

Retirement and Re-employment (Amendment) Bill

Bill No. 36/2016.

Read the first time on 7 November 2016.

A BILL

intituled

An Act to amend the Retirement and Re-employment Act
(Chapter 274A of the 2012 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 is the Retirement and Re-employment (Amendment) Act 2016 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 **Amendment of section 2**

2. Section 2(1) of the Retirement and Re-employment Act (called in this Act the principal Act) is amended —

(a) by inserting, immediately before the definitions of “approved mediator” and “claim referral certificate”, the following definition:

““agreed date” means a date specified for the purposes of section 7C(1A)(a) in a consent form mentioned in section 7C(6);”;

(b) by inserting, immediately after the words “specified age” in the definition of “re-employment”, the words “applicable to that employee”;

(c) by inserting, immediately after the definition of “re-employment”, the following definitions:

““re-employment contract” means a contract of service entered into between an eligible employee and an employer to re-employ the eligible employee for the purposes of section 7A(1) or (3)(a)(i);

“re-employment obligations” means an employer’s obligations to re-employ an eligible employee in accordance with section 7A, failing which, to offer the eligible employee employment assistance payment in accordance with section 7C(1)(a);”;

and

(d) by deleting the words “an employment contract” in paragraph (b)(ii) of the definition of “specified age” and substituting the words “a contract of service”.

Repeal of section 5

3. Section 5 of the principal Act is repealed.

Amendment of section 7

4. Section 7 of the principal Act is amended —

- (a) by deleting subsection (1) and substituting the following subsection: 5

“(1) For the purposes of this Act, an employee is eligible for re-employment in accordance with section 7A if —

- (a) the employee is born on or after 1 July 1952; and 10

- (b) the employer assesses the employee as —

- (i) having at least satisfactory work performance; and

- (ii) being medically fit to continue working.”; and 15

- (b) by inserting, immediately after subsection (2), the following subsection:

“(3) Where an employer does not intend to re-employ an employee because the employee does not meet the criteria in subsection (1)(b), then as far as it is reasonably practicable, the employer must give the employee written notice of that intention within a reasonable period before terminating the employee’s employment.”. 20 25

Amendment of section 7A

5. Section 7A of the principal Act is amended —

- (a) by deleting the word “An” in subsection (1) and substituting the words “Subject to section 7C, an”;

- (b) by deleting paragraph (a) of subsection (2) and substituting the following paragraph: 30

“(a) an employee mentioned in section 7(1)(a) continues, after attaining the specified age, to work for his employer; and”;

(c) by deleting the words “section 7(1)” in subsection (3)(a)(ii) and substituting the words “section 7(1)(b)”;

(d) by deleting the words “new contract of service” in subsection (4) and substituting the words “re-employment contract”;

(e) by deleting the words “new contract of service for the purpose of re-employment under subsection (1) or (3)(a)(i)” in subsection (6) and substituting the words “re-employment contract”;

(f) by deleting subsection (7) and substituting the following subsection:

“(7) Despite subsection (6), where the period between —

(a) the start of re-employment under a re-employment contract for an employee; and

(b) the date on which the employee 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 under the re-employment contract may be for that shorter period.”; and

(g) by deleting subsection (8).

Amendment of section 7B

6. Section 7B of the principal Act is amended —

(a) by deleting the words “new contract of service” wherever they appear in subsections (1) and (2) and substituting in each case the words “re-employment contract”;

(b) by deleting subsection (3) and substituting the following subsection:

“(3) An employee’s continuity of employment under re-employment is not broken if his employer re-employs or renews the re-employment of the employee in accordance with section 7A(4).”; and

(c) by deleting the words “employment contract” in the section heading and substituting the words “contract of service”.

Amendment of section 7C

7. Section 7C of the principal Act is amended —

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

“(1) Section 7A does not apply if an employer (in this section called E1) is unable to re-employ an eligible employee in accordance with section 7A because E1 is unable to find a vacancy in E1’s establishment that is suitable for the eligible employee, despite making reasonable attempts to do so in accordance with the tripartite guidelines, and —

(a) E1 offers an employment assistance payment to the eligible employee; or

(b) during the eligible employee’s employment with E1 —

(i) another employer (in this section called E2) offers to employ the eligible employee in lieu of E1; and

(ii) the eligible employee accepts the offer.

(1A) Subject to any modifications as may be prescribed, where subsection (1)(b) applies —

(a) E1’s re-employment obligations to the eligible employee are discharged immediately before the agreed date;

(b) any reference to an employer in section 7A or 7B(3), or to E1 in subsection (1), includes a reference to E2 from that agreed date; and

5 (c) E1’s re-employment obligations towards the eligible employee survive any unlawful dismissal by E1 of the eligible employee before the agreed date, but to the extent provided in paragraphs (a) and (b).”;

10 (b) by deleting the words “Notwithstanding subsection (1)” in subsection (2) and substituting the words “Despite subsection (1)(a)”;

(c) by inserting, immediately after subsection (4), the following subsections:

15 “(5) Without affecting section 7B, where E2 enters into a contract of service with an eligible employee in lieu of E1, any period for which the eligible employee has served under E1 before he commences his service with E2 is to be reckoned only for the purposes of —

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

25 (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.

30 (6) A consent form signified by E1, E2 and the eligible employee in the prescribed form and manner is prima facie proof of the matters mentioned in subsection (1)(b).

(7) To avoid doubt, the references to an eligible employee’s employer in Parts IV and V include references to E2, where applicable.”; and

(d) by inserting, immediately after the words “Employment assistance payment” in the section heading, the words “or alternative employment”.

Amendment of section 8A

8. Section 8A(4) of the principal Act is amended by deleting the words “section 7C(1)(b)” in paragraph (d) and substituting the words “section 7C(1)(a)”. 5

Amendment of section 12

9. Section 12(2) of the principal Act is amended by deleting the full-stop at the end of paragraph (c) and substituting a semi-colon, and by inserting immediately thereafter the following paragraph: 10

“(d) for any provision of this Act that is applicable to the re-employment of an employee to apply, with such modifications as may be specified in the regulations, to — 15

- (i) the renewal of a re-employment contract; or
- (ii) the employment of an eligible employee by another employer as mentioned in section 7C(1)(b).”.

Amendment of section 13

10. Section 13 of the principal Act is amended by deleting subsections (2) and (3). 20

Saving and transitional provisions

11.—(1) Sections 2, 7, 7A, 7B, 7C, 8A and 12 of the principal Act, as in force immediately before the date of commencement of this subsection, and Parts IV and V of the principal Act, continue to apply to every employee born before 1 July 1952 and every employer of such an employee as if sections 2, 4, 5, 6, 7, 8 and 9 had not been enacted. 25

(2) Subject to subsection (3), no employer may reduce the salary of any employee under the repealed section 5 on or after the date of commencement of section 3, despite any notice to the employee under 30

subsection (3) of the repealed section 5, or any agreement by the employee to the reduction, given before that date.

(3) If, before the date of commencement of section 3, the salary of an employee has been reduced under the repealed section 5 —

5 (a) the repeal of section 5 does not invalidate or render unlawful that reduction in the employee’s salary, and the reduced salary continues to apply unless the employer and the employee agree otherwise; but

10 (b) the employee’s salary cannot be further reduced under the repealed section 5 on or after the date of commencement of section 3.

(4) In subsections (2) and (3), “the repealed section 5” means section 5 of the principal Act as in force immediately before the date of commencement of section 3.

15 (5) For a period of 2 years after the date of commencement of any provision of this Act, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister considers to be necessary or expedient.

EXPLANATORY STATEMENT

This Bill seeks to amend the Retirement and Re-employment Act (Cap. 274A) for various purposes for eligible employees born on or after 1 July 1952, including the following:

(a) if the employer (E1) cannot find a suitable vacancy in the employer’s establishment for an eligible employee, to allow E1’s re-employment obligations to be discharged if the employee accepts an offer of employment by another employer (E2) in lieu of E1;

(b) to abolish salary adjustments under section 5 for all employees, except that it does not invalidate or render unlawful any salary reduction that has already taken place before the repeal of section 5.

The age of 67 years will be prescribed by the Minister, in relation to such eligible employees, for the purposes of section 7A(1).

Clause 1 relates to the short title and commencement.

Clause 2 amends section 2(1) to insert the definitions of “agreed date”, “re-employment contract” and “re-employment obligations”, and to clarify the definitions of “re-employment” and “specified age”. References to a new contract of service in sections 7A and 7B are replaced by references to a re-employment contract.

Clause 3 repeals section 5 to abolish salary adjustments under that section.

Clause 4 amends section 7 to specify that employees born on or after 1 July 1952 are eligible for re-employment in accordance with section 7A. The existing section 7A(8) is re-enacted as section 7(3).

Clause 5 amends section 7A —

- (a) to clarify that subsection (1) operates subject to section 7C;
- (b) to provide that subsection (2)(a) applies to an employee mentioned in section 7(1)(a), that is, an employee born on or after 1 July 1952;
- (c) to update the reference to the eligibility criteria in section 7(1)(b);
- (d) to replace references to “new contract of service” in subsections (4), (6) and (7) with the term “re-employment contract”; and
- (e) to delete subsection (8), which is re-enacted as section 7(3).

Clause 6 amends section 7B by replacing references to “new contract of service” with the term “re-employment contract” in subsections (1) and (2). Subsection (3) is redrafted for simplicity. The section heading is also amended to replace the term “employment contract” with “contract of service” for consistency.

Clause 7 amends section 7C to provide for a new alternative to paying an employment assistance payment if the employer (E1) is unable to re-employ an eligible employee because E1 cannot find a suitable vacancy for the employee in E1’s establishment, despite making reasonable attempts to do so in accordance with the tripartite guidelines. E1’s re-employment obligations may be discharged if the employee accepts an offer of employment by another employer (E2) in lieu of E1. The new subsection (1A) states the date when E1’s re-employment obligations are discharged, applies sections 7A, 7B(3) and 7C(1) to E2, subject to any modifications as may be prescribed and provides that E1’s re-employment obligations continue to apply despite any earlier unlawful dismissal of the employee but only up to the agreed date of discharge. A consequential amendment is made to update a reference in subsection (2) from subsection (1) to subsection (1)(a). The new subsection (5) provides for the continuity of the employee’s service for the purposes of computing the employee’s entitlement to annual leave and sick leave. The new subsection (6) provides that a consent form signified by E1, E2 and the eligible employee as prescribed is prima facie proof of the matters mentioned in section 7C(1)(b). The new subsection (7) clarifies that

references to an eligible employee's employer in Parts IV and V include references to E2, where applicable.

Clause 8 makes a consequential amendment to section 8A(4)(d).

Clause 9 amends section 12(2) to insert a new paragraph (d). The new paragraph provides for provisions of the Act relating to re-employment to apply as prescribed, with modifications, to the renewal of re-employment contracts or for the purposes of section 7C(1)(b). This amendment will be brought into force after the amendments made to section 12 by the Employment Claims Act 2016 (Act 21 of 2016) are brought into force.

Clause 10 amends section 13 to delete subsections (2) and (3) as they are spent.

Clause 11 relates to saving and transitional provisions.

Clause 11(1) provides that sections 2, 7, 7A, 7B, 7C, 8A and 12 of the principal Act, as in force immediately before the date of commencement of the subsection, continue to apply to every employee born before 1 July 1952 as if clauses 2, 4, 5, 6, 7, 8 and 9 had not been enacted. This preserves the employee's existing rights under those sections and their rights to apply for remedies under Part IV for the violation of those rights.

Clause 11(2), (3) and (4) relates to the repeal of section 5. It preserves the reduction of salaries made under section 5 before the repeal, but clarifies that no further reduction of salary may be made under section 5 after the repeal.

Clause 11(5) provides that, for a period of 2 years after the date of commencement of any provision of the Bill, the Minister may, by regulations, prescribe such additional provisions of a saving or transitional nature consequent on the enactment of that provision as the Minister considers to be necessary or expedient.

EXPENDITURE OF PUBLIC MONEY

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