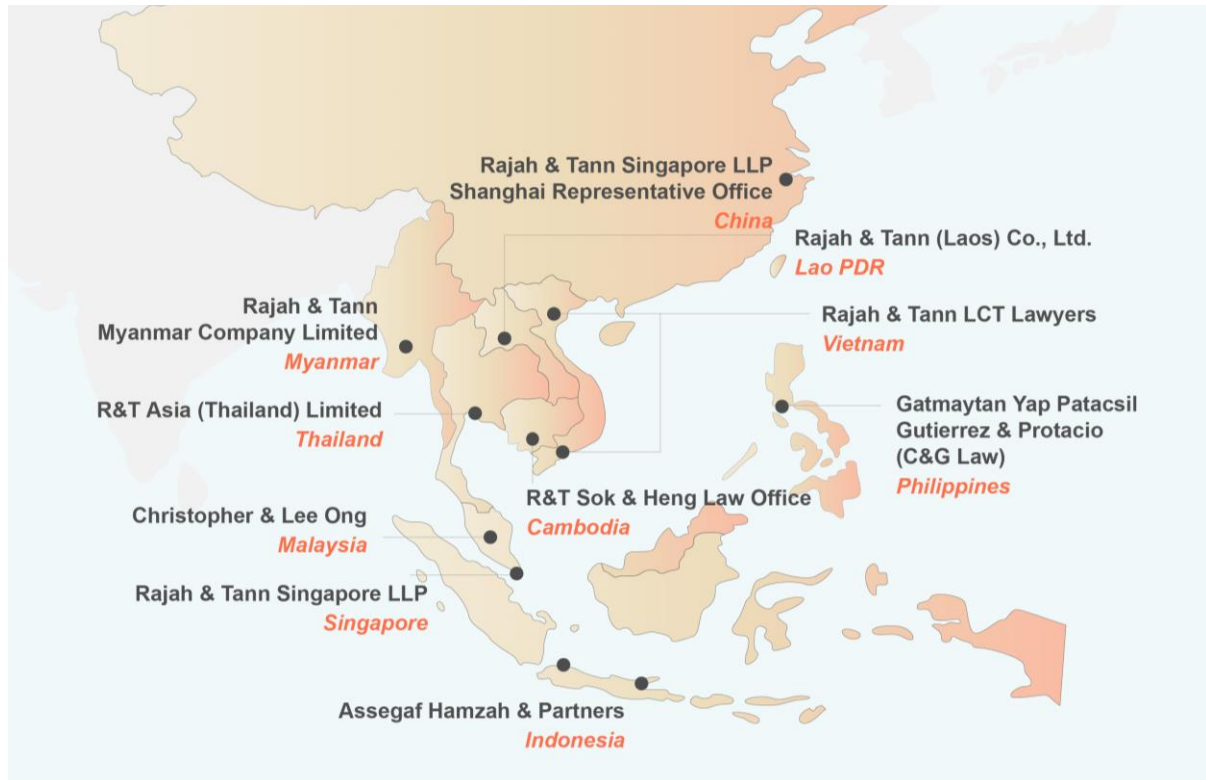
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence



Rajah & Tann Singapore LLP is one of the largest full-service law firms in Singapore, providing high quality advice to an impressive list of clients. We place strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann Singapore LLP is part of Rajah & Tann Asia, a network of local law firms in Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Rajah & Tann Singapore LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann Singapore LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann Singapore LLP or email Knowledge Management at eOASIS@rajahtann.com.