

April 1, 2016

## Executive Summary

With effect from 1 April 2016, all employers must issue itemised payslips and key employment terms to employees covered by the Employment Act. Failure to comply with these requirements will subject the employer to administrative penalties. These are a form of civil liability under the new administrative penalty framework introduced in the Employment Act. This new framework mitigates the former harshness of the Employment Act which criminalised all contraventions regardless of severity, by making less severe contraventions non-criminal. Overall, the new amendments will benefit both employers and employees. Employees can better understand their employment terms and salary components, which will reduce the possibility of disputes with the employer.

## Amendments to the Employment Act effective 1 April 2016

With the passing of the Employment (Amendment) Act 2015, from 1 April 2016, all employers will be required to issue itemised payslips and key employment terms to employees covered under the Employment Act. A new administrative penalty framework will also be introduced to deal with less severe breaches of the Employment Act.

These changes are being introduced pursuant to a review of the Employment Act undertaken in 2013. The aim is to provide greater clarity and assurance to employees about their employment terms and benefits, as well as their regular salary components. Employers, too, will benefit as the documentation helps prevent misunderstandings and reduces potential workplace disputes.

### Issuance of itemised payslips and key employment terms (“KETs”)

Under the new section 96, an employer must give to every of its employees covered under the Employment Act “a pay slip, within the time prescribed for giving pay slips, for all salary paid by the employer for the salary period or salary periods to which the pay slip relates”. Based on the guidelines issued by the Ministry of Manpower (“MOM”), this itemised payslip can be in soft or hard copy (including handwritten copies), and should be given to the employee together with the payment of his salary, or within three working days of payment.

Itemised payslips must include the following, unless any items are not applicable:

- Full name of employer
- Full name of employee

- Date of payment (or dates, if the payslip consolidates multiple payments)
- Basic salary (For hourly, daily or piece-rated workers, to indicate:
  - basic rate of pay, e.g. S\$X per hour; and
  - total number of hours or days worked or pieces produced.)
- Start and end date of salary period
- Allowances paid for salary period, such as all fixed allowances (e.g. transport) and all ad-hoc allowances (e.g. one-off uniform allowance)
- Any other additional payment for each salary period, such as bonuses, rest day pay and public holiday pay
- Deductions made for each salary period, such as all fixed deductions (e.g. employee's CPF contribution) and all ad-hoc deductions (e.g. deductions for no-pay leave, absence from work)
- Overtime hours worked
- Overtime pay
- Start and end date of overtime payment period (if different from start and end date of salary period)
- Net salary paid in total

Employers must keep a record of all payslips issued in either soft or hard copy such that they can be produced upon MOM's request. MOM's guidelines state that for existing employees, a record must be kept for the latest two years. For ex-employees, the last two years' records must be kept for one year after the employee leaves employment.

In addition, under a new section 95A, employers must provide written KETs to their employees who are:

1. Newly employed on or after 1 April 2016;
2. Covered by the Employment Act; and
3. Employed for a continuous period of 14 days or more.

These written KETs must be given to the employee within 14 days after the employee starts employment. Similar to the itemised payslips, these KETs can be in soft or hard copy. Common terms (for example, leave policy that applies to a group of employees) can be set out in the company's employee handbook or website/intranet so long as the information is easily accessible and useable by the employee.

KETs must include the following, unless any items are not applicable:

- Full name of employer
- Full name of employee
- Job title, main duties and responsibilities
- Start date of employment
- If the employee is on a fixed-term contract, the duration of employment
- Working arrangements including daily working hours (e.g. 8.30am to 6.00pm), number of working days per week

(e.g. five) and rest days (e.g. Saturday and Sunday)

- Salary period, i.e. what dates the payment is for
- Basic salary per salary period (For hourly, daily or piece-rated workers, employers should also indicate the basic rate of pay (e.g. S\$X per hour, day or piece))
- Fixed allowances per salary period
- Fixed deductions per salary period
- Overtime payment period (if different from salary period)
- Overtime rate of pay
- Other salary-related components such as bonuses and incentives
- Leave entitlements, such as annual leave, outpatient sick leave, hospitalisation leave, maternity leave and childcare leave
- Medical benefits such as insurance, medical and dental benefits
- Probation period
- Notice period

To assist small businesses, MOM has indicated it will be giving a one-year grace period in enforcing these amendments. From April 2016 to end March 2017, MOM will adopt a “light touch enforcement approach”, focusing on assisting and educating employers on how to meet the new requirements rather than punishing those who do not comply.

## Establishing an administrative penalty framework

Presently, all breaches of the Employment Act are considered criminal offences. Given the wide range of possible breaches under the Employment Act, for example, from administrative offences such as a failure to maintain proper employment records to more serious offences such as non-payment of salaries, there is a lack of proportionality.

With MOM's establishment of an administrative penalty framework by way of an insertion of a new Part XVA in the Employment Act, also effective 1 April 2016, less severe breaches of the Employment Act will be treated as civil contraventions which will attract administrative penalties.

For a start, the following four contraventions will be covered under this administrative penalty framework:

1. Failure to provide itemised payslips within the time required to do so;
2. Failure to provide written KETs within 14 days of the employee starting employment;
3. Failure to make and keep proper employee records for the appropriate period; and
4. Provision of inaccurate information or particulars to the Commissioner for Labour or an inspecting officer, inadvertently or without intent to mislead or defraud.

Under this framework, authorised officers with legal and investigative experience will be appointed and empowered to issue a contravention notice for each occasion of breach. The maximum administrative penalty for a civil contravention

is S\$1,000 for each occasion, and S\$2,000 for a second or subsequent contravention. Under the new section 126D, an authorised officer is also empowered, in lieu of or in addition to issuing a contravention notice, to issue directions and require the employer to take specific action to remedy, mitigate or eliminate any effects of the contravention and to prevent recurrence.

The procedure for appeal in respect of an issued contravention notice is set out in the new section 126C. An aggrieved employer who is issued a contravention notice may, within 14 days after receiving the notice, request an internal reconsideration of the contravention notice by another authorised officer (referred to as the “reviewing authorised officer”), or appeal to the High Court which may hear and determine the matter afresh.

In the first scenario, if the employer continues to be aggrieved by the reviewing authorised officer’s decision, he may still, within 14 days after receiving the decision, appeal to the High Court which may hear and determine the matter afresh. If a request for internal reconsideration or an appeal to the High Court is made, the enforcement of the payment of any administrative penalty required by a contravention notice is stayed until after the reconsideration or the appeal is completed.

It must be noted that the appeals procedure relates only to contravention notices, and there is no similar framework for appeals against directions issued by an authorised officer under section 126D. Further, while a contravention notice attracts only a financial penalty with no criminal record, non-compliance with a direction without reasonable excuse is a criminal offence attracting a fine of up to \$5,000 or imprisonment for up to six months, or both.

## Your Key Contacts



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