Source: *The Straits Times,* pB3
Date: 12 June 2023

Can workplace fairness law deter errant employers and avoid worsening work conflict?

The law must factor in subtle tactics and bad-faith actions undermining fair employment

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For some workers in Singapore, discrimination at the workplace is a daily lived reality. A law is now in the works to give greater protection to such employees and to enable them to seek remedies if they have been harmed.

But it's too early to celebrate. There are many ways in which errant employers may seek to circumvent such a law or mischievous workers may want to abuse it. Still, the first steps towards a fairer workplace have been taken.

Earlier this year, the Tripartite Committee on Workplace Fairness recommended the drafting and adoption of the Workplace Fairness Legislation (WFL) to enhance protection against discrimination at work.

A first reading of an ensuing parliamentary Bill on workplace fairness is expected some time next year. This is a big step in the right direction to tackle the sobering realities persisting in the workplace.

A 2022 Institute of Policy Studies (IPS) study on race relations which surveyed about 2,000 Singapore residents found that about one-fifth of minority race respondents reported experiencing unfair treatment at work due to their race, such as losing out on a job or promotion. About half of those who faced such treatment indicated feeling sadness or resignation.

The WFL will go some way towards deterring discriminatory actions in the workplace. Yet, while the quest to ensure that all are treated justly at work is a crucial one, the path to securing the rights of workers while continuing to sustain harmonious employer-employee relations is fraught with challenges.

DETERRING ERRANT EMPLOYERS

Errant employers may attempt to skirt the WFL by employing various means to undermine the intended protection.

For example, they could try to avoid their legal obligations by modifying the nature of employment relationships. Errant establishments may reclassify employees as independent contractors or freelancers to evade the potential for penalties or entitlements mandated by the WFL.

This has already happened abroad. Studies over the past decade have revealed how approximately 10 per cent to 20 per cent of employers across various states in the United States are guilty of misclassifying their workers as independent contractors.

Of course, the main reason for this is not to circumvent obligations to ensure workplace fairness, but to sidestep giving out employee benefits such as minimum wage and unemployment insurance.

Therefore, in the Singapore context, the WFL should be robust enough to not only encompass traditional employer-employee relationships, but also address the evolving nature of work arrangements, such as those prevalent in the gig economy.

Second, it would be wise to forestall other subtle tactics employed to evade responsibilities to secure workplace fairness. Employers could potentially implement or alter workplace policies in a manner that undermines the spirit of fairness.

For instance, strict dress codes or specific grooming policies could be mooted to pressure individuals from certain religious or cultural backgrounds to either conform or quit the organisation.

There are other ways employers can discriminate against certain workers. For example, they can deliberately prohibit flexible schedules to daunt workers with additional family responsibilities. Or they may needlessly include language proficiency requirements in job advertisements to dissuade individuals of certain ethnicities from applying for a job.

But establishing intent can be challenging, as some employers may unintentionally discriminate due to ignorance as opposed to harbouring deliberate intent. Alternative methods of dispute resolution can play a vital role in resolving conflicts in such instances.

Nonetheless, the WFL should emphasise that any consideration of a protected characteristic such as gender, age or linguistic proficiency must be based on objective criteria and supported by evidence. Scenarios can be outlined whereby certain characteristics may be considered genuine and reasonable job requirements due to the nature of the role.

These should be developed not in isolation by policymakers, but with inputs from industry professionals and representatives of relevant communities.

In addition, employers could also be compelled to have mechanisms in place to proactively monitor and periodically review internal workplace policies and practices, and to identify those that might unintentionally lead to unfair treatment of specific groups.

Third, some employers may even resort to covert forms of retaliation against employees who seek to assert their rights under the WFL. Such employees may face the threat of unfavourable work assignments or even dismissal for exercising their legal protections.

It is hence crucial to anticipate and prevent bad-faith responses when employees raise concerns under the WFL. For example, there can be whistle-blower protections to safeguard employees who report WFL violations from retaliation.

Comprehensive training and resources should be made available for employees to learn about their rights and protections offered by the WFL. This will empower them to identify potential violations and take necessary action.

SAFEGUARDS AGAINST ABUSE

On the flip side, there is also the potential for individual workers to engage in bad-faith actions to exploit the WFL.

While the legislation seeks to empower employees and enhance their protection, an overly broad or ambiguous legal framework can inadvertently create an environment where disgruntled workers exploit the system.

This could involve workers submitting frivolous or vexatious lawsuits against employers after experiencing legitimate disciplinary actions, or getting less than satisfactory performance evaluations. They may misuse the WFL to seek retribution against their employers or seek undeserved financial gain.

Some may seek to weaponise the WFL by making unfounded allegations of harassment against supervisors or colleagues.

These claims, lacking genuine merit, can burden both employers and the legal system, and undermine the intended purpose of the legislation.

To mitigate this risk, the WFL should include safeguards such as stringent evidentiary requirements, and timely dismissal mechanisms allowing the courts to promptly shelve claims that lack evidence or merit during the early stages of litigation.

Establishing robust enforcement mechanisms and imposing meaningful penalties against individuals found to have abused the WFL can also act as a deterrent.

Swift and decisive action against those who file frivolous or vexatious claims, such as public blacklists used in jurisdictions like the United Kingdom, would also send a strong message that the WFL is intended for legitimate protection against workplace discrimination and not for personal gain.

However, it is vital that the right balance is struck to ensure that such safeguards do not inadvertently discourage genuine cases from being surfaced. If these safeguards are perceived as too stringent or intimidating, individuals may be reluctant to report discriminatory acts.

Many individuals already hesitate to report instances of discrimination to the Tripartite Alliance for Fair and Progressive Employment Practices. The IPS study notes that only four in 10 or fewer would report perceived discrimination in the workplace.

In this regard, clear communication of the WFL's provisions can empower individuals to understand the legitimate grounds for filing a claim, discourage wilful misuse, and foster an environment where reporting workplace discrimination is seen as a valuable contribution towards creating a fair and inclusive work culture.

In situations where small and medium-sized enterprises lack internal resources for workplace fairness resolution, the Workplace Fairness Legislation could empower representative organisations like the Association of Small and Medium Enterprises to establish external mediation channels.

AVOIDING ADVERSARIAL RELATIONS

One concern is that an overly legalistic approach to workplace disputes, driven by the implementation of the WFL, could erode current amicable methods of resolution and strain employer-employee relationships.

It is hence welcomed that the Tripartite Committee has also recommended enshrining non-litigious dispute resolution mechanisms. These include adequate internal grievance processes, compulsory mediation, and reconciliation in the WFL as the first ports of call for resolving workplace discrimination issues.

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Similar to early medical testing and detection for optimal treatment of diseases, the WFL should also emphasise the importance of early intervention in resolving workplace conflicts.

Human resource professionals can play a key role in this. Their capabilities should be enhanced through training programmes focused on cultural sensitivity and conflict resolution.

Armed with such expertise, HR professionals can navigate and resolve conflicts before they escalate into adversarial scenarios.

Finally, it is important to continue actively engaging employees in decision-making processes and creating avenues for their input.

This contributes to a harmonious work environment where conflicts are more likely to be resolved amicably, and workplace fairness can be upheld.

With such safeguards in place, the WFL can strike a balance between protecting genuine victims of workplace discrimination and deterring those who seek to misuse the legislation for personal or malicious purpose.

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The planned Workplace Fairness Legislation will go some way towards deterring discriminatory actions in the workplace. Yet, while the quest to ensure that all are treated justly at work is a crucial one, the path to securing the rights of workers while continuing to sustain harmonious employer-employee relations is fraught with challenges, say the writers.

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