

Contents

- I. Revisions to Employment Pass Framework
- II. Update to Advisory on COVID-19 Vaccination at the Workplace

In the July edition of our newsletter we take a look at important changes to Singapore's Employment Pass (EP) Framework. EPs are a constant area of concern for international companies operating in Singapore. The recent changes have hopefully made the process much clearer as compared to the current system where it can be difficult to anticipate the outcome of EP applications. Further as Singapore now fully returns to normal, we take a final look at the applicable advisory for Covid-19 vaccinations at the workplace.

I. Revisions to Employment Pass Framework

Leon Ryan, Advocate and Solicitor

A common difficulty faced by businesses in Singapore is applying for and obtaining Employment Passes (EP) for foreign employees. One reason why this process can be challenging is that the exact qualifying criteria can be unclear. Businesses are thus left with uncertainty on whether an important employee can be brought into Singapore.

It will thus come as good news that the EP application process is being redesigned. The new process is notable for transparently setting out the qualification criteria for EP applications. The new EP framework will be rolled out in two phases:

1. Phase 1 – Higher Qualifying Salary

(1 September 2022 onwards for new applications, 1 September 2023 for renewal applications):

The qualifying salary for EP applications will be raised from \$4,500 to \$5,000. This qualifying salary will increase with the age of the potential employee, up to \$10,500 for employees in their mid-40s. A higher qualifying salary will apply for Financial Services. In general, the policy for the Ministry of Manpower (MOM) is that the qualifying benchmark should be at around the top one-third (65th percentile) of the wages of PMETs in Singapore.

The requirement for the salary benchmark to be at the top one-third of PMET wages reflects the broader policy position by MOM that EPs should generally only be given to “highly skilled” foreign professionals.

2. Phase 2 – Point Based Assessment

(1 September 2023 onwards for new applications, 1 September 2024 for renewal applications):

All EP applications will be assessed on a point-based system called the “Complementary Assessment Framework” (COMPASS). A candidate will need to score 40 points to pass. Points can be earned from 4 basic criteria, as well as 2 bonus criteria. For each criteria, it is possible to score 20, 10 or 0 points depending on how well the criteria is met.

The four basic criteria are as follows:

- a) Fixed monthly income of candidate – 20 Points if the candidate is above the 90th percentile of local PMET salaries, 10 points for salary between the 65th and 90th percentile, 0 points for salary at the 65th percentile.
- b) Educational Qualification of candidate – 20 points if the candidate has qualifications from a “top-tier institution”; 10 points for a “degree-equivalent qualification”; 0 points for a candidate with no degree-equivalent qualification.
- c) Diversity of Employer’s PMETs – 20 points if the candidate’s nationality is less than 5% of the firm’s total PMETS, 10 points if it is 5 to 25% of total PMETS, 0 points if the nationality forms more than 25% of total PMETS.
- d) Support by Employer for Singaporean PMETs – 20 points if the employer’s share of local PMETs is at the 50th percentile of the relevant subsector; 10 points if the share of local PMETs is at the 20th to 50th percentile; 0 points if the share of local PMETs is less than then 20th percentile.

In addition to the 4 basic criteria, a candidate can score bonus points from:

- e) The candidate's job is on the Shortage Occupation List (up to 20 points)
- f) The firm is engaged in specific strategic economic sectors (up to 10 points)

3. Clarifications on the new EP framework

When COMPASS was described in Parliament in March 2022, the Minister for Manpower made some useful qualifications on the new EP Framework.

First, it was clarified that the new EP Framework is generally not intended to be a tightening measure to make it more difficult to obtain an EP. The higher qualifying salary is only meant to be a regular update to ensure that the qualifying salary keeps pace with general wage growth in Singapore. In this regard, businesses can expect for the EP qualifying salary to be continually updated in light of prevailing economic conditions. This is an important policy clarification, and businesses should take some comfort in that the government is generally still wants to welcome businesses to Singapore.

Second, the COMPASS criteria is intended to apply *in addition to* the qualifying salary criteria. A candidate must thus both meet the qualifying salary criteria as well as obtaining the necessary 40 points under the COMPASS system.

Third, and perhaps most importantly, the COMPASS system is designed to be transparent and flexible, so that firms and candidates can plan how they can obtain 40 points. There are no "veto factors" and a candidate could score 0 in any criteria but still make up points by scoring well in other criteria.

Fourth, it was clarified that for smaller firms with less than 25 PMETs, these firms will be given a default 10 points for the criteria (c) and (d) above. This is in recognition of how the workplace ratios of smaller firms can change dramatically with only a few personnel changers.

Finally, MOM's supplementary material on the COMPASS framework also clarifies that candidates with a fixed monthly salary of \$20,000 and above are exempted from COMPASS.

The Minister also stated that in the lead up to the commencement of Phase 1 and Phase 2, MOM will be issuing further educational materials and specific details on each criteria. There are also plans for MOM to provide a Pre-Assessment Tool for employers to obtain a rough idea on how an EP application might be assessed, and make improvements as necessary.

4. Preliminary Observations

Overall, the new EP application framework is certainly a step in the right direction. Firms will now have a clearer way to plan and anticipate whether an EP application will be successful. This will obviously be

a positive change in terms of long-term planning for businesses operating in Singapore. However, a number of important details will need to be clarified. No doubt MOM will be making these clarifications in due course. The areas which require the most clarification for now are as follows:

- a) It is unclear how businesses will be able to assess if the monthly income of a candidate meets a certain percentile. Perhaps MOM will be issuing regular industry salary data, or perhaps this will be automatically assessed as part of MOM's pre-assessment tool.
- b) It is unclear what education qualifications will be considered as coming from a "top-tier institution". MOM will likely need to issue a list of universities deemed to be top-tier institutions. Alternatively, MOM can take reference from common university rankings, with a cut-off rank for universities to be deemed as top tier institutions.
- c) The Shortage Occupation List as well as the qualifying strategic economic sectors will also need to be specified by MOM. Examples given in parliament of shortage occupation list jobs are AI developers and cyber security specialists. However a detailed list from MOM will need to be issued for both these bonus criteria.

While clarifications remain to be made, it can be observed for now that the COMPASS criteria are relatively clear and easy to understand. For example, firms now clearly know how they should prioritize their manpower needs (e.g. how many Singaporean PMETs to hire) so as to ensure a good diversity of PMETs and also good support for Singaporean PMETs. Previously, firms were in the difficult position of generally wanting to support MOM's policies on PMET hiring but were unfortunately left in the dark as to what exactly are the recommended amounts of PMETs that should be hired domestically and how many can be hired from overseas. The COMPASS criteria provides good guidance in this regard, and should be welcomed by most businesses.

II. Update to Advisory on COVID-19 Vaccination at the Workplace

Sherman Ng, Advocate and Solicitor

1. Introduction

On 26 April 2022, the Multi-Ministry Taskforce ("MTF") lifted the prevailing workplace vaccination measures, under which¹ unvaccinated employees were generally not permitted to return to the workplace ("WVM"). With the lifting of the WVM, businesses will have to accordingly adjust their existing

¹ Generally speaking, under the previous measures: (i) only employees who were fully vaccinated, certified to be medically ineligible for vaccination, or had recovered from COVID-19 within 180 days, were able to return to the workplace; and (ii) unvaccinated employees were not permitted to return to the workplace even with Pre-Event Testing. A "Pre-Event Test" is a COVID-19 test taken by a person who wishes to enter a venue where selected events, businesses, or activities are being held. The results of such test must be negative before the person is allowed to enter the venue or participate in the event, business, or activity.

COVID-19 related policies to some degree. In this article, we will discuss what the lifting of the WVM means for employers in Singapore.

2. Continuing WVM

Under the MOM's updated advisory² of 25 April 2022 (the "**Advisory**"), it was acknowledged that notwithstanding the lifting of the WVM, operational and business continuity planning considerations remained relevant, and that certain businesses may have business considerations for wanting to continue imposing vaccination-related measures. For instance, a business that requires its employees to undertake frequent traveling may see a need for vaccinated employees who will face fewer obstacles in making business trips.

The MOM therefore clarified in the Advisory that businesses may continue to impose vaccination-related measures for their employees depending on their needs, so long as it was in accordance with the prevailing employment laws. This means that employers may for instance, differentiate vaccinated and unvaccinated employees, and prohibit the latter from entering the workplace as a matter of company policy.

3. Similarities with the WVM

The Advisory also stated that employees who refuse to show proof of vaccination to their employers may be treated as unvaccinated for the purpose of implementing vaccination-differentiated company policies at the workplace. It is noted that this is similar to the position taken by the MOM under the WVM.

In fact, the similarities do not end here; under the WVM, if an employer assesses that home working arrangements are not suitable for an employee (for example, where the employee's duties and responsibilities required them to physically attend at the workplace to carry out their work, and they did not meet the criteria for returning to the workplace), the employer had the discretion to take any of the following measures:

- (i) redeploy the employee to a suitable alternative job that can be done from home (if available), and adjust the employee's remuneration to be commensurate with the responsibilities of such alternative job;
- (ii) place the employee on no-pay leave, on mutually agreeable terms; or
- (iii) as a last resort, terminate the employee's employment (with notice) in accordance with the employment contract. If an unvaccinated employee is terminated due to that employee's inability to attend at the workplace to perform their contracted work, such termination of employment

² <https://www.mom.gov.sg/covid-19/advisory-on-covid-19-vaccination-in-employment-settings>

would not be considered as wrongful dismissal.

The MOM has clarified in the Advisory that the foregoing measures likewise apply in the event that an employer decides to adopt vaccination-related measures as a matter of company policy. Effectively, this means that businesses who see a need to continue with the vaccination-related measures under the old WVM may continue to do so, and deal with their employees in the same manner as under the WVM. Perhaps the most striking implication of this is that businesses may continue to use an employee's inability to be at the workplace to perform their contracted work as grounds for termination (provided that such termination is, of course, used as a last resort after exploring all the other measures above).

4. Implementing Vaccination-Differentiated Company Policies

The MOM notes that in implementing such vaccination-differentiated company policies, it is critical for employers to communicate the rationale and details of the company's policies to affected employees as early as possible, and that employers may wish to consult with their employees and unions so as to avoid potential disputes.

This is a sound approach for businesses to take, but even before doing so, it may be prudent for businesses to seriously consider whether there is a real need for the business to continue employing vaccination-differentiated measures. While the MOM has accepted that an employee's inability to be at the workplace to perform their contracted work serves as valid grounds for termination of their employment where vaccination-differentiated company policies are in place, it remains to be seen whether this is similarly acceptable to the MOM when the business has no real need for vaccination-differentiated measures, or when the need is only perceived by the business (and is not, objectively speaking, required). These issues are largely untested and therefore the decision to continue vaccination-differentiated measures in the form of company policy is arguably not one to be taken lightly, particularly if it is to be strictly enforced and there is a potential for termination of employment to occur on the grounds of such policy.

In this regard, the Advisory also notes that employers should consider the duration for which, and the specific roles or settings in which, it is necessary to maintain such policies.

5. Conclusion

The lifting of the WVM marks Singapore's progress towards living with COVID-19 as an endemic disease. As a transitory measure, the MTF has effectively permitted businesses to continue what is essentially the WVM, as a matter of company policy. For the reasons explained above, businesses may wish to ensure that their justification for adopting such a policy (if they choose to do so) is logical, clear, and most notably, takes into consideration the "*workplace health and safety and operational needs of their respective companies or sectors*", as noted by the MOM in the Advisory.

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