

Intern's Closing Paper



A review of overtime pay and related issues

By Wang Shimeng, Intern with TWC2 Dec 2017 – Jan 2018.

Most workers at TWC2 are dealing with salary or injury claims. However, for salary claims, some workers may not even be aware of how to accurately calculate their overtime pay. This prevents them from realising that they are underpaid their salary until it is too late, as under the rules of the Tripartite Alliance for Dispute Management (TADM), a worker can only claim up to 12 months of salary and/or \$20,000 for non-union members¹. In this report, I look at what the law, foreign workers, and companies say about overtime and salary regulations.

Details of findings

When I asked 31 Bangladeshi workers over the course of 4 weeks about their overtime payment and calculations, most workers knew that:

- Their weekday overtime starts after 8 hours
- Their weekday and Saturday overtime is calculated at a rate of one and a half times (x1.5) their basic hourly salary according to the Employment Act² (23 workers)

Out of 31 interviewees, 17 were currently pursuing salary claims, 13 had injury claims. There was one interviewee whose company was under MOM investigation. In general, those with salary claims were more aware of MOM's standards on overtime start times and calculation rates than those involved in injury claims. An interesting bit to note when I asked workers about their basic monthly salary: many workers answered with their daily rated pay. When asked again for their monthly rate instead of the daily rate, workers often said they were unsure of the monthly figure.

¹ "An Overview of the Employment Claims Tribunal (ECT)," *State Courts, Singapore*, accessed January 9, 2018, [https://www.statecourts.gov.sg/ECT/Pages/An-Overview-of-the-Employment-Claims-Tribunals-\(ECT\).aspx](https://www.statecourts.gov.sg/ECT/Pages/An-Overview-of-the-Employment-Claims-Tribunals-(ECT).aspx).

² The Employment Act (Cap 91, Rev Ed 2009), Part IV, Section 38 (4)

However, when it came to when overtime starts on Saturday, 17 workers said their company started counting overtime after 8 hours of work, including some who were aware that the rule should be after 4 hours. Only 7 workers were clear that overtime started after 4 hours on Saturday, while others did not know, claimed they had no overtime and gave vague/wrong answers. For the Sunday/public holiday overtime rate, MOM regulations state that it is double the basic hourly rate (x2)³. Almost half of the workers (13) said they did not know the rate, while 6 workers said it was the same as regular overtime. The rest (12) correctly identified the double rate, but 2 workers said their company does not follow MOM standards and only pays them a basic hourly salary.

The company can only start counting overtime after 5 pm or after 8 hours of work on Saturday if there is a written agreement that the worker's working days per week are six⁴, and provided that the weekly maximum remains at 44 hours. In the absence of such an agreement, the standard is assumed to be 5.5 days due to the law of a maximum of 44 working hours a week⁵. However, it was difficult to ask a worker if there was a written contract between him and his employer stating that there were 6 working days. Usually, the worker simply stated that the employer told him that his overtime would start from 5 pm on Saturday. During my internship and from the knowledge of TWC2's social workers, there are rarely cases where the worker has a written agreement with the employer stipulating 6 working days per week.

I found out that companies have many ways to "calculate" overtime pay, with a worker claiming that his company paid overtime according to the proximity of the worksite, with far worksites' overtime at additional \$5 and near worksites' overtime being additional \$3. A previous case described by TWC2 also saw the employer only agreeing to give the worker overtime salary if he performed manual work but the worker's vocation was a driver⁶ and on that basis, the employer denied that he was entitled to it. This worker was unpaid for his overtime each month, which averaged 100 hours a month. Then the employer tried to prove overtime was fully paid with unsigned payment vouchers, but the lack of signatures showed no acknowledgement of receipt by the worker.

³ Employment Act, Part IV, Section 37 (3)

⁴ Employment Act, Part IV, Section 37 (3A)

⁵ Employment Act, Part IV, Section 37 (3A)

⁶ "After an Eight-Month Slog through the Labour Court, Durai Wins Back His Overtime Pay," *Transient Workers Count Too*, 2014, <http://twc2.org.sg/2014/08/31/after-an-eight-month-slog-through-the-labour-court-durai-wins-back-his-overtime-pay/>.

The Employment Act states that workers cannot work for more than 72 hours of overtime per month⁷, but if a worker worked an average of 4 hours overtime every weekday, every week of the month, he would easily exceed the maximum. Most workers I spoke to welcomed more overtime hours, as they saw more work as leading to more income. If they could earn more money, why not? TWC2 has previously mentioned this as well as that generally speaking, workers' basic monthly salaries are too low to cover the agent fees paid.

Relevance to injury cases

Even in injury cases, where the workers were pursuing an injury claim instead of a salary claim, some of the workers had not been paid their overtime salaries prior to the accident, either due to their own lack of knowledge about overtime calculations or a fear of bringing it up to their bosses and superiors. TWC2 recently highlighted the importance of this issue: The amount of disability compensation awarded to the injured worker is partly based on his Average Monthly Earnings⁸. If the worker was underpaid, the final amount of compensation would be less than what he should be getting. Workers who are unclear about the WICA and salary processes would be unaware of how their underpaid salaries affected their injury compensation.

The Average Monthly Earnings (AME) is calculated from an average salary for 12 months preceding the accident, including overtime pay⁹. It is usually based on salary slips provided by the employer. In cases of underpayment, the amount shown on the salary slips would be lower than what the worker should have got, such as the IPA-stated basic salary. Unless the worker knows he has been underpaid and is able to successfully dispute the pay slips, he will end up with an unfair compensation amount.

Workers' records of salary and overtime

This ties in with the issue of proper salary slips, as the type of salary slips workers receive vary widely. Some men receive proper itemised salary slips with their working hours, overtime hours and pay clearly stated, but not receive any money at all, while other workers receive their 'salary

⁷ Employment Act, Part IV, Section 38 (5)

⁸ "At TWC2, We Ask Injured Workers about Their Salary. Why?," *Transient Workers Count Too*, 2017, <http://twc2.org.sg/2017/12/15/at-twc2-we-ask-injured-workers-about-their-salary-why/>.

⁹ "How to Calculate Average Monthly Earnings (AME)," *Ministry of Manpower, Singapore - Work Injury Compensation*, accessed January 16, 2018, <http://www.mom.gov.sg/faq/work-injury-compensation/how-to-calculate-ame>.

slip' in the form of an envelope with cash and the amount written on it, with no information stated on what the money was for (basic salary, overtime, food expenses etc). The Employment Act states that workers should be paid their basic salary before or on the 7th day after the last salary period and overtime is to be paid before or on the 14th day after the last salary period¹⁰. In cases seen, this is clearly not applied to those workers who have complete non-payment of salaries, or for those workers who receive a few hundred dollars a month with no clear indication of what this amount is for.

MOM recently passed a new law that states that employers must give every employee a written record of key employment terms and an itemised pay slip for salary and all other expenses paid¹¹. However, having the law is not enough. Workers have described their employers forcing them to sign employment contracts in languages they do not fully understand, such as in Mandarin or English for Bangladeshi workers. TWC2 has long pushed for compulsory payment of salary through bank/electronic means, as itemised salary slips do not demonstrate or ensure that money is actually transferred to the worker¹². In various salary dispute cases, workers often claim that their employers make them sign blank salary slips that show acknowledgment of salary paid when the workers did not receive any or the full amount. Some workers I spoke to, and in other cases I've come across, have said they have signed 12 months' worth of blank salary slips upon joining the company, which is clearly against the law. The presence of the worker's signature makes it harder for the worker to prove later on that he did not receive the amount indicated on the salary slip. The dispute becomes one of his word against paper evidence. Many salary cases TWC2 (and MOM) deal with can be simplified if there is an electronic payment system in place. Then there will be third-party records (bank statements) proving payment, instead of just the worker's signatures which could have been obtained under confusion or force. Thus, even with the new legislation in place, there are still many ways the employer can avoid paying the worker the correct, full amount of salary due to the lack of checks on the company and unequal power balance between the worker and the company.

IPA as the basic salary document

¹⁰ Employment Act, Part III, Section 21 (1) and (2)

¹¹ Employment Act, Part XII, Section 95, 96

¹² "Over 80% of Male Foreign Workers Want to Be Paid through Bank Giro," *Transient Workers Count Too*, 2016, <http://twc2.org.sg/2016/05/14/over-80-of-male-foreign-workers-want-to-be-paid-through-bank-giro/>.

When I asked the workers why they chose to come to Singapore for work, knowing that they had to pay such a high amount of agent fee up front, many answered it was due to their **IPA stating a basic monthly salary of \$1,600**. When asked about the amount of agent fees paid to obtain their job in Singapore, almost all workers cited an amount in the thousands -- the highest I heard was \$10,000 – and they thus assumed that they would be able to pay back the debt with that level of salary. Some workers also cited their agent saying there would be large amounts of overtime, where they could work until 10 pm almost every day, which would enable them to earn more money. However, workers with \$1,600 are rarely paid the full amount of basic salary stated on their IPA and the full amount of overtime hours that they worked. A Wednesday clinic volunteer mentioned that there are more and more cases of workers having IPAs stating a monthly salary of \$1,600, only to be paid much less after starting on the job.

Both TWC2¹³ and TODAY¹⁴ have called attention to this situation, termed as the **'R1 Scam'**, which can be seen clearly in the salary claim case of the foreign workers from Everglory construction firm. From 1st January 2017, firms are required to have at least 10% of their work permit holders in the R1 category¹⁵. R1 workers would also allow companies to pay lower levies of \$300 instead of \$700 (rates from 1st July 2017 onwards) for a basic-skilled worker.

There are four ways a worker could upgrade from a basic skilled worker to a higher skilled worker, but the R1 scheme is the simplest, with no minimum on their years of experience in construction sector, only requires a SEC(K) skills certificate at the higher-skill level and a minimum fixed monthly salary of \$1,600¹⁶. The Labour Court's verdict in the Everglory case is inferred by TWC2 to be based the lower pay that the employer actually gave the workers – of \$25 a day instead of the IPA. The Labour Court did not seem to implement MOM's own written bylaws, as workers never gave prior written consent to a reduced salary. MOM's bylaw states that the employer can only lower the worker's salary with written consent of the worker and must also inform MOM in writing¹⁷. However, employers often claim a verbal agreement to a lowered salary, even though workers protest that a verbal agreement never took place. MOM responded to TODAY's article by

¹³ Alex Au, "The Everglory Scam: Productivity Incentive Shot to Pieces," *Transient Workers Count Too*, 2017, <http://twc2.org.sg/2017/06/25/the-everglory-scam-productivity-incentive-shot-to-pieces/>.

¹⁴ Neo Chai Chin and Kenneth Cheng, "Dishonest Firms Hinder Efforts to Raise Construction Workforce Quality," *TODAY*, July 8, 2017, <http://www.todayonline.com/singapore/efforts-raise-quality-construction-workforce-hamstrung-dishonest-firms>.

¹⁵ "Direct R1 Scheme," *Building and Construction Authority, Singapore - Manpower*, n.d., 15/01/18.

¹⁶ *Ibid.*

¹⁷ Employment of Foreign Manpower (Work Passes) Regulations 2012, Part IV, Section 6A

saying they are investigating into “possible offences in relation to the salary claims and false declaration of salaries in the work-pass applications”.

In November 2017, both TWC2¹⁸ and the Straits Times¹⁹ reported on the **High Court ruling** that the worker should be paid the basic salary stated on the IPA, in the absence of any written agreement between the employer and the worker. The judge also stated that even if there was a written contract showing the lower monthly salary, the employer should be the one to prove why the IPA is not reflective of the real salary. TWC2 has always maintained the stance that “the IPA letter should be the new standard when there is no written contract.” Since the ruling was fairly recent, it’s difficult to see if recent rulings have followed this standard but at the least, there is a ruling from the High Court for future cases to follow.

Non-reporting of unpaid salary

The number of months that workers claim for owed salary varies, from 1 month to 12 months (the maximum claim period under TADM). The type of claim is either short payment of salary, meaning the employer has not paid the full amount of basic monthly salary and overtime or complete non-payment where the worker has yet to receive any amount. While complete non-payment is rare, I came across workers who had gone a few months without salary. Why and how, was he willing to continue working without any paid salary? Foreign workers often explained that they borrowed money from friends or received food and supplies from friends during this period.

TWC2 has previously mentioned the reasons for the worker keeping mum: chiefly, the high amount of recruitment fees the worker has paid in his home country, where the worker mostly likely borrowed heavily in order to pay it²⁰. Especially if the worker was receiving some partial amount, to complain might jeopardise the job entirely, leaving him even worse off. It might be different if workers who lose their jobs after lodging complaints are assured of being able to find new jobs, but experience shows this is not the case. Very few jobless foreign workers, by TWC2’s estimate, manage to land a new job. Even workers who obtain new jobs through this “Change of Employer” process

¹⁸ “Basic Salary Stated in IPA Is ‘prima Facie’ the Applicable Basic Salary, Rules the High Court,” *Transient Workers Count Too*, 2017, <http://twc2.org.sg/2017/11/10/basic-salary-stated-in-ipa-is-prima-facie-the-applicable-basic-salary-rules-the-high-court/>.

¹⁹ Joanna Seow, “In-Principle Approval Letters Can Be Evidence of Foreign Workers’ Rightful Pay: Judge,” *The Straits Times*, November 9, 2017, <http://www.straitstimes.com/singapore/manpower/in-principle-approval-letters-can-be-evidence-of-foreign-workers-rightful-pay>.

²⁰ “Noor Worked Nine Months; Never Paid His Proper Salary,” *Transient Workers Count Too*, 2017, <http://twc2.org.sg/2017/08/11/noor-worked-nine-months-never-paid-his-proper-salary/>.

sometimes find themselves having to pay a large ‘agent fee’ for the new job, even while they are in Singapore, and even as charging such high fees is illegal. If they cannot find a new job locally, as most often is the case, they have to return home after a salary claim is resolved, from where they need to pay a few thousand dollars again to obtain a new job in Singapore.

As one worker put it when I asked him why he did not approach his boss for salary, “If I ask boss, boss later angry, I get into trouble, he cancel my work permit, how?”. Workers know that going to MOM to report a salary claim means burning bridges with their employers. Their work permit is most likely to be cancelled and they will be unable to pay back their debt. Hence, most workers who are underpaid usually do not lodge an official salary claim unless they are severely underpaid for a long period. The ones who lodge a claim are usually those who were completely unpaid for a few months, to a point where they were unable bear with it anymore. Hence, from the start, the workers are at a disadvantaged position of power vis-à-vis their employers.

Furthermore, a salary claim is rarely just about the basic salary and overtime being underpaid or unpaid. Often, there involve any other elements that complicate a claim further. Further probing into salary cases can reveal many instances where the company is clearly not following MOM regulations. For example, there are cases where the company cites a verbal agreement with the worker when questioned why they are paying the worker a salary much lower than the IPA-indicated salary when doing so, according to MOM’s bylaws, a written agreement with the employee is required. Other cases seen at TWC2 include employers deducting workers’ salary for attending skills-upgrading classes, permit renewals, forging so-called contracts or even physically beating up the workers when the workers request their due salary. All of the above would complicate a claim much further.

The claims process

For salary or overtime claims, workers would first go through mediation at TADM with their employer. For example, for non-payment, the amount claimed would be based on the worker’s timecards for his working hours. The settlement may not be the amount claimed as TADM is mediation- and negotiation-based. If mediation is unsuccessful, the case goes up to the Employment Claims Tribunals (ECT) to be decided by a judge²¹. Then, if the judge determines a certain amount of salary is to be paid to the worker, a court order will be issued to the company to pay the worker that

²¹ “An Overview of the Employment Claims Tribunal (ECT).”

amount. However, even then the worker is not guaranteed to receive the money if the company avoids paying or declares bankruptcy. The court could continue to send Letter of Demand to the company but there is no enforcement at that stage by the ECT. The way to enforce the payment ordered by the ECT order is for the worker to privately engage a lawyer to apply for a Writ of Seizure and Sale (WSS), which would require more of the worker's time and money to do. The minimum stated amount is \$90 as stated on the State Courts' website, but more importantly, it drags out the salary claims process even longer. This process is documented by both TWC2 and the Straits Times in the case of Islam Rafiqui where the employer refused to pay him around \$7,000 in owed salary despite Labour Court's orders²². The worker went home in the end without getting any of his owed salary from the employer.

TWC2 has also raised the issue of **non-payment of** salaries in response to Minister Lim Swee Say's statement in Parliament that 350 companies had defaulted on payments out of 1,400 cases that were decided in favour of the employees from 2015 to 2016. However, the figure for defaulting employers does not differentiate between locals and foreign workers²³. A later MOM response indicated that 75% of cases were lodged by foreign workers²⁴. Furthermore, judgements in favour of employees are vague as well, since the cases at TWC2 rarely see the worker being given the full amount of the claimed salary at TADM or ECT and the worker is sometimes unclear how the judge came to the lower figure.

Only a low number of employers (25 out of 200 companies, 350 cases) were charged in court despite the clear violation of law in 2015-2016²⁵. MOM has stated that they do not intend to criminalise all cases, only those more serious and repeated cases. However, MOM should not be simply relying on the threat of prosecution to deter the non/short-payment of salaries.

The length of the whole claim process for salary and overtime wages is a key factor in how it disadvantages workers. Once their work permit is cancelled, and provided they have an ongoing claim, workers are placed on Special Passes. A condition of the Special Pass is that they must not undertake paid employment. A lengthened claim period means the worker must stay longer in

²² Yong Chuan Toh, "Labour Court Can't Make Employer Pay," *The Straits Times*, 2017, <http://www.straitstimes.com/singapore/manpower/labour-court-cant-make-employer-pay>.

²³ "One Quarter of Labour Court Salary Orders Unpaid," *Transient Workers Count Too*, 2017, <http://twc2.org.sg/2017/02/24/one-quarter-of-labour-court-salary-orders-unpaid/>.

²⁴ "Straits Times: Labour Court Can't Make Employer Pay," *Transient Workers Count Too*, 2017, <http://twc2.org.sg/2017/01/19/strait-times-labour-court-cant-make-employer-pay/>.

²⁵ "One Quarter of Labour Court Salary Orders Unpaid."

Singapore and incur more living costs, such as housing and food. Although the law stipulates that the employer is responsible for the upkeep of the worker at all times when they are in Singapore, hence also while they are pursuing claims with MOM²⁶, this is often not the case, as workers at TWC2's Cuff Road project often do not get money for food from their employers. Employers in conflict with their former employees are hardly keen on providing accommodation to workers; they will make it as difficult as possible, including issuing threats of forced repatriation. The result is that many salary claimants find themselves moving out and having to pay their own rent.

TWC2 has long argued that reducing the number and complexity of salary claims is the key to productivity at MOM and to a happier workforce overall. Instead of designing elaborate dispute resolution processes, more attention should be paid on have early warning signals, making it easier for workers to complain and switch jobs, and tighter control over areas where employers are known to take liberties with the law. TWC2 has suggested a system that has stringent and automatic checks at closely-spaced intervals against non-payment of salaries, something similar to the Wage Protection System in the United Arab Emirates²⁷. There, employers of foreign labour are required by law to pay salaries through financial institutions with monthly reporting to the government. In effect, there is third-party certification every month that workers have received their salaries. Overall, there should be a system that ensures consistent, independent checks on whether a worker is correctly paid his salary. On the face of it, it may require a lot of manpower and administration from the government's side, but on the other hand, reducing the need to handle so many, and such complex disputes is the compensating benefit.

Conclusion

From this brief study on overtime claims, I discovered many issues with salary claims in general. The most urgent issue would be workers who are unaware of how overtime is counted and calculated, as they would not be aware even if the problem existed. This issue could be resolved by MOM's new initiative of expanding the Settling-In Programme (SIP) to foreign workers²⁸. Still, this paper sees that those who are aware still choose not to report it due to repercussions from the employer, mainly the threat of their permit being cancelled. Employers still have disproportionate

²⁶ Employment of Foreign Manpower Act (Work Passes), Fourth Schedule, Part I, paras 1 and 4

²⁷ Ibid.

²⁸ "New Settling-in Programme for Foreign Workers to Start in Second Half 2018," *Ministry of Manpower, Singapore*, 2017, <http://www.mom.gov.sg/newsroom/press-releases/2017/1126-new-settling-in-programme-for-fws-to-start-in-second-half-2018>.

power in dismissing the workers, cancelling their permit and sending them back to their home country swiftly. This disproportionate power stems from a large amount of agent fees paid back in their home country, but it is difficult for the Singaporean government to regulate that since it is not in Singapore. The law does offer protection to foreign workers, but there needs to be more checks and regulations, either from MOM or from independent third parties, to ensure the workers can freely exercise their rights stated in the law without any fear or intimidation.

Hence, although workers have the option of reporting their salary claims, this option is often not exercised, or not exercised early, due to the consequences that the law does not protect the worker from. There should be a way where the worker can anonymously report their salary and injury claims, and perhaps the new mobile application developed by MOM will enable that. Furthermore, the lack of transparency on how the amount awarded at ECT for salary claims is calculated is an issue as well, since the worker is unaware how the amount is derived, why is it different, and often lower, than his initial claim. This may prove to be a point of frustration for the worker who has waited many months for his money to be awarded, only to receive a lesser amount.

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