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EMPLOYMENT CLAIMS ACT 2016 (ACT 21 OF 2016)

EMPLOYMENT CLAIMS (AMENDMENT) REGULATIONS 2019

In exercise of the powers conferred by section 34(1) of the Employment Claims Act 2016, the Minister for Manpower makes the following Regulations:

Citation and commencement

1. These Regulations are the Employment Claims (Amendment) Regulations 2019 and come into operation on 1 April 2019.

Amendment of regulation 3

2. Regulation 3 of the Employment Claims Regulations 2017 (G.N. No. S 136/2017) (called in these Regulations the principal Regulations) is amended —

- (a) by deleting the words “statutory dispute” in paragraphs (a) and (b) and substituting in each case the words “employment dispute”; and
- (b) by inserting, immediately after the words “to the Act” in paragraph (a), the words “and item 3 of the Third Schedule to the Act”.

Deletion and substitution of regulation 7

3. Regulation 7 of the principal Regulations is deleted and the following regulation substituted therefor:

“Prescribed fee for mediation under Part 2 of Act

7. For the purposes of section 3(3)(d) of the Act, the prescribed fee payable by a claimant for a mediation request is the total of the following sums, where applicable:

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- (a) where the total amount alleged to be payable in respect of all of the specified contractual disputes and specified statutory disputes listed in the mediation request does not exceed \$10,000 — \$10;
 - (b) where the total amount alleged to be payable in respect of all of the specified contractual disputes and specified statutory disputes listed in the mediation request exceeds \$10,000 — \$20;
 - (c) where the total amount alleged to be payable in respect of any wrongful dismissal dispute listed in the mediation request does not exceed \$10,000 — \$10;
 - (d) where the total amount alleged to be payable in respect of any wrongful dismissal dispute listed in the mediation request exceeds \$10,000 — \$20.”.

Amendment of regulation 10

4. Regulation 10(3) of the principal Regulations is amended by inserting, immediately after the words “paragraph (a), (b), (c),”, “(ca), (cb),”.

Amendment of regulation 11

5. Regulation 11 of the principal Regulations is amended —

- (a) by deleting the word “Upon” in paragraph (1) and substituting the words “Unless an approved mediator decides that section 4(2) of the Act applies, upon”;
- (b) by inserting, immediately after paragraph (1), the following paragraph:

“(1A) If the approved mediator decides that section 4(2) of the Act applies, the approved mediator must notify the respondent that —

- (a) a claim relating to a specified employment dispute has been made by a claimant against the respondent; and

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- (b) the approved mediator has issued a claim referral certificate to the claimant under section 6(2)(c) of the Act.”; and
- (c) by inserting, immediately after paragraph (3), the following paragraph:

“(4) The approved mediator may require the claimant or the respondent to submit, within the time required by the approved mediator, any document or information that the approved mediator considers necessary to —

- (a) make a decision whether paragraph (1) or section 4(2) of the Act applies; or
- (b) decide on any other matter in relation to any specified employment dispute listed in the mediation request.”.

New regulation 11A

6. The principal Regulations are amended by inserting, immediately after regulation 11, the following regulation:

“Continuation of mediation by another approved mediator

11A. Where an approved mediator is unable to continue mediation under the Act because of death, illness or any other cause, another approved mediator may continue the mediation.”.

Amendment of regulation 13

7. Regulation 13 of the principal Regulations is amended by deleting the words “the Form set out in the Second Schedule” and substituting the words “the applicable form provided at the website of the Ministry of Manpower at <http://www.mom.gov.sg> for the specified employment dispute concerned”.

New regulation 13A

8. The principal Regulations are amended by inserting, immediately after regulation 13, the following regulation:

“Correction of error, etc.

13A.—(1) This regulation applies in relation to —

- (a) a claim referral certificate in respect of one or more claims that have not been determined by a tribunal; or
- (b) a settlement agreement entered into under section 7(1) of the Act that has not been registered in a District Court.

(2) An approved mediator may correct any error in, or any defect in the form of, a claim referral certificate or settlement agreement —

- (a) on the approved mediator’s own initiative; or
- (b) on the application of one of the following persons:
 - (i) in a case of a claim referral certificate — by the claimant concerned;
 - (ii) in a case of a settlement agreement — by any party to the settlement agreement.

(3) An approved mediator who corrects an error or defect in form under this regulation must —

- (a) issue an amended claim referral certificate to the claimant concerned; or
- (b) provide a new settlement agreement to be entered into in accordance with section 7(1) of the Act.

(4) In this regulation, “error” means any misnomer, misspelling, misprint, mistake, inaccuracy, omission or any error of any other description that is accidental or inadvertent.”.

Amendment of regulation 14

9. Regulation 14 of the principal Regulations is amended —

- (a) by inserting, immediately after the words “Second Schedule to the Act” in paragraph (2), the words “, or a claim relating to a wrongful dismissal dispute concerning any matter specified in item 3 of the Third Schedule to the Act,”;
- (b) by inserting, immediately after the words “Second Schedule to the Act” in paragraph (3), the words “, or a claim relating to a wrongful dismissal dispute concerning any matter specified in item 2 of the Third Schedule to the Act,”;
- (c) by deleting sub-paragraph (iii) of paragraph (3)(c); and
- (d) by inserting, immediately after paragraph (4), the following paragraph:

“(4A) For the purposes of section 12(2)(a) of the Act, a claim relating to a wrongful dismissal dispute concerning any matter specified in item 1 of the Third Schedule to the Act may be made by an employee in relation to whom all of the following requirements are satisfied:

- (a) the employee works or worked under a contract of service with an employer who —
 - (i) being an individual — resides, or carries on a business, in Singapore; or
 - (ii) not being an individual — is incorporated or formed under any written law, or carries on a business in Singapore;
- (b) the employee is any of the following:
 - (i) a citizen of Singapore;

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- (ii) a permanent resident of Singapore;
 - (iii) a foreigner —
 - (A) who has or had a valid work pass entitling the foreigner to work for the employer during the period when the dispute giving rise to the claim arose;
 - (B) who had a valid work pass entitling the foreigner to work for the employer, whose work pass was cancelled through no fault of the foreigner, and who continued to work for the employer, during the period when the dispute giving rise to the claim arose, without knowing of the cancellation of the work pass; or
 - (C) who, under any notification under section 4 of the Employment of Foreign Manpower Act, is or was entitled to work for the employer during the period when the dispute giving rise to the claim arose, without holding a valid work pass;
 - (c) the employee is a relevant employee within the meaning of section 14(2A) of the Employment Act;
 - (d) the employee is not any of the following:
 - (i) a seafarer;
 - (ii) a domestic worker;

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- (iii) a person mentioned in paragraph (d) of the definition of “employee” in section 2(1) of the Employment Act;
 - (iv) a public officer.”.

Amendment of regulation 17

10. Regulation 17 of the principal Regulations is amended —

(a) by deleting paragraph (1) and substituting the following paragraph:

“(1) Except as provided in paragraphs (2) and (3), the prescribed claim limits are as follows:

(a) for the purposes of section 12(7)(a) of the Act — the total amount alleged to be payable under the claim must not exceed \$20,000;

(b) for the purpose of section 12(7)(b) of the Act — the total amount alleged to be payable under the claim must not exceed \$20,000.”; and

(b) by deleting the words “the prescribed claim limit” in paragraph (2) and substituting the words “the prescribed claim limit for section 12(7)(a) or (b) of the Act”.

New regulation 17A

11. The principal Regulations are amended by inserting, immediately after regulation 17, the following regulation:

“Compensation for wrongful dismissal dispute

17A. For the purposes of section 20(6A)(b) of the Act, the amount of compensation in a claim relating to a wrongful dismissal dispute is to be calculated in accordance with the Second Schedule.”.

Deletion and substitution of Second Schedule

12. The Second Schedule to the principal Regulations is deleted and the following Schedule substituted therefor:

“SECOND SCHEDULE

Regulation 17A

CALCULATION OF COMPENSATION RELATING TO WRONGFUL DISMISSAL DISPUTE

1. The amount of compensation to be awarded by a tribunal to a claimant in a wrongful dismissal dispute is to consist of compensation for —

- (a) the claimant’s loss of income determined in accordance with paragraph 2; and
- (b) the harm caused to the claimant by the respondent from the wrongful dismissal determined in accordance with paragraphs 3 to 7.

2. The amount of compensation for loss of income is not to exceed 3 months of the claimant’s gross rate of pay as defined by section 2(1) of the Employment Act (Cap. 91) (called in this Schedule the claimant’s gross rate of pay) on the date of the wrongful dismissal by the respondent.

3. In determining the amount of compensation for harm caused to a claimant by a respondent, a tribunal may take into account any aggravating or mitigating factor that the tribunal considers relevant to the wrongful dismissal concerned.

4. Without affecting paragraph 3 —

- (a) aggravating factors may include —
 - (i) the conduct of the wrongful dismissal in a humiliating or degrading manner, or in a manner that caused physical harm to the claimant;
 - (ii) any false accusation or allegation made by the respondent against the claimant that was used as a ground for the claimant’s wrongful dismissal; or
 - (iii) any deliberate act of the respondent to adversely affect the claimant’s prospect of any subsequent employment; and
- (b) mitigating factors may include —
 - (i) any misconduct or poor performance of the claimant; or

(ii) insubordination by the claimant,

which, whilst not providing just cause or excuse, or sufficient cause, for the dismissal, was taken into account by the respondent in dismissing the claimant.

5. The amount of compensation for harm caused to a claimant by the respondent is to consist of a base amount not exceeding 2 months of the claimant's gross rate of pay on the date of the wrongful dismissal by the respondent (called in this Schedule the base amount), which may be increased or decreased in accordance with paragraph 6 or 7, as the case may be.

6. If a tribunal considers that there is any aggravating factor, or there are more aggravating than mitigating factors, for the wrongful dismissal, the amount of compensation under paragraph 5 is to be increased by up to 50% of the base amount.

7. If a tribunal considers that there is any mitigating factor, or there are more mitigating than aggravating factors, for the wrongful dismissal, the amount of compensation under paragraph 5 is to be reduced by up to 50% of the base amount.”.

Made on 1 April 2019.

AUBECK KAM
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