

Retirement Age (Amendment) Bill

Bill No. 36/2010.

Read the first time on 22nd November 2010.

A BILL

intituled

An Act to amend the Retirement Age Act (Chapter 274A of the 2000 Revised Edition), to provide for the re-employment of employees and to make consequential amendments to the Income Tax Act (Chapter 134 of the 2008 Revised Edition) and the Industrial Relations Act (Chapter 136 of the 2004 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Retirement Age (Amendment) Act 2010 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 **Amendment of long title**

2. The long title to the Retirement Age Act (referred to in this Act as the principal Act) is amended by inserting, immediately after the word “employees”, the words “, for the re-employment of employees”.

Amendment of section 1

10 3. Section 1 of the principal Act is amended by deleting the words “Retirement Age Act” and substituting the words “Retirement and Re-employment Act”.

Amendment of section 2

4. Section 2 of the principal Act is amended —

15 (a) by inserting, immediately after the definition of “collective agreement” in subsection (1), the following definition:

““Commissioner” means the Commissioner for Labour appointed under section 3(1) of the Employment Act (Cap. 91);”;

20 (b) by inserting, immediately after the definition of “contract of service” in subsection (1), the following definition:

““eligible employee” means an employee who satisfies the re-employment eligibility criteria set out in section 7(1);”;

25 (c) by inserting, immediately after the definition of “employer” in subsection (1), the following definition:

““employment assistance payment” means such sum of money which is payable by an employer to an eligible employee under section 7C(1);”;

30 (d) by deleting the definition of “prescribed retirement age” in subsection (1) and substituting the following definitions:

“prescribed minimum retirement age” means such other minimum retirement age as may be prescribed by the Minister under section 4(1);

5 “re-employment”, with its grammatical variations and cognate expressions, means the employment of an employee by the same employer on or after the date the employee attains the specified age;

“salary” has the same meaning as in section 2(1) of the Employment Act (Cap. 91);

10 “specified age” means —

(a) in relation to any person or class of persons as may be prescribed by the Minister by notification in the *Gazette*, such age as may be prescribed by the Minister in the *Gazette* in relation to such person or class of persons; and

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(b) in relation to any other person —

(i) the prescribed minimum retirement age; or

(ii) where the retirement age stipulated in an employment contract is higher than the prescribed minimum retirement age, the retirement age so stipulated;

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“tripartite guidelines” means the guidelines relating to re-employment issued by the Minister under section 11B.”; and

25 (e) by inserting, immediately after subsection (2), the following subsection:

“(3) In this Act, a person shall be regarded as attaining or having attained N years of age (where N is a positive integer) or other higher age on or after the Nth or other anniversary, as the case may be, of the date of his birth.”.

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Repeal and re-enactment of section 3

5. Section 3 of the principal Act is repealed and the following section substituted therefor:

“Officers

3.—(1) The Commissioner for Labour shall be the officer in charge of the general administration of this Act.

5 (2) Any Deputy Commissioner for Labour, Principal Assistant Commissioner for Labour or Assistant Commissioner for Labour appointed under the Employment Act (Cap. 91) may, subject to such limitations as may be prescribed, perform all duties imposed and exercise all powers conferred on the Commissioner by this Act, and every duty so performed and power so exercised shall be deemed to have been duly performed and exercised by the Commissioner for the purpose of this Act.

10 (3) The Minister may appoint such number of investigating officers, conciliation officers and other officers as he may consider necessary or expedient for the purpose of this Act.

15 (4) The Minister may, from time to time, make rules for the conduct of the duties of officers under this Act.”.

Amendment of section 4

6. Section 4 of the principal Act is amended —

20 (a) by deleting subsection (1) (including the footnote) and substituting the following subsection:

“(1) Notwithstanding anything in any other written law, contract of service or collective agreement, the retirement age of an employee shall be not less than 62 years or such other age, up to 67 years, as may be prescribed by the Minister.”;

25 (b) by deleting the words “60 years” in subsection (2) and substituting the words “62 years”; and

(c) by deleting the words “prescribed retirement age” in subsection (2) and substituting the words “prescribed minimum retirement age”.

30 Amendment of section 5

7. Section 5 of the principal Act is amended —

(a) by deleting the word “older” wherever it appears in subsections (1) to (6);

- (b) by inserting, immediately after the word “prescribed” in subsection (2), the word “by or”;
- (c) by deleting the word “wages” wherever it appears in subsections (2) to (5) and substituting in each case the word “salary”;
- (d) by deleting subsection (7); and
- (e) by deleting the section heading and substituting the following section heading:

“Salary adjustment at 60 years of age”.

Amendment of section 6

8. Section 6 of the principal Act is amended by deleting the words “60 years or the prescribed retirement age” and substituting the words “62 years or the prescribed minimum retirement age”.

Repeal and re-enactment of section 7 and new sections 7A, 7B and 7C

9. Section 7 of the principal Act is repealed and the following sections substituted therefor:

“Re-employment eligibility criteria

7.—(1) For the purposes of this Act, an employee shall be eligible for re-employment if —

- (a) he attains the specified age on or after 1st January 2012; and
- (b) upon attaining or having attained the specified age or other higher age, which higher age shall not exceed 65 years or such other age, up to 67 years, as may be prescribed by the Minister, he —
- (i) is assessed by his employer to have at least satisfactory work performance; and
- (ii) is medically fit to continue working.

(2) For the purpose of subsection (1)(b)(ii), an employee shall be presumed to be medically fit to continue working, unless the employer of the employee proves, on a balance of probabilities, that the employee is not medically fit.

Employer to re-employ eligible employee

5 **7A.—(1)** An employer shall, before his employee (being an eligible employee) attains the specified age, offer re-employment to that employee and the obligation of the employer to re-employ that employee shall begin from the time that employee attains the specified age, until that employee attains the age of 65 years or such other age, up to 67 years, as may be prescribed by the Minister.

(2) Where —

10 (a) an employee who attains the specified age on or after 1st January 2012 continues to work for his employer after he has attained the specified age; and

(b) the employer does not, upon that employee attaining the specified age —

(i) re-employ that employee; or

15 (ii) terminate the employment of that employee,

then any right, privilege, obligation or liability acquired, accrued or incurred by the employee under the contract of service between him and his employer before he attains the specified age shall not be affected.

20 (3) Where subsection (2) applies, the employer referred to in that subsection —

(a) may, at any time after the employee referred to in that subsection has attained the specified age —

(i) re-employ the employee; or

25 (ii) terminate the employment of the employee if the employee does not satisfy the eligibility criteria set out in section 7(1); and

(b) shall be deemed to have complied with the requirement under subsection (1) for the period between —

30 (i) the time the employee attains the specified age; and

(ii) the time the employer re-employs the employee or terminates the employment of the employee under paragraph (a).

(4) For the purposes of re-employment under subsection (1) or (3)(a)(i), a new contract of service shall be entered into by the employee and his employer in which the job scope and the terms and conditions may vary from the previous contract of service between them.

(5) Any variation referred to in subsection (4) shall be based on reasonable factors such as, but not limited to, the employee's productivity, performance, duties and responsibilities, and the wage system such as the seniority system applicable to the employee.

(6) Unless otherwise agreed by the parties to a new contract of service for the purpose of re-employment under subsection (1) or (3)(a)(i), the period of employment stipulated in the contract shall not be less than one year at any one time.

(7) Notwithstanding subsection (6), where the period between —

(a) the effective date of the coming into force of a new contract of service for the purpose of re-employment under subsection (1) or (3)(a)(i); and

(b) the date on which the employee (who is party to the new contract of service) attains the age of 65 years or such other age, up to 67 years, as may be prescribed by the Minister,

is less than one year, the period of employment stipulated in the new contract of service may be for that shorter period.

(8) Where an employer does not intend to re-employ an employee because the employee does not satisfy the eligibility criteria set out in section 7(1), the employer shall, in so far as reasonably practicable, give notice in writing to the employee, within a reasonable period before he terminates the employment of the employee, stating his intention to do so.

(9) Notwithstanding any of the provisions of this Act, an eligible employee may retire or be retired, if he does not wish to be employed by his employer on or after the date he attains the specified age.

(10) An eligible employee who intends to retire shall, in so far as reasonably practicable, give notice in writing to his employer, within a reasonable period before he retires, stating his intention to do so.

Period of service under previous employment contract and under re-employment contracts

5 **7B.**—(1) Unless otherwise agreed by parties to a contract of service, and subject to subsections (2) and (3), when a new contract of service is entered into between an employer and his employee pursuant to section 7A(4), then for the purposes of determining any right, privilege, obligation or liability to be acquired, accrued or incurred by the employee under his new contract of service, any period for which the employee has served under his employer under the previous contract of service before he commences his service under the new contract of service shall be disregarded.

10 (2) Any period for which an employee has served under his employer before he commences his service under the new contract of service entered into pursuant to section 7A(4) shall be reckoned for the purposes of —

15 (a) computing the minimum period of 3 months for entitlement to annual leave under section 43(1) of the Employment Act (Cap. 91); and

20 (b) determining the period of service of an employee for entitlement to paid sick leave under section 89(1) and (2) of the Employment Act.

25 (3) Where there is more than one contract of service entered into by an employee and his employer pursuant to section 7A(4), the aggregate periods for which the employee has served under his employer under those contracts of service shall be treated as continuous service for the purposes of determining any right, privilege, obligation or liability acquired, accrued or incurred by the employee under those contracts.

Employment assistance payment

30 **7C.**—(1) If an employer is unable to re-employ an eligible employee in accordance with section 7A because the employer is unable to find a vacancy in his establishment which is suitable for the eligible employee despite making reasonable attempts to do so in accordance with the tripartite guidelines, the employer shall be required to —

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(a) retire the eligible employee, or allow him to retire, on or after the date he attains the specified age; and

(b) offer an employment assistance payment to the eligible employee.

5 (2) Notwithstanding subsection (1), an employer shall not be required to offer any employment assistance payment to an eligible employee who informs his employer of his decision not to continue to be employed by his employer on or after the date he attains the specified age.

10 (3) Subject to subsection (4), the employment assistance payment shall be —

(a) a single lump-sum payment paid by an employer by the last day of employment of the eligible employee; or

(b) other mutually agreed arrangements.

15 (4) In determining the amount of employment assistance payment to be paid under this section, an employer shall take into account the tripartite guidelines.”.

Amendment of section 8

10. Section 8 of the principal Act is amended —

20 (a) by deleting the words “60 years of age or the prescribed retirement age” in subsection (1) and substituting the words “the specified age”;

(b) by deleting the words “an investigating officer” in subsections (2) and (3) and substituting in each case the words “the
25 Commissioner”;

(c) by deleting the word “investigate” in subsection (2) and substituting the word “inquire”;

(d) by deleting the word “wages” in subsection (3)(a) and (b) and substituting in each case the word “salary”;

30 (e) by deleting the words “and shall not be called in question in any court” in subsection (5); and

(f) by deleting “\$5,000” in subsection (7) and substituting “\$10,000”.

New sections 8A to 8F

11. The principal Act is amended by inserting, immediately after section 8, the following sections:

“Conciliation

5 **8A.**—(1) An employee who has a re-employment dispute with his employer which relates to any matter referred to in subsection (4)(a) or (b) must, before making any representation to the Minister under section 8B, first notify the Commissioner in writing of the re-employment dispute no later than one month after the last day of his
10 employment with his employer.

(2) An employee (being an employee who attains the specified age on or after 1st January 2012) who considers that he has been dismissed without just cause or excuse by his employer on or after the date the employee attains the specified age must, before making any
15 representation to the Minister under section 8B, first notify the Commissioner in writing of the dismissal no later than one month after the last day of his employment with his employer.

(3) An employee who has a re-employment dispute with his employer which relates to any matter referred to in subsection (4)(c) or (d) must, before lodging a claim with the Commissioner under
20 section 8C, first notify the Commissioner in writing of the re-employment dispute no later than 6 months after the last day of his employment with his employer.

(4) For the purposes of this Part, a re-employment dispute means a
25 dispute over any of the following matters:

- (a) the denial of re-employment to an employee on the ground that the employee does not satisfy the eligibility criteria set out in section 7(1);
- (b) the denial of re-employment, in accordance with
30 section 7C(1), to an employee on the ground that the employer is unable to find a vacancy in his establishment which is suitable for the employee;
- (c) the reasonableness of the terms and conditions of any re-employment offer made pursuant to section 7A(1) or
35 (3)(a)(i) by an employer;

(d) the reasonableness of the amount of any employment assistance payment offered to an employee pursuant to section 7C(1)(b).

5 (5) Upon receipt of the notice referred to in subsection (1), (2) or (3), the Commissioner may consult, or direct a conciliation officer to consult, the employer and employee concerned in an endeavour to assist them to reach an agreement through conciliation.

Remedies relating to unreasonable denial of re-employment and dismissal without just cause or excuse

10 **8B.**—(1) An employee who has a re-employment dispute with his employer which relates to any matter referred to in section 8A(4)(a) or (b), or an employee (being an employee who attains the specified age on or after 1st January 2012) who considers that he has been dismissed without just cause or excuse by his employer on or after the date the employee attains the specified age, may at any time after any conciliation conducted pursuant to section 8A(5), make representations in writing to the Minister to be re-employed.

15 (2) Any representations to the Minister under subsection (1) shall be made no later than one month after the conclusion of any conciliation conducted pursuant to section 8A(5).

(3) Where an employee who is dismissed by his employer makes any representations to the Minister in accordance with subsection (1) to be re-employed, such representations made shall operate as a bar to —

25 (a) the lodging of any claim under section 8C(1) in relation to the matter referred to in section 8A(4)(d), by that employee in respect of that dismissal; and

30 (b) the making of any representations to the Minister in respect of that dismissal under section 14(2) of the Employment Act (Cap. 91) or section 35(3) of the Industrial Relations Act (Cap. 136).

35 (4) Where an employee who is dismissed by his employer makes any representations to the Minister in respect of that dismissal under section 14(2) of the Employment Act or section 35(3) of the Industrial Relations Act, such representations made shall operate as a bar to —

- (a) the making of any representations to the Minister in respect of that dismissal under subsection (1); and
- (b) the lodging of any claim under section 8C(1) in relation to the matter referred to in section 8A(4)(d), by that employee in respect of that dismissal.

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(5) The Minister may, before making a decision on any such representations made under subsection (1), direct the Commissioner to inquire and report whether in the Commissioner's opinion the employee has been unreasonably denied of re-employment by his employer, or has been dismissed without just cause or excuse by his employer, as the case may be.

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(6) If, after considering any report made by the Commissioner under subsection (5), the Minister is satisfied that the employee has been unreasonably denied of re-employment by his employer, or dismissed by his employer without just cause or excuse, as the case may be, the Minister may, notwithstanding any rule of law or agreement to the contrary —

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- (a) direct the employer to re-employ the employee; or
- (b) direct the employer to pay such amount of compensation as the Minister may consider just and equitable having regard to all the circumstances of the case,

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and the employer shall comply with the direction of the Minister.

(7) Notwithstanding any other provision in this section, if the Minister —

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- (a) after considering any report made by the Commissioner under subsection (5); and
- (b) is satisfied that in relation to a dispute, being a re-employment dispute over the matter referred to in section 8A(4)(b), the employer had made reasonable attempts to find a vacancy in his establishment which is suitable for his employee,

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the Minister may allow the employee to lodge a claim for employment assistance payment with the Commissioner within such time as the Minister may determine.

(8) Sections 8C(4), 8D, 8E and 8F shall apply in relation to any claim lodged by an employee pursuant to subsection (7).

(9) In determining the amount of compensation to be awarded under subsection (6), the Minister may, in particular, have regard to —

(a) the tripartite guidelines; and

(b) the steps taken by the employer to re-employ his employee.

(10) The decision of the Minister on any representation made under this section shall be final.

(11) Any direction of the Minister under subsection (6) shall operate as a bar to any action for damages by the employee in any court in respect of the unreasonable denial of re-employment, or the dismissal of the employee without just cause or excuse, as the case may be.

(12) Any employer who fails to comply with the direction of the Minister under subsection (6) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.

(13) Where any amount of compensation to be paid by an employer under subsection (6) is not paid in accordance with the direction of the Minister and the employer has been convicted of an offence under subsection (12), the amount or part thereof that remains unpaid shall be recoverable by the court as if it were a fine and the amount so recovered shall be paid to the employee entitled to payment under the direction of the Minister.

(14) The Minister may, by writing under his hand, delegate all or any of his powers under this section (except the power of delegation conferred by this section) to any public officer.

(15) A delegation under subsection (14) is revocable at will and no delegation shall prevent the exercise of any power under this section by the Minister.

(16) A power so delegated, when exercised by the delegate, shall for the purposes of this section be deemed to have been exercised by the Minister.

Remedies relating to unreasonable terms and conditions of re-employment contract and employment assistance payment

5 **8C.**—(1) An employee who has a re-employment dispute with his employer relating to any matter referred to in section 8A(4)(c) or (d), may at any time after any conciliation conducted pursuant to section 8A(5), lodge a claim with the Commissioner for the purpose of making a claim for the payment or the amount of the employment assistance payment, as the case may be.

10 (2) Any claim lodged with the Commissioner under subsection (1) shall be made no later than one month after the conclusion of any conciliation conducted pursuant to section 8A(5).

15 (3) Where an employee who is dismissed by his employer lodges any claim with the Commissioner in accordance with subsection (1) in relation to the matter referred to in section 8A(4)(d), such claim shall operate as a bar to —

(a) the making of any representations under section 8B(1) by that employee in respect of that dismissal; and

20 (b) the making of any representations to the Minister in respect of that dismissal under section 14(2) of the Employment Act (Cap. 91) or section 35(3) of the Industrial Relations Act (Cap. 136).

(4) In making a decision on any claim in relation to the employment assistance payment, the Commissioner —

25 (a) may take into account the tripartite guidelines and any steps taken by the employer to re-employ his employee; and

30 (b) may, notwithstanding paragraph (a), make an order in the prescribed form for any amount of employment assistance payment to be paid by an employer to an employee as the Commissioner considers just and equitable having regard to all the circumstances of the case.

Procedure for making and hearing claims

8D.—(1) The procedure for the making and hearing of claims in relation to the employment assistance payment shall be as follows:

35 (a) an employee claiming shall lodge a claim in the prescribed form at the office of the Commissioner, specifying briefly

the subject-matter of the claim and the remedy sought to be obtained, or he may make his claim in person to the Commissioner who shall immediately reduce it or cause it to be reduced in writing;

- 5 (b) upon receipt of the claim and of the registration fee payable by the employee in accordance with the prescribed rate of fees, the Commissioner shall summon in writing the employer against whom the claim is made, giving reasonable notice to him of the nature of the claim and the
10 time and place at which the claim will be inquired into, and the Commissioner shall also notify or summon all persons whose interests may appear to him likely to be affected by the proceedings;
- 15 (c) if any person interested has been duly summoned by the Commissioner to attend an inquiry, and makes default in so doing, the Commissioner may subsequently summon in writing that person, giving reasonable notice to him of the nature of the claim and the subsequent time and place at which the claim will be inquired into, and the summons may
20 be delivered by ordinary post to his last known address, and shall be deemed to be duly served on that person;
- (d) the Commissioner may also summon such witnesses as either party may wish to call;
- 25 (e) at any time between the issuing of summons and the hearing of the claim, the Commissioner may hold or cause to be held a preliminary inquiry at which the employee claiming and the employer against whom the claim is made shall be present after having been notified in writing of the inquiry;
- 30 (f) at the preliminary inquiry the employee may amend or withdraw the whole claim or portion thereof, or reach a settlement in respect of the claim;
- 35 (g) if a settlement is effected at a preliminary inquiry in respect of a claim or portion thereof, the Commissioner shall make an order recording the terms of the settlement and that order shall have effect as if it were an order made under paragraph (h);

- 5 (h) at the time and place appointed, the parties shall attend and state their case before the Commissioner and may call evidence, and the Commissioner, having heard on oath or affirmation the statements and evidence and any other evidence which he may consider necessary, shall give his decision and make such order in the prescribed form as may be necessary for giving effect to the decision;
- 10 (i) if any person interested has been duly summoned by the Commissioner to attend at the inquiry and makes default in so doing, the Commissioner may hear the claim and make his decision in the absence of that person notwithstanding that the interest of that person may be prejudicially affected by his decision; and
- 15 (j) the Commissioner shall keep a case book, in which he shall enter notes of the evidence taken and the decisions arrived at in each case heard before him and shall authenticate them by attaching his signature thereto, and the record in the case book shall be sufficient evidence of the giving of any decision, or of the making of any order, and of the terms thereof; and any person interested in a dispute, a decision or 20 an order, shall be entitled to a copy of the record upon payment of the prescribed fee.
- 25 (2) Where an employer admits to the Commissioner in writing that an amount of the employment assistance payment is owing by him to an employee, he need not be summoned before the Commissioner and the Commissioner may make such order in his absence.
- 30 (3) Any person so summoned shall be legally bound to attend at the time and place mentioned in the summons and to answer truthfully all questions relating to the dispute which the Commissioner may put to him.
- (4) In hearing claims or conducting proceedings under this section, the Commissioner —
- 35 (a) shall not be bound to act in a formal manner or in accordance with the Evidence Act (Cap. 97) but may inform himself on any matters in such manner as he thinks just; and
- (b) shall act according to equity, good conscience and the merits of the case without regard to technicalities.

(5) In proceedings before the Commissioner, a party —

(a) being an employee and a member of a trade union that has been given recognition under Part III of the Industrial Relations Act (Cap. 136) by the employer of the employee, may be represented by an officer of the trade union; and

(b) being an employer may be represented by one of his employees, but shall not be represented by an advocate or solicitor or a paid agent.

(6) Any summons issued under subsection (1)(b) or (d) or section 9A(1), may be served on any person in the same manner as the service of a summons under section 116 of the Criminal Procedure Code 2010 (Act 15 of 2010).

(7) Any summons sent by registered post to any person in accordance with subsection (6) shall be deemed to be duly served on the person at the time when the summons would in the ordinary course of post be delivered and, in proving service of the summons, it shall be sufficient to prove that the envelope containing the summons was properly addressed, stamped and posted by registered post.

(8) No fees other than a registration fee in accordance with the prescribed rate of fees shall be charged by the Commissioner in respect of processes issued by him under this section and all orders made by the Commissioner shall, notwithstanding that they may in respect of the amount or value be in excess of the ordinary jurisdiction of the court, be enforced by a District Court in the same manner as a judgment of that Court and all necessary processes may be served by the Court on behalf of the Commissioner.

(9) No sale of immovable property shall for the purposes of the enforcement be ordered except by the High Court.

(10) Nothing in this section shall limit or affect the jurisdiction of any court.

Joining of claims

8E.—(1) In proceedings under section 8D where it appears to the Commissioner that there are more than one employee having a common claim or similar claims against the same employer or person liable, it shall not be necessary for each of them to make a separate claim under that section, but the Commissioner may, if he thinks fit,

permit one or more of them to lodge a claim and to attend and act on behalf of and generally to represent the others, and the Commissioner may proceed to adjudicate on the several or joint claim of each and every such employee.

- 5 (2) Where the Commissioner is of the opinion that the interest of the employer is or is likely to be prejudiced by the non-attendance of any employee, the Commissioner shall require the personal attendance of the employee.

Appeal against decision or order of Commissioner

10 **8F.**—(1) Where any person interested is dissatisfied with the decision or order of the Commissioner, he may, within 14 days after the decision or order, appeal to the High Court.

(2) The procedure governing any such appeal to the High Court shall be provided for in the Rules of Court.

15 (3) No appeal shall lie against any decision or order of the Commissioner unless a substantial question of law is involved in the appeal.

(4) In determining any appeal under subsection (1), the High Court may have regard to the tripartite guidelines.”.

20 Amendment of section 9

12. Section 9 of the principal Act is amended —

(a) by deleting subsections (1) and (2) and substituting the following subsection:

25 “(1) The Commissioner or any investigating officer shall, for the purposes of this Act, have power to do all or any of the following:

30 (a) enter without previous notice at any reasonable time any place of employment for the purposes of conducting any audits which is deemed necessary by the Minister, or make such inquiry into the terms and conditions of employment of any employee as he may think fit;

(b) examine orally any person supposed to be acquainted with the facts and circumstances relevant to carrying

out the provision of this Act, and reduce into writing the answer given or statement made by the person who shall be bound to state truly the facts and circumstances with which he is acquainted, and the statement made by the person shall be read over to him and shall, after correction, be signed by him;

(c) require the employer to produce before him any other employee employed by the employer together with any contract of service or other document concerning the employment;

(d) make copies of any document required to be produced under paragraph (c);

(e) take or remove for purposes of investigations any document;

(f) take such photographs or audio or video recording, as the Commissioner or investigating officer thinks necessary, of the premises and persons reasonably believed to be acquainted with the facts and circumstances relevant to the carrying out of the provisions of this Act;

(g) require any person to produce any article which is relevant to any investigation carried out under this Act and, if necessary, to take into custody any such article.”; and

(b) by inserting, immediately after the words “Powers of” in the section heading, the words “Commissioner and”.

New sections 9A, 9B and 9C

13. The principal Act is amended by inserting, immediately after section 9, the following sections:

“Investigations of complaints and offences

9A.—(1) Whenever —

(a) the Minister, the Commissioner or an investigation officer has reasonable grounds for believing that an offence under this Act has been committed;

(b) the Minister, the Commissioner or an investigation officer wishes to inquire into any matter for which provision is made by this Act or any dispute as to such matter, or any matter connected with investigation; or

5 (c) any person complains of any breach of any provision of this Act,

the Minister, the Commissioner or the investigation officer, as the case may be, may summon any person who he has reason to believe can give information regarding the subject-matter of the inquiry or complaint, and the person so summoned shall be legally bound to attend at the time and place specified in the summons to furnish information or documents, produce any article or give statements, and to answer truthfully all questions which the Minister, the Commissioner or the investigation officer, as the case may be, may put to him.

(2) Any person who in any way wilfully obstructs the service of or obedience to such summons, and any person summoned who neglects to attend as required in such summon, shall be guilty of an offence.

(3) The Commissioner or investigation officer shall have the power to report any failure by such person to attend as required by the summons under subsection (2) to a Magistrate, who may thereupon issue a warrant to secure the attendance of that person as required by the summons.

Obstructing employee, etc.

25 **9B.**—(1) Any employer or other person who in any way obstructs any employee in appearing before the Commissioner pursuant to any summons issued under this Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

30 (2) Any person who wilfully obstructs or impedes any entry, inquiry or investigation made under this Act for which no penalty is expressly provided, shall be guilty of an offence.

Penalties

35 **9C.** Any person who is guilty of any breach or any offence under this Act for which no penalty is otherwise provided shall be liable on

conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both, and for a subsequent offence under the same section to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 12 months or to both.”.

5 **Amendment of section 10**

14. Section 10 of the principal Act is amended by deleting subsection (1) and substituting the following subsections:

10 “(1) An investigation officer, with the approval of the Commissioner, may in his discretion compound any offence under this Act which is prescribed as a compoundable offence by collecting from a person reasonably suspected of having committed the offence a sum not exceeding —

(a) one half of the amount of the maximum fine that is prescribed for the offence; or

15 (b) \$1,000,

whichever is the lower.

(1A) On payment of such sum of money, no further proceedings shall be taken against that person in respect of the offence.”.

New sections 11A and 11B

20 **15.** The principal Act is amended by inserting, immediately after section 11, the following sections:

“Restriction on contracting out

11A. Any term of a contract of service or collective agreement shall be void in so far as it purports —

25 (a) to exclude or limit the operation of any provision of this Act; or

(b) to preclude any person from making a representation, claim or application under this Act.

Power to issue tripartite guidelines

30 **11B.** The Minister may, from time to time, issue guidelines relating to the re-employment of eligible employees and the terms and conditions of re-employment of eligible employees, in the form of

tripartite guidelines, and upon the publication of such guidelines in the *Gazette*, regard may be had to the guidelines for the purposes of Part III and sections 8A, 8B, 8C and 8F of this Act and section 34 of the Industrial Relations Act (Cap. 136).”.

5 **Amendment of section 12**

16. Section 12(2) of the principal Act is amended —

- (a) by deleting the word “and” at the end of paragraph (a); and
 (b) by deleting the full-stop at the end of paragraph (b) and substituting a semi-colon, and by inserting immediately thereafter the following paragraphs:

“(c) for prescribing the form of the orders to be made under this Act; and

(d) for prescribing the fees payable for the provision of a copy of the notes of evidence and any decision recorded under section 8D(1)(j).”.

Division of Act into Parts

17. The principal Act is amended —

- (a) by inserting, immediately above section 1, the following Part heading:

“PART I

PRELIMINARY”;

- (b) by inserting, immediately above section 4, the following Part heading:

“PART II

MINIMUM RETIREMENT AGE”;

- (c) by inserting, immediately below section 6, the following Part heading:

“PART III

RE-EMPLOYMENT OF ELIGIBLE EMPLOYEES”;

- (d) by inserting, immediately above section 8, the following Part heading:

“PART IV

REMEDIES”;

- (e) by inserting, immediately above section 9, the following Part heading:

“PART V

GENERAL”.

Consequential amendments to Income Tax Act

18. The Income Tax Act (Cap. 134) is amended —

- (a) by deleting the definition of “prescribed retirement age” in section 2(1) and substituting the following definition:

“ “prescribed minimum retirement age” has the same meaning as in the Retirement and Re-employment Act (Cap. 274A);”;

- (b) by deleting the words “prescribed retirement age” in section 10L(3)(b) and (8)(c) and substituting in each case the words “prescribed minimum retirement age”.

Consequential amendments to Industrial Relations Act

19. Section 34(1) of the Industrial Relations Act (Cap. 136) is amended —

- (a) by deleting the word “and” at the end of paragraph (a); and

- (b) by deleting the full-stop at the end of paragraph (b) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:

5 “(c) in the case of any trade dispute relating to the re-employment of any eligible employee under the Retirement and Re-employment Act (Cap. 274A), the tripartite guidelines relating to re-employment issued by the Minister under section 11B of that Act.”.

Savings and transitional provisions

20.—(1) This Act shall not affect any investigation carried out by an investigating officer who —

10 (a) before the date of commencement of section 10 of this Act, is subject to any direction of the Minister to investigate and report on whether in the investigating officer’s opinion, an employee has been unlawfully dismissed on the ground of age; and

(b) has not submitted the report to the Minister before that date, and everything in relation to the investigation and report may be done in all respects after that date as if this Act had not been enacted.

(2) Any representation made to the Minister before the date of commencement of section 10 of this Act —

(a) which is investigated by an investigating officer before that date; and

20 (b) which is not yet decided by the Minister before that date, may be continued to be dealt with and everything in relation thereto may be done in all respects after that day as if this Act had not been enacted.

25 (3) For a period of 2 years after the date of commencement of this section, the Minister may by regulations prescribe such additional provisions of a savings or transitional nature as he may consider necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Retirement Age Act (Cap. 274A) for the following main purposes:

- (a) to introduce a set of eligibility criteria for the purposes of re-employment of employees;
- (b) to require employers to re-employ eligible employees;

- (c) to provide various avenues for employees to seek recourse for re-employment disputes; and
- (d) to make technical amendments to update existing provisions and introduce offences relating to re-employment.

The Bill also makes consequential amendments to the Income Tax Act (Cap. 134) and the Industrial Relations Act (Cap. 136).

Clause 1 relates to the short title and commencement.

Clause 2 makes an amendment to the long title of the Act.

Clause 3 makes an amendment to the short title. The Act is now renamed as the Retirement and Re-employment Act.

Clause 4 amends section 2(1) by inserting new definitions of “Commissioner”, “eligible employee”, “employment assistance payment”, “prescribed minimum retirement age”, “re-employment”, “salary”, “specified age” and “tripartite guidelines”.

Clause 5 repeals and re-enacts section 3 which provides for the appointment of certain officers.

Clause 6 makes technical amendments to section 4.

Clause 7 amends section 5 by substituting the references to “older employees” with “employees”, and substitutes the references to “wages” with “salary”. Subsection (7) is deleted as it is no longer required.

Clause 8 makes a technical amendment to section 6.

Clause 9 repeals and re-enacts section 7 and inserts new sections 7A, 7B and 7C.

The new section 7 relates to the eligibility criteria for re-employment. An employee who attains the specified age (as defined in section 2(1)) before 1st January 2012 is not eligible for re-employment. The new section 7 also provides for a presumption that an employee is medically fit for the purposes of re-employment. The onus falls on the employer to prove, on a balance of probabilities, that his employee is not medically fit.

The new section 7A imposes a requirement for employers to re-employ eligible employees. The obligation on an employer will begin from the time an eligible employee attains the specified age and continue until the eligible employee attains the age of 65 years (or such higher age as may be prescribed by the Minister).

An employer will be deemed to have complied with the requirement to re-employ an eligible employee if the employer allows his employee (being an employee who attains the specified age on or after 1st January 2012) to continue to work for him beyond the specified age and the employer does not offer a new contract of service to the employee or terminate his contract. In such instance, any right, privilege, obligation or liability acquired, accrued or incurred by the employee under the contract of service between him and his employer before he attains the specified age is not affected. Therefore, if under the previous contract of service, an employee is entitled to a certain number of days of annual leave based on a period of continuous service with his employer, the

employee will continue to enjoy such entitlement which is based on his previous period of continuous service with his employer.

For the purposes of re-employment, a new contract of service may be entered into by the employee and his employer in which the job scope and the terms and conditions may vary from the previous contract of service between them. Any variation must be based on reasonable factors such as, but not limited to, the employee's productivity, performance, duties and responsibilities, and the wage system such as the seniority system applicable to the employee.

Unless otherwise agreed by the parties to a new contract of service for the purpose of re-employment, the period of employment stipulated in the contract must not be less than one year at any one time. Where the period between the effective date of the coming into force of a new contract of service for the purpose of re-employment and the date on which an employee attains the age of 65 years (or such higher age as may be prescribed by the Minister) is less than one year, the period of employment stipulated in the new contract of service may be for that shorter period. For example, if the new contract of service for the purpose of re-employment is effective when the eligible employee is 64 years 6 months old, the new contract may be made which is valid for 6 months, i.e., until the eligible employee turns 65 years old.

Notwithstanding any of the provisions of the Act, an eligible employee may retire or be retired, if he does not wish to be employed by his employer on or after the date he attains the specified age.

The new section 7B relates to the period of service under a previous contract of service between an employer and his eligible employee. With certain exceptions, when a new contract of service is entered into between an employer and his eligible employee pursuant to the new section 7A(4), then for the purposes of determining any right, privilege, obligation or liability to be acquired, accrued or incurred by the employee under his new contract of service, any period for which the employee has served his employer under the previous contract of service before he commences his service under the new contract of service is disregarded. For example, if an employee has served under his employer for a period of 10 years before he attains the age of 62 years old on or after 1st January 2012, then upon re-employment at the age of 62 years old, such period of service will not be taken into account for the purpose of determining the number of days of annual leave which the eligible employee is entitled to under the new contract of service. However, any period for which an employee has served under his employer before he commences his service under the new contract of service for the purpose of re-employment can be taken into account for the purpose of computing the minimum period of 3 months for entitlement to annual leave under section 43(1) of the Employment Act (Cap. 91), and also for determining the period of service of an employee for entitlement to paid sick leave under section 89(1) and (2) of the Employment Act.

Where there is more than one contract of service for the purpose of re-employment between an employer and his eligible employee, the aggregate periods for which the eligible employee has served under his employer under those contracts of service must be treated as continuous service for the purposes of determining any right, privilege, obligation or liability acquired, accrued or incurred by the employee under those

contracts. For example, an eligible employee may be re-employed for a period of one year each upon his attaining the ages of 62, 63 and 64 years old. His 3 separate periods of service with his employer under 3 different re-employment contracts each lasting one year will be treated as continuous service for the purpose of determining any right or benefits, etc., (eg., annual leave and paid sick leave) under those contracts.

The new section 7C imposes certain obligations on an employer if the employer is unable to re-employ an eligible employee because the employer is unable to find a vacancy in his establishment which is suitable for the eligible employee despite making reasonable attempts to do so in accordance with the tripartite guidelines. In particular, the employer will have to offer an employment assistance payment to the eligible employee for the purpose of assisting him to tide over the period during which the eligible employee attempts to find employment with another employer. However, the employer is not required to offer any employment assistance payment to an eligible employee who informs his employer of his decision not to continue to be employed by his employer on or after the date he attains the specified age. The employer must take into account the tripartite guidelines when determining the amount of employment assistance payment to be paid to an employee.

Clause 10 amends section 8 by making a technical change by substituting the phrase “60 years of age or the prescribed retirement age” in subsection (1) with the phrase “the specified age”. For consistency with the Employment Act (Cap. 91), section 8 is further amended by empowering the Minister to direct the Commissioner for Labour (the Commissioner), instead of an investigation officer, to inquire and report whether in the Commissioner’s opinion, an employee has been unlawfully dismissed on the ground of age. The penalty amount in subsection (7) is also increased.

Clause 11 inserts new sections 8A to 8F.

The new section 8A provides that when an employee has a re-employment dispute with his employer or if he considers that he has been dismissed without just cause or excuse, he must before making representations to the Minister or before lodging a claim with the Commissioner, as the case may be, notify the Commissioner in writing within certain time limits. The new section 8A further provides that upon receipt of the notice, the Commissioner may consult, or direct a conciliation officer to consult, the employer and employee concerned in an endeavour to assist them to reach an agreement through conciliation.

The new section 8B introduces certain remedies relating to unreasonable denial of re-employment and dismissal without just cause or excuse. An employee who claims his remedy under the new section 8B cannot also pursue his remedy under the new section 8C, or section 14(2) of the Employment Act or section 35(3) of the Industrial Relations Act (Cap. 136). Similarly, a person who pursues his remedy under section 14(2) of the Employment Act or section 35(3) of the Industrial Relations Act cannot also pursue his remedy under the new section 8B or new section 8C. The new section 8B further provides that the Minister may, before making a decision on any representations made to him, direct the Commissioner to inquire and report whether in his opinion the employee has been unreasonably denied of re-employment by his employer, or has been dismissed without just cause or excuse by his employer, as the case may be. If after considering any report made by the Commissioner, the Minister is

satisfied that the employee has been unreasonably denied of re-employment by his employer, or dismissed by his employer without just cause or excuse, as the case may be, the Minister may direct the employer to re-employ the employee, or direct the employer to pay such amount of compensation as the Minister may consider just and equitable having regard to all the circumstances of the case. The employer must comply with the direction of the Minister.

If the Minister, after considering any report made by the Commissioner, is satisfied that in relation to a dispute, being a re-employment dispute over the matter referred to in the new section 8A(4)(b), the employer is unable to re-employ an eligible employee despite making reasonable attempts to find a vacancy in his establishment which is suitable for his employee, the Minister may allow the employee to lodge a claim for employment assistance payment with the Commissioner within such time as the Minister may determine.

In determining the amount of compensation to be awarded, the Minister may, in particular, have regard to the tripartite guidelines and the steps taken by the employer to re-employ his employee.

The new section 8C introduces certain remedies which are available to an employee who considers that any term or condition of his re-employment contract, or the amount of employment assistance payment offered by his employer, is unreasonable. The employee in such a situation may lodge a claim with the Commissioner to claim for the payment or the amount of the employment assistance payment.

An employee who claims his remedy under the new section 8C cannot also pursue his remedy under the new section 8B, or section 14(2) of the Employment Act (Cap. 91) or section 35(3) of the Industrial Relations Act (Cap. 136).

The new section 8D provides for the procedure for making and hearing claims.

The new section 8E relates to the joining of claims.

The new section 8F provides for the appeal against the decision or order of the Commissioner. The new section 8F further provides that no appeal must lie against any decision or order of the Commissioner unless a substantial question of law is involved in the appeal. In determining any appeal, the High Court may have regard to the tripartite guidelines.

Clause 12 amends section 9 by conferring certain powers on the Commissioner and investigating officers.

Clause 13 inserts new sections 9A, 9B and 9C.

The new section 9A relates to the investigation of complaints and offences.

The new section 9B provides for the offence of obstruction of any employee in appearing before the Commissioner pursuant to any summons issued under the Act. It is also an offence for a person to wilfully obstruct or impede any entry, inquiry or investigation made under the Act.

The new section 9C provides for the penalty in the situation where a person is guilty of any breach or any offence under the Act for which no penalty is otherwise provided.

Clause 14 amends section 10 by providing for the composition by the investigation officer (with the approval of the Commissioner) of any offence under the Act which is prescribed as a compoundable offence.

Clause 15 inserts new sections 11A and 11B.

The new section 11A relates to restriction on contracting out. This provision was formerly section 7, which has been repealed.

The new section 11B empowers the Minister to issue guidelines relating to the re-employment of eligible employees and the terms and conditions of re-employment of eligible employees, in the form of tripartite guidelines. Upon the publication of such guidelines in the *Gazette*, regard may be had to the guidelines for the purposes of Part III and sections 8A, 8B, 8C and 8F of the Act and section 34 of the Industrial Relations Act (Cap. 136).

Clause 16 amends section 12 by empowering the Minister to make regulations on certain matters.

Clause 17 amends the Act by dividing it into Parts.

Clause 18 makes consequential amendments to the Income Tax Act (Cap. 134).

Clause 19 makes consequential amendments to the Industrial Relations Act.

Clause 20 relates to certain savings and transitional provisions.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
