

Client Alert

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For more information, please contact:

Celeste Ang
Principal
+65 6434 2753
celeste.ang@bakermckenzie.com

Kelvin Poa
Principal
+65 6434 2524
kelvin.poa@bakermckenzie.com

Clarence Ding
Senior Associate
+65 6434 2662
clarence.ding@bakermckenzie.com

Zhao Yang Ng
Senior Associate
+65 6434 2701
zhao.yang.ng@bakermckenzie.com

Company Fined SGD 18,000 for False Declaration on Fair Hiring in Employment Pass Application

Executive Summary

On 10 March 2020, the Minister of Manpower ("**MOM**") put out a press release stating that a company has been convicted of falsely declaring in its Employment Pass ("**EP**") application that it had considered local candidates fairly, in order to hire a foreigner it had pre-selected for a job position.

The sole director of Ti2 Logistics Pte Ltd ("**Ti2 Logistics**") pleaded guilty to one charge under the Employment of Foreign Manpower Act (Cap. 91A) ("**EFMA**") of making false declaration on fair consideration in an EP application. As a result, Ti2 Logistics was barred from hiring foreign employees for 24 months, the EP of the foreign employee (who was hired for the position) was revoked with immediate effect, and Ti2 Logistics was fined SGD 18,000 as a result of the offence.

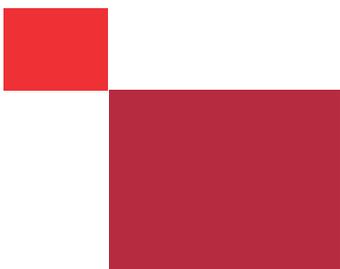
Section 22 (1)(d) of the EFMA sets out that any person (i.e. being an employer, foreign employee or a self-employed foreigner) who makes any statement or furnishes any information to the Controller or an authorised officer or employment inspector which he knows, or ought reasonably to know, is false in any material particular or is misleading by reason of the omission of any material particular, shall be guilty of an offence and subject to a fine not exceeding SGD 20,000 or to imprisonment for a term not exceeding two years or to both.

Ti2 Logistics is the first firm to be prosecuted for making false declarations on fair hiring considerations, under the enhanced Fair Consideration Framework ("**FCF**").

The FCF was updated in January 2020, to impose greater deterrence against any form of workplace discrimination in Singapore. The administrative penalties under the FCF are stiffened which include: (i) revoking work pass privileges of discriminatory employers for a longer duration, and (ii) prosecuting employers and key personnel who make false declarations on fair consideration.

Facts

On 26 June 2019, Ti2 Logistics submitted an EP application for a foreign candidate it had pre-selected for the position of General Manager. In the application, Ti2 Logistics indicated that it had interviewed one foreigner for the aforementioned position. However, the MOM rejected the EP application as Ti2 Logistics had failed to comply with the FCF requirement of practising fair hiring considerations, including advertising the job position on MyCareersFuture.sg (formerly known as the Jobs Bank).





To circumvent this requirement, Ti2 Logistics posted the job advertisement on Jobs Bank for the position of Business Development on 10 July 2019.

Investigations showed that 22 local candidates had responded to the job advertisement by submitting their resumes to Ti2 Logistics via Jobs Bank. However, Ti2 Logistics did not review and consider any of the local candidates.

Ti2 Logistics then resubmitted the EP application for the pre-selected foreign candidate on 26 July 2019. Ti2 Logistics then falsely declared in its EP application that it had interviewed two Singaporeans and one foreigner for the position and considered local candidates fairly.

All employers must make accurate, complete and truthful declarations to the Controller of Work Passes in their work pass applications. Those who fail to do so can be fined up to SGD 20,000, or jailed for up to two years or both, for each charge.

Conclusion

The MOM has continuously emphasised that employers should not treat the job advertising requirement as a "paper exercise". All employers are expected to consider Singaporeans fairly for jobs. The MOM will also continue to be vigilant on discriminatory employers, and will not hesitate to take actions against employers who are seen as trying to circumvent the job advertising requirement.

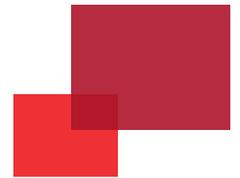
Currently, employers are exempted from the job advertising requirement if they meet any of the following ground for exemption:

- a) The company has fewer than ten employees;
- b) **The fixed monthly salary for the vacancy is at least SGD 15,000;**
- c) The vacancy is to be filled by an intra-corporate transferee as defined by the World Trade Organisation's General Agreement on Trade in Services; or
- d) The period of employment is not more than one month.

With effect from 1 May 2020, the exemption in bold above will be tightened: only job positions which pay a fixed monthly salary of at least SGD 20,000 will be exempted from the job advertisement.

Employers should ensure that their recruitment functions (including those which are based overseas) are fully aware of the FCF requirement.

As a good practice, employers should make reasonable efforts to tap into the local market to consider Singaporeans for the job vacancies first (e.g. advertising on MyCareersFuture.sg, fairly considering the submitting resumes and conducting interviews for potentially qualified candidates), before exploring other recruitment avenues to consider a greater pool of candidates which may include



foreigners. Employers should not pre-select a foreign candidate first and thereafter go through the motion of advertising on MyCareersFuture.sg.

Employers should keep their interview and job offer records for at least one year, in case a complaint of discriminatory hiring is made against them. Employers who are unable to provide documents to support their fair hiring practices, may be seen as not committed to fair hiring practices by the MOM.

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