



WORKPLACE DISCRIMINATION

Is Singapore doing enough?

"Discrimination of any form and against anyone **has no place at all in our society** and, most certainly, not at the workplace. People should be assessed solely on their merits and their ability to do a job and nothing else."



President Halimah Yacob

20 August 2020

Legal Framework for Employment Discrimination

Currently, Singapore law **only prohibits discrimination in relation to wrongful dismissal**. This means that an employer cannot dismiss an employee on the basis of their *age, race, gender, religion, marital status and family responsibilities, pregnancy or disability*.

Under the Employment Act, an employee may make a claim with the Employment Claims Tribunal to either be (a) reinstated in their former employment or (b) claim compensation from the employer. However, there is **no statutory penalty on errant employers** who discriminate against employees.

aware



According to a 2018 report by AWARE and the Disabled People's Association, this limited protection may be inadequate in addressing workplace discrimination and attitudinal bias at all levels of employment, including hiring and promotion.¹

Singapore's Business Case Approach

The Singapore government has resisted enacting an anti-discrimination legislation on the basis that these laws may deter businesses from hiring workers from protected groups for fear of being accused of discrimination.²

Instead, the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP) was set up to encourage organisations to adopt fair employment practices.

Under the Fair Consideration Framework, employers who do not abide by the Tripartite Guidelines will face scrutiny from the Ministry of Manpower and may have their work pass privileges curtailed. However, this administrative penalty is mainly **aimed at deterring discrimination against Singaporeans** and **may not be effective in addressing other forms of discrimination.**³

A business case approach refers to campaigning for diversity and non-discrimination by highlighting how implementing such values in the workplace can be *beneficial* to the company by enabling them to "remain competitive" or "attract the best talent".



How Does TAFEP Deal with Discriminatory Employers?

- Individuals who experience employment discrimination can contact TAFEP for advice and assistance.
- TAFEP will contact the employer to improve its employment practices based on its guidelines.
- In instances where the employer is recalcitrant, unresponsive or persistently fails to improve on their employment practices, TAFEP can refer the case to MOM for further investigation.
- During investigation, the employer will be given an opportunity to present its case.



If the complaint is substantiated, the employer will be given the opportunity to rectify its actions.



In cases where employers persist with discriminatory employment, MOM can curtail their work pass privileges.⁴ It is not clear what other administrative penalties may be imposed on errant employers.

Incentives to Promote Employment of Marginalised Groups

In addition to the Tripartite Guidelines, the Ministry of Social & Family Development (MSF) has also introduced various other initiatives to promote workplace diversity.

In 2014, the Council for Board Diversity was established to increase the number of women on boards of listed companies, statutory boards and non-profit organisations.



MSF also runs the Open Door Programme (ODP) Grant which aims to encourage employers to hire, train and integrate persons with disabilities in the workplace.

Effective or Not?

According to NUS academics Audrey Chia and Angeline Lim,⁵

- There are no explicit measures or research documenting TAFEP's success. While the number of businesses publicly pledging to abide by TAFEP's guidelines is increasing, it is difficult to ascertain if these practices are actually being put in place especially given the lack of monitoring of protected groups' progress.
- TAFEP's business-case approach may not be sufficient to shift employers' attitudes and increase the adoption of fair employment practices.

According to the American Chamber of Commerce,⁶

"Encouragement alone is not enough to change business practice [and] Singapore's government may need to change laws and policies if it truly wants the nation to experience the economic benefits of D&I."

Its 2019 report cited research by NTU professor Gao Huasheng that demonstrated how enacting anti-discrimination laws can improve innovation and productivity.

Singapore's Obligations Under International Law

The absence of an anti-discrimination law to tackle gender, disability and racial discrimination may also be in contravention of Singapore's obligations under international law to eliminate discrimination under CEDAW (ratified in 1995), the CRPD (ratified in 2013) and CERD (ratified in 2017).



Did you know? Singapore is 1 of only 14 countries out of 183 members of the International Labour Organization that has not ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).



In a 2012 report, the ILO emphasised that comprehensive legislation containing explicit provisions defining and prohibiting direct and indirect discrimination is necessary to address the “*persisting patterns of discrimination*” across societies alongside non-legislative measures.⁷

Carrots Not Enough, Time to Introduce The Stick in Singapore?

In 2013, the then acting Minister for Manpower Tan Chuan-Jin said: "Anti-discrimination legislation is one possible way...and we do not reject the idea entirely". However, he clarified that the current approach is "working for us".⁸



Is this still the case? Or is it time for a different approach?



For example, in 2018, PAP MP Saktiandi Supaat called on the government to give TAFEP legal powers to prosecute errant employers.⁹ In its 2020 GE Manifesto, the Workers' Party also suggested enacting an anti-discrimination law.¹⁰

As a 2008 OECD report noted, the effectiveness of a well-designed anti-discrimination legislation *"resides not only in their capacity to repress unwanted behaviours and compensate victims, but also in their capacity to induce cultural change and redefine socially acceptable practices."*¹¹

References

1. AWARE and DPA (2018), "Joint Submission to the Public Consultation on the Employment Act Review" <<http://www.aware.org.sg/wp-content/uploads/AWARE-and-DPA-joint-submission-to-the-Public-Consultation-on-the-Employment-Act-Review.pdf>>
2. Ministry of Manpower (2018), "Legal and punitive measures in place to tackle workplace discrimination" <<https://www.mom.gov.sg/newsroom/press-replies/2018/0428-legal-and-punitive-measures-in-place-to-tackle-workplace-discrimination>>
3. Rachel Phua (Channel NewsAsia, 14 January 2020), "Harsher penalties for companies whose hiring practices discriminate against Singaporeans" <<https://www.channelnewsasia.com/news/singapore/penalties-companies-discriminate-against-singaporeans-hiring-12261678>>
4. Ministry of Manpower, "How MOM Deals with Employment Discrimination" <<https://www.mom.gov.sg/-/media/mom/documents/parliament/how-mom-deals-with-employment-discrimination-final.pdf>>
5. Chia, A., & Lim, A. (2010). Singapore: equality, harmony and fair employment. International handbook on diversity management at work: Country perspectives on diversity and equal treatment, 198.
6. American Chamber of Commerce (2019), "Increasing Innovation and Productivity in Singapore: The Role of Diversity and Inclusion" <<https://amcham.com.sg/wp-content/uploads/2019/07/The-Diversity-Inclusion-White-Paper.pdf>>
7. ILO 2012 General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008 at [854] - [855] <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf>
8. Reach Singapore (2013), "Articles: Govt is open to anti-discrimination labour laws: Chuan-Jin & Employers open to hiring older workers: Study" <<https://www.facebook.com/notes/reachsingapore/articles-govt-is-open-to-anti-discrimination-labour-laws-chuan-jin-employers-ope/10151486159288795>>
9. Yasmine Yahya (The Straits Times, 14 May 2018), "Parliament: Give legal powers to Tafep to fight workplace discrimination, suggests MP" <<https://www.straitstimes.com/politics/parliament-give-legal-powers-to-tafep-to-fight-workplace-discrimination-suggests-mp>>
10. Workers' Party (2020), "Make Your Vote Count: The Workers' Party Manifesto 2020" <<https://d3bnzwrhehvbjwjmja.s3-ap-southeast-1.amazonaws.com/The+Workers+Party+Manifesto+2020.pdf>>
11. OECD (2008), "The Price of Prejudice: Labor Market Discrimination on the Grounds of Gender and Ethnicity" at p 46 <<https://halshs.archives-ouvertes.fr/halshs-00312794/document>>

CAPE, or the Community for Advocacy & Political Education – a student organisation based in Yale-NUS College – was founded in 2017 by students from Yale-NUS College and the Law Faculty of the National University of Singapore (NUS). An independent and non-partisan community, we aim to build capacity for political literacy and constructive participation in Singapore’s civic democracy.



@cape.sg