

What employers need to know — the Fair Consideration Framework (FCF)

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Introduction

In our previous article, 'What employers need to know — Increases in local qualifying salary and employment pass minimum qualifying salary', we discussed how the local qualifying salary and employment pass minimum qualifying salary will be raised as part of efforts to maintain the effectiveness of foreign workforce controls. These measures are in line with the country's strategy, which is that while Singapore welcomes talent from overseas to work alongside Singaporeans in globally competitive teams, Singapore will continue to develop the skills of its local workforce and maximise the potential of the best in the country. In this article, we will discuss the Fair Consideration Framework (FCF), its requirements and the penalties for non-compliance.

Requirements under the FCF

Under the FCF, employers who wish to apply for employment passes (EP) to hire foreign employees must first advertise job vacancies on MyCareersFuture.sg (formally the Jobs Bank) for at least 14 days and must consider all candidates fairly before submitting an application.

All job advertisements must comply with the requirements set out in the Tripartite Guidelines on Fair Employment Practices (Tripartite Guidelines). The advertising requirements include (but are not limited to) the following:

1. The selection criteria must be accurately stated and should primarily relate to qualifications, skills, knowledge and experience.
2. Discriminatory words and phrases (including words and phrases that could be perceived as such) should not be used.
3. Words or phrases that exclude Singaporeans or indicate that non-Singaporean candidates are preferred should not be used.
4. If the job being advertised requires candidates with a specific attribute that may be perceived to be discriminatory, the reasons for this requirement must be explained. For example, a spa may require a female masseuse to provide treatments to its female customers.
5. The salary range (a) must be stated clearly, (b) must be visible to all candidates, (c) cannot exceed two (2) times the minimum salary and (d) must contain the salary offered to the EP candidate.

Presently, an employer may be exempted from the abovementioned advertising requirements if (a) it has less than 10 employees and (b) the fixed monthly salary for the vacancy is S\$15,000 or more. However, in her speech at the MOM Committee of Supply 2020, the Minister for Manpower, Mrs Josephine Teo announced that from 1 May 2020, the salary threshold will be raised to S\$20,000 or more.

Penalties for non-compliance

Since January 2020, the FCF has been enhanced to increase the penalties for breaches. Employers who violate the FCF or the Tripartite Guidelines will now be barred from applying for new work passes and renewing existing work passes for a minimum of 12 months and up to a maximum of 24 months. Further, employers who falsely declare that they have complied with the Tripartite Guidelines and have fairly considered all candidates may face imprisonment of up to two (2) years and/or a maximum fine of S\$20,000.

The MOM has made it clear that it will not take such breaches lightly. In her speech, the Minister for Manpower highlighted that the MOM will place employers suspected of nationality-bias in their hiring practices on a watchlist (FCF Watchlist) and will take action against errant employers. The Minister further added that the MOM “will also hold culpable key decision makers responsible, whether it is the CEO, Chief HR Officer, or line managers [and] are prepared to name them publicly, and revoke their work passes if they are foreigners.”

On 10 March 2020, the MOM announced in a press release that a logistics company was convicted of making a false declaration to hire a foreign employee who had been pre-selected for the position of General Manager. While the company had posted an advertisement on the Jobs Bank, it failed to review or consider any of the 22 local candidates who had responded to the advertisement. Subsequently, the company falsely declared in its EP application for the pre-selected foreign employee that it had interviewed two (2) local candidates and one (1) foreign candidate for the position. This was found to be false and the company was fined S\$18,000 and barred from hiring foreign employees for 24 months. The work pass of the pre-selected foreign employee was also revoked.

Concluding remarks

Employers looking to hire foreign employees should be aware of their obligations under the FCF and abide by the Tripartite Guidelines. They should ensure that local candidates are properly considered and should not merely “go through the motion” of posting the advertisements to fulfil the requirements of the FCF, not least because of the harsh penalties that they will face if found out.

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