

Transient Workers Count Too

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Require standard employment contracts for Work Permit holders

Require standard employment contracts that include key employment terms to be signed by all prospective Work Permit holders before issuance of IPA

Issue

Many Work Permit holders in the construction and marine sectors do not have an employment contract. Their only employment terms may be the minimal information set out in their in-principle approval letter (IPA): monthly basic salary and permissible deductions and allowances.

Without a contract, workers are unclear about the basic terms that govern their employment. This lack of clarity can lead to disputes as well as delays in dispute resolution between employer and employee. Clarity will help resolve disputes more quickly and efficiently, which helps workers, employers, MOM, and the courts.

Workers may also unknowingly be employed under terms that fall below the legally mandated standards of the Employment Act (EA), the Employment of Foreign Manpower Act (EFMA), and other Singapore laws and regulations.

Recent legislative amendments require employers to issue Key Employment Terms (KETs) in order to rectify workers' lack of access to employment terms. However, workers report inconsistent employer compliance. In addition, it is unclear how KETs relate to the employment terms already established by the IPA or whether an employee must agree, and in what manner, to the KETs.

Instead, if the key employment terms are required to be included in a standard employment contract (SEC), the SEC would:

- Notify both employers and employees of their contractual obligations;
- Protect the interests of both parties; and
- Minimise labour disputes.

Case Study

IPA only upon arrival; no contract. Contract provided later reduced salary; illegal overtime rate.

Karim Rana arrived in Singapore to start work with an IPA stating a basic salary of \$1,100 per month. Under these terms, he would be entitled to an overtime rate of \$8.65 per hour. In the second week, he was presented with a contract that lowered his basic salary to \$800 and his overtime rate to \$3. It was made clear to him that if he didn't sign the contract, he would lose his job and be sent home. Having borrowed money to pay a large recruitment fee, he felt he could not afford to lose the job. Against his will, he signed.

When he files a complaint with the Ministry of Manpower (MOM) for short-payment, there will be confusion over what constitutes the correct basic salary and overtime rate because of the different IPA and contract rates. The IPA stated his basic salary, then the contract reduced it, as well as included an overtime rate that was not 1.5 times the lowered basic salary rate as required by the Employment Act.

Seen through the perspective of International Labour Organisation (ILO) standards and the Palermo (Trafficking in Persons) Protocol, which Singapore has acceded to, the contract would not be deemed valid. It would be classified as a case of contract substitution, where employees agree to and sign one set of employment terms in their home country and before beginning work, but are later compelled to sign different terms in the destination country after the start of work. The employer likely had intention to deceive given that the substitution and lowering of salary and overtime rates occurred within two weeks of starting work. The employer exploited the vulnerability of the employee at a point in the process when he could least resist;

he had already incurred recruitment fees for the job and had already traveled to Singapore to work.

Requiring a SEC signed by employer and employee, and deposited with MOM, prior to the issuance of the IPA and the commencement of work, would clarify contract terms during employment and speed resolution if a dispute occurs.

Current Law and Gaps

The application of law and regulations regarding the IPA and KETs fall short of the safeguards provided by legislation and Singapore's international commitments. Singapore faces reputational risk as a consequence of this gap.

Having an SEC deposited with MOM at the time of Work Permit application would help ensure that the details in the IPA are the same, thus reducing the likelihood of future disputes. It would also set forth additional employment terms such as overtime rates and limits, length of work week, and job description.

Current Law	Gaps
<p>Section 95A of the EA requires employers to provide employees with their KETs.</p>	<p>Although the law came into effect in April 2016, many workers report they are still not provided with KETs.</p> <p>An SEC would provide clarity and mutual agreement that KETs do not. It is unclear how KETs are agreed to by the employee, whether these terms can differ from those of the IPA, and whether they are enforceable.</p>
<p>Section 8 of the EA requires employment contracts to comply with certain minimum conditions in the EA. Any term which is less favourable to an employee than any condition under the EA is deemed illegal, null, and void to the extent that it is less favourable. This applies to all employment contracts, whether signed in Singapore or overseas.</p>	<p>Section 8 of the EA does not cover standards or regulations set out in the EFMA and its subsidiary legislation. Nor does Section 8 of the EA offer any protection in areas such as salary where the EA does not set out minimum conditions.</p> <p>Consequently, it offers no protection against contract substitution, as in Karim Rana's case above.</p>
<p>Section 5(3) of EFMA provides that employment of a foreign employee must be in accordance with the work pass conditions.</p>	<p>It is not clear how incompatibility with work pass conditions affects the enforceability of contract terms.</p>
<p>Section 6A of the EFMA regulations states that the employer must first obtain the worker's written consent and then inform MOM before reducing a worker's basic monthly salary or increasing the amount of fixed monthly deductions.</p>	<p>Section 6A only applies to changes to basic monthly salary and fixed monthly deductions. It is not clear how unauthorised changes affect the enforceability of the amended terms. Workers report that MOM sometimes upholds these changed employment terms — including reduced salaries — despite the workers' protestations that they have not willingly agreed to the reductions.</p>

Recommendations

- Require that all Work Permit holders sign a standard employment contract (SEC) with their employers before an employer applies for a Work Permit.
 - Details of basic salary, deductions and allowances in the Work Permit application must be in accordance with the terms of employment in the SEC.
 - The KETs in the SEC should comply with the minimum standards in the EA and EFMA.
 - SEC should be in English with a translation in a language the worker understands. The English version is the binding version in cases where the meaning of the SEC's terms is disputed.
 - The worker's agreement to the SEC should be indicated with a thumbprint and date on every page of the document on both the English and translated versions.
 - A copy of the SEC, including a translation, shall be given to the employee.
 - A copy of the SEC shall be deposited with MOM alongside the application for a Work Permit.
- For the duration of the first contract, all amendments to the SEC, or contracts which supersede it, shall be deemed illegal, null, and void to the extent that they are less favorable to the employee.
- For subsequent renewals of contracts, all amendments to the SEC, or contracts which supersede it, shall be deemed illegal, null, and void to the extent that they are less favorable to the employee, unless the employer can overcome the presumption that the employee had not willingly agreed to the amended terms.

Further Readings

[Protecting Low-Wage Foreign Workers in Singapore from Bait-and Switch Contracts](#), Justice Without Borders, October 2016.

[Wage Theft & Exploitation Among Singapore's Migrant Workers](#), Humanitarian Organization for Migration Economics, January 2017. See pages 11 to 16.

[Using Written Employment Contracts](#), Hong Kong Labour Department, 2017.

[Labour Protection for the Vulnerable: An Evaluation of the Salary and Injury Claims System for Migrant Workers in Singapore](#), TWC2, June 2017. See pages 39 and 40.