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Labour protection for the vulnerable: An evaluation of the salary and injury claims system for migrant workers in Singapore

Tamera FILLINGER

Nicholas HARRIGAN

Singapore Management University, nharrigan@smu.edu.sg

Stephanie CHOK

Amirah AMIRRUDIN

Patricia MEYER

See next page for additional authors

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Author

Tamera FILLINGER, Nicholas HARRIGAN, Stephanie CHOK, Amirah AMIRRUDIN, Patricia MEYER, Meera RAJAH, and Debbie FORDYCE



LABOUR PROTECTION FOR THE VULNERABLE

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FOR MIGRANT WORKERS IN SINGAPORE

Tamera Fillinger, Nicholas Harrigan, Stephanie Chok, Amirah Amirrudin,
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Amirah Amirrudin, Patricia Meyer, Meera Rajah, and
Debbie Fordyce

**these authors contributed equally to the study*

ABOUT THE AUTHORS

TAMERA FILLINGER

Tamera Fillinger teaches at the SMU School of Law as adjunct faculty and assists migrant workers with their injury and salary claims with Transient Workers Count Too (TWC2). Before moving to Singapore, she served as Executive Director of the United Foundation for China's Health and taught law with the Tsinghua-Temple LLM programme and China's National Judicial College. She began her career in the New York law firm Paul, Weiss and then served as a lawyer with USAID in Jakarta, Indonesia; Nairobi, Kenya; and Washington, DC.

STEPHANIE CHOK

Dr Stephanie Chok did her MA in Development Studies and obtained her PhD from Murdoch University, Western Australia. She wrote her thesis on temporary migrant workers in Singapore, with a focus on migrant construction workers. Her thesis was awarded the second prize in the 2013 Asian Studies Association of Australia's Presidents' awards for the best theses on Asia. Stephanie has volunteered and worked with local migrant worker organizations for many years and is currently an independent researcher. She continues to be involved in research on labour migration and inequality.

PATRICIA MEYER

Dr Patricia Meyer has a PhD in Chemical Engineering from Carnegie Mellon University. Singapore has been her home for over 16 years and she has been a Permanent Resident since 2002. Patricia is a researcher and interviewer at Singapore Management University on a project basis. In 2011, she started volunteering with TWC2's free meal programme for migrant workers who are unable to work due to injury or salary claims. Today she is involved in research, casework, and volunteer training at TWC2.

DEBBIE FORDYCE

Debbie Fordyce is the founder of the Cuff Road Project, the TWC2's free meal programme for foreign workers with injury and salary claims. This programme services almost 2,000 workers per year and has given out over 700,000 free meals since 2008. Debbie orients and trains new volunteers, handles casework and medical issues, gathers statistics, and works directly with the South Asian men participating in the project. She has lived in Singapore since 1980 and for ten years was a caseworker assisting refugees in asylum camps in Singapore and Indonesia.

NICHOLAS HARRIGAN

Dr Nicholas Harrigan is Assistant Professor of Sociology at the School of Social Sciences at Singapore Management University. His research on low-wage migrant workers focuses on the social determinants of health and working conditions. Before joining SMU in 2008 he was a postdoctoral researcher in Sociology at Nuffield College at the University of Oxford, and completed a PhD in Politics at the Australian National University.

AMIRAH AMIRRUDIN

Amirah Amirrudin is an academic researcher in the field of sociology, with a particular focus on labour migration. She mainly studies low-wage migrant workers in Singapore, covering issues such as work and living conditions, labour exploitation, and temporary migration programmes. She is a Research Assistant at Singapore Management University. She has a Bachelor of Science in Economics with a second major in Sociology.

MEERA RAJAH

Meera Rajah is a lawyer admitted to the Singapore bar. She is currently an Associate at Rajah & Tann Singapore LLP, and has a keen personal interest in employment and discrimination law. She graduated with a LLB (Hons) from University College London, where she won several academic and mootng prizes, including the Blackstone Chambers Commercial Law Prize, the John Frederic Whitehouse Essay Award and the Bentham Prize for High Achievement. She started volunteering with TWC2 in 2014, where she assisted at the Cuff Road Project and with casework.

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GLOSSARY AND ACRONYMS

ACL. Assistant Commissioner of Labour or Labour Court judge. While ACL is the official term, workers will often refer to the Labour Court judge as simply judge or even just MOM.

Ali baba. A term used by workers to indicate anything illegal, false, unethical, or dodgy. For example, “This salary paper *ali baba*”, or “My boss, he always *ali baba* talking.”

AME. Average monthly earnings. The MOM calculates a worker’s medical leave wages and injury compensation based on the worker’s AME, which are based on the worker’s earnings (including overtime) over the 12 months prior to the accident.

ASEAN. Association of Southeast Asian Nations.

Civil claim / common law. An alternative to MOM’s work injury compensation scheme for seeking compensation for workplace accidents. It requires a lawyer and is outside MOM’s ambit. Compensation is potentially higher, but the worker needs to prove negligence or fault by another party and the process may take years if the case is settled in court. When workers say, “I go common law”, it means they have withdrawn their claim from MOM’s process and have engaged a lawyer to pursue a settlement through common law.

COL. Commissioner for Labour.

EA. Employment Act. Singapore’s main labour law, which provides terms and working conditions for employees.

ECT. Employment Claims Tribunal.

EFMA. Employment of Foreign Manpower Act. This act regulates the employment of foreigners in Singapore.

FCWDS. Foreign Construction Worker Directory System in Singapore.

FWL. Foreign worker levy. The MOM requires employers to pay a monthly levy for each worker as a pricing mechanism to regulate the number of foreign workers in Singapore.

HealthServe. Singaporean non-profit organisation that provides various health services for migrant workers including healthcare and advocacy.

HOME. Humanitarian Organization for Migration Economics. Singaporean non-profit organisation that provides services for and advocates on behalf of migrant workers.

ILO. International Labour Organisation.

IPA. In-principle approval. A letter given to a migrant worker in his home country after MOM approves the Work Permit application. The IPA states the basic salary, allowances, and deductions.

i-Report. The incident report or accident report describing the workplace accident, filed by the employer and/or the worker with MOM. Lawyers often file this report on behalf of their clients.

Judgment or Order. Settlement agreements registered with MOM, Labour Court judgments or orders, Employment

Claims Tribunal judgments, and Notice of Assessment orders under WICA, among others.

KET. Key employment terms.

LCRP. Labour Court Research Project.

Liability. Legal responsibility. In the WICA context it is the basis of the injury compensation, eg, the employer is liable if the injury is deemed a valid workplace injury.

Light duty. Modified or restricted duties which do not interfere with a worker's recovery from an injury. One important distinction between light duty and MC is that employers are required to pay all MC wages during the first year of the worker's recovery, but light duty only for the time when the work permit is valid. Unlike MC, which is paid up to one year whether the work permit is valid or invalid, once a worker is on a Special Pass, there is no pay for light duty.

LOD. Letter of demand. A formal letter, usually drafted by a lawyer on behalf of a client, which makes a demand for payment or action.

LOG. Letter of guarantee. Employers are asked to provide this document to clinics or hospitals to guarantee payment for an injured worker's medical tests and treatment.

Makan. Malay word which means "to eat", "meal", or "food."

MC. Medical certificate. A certificate issued by the treating doctor showing the number of days a patient should take rest from work due to a medical condition.

MOM. Ministry of Manpower.

NOA. Notice of Assessment. A document issued by MOM showing percentage of incapacity (ranging from 0 to 100 percent) as defined by the Guide to Traumatic Injuries and the amount of work injury compensation. The NOA is issued by MOM based on the doctor's assessment of the incapacity and sent to the employee (or his legal representative), the employer and the insurer. These stakeholders can contest the NOA within two weeks of the date of service.

NPO. Non-profit organisation. The Singaporean NPOs referred to in this paper are Transient Workers Count Too (TWC2), the Humanitarian Organization for Migration Economics (HOME), HealthServe, and the Migrant Workers Centre (MWC). We use the term NPO to include both organisations with government affiliation (normally referred to as voluntary welfare organisations) and those without governmental affiliation (normally referred to non-governmental organisations).

NUS. National University of Singapore.

PHC. Pre-hearing conference. The PHC, conducted by an ACL with the employee and the employer (or their legal representatives), allows an opportunity for the judge to hear arguments from both sides as well as to assess the evidence available. When sufficient material from both sides has been presented, the judge will convene a Labour Court hearing. Workers rarely use this term, usually referring to the sessions simply as meetings.

Points. The degree of permanent incapacity or permanent disability, ranging from 0 to 100 percent. This percentage,

multiplied by the worker's average monthly earnings and a factor relating to the worker's age, determines the amount of compensation.

Quantum. The amount of the compensation, used in the WICA claim context.

Receiving country. Also referred to as destination or host country, the country the migrant worker travels to for work.

SEC. Standard Employment Contract.

Sending country. Also referred to as country of origin or source country. In this report, it is the home country of the migrant worker, the country they will return to after their employment in Singapore ends.

Singapore Courts. Includes the State Courts, High Court, and Court of Appeal. The State Courts (previously known as the Subordinate Courts) form the first tier in the judicial hierarchy. They comprise the District Courts, Magistrates' Courts, and other specialised courts, such as the Coroner's Court and the Small Claims Tribunals. The District Courts, Magistrates' Courts and Small Claims Tribunals can hear civil matters where disputed amounts do not exceed \$250,000, \$60,000 and \$10,000, respectively. The second tier is the Supreme Court, made up of the High Court and Court of Appeal, the latter being the highest court in Singapore. The Supreme Court has inherent jurisdiction to try all civil and criminal claims, unlike the State Courts, and it hears appeals from these courts. Civil claims with a subject matter exceeding \$250,000,

criminal cases involving offences that carry the death penalty, an imprisonment term of over 10 years or are non-bailable, as well as admiralty, winding-ups, bankruptcies and admissions are commenced in the High Court, instead of the State Courts.

SMU. Singapore Management University.

S-Pass. A type of work pass for mid-level skilled migrant workers who earn at least S\$2,200 a month and have the relevant qualifications and work experience.

Special Pass. A document which legalises a worker's stay in Singapore while his injury or salary claim is considered, but does not allow the pass holder to work. The MOM issues Special Passes to workers when their work pass has been cancelled.

TWC2. Transient Workers Count Too. Singaporean non-profit organisation that provides services for and advocates on behalf of low-wage migrant workers.

WICA. Work Injury Compensation Act. The MOM's no-fault compensation system that includes payment for: permanent incapacity, MC days, and medical expenses.

Worker. In this report, worker refers to migrant worker and foreign employee.

WP. Work Permit. A type of work pass that is usually issued to low-wage workers within 14 days of their arrival in Singapore. When workers say the boss or MOM has "cut my Work Permit", they mean the Work Permit has been cancelled.

WPR. Work pass regulations.

WSS. Writ of seizure and sale.

EXECUTIVE SUMMARY

This research seeks to review and analyze the protections afforded to migrant workers in Singapore who bring salary and injury claims to the Ministry of Manpower for resolution. Our focus is male Work Permit holders from Bangladesh, China, and India who make up the majority of the workforce in Singapore's construction and marine sectors. Work Permit holders are the lowest wage category of foreign workers and comprise nearly a third of the overall workforce. While these workers play an important role in building the nation, they face workplace issues that many would not associate with a modern economy.

The impetus for this research project was the persistent numbers of migrant workers with salary and injury issues who approach Singapore's migrant worker non-profit organisations (NPOs) for assistance. While Singapore has continued to improve labour laws in recent years—to enhance employee protections and clarify employer responsibilities, for example the 2015 legislative amendments requiring employers to provide key employment terms—the persistence of workplace issues for migrant workers shows a disconnect between the intent of these protections and the practical realities for a subset of workers with salary and injury issues.

By analysing the causes of these issues, as well as the salary and injury claim system's responses, this research aims to help policy makers reduce gaps and strengthen dispute

“THE IMPETUS FOR THIS RESEARCH PROJECT WAS THE PERSISTENT NUMBERS OF MIGRANT WORKERS WITH SALARY AND INJURY ISSUES WHO APPROACH SINGAPORE'S MIGRANT WORKER NON-PROFIT ORGANISATIONS (NPOS) FOR ASSISTANCE.”

resolution mechanisms available to migrant workers. Drawing on legal and sociological methods, we employed a two-pronged approach. Through a review of legislation, Parliamentary debates, regulations, case law, and the claims system we sought to understand the legislative intent and the current legal and regulatory framework that seeks to protect workers and guide resolution of their claims. Our analysis finds that while the legislative and regulatory framework governing the employment of migrant workers is designed to provide substantial protections, four factors appear to undermine these protections: migrant worker vulnerability, ambiguous legal language, violations of the law, and gaps in administration. Our sociological analysis draws on 157 qualitative interviews with claimant migrant workers, as well as interviews and consultations with a range of stakeholders, including academics, industry representatives, and legal and medical practitioners. This is further supported by relevant literature on low-wage migrant workers in Singapore.

Our recommendations were developed both through consolidating our legal and sociological analysis, and through consultations with migrant workers, migrant worker NPOs, and other experts in the fields of employment law, legal aid, and healthcare. In each recommendation area, we reviewed policies and legislation in comparative jurisdictions, such as Hong Kong, Taiwan, Malaysia, United Arab Emirates, Qatar, Australia, and Germany. The development of our recommendations was guided and informed by the key principles that undergird regional and international benchmarks and labour standards agreed upon by international

institutions such as ASEAN, the International Labour Organization, and United Nations agencies. We acknowledge that the recommendations have associated costs for government, employers, and workers, and potential downstream implications. These costs may constrain policy options. We have sought to identify ways to reduce ambiguity and simplify systems to improve efficiency and create greater deterrence, which are intended to reduce incidents and costs over the long term. We present an abbreviated version of our recommendations below. See the full version of our recommendations in Chapter 4.

RECOMMENDATIONS

- 1** | **Require that before arrival in Singapore, Work Permit holders sign a Standard Employment Contract (SEC) that sets forth minimum standards embodied in the Employment Act (EA), Employment of Foreign Manpower Act (EFMA), and other relevant legislation.**

The SEC will include predetermined minimum contractual parameters and key employment terms, and will be made available in a language the worker understands to workers before the Work Permit is issued. Changes to employment terms and conditions set forth in the SEC made after the employee's arrival in Singapore that are less favourable to the employee must be authorised by MOM.

- 2** | **Require payment of salaries and allowances by electronic transfer or through payroll services for all Work Permit holders.**

The Ministry of Manpower can provide assistance packages to employers, and facilitate accessible and affordable bank transfer or payroll service options for Work Permit holders, in coordination with employers and local banks.

3 Amend Employment Act, Employment of Foreign Manpower Act, Work Injury Compensation Act, and related regulations and policies.

For the EA, simplify rules regarding salary payments, extend the one-year claim limitation to three years for salary claims, and require employers to provide and maintain receipts for salary payments, for payments made for actual costs of meals, accommodation and amenities provided to employees, for employee medical payments, and for deductions made from salaries. Employers should also maintain records of any payments workers make to agents.

For EFMA, require that any changes to the Standard Employment Contract to reduce employment terms be reviewed and approved by MOM in order to be enforceable. This process should involve all parties and take into account the limited bargaining power of migrant workers. For WICA, clarify and strengthen application of the presumption that an injury is related to work if it occurred at the workplace to better reflect legislative intent. Create a six-month time limit on MOM's initial determination of the validity of the workplace injury.

4 Improve claims process through access to information and enhancing safeguards.

Our recommendations include providing clear information on procedural rules, decision-making criteria, evidentiary requirements as well as time and costs involved, and ensuring this information is available in the languages of Work Permit holders. In assessing the credibility of witnesses for the company, give greater consideration to whether the witness is employed by that company and whether he has an interest in the outcome of the claim. MOM or other officers with mediation or settlement responsibility should be accredited by a recognised external organisation such as the Singapore Mediation Centre and have legal training. Increase access to the Change of Employer (COE) scheme for claimants and abolish the employer permission requirement, and allow access to the Foreign Construction Worker Directory System (FCWDS) for claimants on Special Pass. Enhance employer compliance with responsibilities to employees during the claims process by establishing and monitoring MOM requirements to provide specific dollar amounts per month for food and housing.

- 5 Improve claims reporting mechanisms and injury prevention.**

Recommendations here include the extension of MOM hours and creation of alternative sites so workers can access information or file claims on Sundays and evenings. Additionally, require healthcare providers or their surrogates to report to MOM when a Work Permit holder is issued more than three days MC, or is hospitalised for more than 24 hours. Employ independent safety supervisors on worksites and strengthen employee representation on workplace safety and health committees.
- 6 Ensure Work Permit holders have access to the full range of documentation that may be needed to bring a claim.**

This includes the various forms of documentary evidence migrant workers need for both salary and injury claims (eg the IPA, contract, time cards, pay slips, work injury incident reports, medical records, etc). Legislation should direct an adverse inference and ensure penalties if employers fail to provide these documents. The power to order discovery of these documents should be utilised, and affordable forensics analysis provided if the authenticity of a document or signature is reasonably in question. Medical facilities should ensure that patients have access to their medical documents.
- 7 Increase transparency and effectiveness of the mediation and adjudication process.**

Our suggestions include the publication of written Labour Court decisions and judgments through the MOM website (or, in the alternative, the law reports), creation of a body of precedents available to all parties who wish to access them; provision to all parties with information from MOM's investigations; open mediation, Labour Court and ECT sessions to a limited number of nominated observers; and to permit migrant workers to be accompanied by volunteer non-legal representatives during mediation and adjudication proceedings.
- 8 Improve access to medical care for Work Permit holders.**

Recommendations here include providing workers with insurance cards to directly access medical care up to a limited amount; requiring employers to pay for their employees' medical treatment and procedures that the doctor deems medically necessary without a Letter of Guarantee; maintaining a central register of Work Permit holders' insurers accessible to healthcare providers to clarify insurance coverage; and establishing a government fund or subsidy for migrant workers whose medical expenses exceed the S\$36,000 insurance coverage limit and whose employers are unable to pay.

9**Enhance stakeholder engagement and education.**

Recommendations here include creating a central resource center to provide information to healthcare providers on issues related to the injury claim process for migrant workers; enhancing education to increase understanding of Members of the Singapore Medical Council, the Law Society and the General Insurance Association of Singapore about migrant worker issues and employer responsibilities before and during the claim process; and extending pro bono and/or legal aid services to migrant workers.

10**Strengthen enforcement regime.**

Recommendations here include establishing a dedicated unit to help Work Permit holders enforce judgments; extend the Special Pass period for Work Permit holders to enforce judgments; and require employers to deposit a minimum sum at the start of the claim, and pay judgments and settlement orders directly to MOM or a Public Trustee.

Penalties should be increased and strictly enforced for employers who engage in practices such as failing to pay judgments and settlement orders, failing to pay or underpaying employee salaries, failing to report workplace injuries within stipulated timelines, and failing to meet their responsibilities in paying for meals, accommodation and medical care of employees.



CHAPTER 1

— INTRODUCTION —

CHAPTER 1: INTRODUCTION

In the past decade, migrant worker support, both formal and informal, has grown considerably. Migrant worker organizations such as Transient Workers Count Too (TWC2), the Humanitarian Organization for Migration Economics (HOME), HealthServe, and the Archdiocesan Commission for the Pastoral Care of Migrants and Itinerant People (ACMI), have expanded their programmes and collectively provide a wide range of services, from food, housing, and financial support to case work assistance, skills and language training, as well as subsidized medical and dental care.¹ The Migrant Workers' Centre (MWC), a bipartite initiative of the National Trades Union Congress (NTUC) and the Singapore National Employers' Federation (SNEF), was set up in 2009 to promote better employment practices and provide aid for distressed migrant workers.² There are also religious-based organizations and other volunteer groups, including arts and community-driven initiatives, that perform outreach and organise activities with, or related to, migrant workers in Singapore.³ This expansion has paralleled the growth of the country's migrant worker numbers,⁴ and has sensitised an increasing

number of people to the working and living conditions of migrant workers in Singapore. The expansion also reflects a growing demand for services (see Appendix 4), with NPOs seeing a steady stream of migrant workers seeking basic needs support and assistance with salary and injury claims.

Additionally, migrant worker NPOs that provide case work assistance through administrative and liaison support are increasingly supplementing these efforts with research and policy advocacy. Singapore's labour laws have continued to improve in recent years, with attempts to close gaps, protect employees and clarify employer responsibilities. Yet empirical realities, as witnessed by migrant worker NPOs on a regular basis, expose what appear to be gaps between legislative intent and actual outcomes for migrant workers with salary and injury claims. This study aims to further close those gaps and strengthen the dispute resolution mechanisms available to migrant workers. This study also aims to contribute to, and participate in, the ongoing dialogue and multi-stakeholder effort to improve employment conditions for migrant workers in Singapore.

¹ Further details on the services provided by TWC2, HOME, HealthServe and ACMI can be found on their websites: TWC2 <http://twc2.org.sg/>; HOME: <http://www.home.org.sg/>; HealthServe: <http://www.healthserve.org.sg/>; ACMI: <http://www.acmi.org.sg/>.

² Migrant Workers' Centre, "Who we are" (accessed 8 November 2016), <http://tinyurl.com/mwscg1>.

³ There are church groups that organize recreational activities or skills training for migrant workers, individual efforts to promote social projects involving migrant workers such as Geylang Adventures (<http://www.geylangadventures.com/projects/>), as well as groups like SAMASAMA (<https://www.facebook.com/groups/samasama2016/>) that aim to use art and dialogue as a platform to change perceptions of migrant workers. There are also a growing number of multi-stakeholder collaborations, such as the Migrant Worker Poetry Competition (<http://www.singaporeworkerpoetry.com/>).

⁴ Ministry of Manpower, "Foreign workforce numbers" (accessed 8 November 2016), <http://www.mom.gov.sg/documents-and-publications/foreign-workforce-numbers>

1. THE LABOUR COURT RESEARCH PROJECT

The Labour Court Research Project (LCRP) was created in response to the persistent number of low-wage migrant workers who approach migrant worker non-profit organisations (NPOs) for support and help with their salary and injury issues (for more details, see Appendix 4). Collectively, NPOs that provide support to migrant workers assist several thousand workers each year. In the specific case of TWC2, this assistance includes support for basic needs as well as guidance regarding the salary and injury claims process, including claims that are unresolved and advance to Labour Court.

This persistence is compounded by the egregious nature of the issues raised. Injured workers report an inability to access the claims system due to threats of repatriation or the repatriation of colleagues who could act as witnesses. They report difficulty accessing medical care, both in the hours or days immediately following an injury, and in the months, sometimes years, while waiting for a claim to be resolved. Workers with salary issues report having no access to their contracts or have contracts that contain terms that violate the Employment Act or have no contracts at all. Others report forged signatures or being made to sign blank vouchers and incorrect pay slips.

Since 2014, TWC2 has run a weekly clinic to provide additional assistance to migrant workers whose claims proceed to prehearing conference and Labour Court. These workers face issues related to the longer-term nature of their disputes, including a lack of support for basic needs, as well as a lack of guidance to adequately navigate the adjudication process. Volunteers see workers without

English language skills or experience of the law who are expected to cross-examine employers' witnesses, collect and present evidence, and represent themselves in Labour Court hearings.

In late 2015, TWC2 received a grant to undertake research analysing the circumstances that give rise to salary and injury claims, the dispute resolution mechanisms offered by mediation and adjudication, and possible recommendations for improvement. With this grant, the LCRP began. The LCRP assembled a team of academics, students, NPO volunteers and other interested stakeholders (over 100 people in total) to conduct a year-long review of the salary and injury claims system, workers' experiences with their claims, and processes used in other jurisdictions. While the research began with a focus on Labour Court, it was extended to include a review of the entire claims process.

A key puzzle for the members of our team was how 'law on the books'—detailed, encompassing, noble in its intentions—becomes so different in its application that legislative intent is undermined. While legislative protections exist and continue to be strengthened, migrant workers who turn to NPOs often express frustration with Singapore's claim system. Their perception of complex legal and evidentiary procedures, compounded by their tenuous legal status, often leave them feeling disempowered.

We attempt to address this issue from two sides, the first legal, the second sociological. Our legal analysis is presented in Chapter 2: Legislative and Regulatory Framework. In this

chapter we seek to understand and highlight the legislative intent of the key legal provisions governing migrant workers' employment in Singapore as well as the dispute resolution process used to resolve salary and injury issues. We review Singapore's statutes and regulations related to the employment of migrant workers and the procedures required for filing claims and resolving disputes through the Ministry of Manpower (MOM)'s mediation and adjudication systems. We identify related issues reported by various sources, such as newspapers, NPO reports, and other academics, and attempt to understand how existing laws and/or their administration might contain gaps that exacerbate migrant worker vulnerability. The legal analysis team includes academics, lawyers, law students and others with expertise in migrant worker issues.

Our sociological analysis is presented in Chapter 3: Key Findings from Interviews. In this chapter we seek to understand how employment law and the claims process is experienced by migrant workers. We interviewed 157 migrant workers who sought assistance from the following migrant worker NPOs: TWC2, HOME, HealthServe, and MWC. These semi-structured interviews provide an opportunity for workers to share their experiences of working in Singapore and of attempting to resolve salary or injury problems. Additional interviews were conducted with other stakeholders, including NPO staff and volunteers, industry

representatives, academics, as well as legal and medical practitioners. After a thorough analysis, we identify recurring, common experiences of workers, and apparent mechanisms that give rise to these problems. Through this analysis we gained insights that can serve to improve the current system.

One overarching objective guides this project: to provide a set of comprehensive recommendations geared towards improving the claims system for migrant workers and, ultimately, for all stakeholders. These recommendations are presented in Chapter 4. In writing this chapter we consulted NPOs, academics, and a range of legal, medical, and other experts; we also conducted a review of policies and legislation that address similar issues in comparative jurisdictions. From our legal review and our consultation with migrant worker practitioners, we have also developed a brochure for migrant workers to clarify the claims process in Bengali, Chinese and Tamil.

The LCRP received institutional review board approval from both the Singapore Management University and the National University of Singapore to ensure that our research methodologies adhered to the highest ethical standards. This was especially critical because the majority of our interviewees are from a recognisably vulnerable social group. LCRP research has been reviewed by academic peer reviewers and benefited from the inputs and feedback from the Ministry of Manpower prior to publication and dissemination.

2. METHODS

The primary source data for this study is qualitative interviews with workers and other stakeholders involved in the salary and injury claims process for migrant workers. Our goal is to understand how the claims process for salary and injury claims is experienced by the migrant workers we interviewed, and to examine the processes and mechanisms that give rise to persistent problems. Most of the interviews were conducted with claimant migrant workers who sought assistance from migrant worker NPOs, and a smaller number of interviews were conducted with academics, lawyers, medical professionals, employers and NPO representatives.

Additionally, perspectives of other stakeholders are captured through secondary data including a study on employer attitudes about the claim system based on interviews with 15 employers of migrant workers,⁵ off-the-record consultations with practitioners and the Ministry of Manpower, and other publicly available secondary sources. This study also includes a review of relevant legislation, regulations, and case law. Collectively, these sources provide a framework for understanding the legal underpinnings of our claims system, as well as other stakeholders' perspectives about the claims process.

2.1. Methodology for primary qualitative data

Semi-structured interviews were conducted with 157 claimant migrant workers, three academics, five lawyers, five medical professionals, one employer, and seven NPO representatives. The interviews clarify the perspectives of stakeholders about their

experience and understanding of the claims process and related issues.

This study received ethics approval from the institutional review boards of the Singapore Management University and the National University of Singapore. All interviewees agreed to an informed consent, by either signing their consent or verbally indicating consent. All interview information has been anonymised.

The 157 claimant workers were selected through convenience sampling at the location of the NPO where they were seeking assistance. The majority of the Indian and Bangladeshi workers were interviewed at the TWC2 meal program in Little India (The Cuff Road Project), while the majority of the Chinese workers were interviewed at the HealthServe day shelter in Geylang. Interviews were conducted either in the worker's native language or in English for workers proficient in English. Similarly, the other stakeholders were selected by means of convenience sampling⁶ and interviewed in English via conference call or at locations suggested by the interviewee.

Interviewers carried out semi-structured interviews with migrant workers which covered the following topics: a detailed background on events that lead to the making of a claim, experiences of the claim process including mediation and Labour Court, reasons for migrating to Singapore and experiences of migration, a brief background on their employer and relations with their employer, and background questions on their experiences of signing an employment contract and being paid for overtime.

⁵ Koh, Stanley (2014) "Paper-cuts, unseen falls and invisible back injuries: employer perceptions of workplace injuries and runaway migrant workers in Singapore." Bachelor dissertation, School of Social Sciences, Singapore Management University.

⁶ Convenience sampling is a type of non-probability statistical sampling method where the elements in the population are selected based on the ease of accessibility and availability.

For further information on our methodology, consult Appendices 1 and 2. Appendix 1 contains an explanation of the method used to conduct and analyse the interviews.

Appendix 2 contains a complete list of the interview questions which were asked of migrant workers.

TABLE 1. Distribution of interviewed migrant workers by nationality and claim type

	Salary	Injury	Salary and Injury	Other	Total
Bangladeshi	21	48	23	2	94
Chinese	4	32	7	5	48
Indian	0	12	1	1	14
Other	0	0	1	0	1
Total	25	92	32	8	157

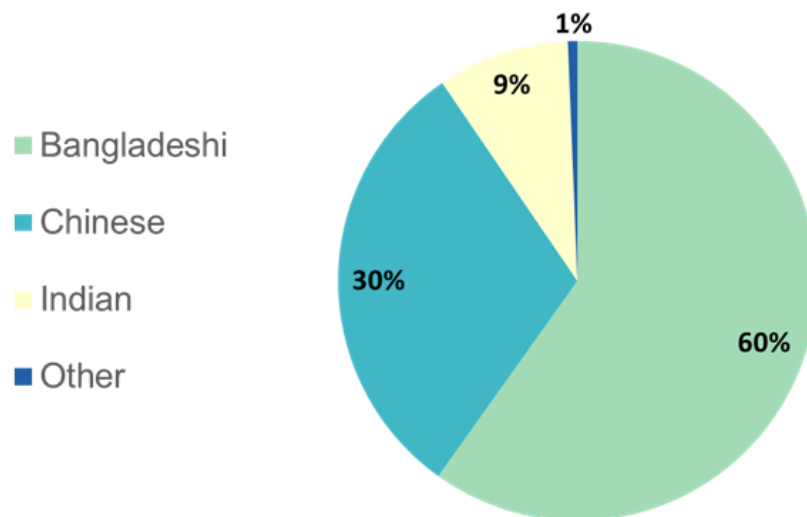


FIGURE 1. Nationality of interviewed workers

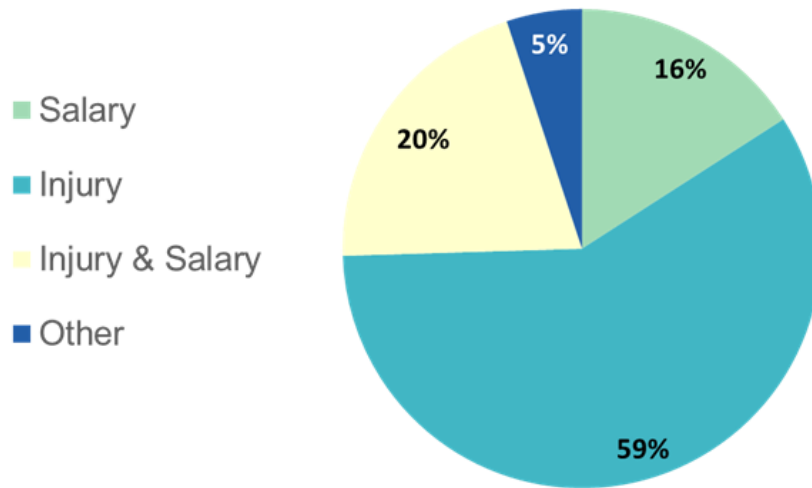


FIGURE 2. Claim type of interviewed workers

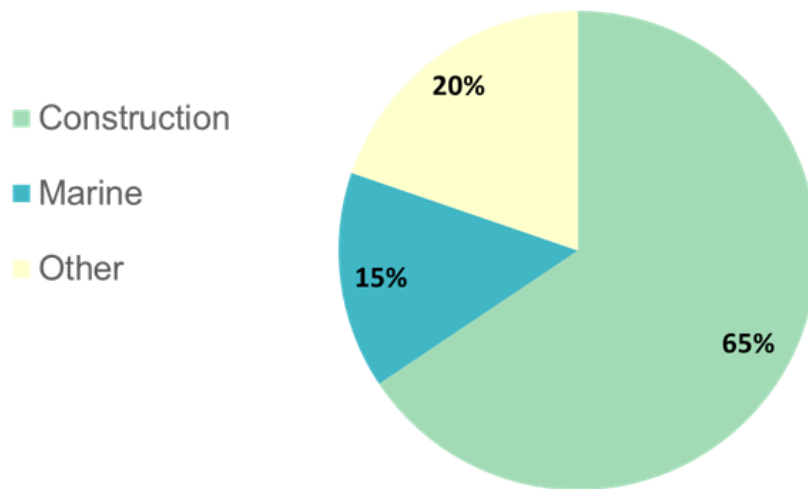


FIGURE 3. Industry of interviewed workers

2.2. Profile and background of interviewed workers

Figure 1 shows the distribution of nationality of the 157 workers we interviewed. Sixty percent of the workers are Bangladeshi, 30 percent are Chinese, 9 percent are Indian, and 1 percent was of other or unknown nationalities.

Figure 2 shows the types of claims filed by the 157 workers. Seventy-nine percent of the workers filed injury claims (59 percent filed only injury claims and 20 percent filed both injury and salary claims). Thirty-six percent of workers filed salary claims, 16 percent filed only salary claims and 20 percent filed both injury and salary claims. Five percent of the

interviewees either had yet to file a claim or did not specify their claim type.

Figure 3 shows the distribution among the three industries of the 157 workers. Sixty-five percent were in the construction industry, 15 percent in the marine industry, and 20 percent were from other industries or did not specify their industry.

2.3. Limitations of the study

One limitation of the study is that the population of sampled workers is inherently biased towards workers who have approached an NPO for assistance in relation to the claim process. This method excludes workers who filed a claim and were able to resolve their claims successfully and did not have to seek assistance from an NPO. At the same time, this also excludes workers in the most disadvantaged positions, workers who have need to or have filed a claim but were

unsuccessful and were not able to seek help from an NPO. We acknowledge this limitation; our report is meant to address issues faced by the subpopulation of workers who have lodged a claim and sought help from NPOs for the significant challenges they faced.

Another limitation is that our study weighed in more on worker interviews as compared to other-stakeholder interviews. A large reason for this is the difficulty in gaining access to other stakeholders such as employers, professionals, and policy makers due to limited availability and reluctance to publicly share their insights. We endeavoured to present a balanced inquiry through numerous formal and informal discussions with legal and medical professionals, employers, agents, industry representatives, NPO representatives, and MOM on top of our interviews with migrant workers.



CHAPTER 2

— LEGISLATIVE AND —
REGULATORY FRAMEWORK

CHAPTER 2: LEGISLATIVE AND REGULATORY FRAMEWORK

In this chapter we review and analyse the existing legislative and regulatory frameworks governing the employment of migrant workers in Singapore. We draw the reader's attention to the strengths and potential weaknesses of existing legislation and regulations.

This chapter fits into the larger structure of the report in two ways: first, by showing how the existing legislation and regulations provide protections to workers, and second, by showing how some of these protections may be undermined by four main factors: migrant worker vulnerability, interpretation of legal language, violations of the law, and gaps in administration.

This chapter is divided into three parts: a brief background on migrant workers in Singapore, a review of the major legislation regulating and protecting migrant workers, and a review of the salary and injury claims process.

“ We draw the reader’s attention to the strengths and potential weaknesses of existing legislation and regulations. ”

1. MIGRANT WORKERS IN SINGAPORE

Singapore heavily relies on foreign labour, particularly in the low-wage sectors. It has one of the highest foreign-to-local labour ratios in the world, behind the Gulf States.⁷ Sixty-eight percent of low-wage manual jobs in Singapore are filled by Work Permit holders, the lowest wage category of work passes.⁸ In 2015, foreigners numbered 1.4 million or 38 percent of Singapore's total workforce;⁹ with 32 percent or almost 1.2 million hired on Work Permits.¹⁰ The highest

concentration of migrant workers is in construction at approximately 80 percent,¹¹ followed by manufacturing at approximately 54 percent, then services at about 31 percent.

Many come to Singapore from countries with poor economic conditions, high levels of unemployment, and irregular or very low-wage work. They arrive in search of financial opportunities, and with aspirations to support their families back home and to achieve social

⁷ Singapore sits behind the Gulf Cooperation Council (GCC) countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) where foreign guest workers constitute about 68 percent of all employment, and over 90 percent in Qatar and the United Arab Emirates in 2010. See Naufal G and Genc I. "Labor Migration in the GCC Countries: past, present and future", NUS, Middle East Institute, Singapore Middle East Papers, No. 9/2, 2 June 2014. Cross referenced with the latest data on the GCC Gulf Research Centre website (accessed November 6, 2016). With a few other exceptions such as Brunei and Macau where foreign workers respectively made up about 44% (in 2009 based on Ministry of Home Affairs private sector employment by residential status data & Department of Economic Planning & Development total labour force estimates) and 30% (in 2014 based on Macau SAR Statistics and Census Service) of total employment, proportions of the national workforces consisting of foreign workers on work visas in other mid-to-high income countries are typically much lower than Singapore. For example: Malaysia 9.5% ("Immigration in Malaysia: Assessment of its Economic Effects, and a Review of the Policy and System", World Bank, 2013); Taiwan approximately 6% (Ministry of Labor); South Korea approximately 3% (Roh J, "Korea's Employment Permit System and Wage Development of Foreign Workers" Public Policy and Administration Review, September 2014, Vol. 2, No. 3, pp. 41-63 & ILO data); Australia approximately 1% (stock of 457 Visas, though there are other student and holiday visas categories allowing some work. See "A National Disgrace: The Exploitation of Temporary Work Visa Holders", Senate Enquiry, March 2016). Across the EU countries foreign workers made up 7.4 % of persons in employment in 2015. The split between intra- and extra-EU migrants was 3.6 % with citizenship from another EU country, and 3.8 % from outside the EU. Source: Eurostat, Labour market and Labour force survey.

⁸ Ministry of Manpower last modified September 15, (2016) Foreign workforce numbers, <http://www.mom.gov.sg/documents-and-publications/foreign-workforce-numbers> (accessed October 12, 2016). Similar figures are not available for Work Permit holders in the marine industry. The ratio of Work Permit holders to total residents employed as 'Production & Transport Operators, Cleaners & Labourers and in Related Occupations' was 2.1:1 at June 2014. As at June 2014 there were 980,800 Foreign Work Permit holders (MOM) and 465,300 Resident employees employed as "Production & Transport Operators, Cleaners & Labourers and in Related Occupations" (Source: The Labour Force in Singapore, 2014, MOM). These are approximations as there may be some foreign workers in the S-Pass category undertaking some of the lower skilled occupations listed for Singapore Residents. Also, not all foreign Work Permit holders may be in these occupations. Some, possibly foreign domestic workers, could be in the "Clerical, Sales and Service occupations" category, though there would be minimal numbers of Residents in this occupation.

⁹ As of Dec. 2015. "Annual Employment Change by Industry and Residential Status", Ministry of Manpower.

¹⁰ As of Dec. 2015. Ministry of Manpower last modified September 15, (2016). Foreign workforce numbers, <http://www.mom.gov.sg/documents-and-publications/foreign-workforce-numbers> (accessed October 12, 2016). Similar figures are not available for Work Permit holders in the marine industry.

¹¹ These percentages include foreign workers in all categories (EP, SP and WP) and were derived by subtracting Resident Employment numbers by industry from Total Employment numbers in the same industry (sourced from Administrative Records and the Labour Force Survey) as at June 2014. While total foreign employment was estimated at about 388,000 (or 80%) in the Construction sector using this method, there were 321,200 low-wage Work Permit employees making up 66% of total Construction employment in 2014.

mobility in their home countries because of their work in Singapore.

1.1. Work Permit system

This report focuses on male migrant Work Permit holders (hereafter ‘migrant workers’, ‘workers’ or ‘employees’) employed in the construction and marine sectors. As of June 2016, 326,700 migrant workers were employed in the construction industry.¹² Specific numbers for those working in the marine sector are unavailable. The construction and marine sectors, like other industries, are bound by source country restrictions, which determine the nationalities allowed to work in particular industries.¹³ Although the Singapore Government does not release a breakdown of nationalities in the foreign workforce, the construction industry appears to employ a majority of workers from Bangladesh, China and India. In January 2016, the High Commissioner of Bangladesh estimated that of the more than 160,000 Bangladeshi nationals in Singapore,

over 90 percent work in the construction and marine industries.¹⁴

The work pass system regulates the employment of foreign employees in Singapore. Work pass types include the Employment Pass (for professionals and executives who earn at least S\$3,300 a month),¹⁵ the S-Pass (for mid-skilled technical staff who earn at least S\$2,200 a month),¹⁶ and the Work Permit (those primarily engaged in manual labour and domestic work, who have no minimum salary).¹⁷ Work Permits may be renewed every one or two years. The migrant workers who are the focus of this study earn between approximately S\$400 and S\$1,500 per month, with South Asian workers generally earning significantly lower salaries (in the S\$400-S\$800 range) than their Chinese counterparts.¹⁸

Singapore utilises the sponsorship employment system, also known as the *kafala* system, which makes a migrant worker’s employment in Singapore contingent on

¹² Ministry of Manpower last modified September 15, (2016) Foreign workforce numbers, <http://www.mom.gov.sg/documents-and-publications/foreign-workforce-numbers> (accessed October 12, 2016).

¹³ See the individual sector-specific requirements for different industries on MOM’s website: Ministry of Manpower (2016) Sector-specific rules for Work Permit, <http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/sector-specific-rules> (accessed 12 October 2016). While commonly termed migrant workers, they do not have the ability to migrate to Singapore.

¹⁴ Platt, Maria, Grace Baey, Brenda SA Yeoh, Choon Yen Khoo, and Theodora Lam (2016) “Debt, precarity and gender: male and female temporary labour migrants in Singapore.” *Journal of Ethnic and Migration Studies* 1-18. p. 9.

¹⁵ Ministry of Manpower(2016) Employment Pass, <http://www.mom.gov.sg/passes-and-permits/employment-pass> (accessed 12 October 2016). This S\$3,300 will be raised to S\$3,600 a month in January 2017.

¹⁶ Ministry of Manpower (2016) S Pass, <http://www.mom.gov.sg/passes-and-permits/s-pass> (accessed 12 October 2016).

¹⁷ According to MOM, the Work Permit is “generally issued to foreign low-skilled workers with a monthly fixed salary of not more than S\$2,000”. See “Glossary of terms”, Ministry of Manpower (accessed 12 October 2016), <http://www.mom.gov.sg/~media/mom/documents/press-releases/2012/annex%20c%20-%20glossary%20of%20terms.pdf>.

¹⁸ A *Straits Times* report in 2012 stated that Chinese construction workers earn monthly wages of S\$1,000 to S\$1,500 on average, while those from India and Bangladesh earn between S\$480 and S\$800. Bal’s research on Bangladeshi construction workers revealed basic daily rates of around S\$18 to S\$20 a day. HOME’s report on Chinese construction workers, meanwhile, cited gross monthly salaries that range from S\$1,000 to \$1,500 a month. See Yan Min, Chia and Zaccheus, Melody (2012) “Hard life, but foreign workers labour on”, *Straits Times*, 10 December Charanpal Singh Bal, (2016) *Production politics and migrant labour regimes: Guest workers in Asia and the Gulf*. London: Palgrave Macmillan, 38; HOME (2011) The exploitation of migration Chinese construction workers in Singapore, www.home.org.sg/wp-content/uploads/2015/07/PRC_MCW_Report_final_2011.pdf.

sponsorship by a single employer. While sponsorship systems are present in many countries including Saudi Arabia, Bahrain, Qatar and the United Arab Emirates, their use has been criticised because such contingency increases the bargaining power of employers vis-à-vis workers.¹⁹ In Singapore, employers may cancel a worker's Work Permit and repatriate him at any time unless the worker has made or intends to make a salary or injury claim. Discretion over the validity of such claims rests with MOM.

The Work Permit system imposes specific regulations and restrictions that are not imposed on workers or employers of other work pass categories. Work Permit holders, for example, are not entitled to bring their families to Singapore, and face restrictions on marriage to Singaporeans.²⁰ Employers are required to post a S\$5,000 security bond before a Work Permit holder is allowed to enter Singapore. While this employer liability is discharged when a migrant worker returns

home, the security bond is liable to forfeiture if a migrant worker is not repatriated when required to leave or if the migrant worker 'absconds' and remains illegally in Singapore.²¹ This security bond is usually provided in the form of a banker's or insurance guarantee,²² rather than a full payment of S\$5,000. However, the possibility of losing S\$5,000 amplifies employers' anxieties around workers' movements and leads to practices such as the withholding of migrant workers' passports.²³ Employers must pay a monthly levy for each Work Permit holder they employ. Currently, the foreign worker levy ranges from S\$300 to S\$950 a month for each construction worker, and S\$300 to S\$400 for each worker in the marine sector.²⁴ Although prohibited by law, considerable numbers of workers claim that their employers recover these costs through

¹⁹ Under a sponsorship or *kafala* system, foreign nationals need a local sponsor or *kafeel*, in most cases an employer, to obtain residence or a Work Permit. Under this system, workers generally do not have the right to change jobs or choose a new employer without the sponsor's consent. Meanwhile, the employer retains the power to dismiss and send the worker back to his/her home country at any time. Workers are considered "effectively bonded" to their employers under this system. See Frantz, Elizabeth (2013) "Jordan's unfree workforce: State-sponsored bonded labour in the Arab region", *Journal of Development Studies*, 49: 1072. See also Donald Low (2015) "Foreign worker issues: Rethinking Assumptions", *Straits Times*, 10 Feb.

²⁰ "Singapore's system for managing foreign manpower", 231, http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/04/pa_MT_Managing-International-Migration-for-Development-in-East-Asia-Research-Papers_240215.pdf; Ministry of Manpower (2016) "As a Work Permit holder, how do I apply for approval to marry a Singaporean or permanent resident?" <http://www.mom.gov.sg/faq/work-permit-for-foreign-worker/as-a-work-permit-holder-how-do-i-apply-for-approval-to-marry-a-singaporean-or-permanent-resident> (accessed 22 November 2016).

²¹ Ministry of Manpower (2016) Security bond requirements for foreign worker <http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/sector-specific-rules/security-bond> (accessed 12 October 2016).

²² Ministry of Manpower (2016) Security bond requirements for foreign worker <http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/sector-specific-rules/security-bond> (accessed 12 October 2016).

²³ During the Committee of Inquiry hearing into the Little India riot, it was stated by Ms Jennis Yeo, deputy executive secretary of the Building Construction and Timber Industries Employees' Union, that migrant workers having to surrender their passports to their employers is "general practice across the industry". It was also reported that if migrant workers required their passports back, for example, to open a bank account, they had to pay their employers up to S\$5,000 as a security deposit. See Leong Wai Kit (2014) "Little India riot: COI focuses on labour practices faced by foreign workers", Channel News Asia, 6 March 6, <http://www.channelnewsasia.com/news/specialreports/littleindia/news/little-india-riot-coi-focuses-on-labour/1022892.html> (accessed 7 November 2016).

²⁴ Ministry of Manpower (2016) Schedule of foreign worker levy changes http://www.mom.gov.sg/~media/mom/documents/services-forms/passes/schedule_of_levy_changes.pdf.

deductions from their salaries and kickbacks.²⁵

Two elements of the work pass system compound migrant worker vulnerability: the sponsorship system, which grants the

employer discretion over the worker's ability to remain and work in Singapore; and the monthly foreign worker levy, which intensifies the employer's cost pressures and increases an employer's incentive to recover costs from the worker.²⁶

1.2. Recruitment fees

The Work Permit holders in our study typically pay recruitment fees—locally known and referred to as 'agent fees'—for their job placement in Singapore. Fees vary according to nationality, sector and whether the worker

is working at his first job, in which case the fees are higher.²⁷ Research shows that Bangladeshi workers pay the highest agent fees, reportedly between S\$5,000 and \$15,000,²⁸ while earning the lowest salaries (S\$400–\$800 a month).²⁹ A 2014 study reported that Bangladeshi construction

²⁵ Kickbacks are outlawed as per the Employment of Foreign Manpower (Work Passes) Regulations: Fourth Schedule, Part III, paragraph 10, which says: "The employer shall not demand or receive any sum or other benefit from an employment agency or any other person in connection with the employment or change in employment of a foreign employee." "Boss charged with collecting over \$100,000 in kickbacks from foreign workers", *Straits Times*, 11 Oct. 2016, <http://www.straitstimes.com/singapore/courts-crime/boss-of-wooden-case-making-firm-charged-with-collecting-over-100k-in>; "Some who employ foreign workers still demand kickbacks", *Straits Times*, 13 April 2015, <http://www.straitstimes.com/singapore/some-who-employ-foreign-workers-still-demand-kickbacks>; "Boss demands S\$100,000 in kickbacks from foreign workers", *Straits Times*, 11 October 2016, <http://www.straitstimes.com/singapore/courts-crime/boss-of-wooden-case-making-firm-charged-with-collecting-over-100k-in>; "Crackdown on employers who get kickbacks to hire foreign workers", *Straits Times*, June 20, 2008 (accessed October 12, 2016), <http://news.asiaone.com/News/AsiaOne+News/Singapore/Story/A1Story20080620-71920.html>; "Employer tells worker: salary deduction is for Government levy", *TWC2*, June 27, 2013 (accessed October 12, 2016), <http://twc2.org.sg/2013/06/27/employer-tells-worker-salary-deduction-is-for-government-levy/>; Bal, Charanpal Singh (2016) *Production politics and migrant labour regimes: Guest workers in Asia and the Gulf*. London: Palgrave Macmillan, 37–38.

²⁶ Bal, Charanpal Singh (2016) *Production politics and migrant labour regimes: Guest workers in Asia and the Gulf*. London: Palgrave Macmillan, 30–32.

²⁷ See Chapter 1. In a 2010 report by HOME and TWC2, it was reported that Indian migrant workers pay between S\$6,000 and S\$7,000 in recruitment fees; Bangladeshi workers pay between S\$8,000 and S\$10,000 (a figure that appears to have increased significantly over the last few years); and, Chinese workers pay between S\$3,000 and S\$7,000 for jobs in construction, and S\$8,000 to S\$10,000 for service sector jobs. See HOME and TWC2 (2010) *Justice Delayed, Justice Denied: The Experiences of Migrant Workers in Singapore*, p. 6.

²⁸ Workers interviewed in this study were also asked about fees paid to agents. Among all workers, 62% paid fees of over S\$5,000, with one having paid S\$20,000. A recent straw poll conducted by TWC2 in mid-2016 suggests that agent fees are rising for Bangladeshi construction workers, with the men interviewed having paid between S\$10,000 and S\$16,000. See TWC2 (2016) Foreign workers chained by debt, governments have a moral duty to act, <http://twc2.org.sg/2016/10/16/foreign-workers-chained-by-debt-governments-have-a-moral-duty-to-act/> (accessed 10 December 2016).

²⁹ Yan Min, Chia and Zaccheus, Melody (2012) "Hard life, but foreign workers labour on", *Straits Times*, December 12.

workers take an average of 16.5 months to repay their recruitment fee.³⁰ Other research indicates that, while salaries in the construction and marine sectors are flat or declining, agent fees continue to rise.³¹

The migration industry is as complex as it is profitable, with its growth linked to the formalisation of labour recruitment regimes.³² In the case of Singapore, policy shifts towards hiring skilled labourers in the construction industry meant new skill requirements and a subsequent expansion in the number of training centres and overseas testing centres in sending countries.³³ In Bangladesh, the more established training centres work with testing centres,³⁴ employers as well as agents to provide a host of services, from skills training and testing to job placement and travel arrangements.³⁵ Various

intermediaries are involved in linking migrant workers with training centres and agents. At each stage of the training, examination and recruitment process, additional payments are demanded, with little or no documentation provided on what these payments are for.³⁶ The limited number of exam slots vis-à-vis the large number of migrant workers who pay and undergo skills training also results in practices such as the ‘auctioning’ of exam slots, which further increases costs for migrant workers.³⁷ After Bangladeshi migrant workers pass the examinations and obtain the skills certificate, they are then required to pay the balance of their agent fees. Prospective workers sometimes pay the fees in Bangladesh or arrange through friends for the payment to be made in Singapore. In either case, migrant workers claim that a significant

³⁰ Baey, Grace and Yeoh, Brenda (2015) “Migration and precarious work: negotiating debt, employment, and livelihood strategies amongst Bangladeshi migrant men working in Singapore’s construction industry”, Migrating Out of Poverty Research Programme Consortium Working Paper 26, University of Sussex, Brighton, United Kingdom.

³¹ TWC2 (2013) Survey uncovers exorbitant agent fees suffered by Bangladeshi workers, <http://twc2.org.sg/2013/08/29/survey-uncovers-exorbitant-agent-fees-suffered-by-bangladeshi-workers/> (accessed 10 December 2016).

³² Baey, Grace and Brenda Yeoh, Brenda (2015) “Migration and precarious work: Negotiating debt, employment, livelihood strategies amongst Bangladeshi migrant men working in Singapore’s construction industry”, Migrating Out of Poverty Research Programme Consortium Working Paper 26, University of Sussex, Brighton, United Kingdom, p.19.

³³ In 2000, Singapore’s Building and Construction Authority introduced its Skills Evaluation Certificate Scheme, which was made mandatory in 2005 for all migrant workers who wish to work in the construction industry in Singapore. See Baey, G & Yeoh, B “Migration and precarious work”, 19.

³⁴ There are apparently 100 training centres in the capital city of Dhaka alone. See TWC2 (2016) The name of the devil is process: How regulatory process creates and sustains the disempowerment and injustices faced by migrant labour <http://twc2.org.sg/2016/09/12/the-name-of-the-devil-is-process/> (accessed 20 October 2016). Watch the video titled “The name of the devil is process, part 2”, for details on the recruitment industry in Bangladesh.

³⁵ Baey, G & Yeoh, B “Migration and precarious work”, 19.

³⁶ Bal, Charanpal Singh (2016) *Production politics and migrant labour regimes: Guest workers in Asia and the Gulf*. London: Palgrave Macmillan, 63–65.

³⁷ As revealed in this TWC2 video on the recruitment industry in Bangladesh, there are 800 exam slots in Dhaka a month, but there are approximately 1700 trainees competing for these exam slots, with this mismatch between supply and demand resulting in training centres auctioning off exam slots and more money exchanging hands. See “The name of the devil is process, part 2”, TWC2.

portion of this fee is remitted to agents or employers in Singapore.³⁸

Bangladeshi construction or marine sector workers who have previously worked in Singapore are also made to pay recruitment fees, with recruitment often arranged through social networks that may involve brokers who are migrant workers themselves. These payments may be made in Bangladesh or Singapore though, again, usually with no paper trail and no money-back guarantee if

workers are terminated prematurely or the Work Permit is not issued. While the Employment Agencies Act (EAA) is meant to regulate the payment of agent fees and curb profiteering,³⁹ migrant workers lack evidence to prove payments to local agents. Furthermore, the Ministry of Manpower's stance is that "debts paid overseas and the regulation of employment agents in foreign countries are beyond the jurisdiction of the Singapore Government".⁴⁰

2. LEGISLATIVE FRAMEWORK FOR REGULATION AND PROTECTION

In Singapore, salary and injury issues of migrant workers are regulated by three primary pieces of legislation and their related regulations and policies (see Table 2):

- The Employment Act (EA)
- The Employment of Foreign Manpower Act (EFMA)
- The Work Injury Compensation Act (WICA)

The MOM is the ministry responsible for administering these three legislative acts and the salary and injury dispute resolution system. The MOM oversees an integrated set

of functions—regulatory, educational, investigatory, mediational, visa, and quasi-judicial—which together provide avenues for reducing the number of injury and salary disputes, and for resolving such disputes when they do arise.

In the sections that follow, we provide an overview of the EA, the EFMA, and WICA. We also explain the protections provided to workers by these laws, and also how such protections can be undermined by factors such as migrant worker vulnerability, interpretation of legal language, violations of the law, and administrative gaps.

³⁸ Bal details how various layers of agents and sub-agents, recruiters (both licensed and unlicensed) as well as employers get a cut of migrant workers' agent fees. Money that is collected in Bangladesh moves through a parallel banking system called the *bundi* system to partners in Singapore, and such transactions are not officially documented. Bal, *Production politics*, 64.

³⁹ Ministry of Manpower (2012) MOM regulates local recruitment fees; penalises errant agencies <http://www.mom.gov.sg/newsroom/press-replies/2012/mom-regulates-local-recruitment-fees-penalises-er>; *Employment Agencies Act (Chapter 92), Employment Agencies Rules 2011*, Section 12. Retrieved from <http://statutes.agc.gov.sg/aol/search/display/view.w3p;query=DocId%3A2d7a278e-f5c5-43a0-a0aa-> (accessed October 20, 2016.)

⁴⁰ Ministry of Manpower (2012) MOM regulates local recruitment fees; penalises errant agencies <http://www.mom.gov.sg/newsroom/press-replies/2012/mom-regulates-local-recruitment-fees-penalises-er> (accessed 20 October 2016.)

TABLE 2. Legal snapshot: Work permit holders in Singapore

EMPLOYMENT ACT (EA) <i>Primary statute governing employer-employee relations in Singapore</i>		
LEGISLATIVE INTENT	<ul style="list-style-type: none"> Safeguard employment rights, with particular protections for vulnerable workers Regulate employment relations: determine rights and obligations of employees and employers Provide effective employment dispute resolution mechanisms 	
WHO IT COVERS	<ul style="list-style-type: none"> <i>Employees of all nationalities, including those who earn a basic monthly salary below S\$4,500</i> <i>Excludes foreign domestic workers and seamen</i> 	
RELEVANT SECTIONS	S 8 Part III, Part IV Part III EA 2014 S 34 EA 2015 S 95A S 95	Requires employment contracts to comply with EA Regulates payment of salary, overtime, excessive hours Regulates salary deductions Specifies penalties for salary violations Explains key employment terms and pay slips Defines record-keeping and reporting requirements
EMPLOYMENT OF FOREIGN MANPOWER ACT (EFMA) <i>Regularises and regulates employment of foreigners</i>		
LEGISLATIVE INTENT	<ul style="list-style-type: none"> Regulate the employment of foreign employees and protect their well-being Set forth conditions required for employment of foreign workers 	
WHO IT COVERS	<ul style="list-style-type: none"> <i>All work pass holders, including Work Permit holders</i> 	
RELEVANT SECTIONS	EFMA & Work Pass Regulations (WPR) S 11 S 6A WPR Fourth Schedule Part III WPR Fourth Schedule Part IV	Regulates IPAs and Work Permits and stipulates employer responsibilities Specifies levies, quotas and security bond Requires MOM be notified of modifications to employment terms Requires payment of full basic salary regardless of hours worked Stipulates compulsory medical insurance (non-accident) of S\$15,000 for each foreign employee
WORK INJURY COMPENSATION ACT (WICA) <i>A no-fault work injury compensation system</i>		
LEGISLATIVE INTENT	<ul style="list-style-type: none"> Simplify and expedite work injury compensation Provide fast, low-cost alternative to court system Establish no-fault system for work-related injuries with compensation payable up to specified limits Function as social legislation to compensate injured employees 	
WHO IT COVERS	<ul style="list-style-type: none"> <i>Any employee injured due to an accident or suffering from illness arising out of and in the course of employment</i> <i>Excludes foreign domestic workers and independent contractors</i> 	
RELEVANT SECTIONS	S23 of WICA read together with S5 of the Third Schedule S8 of WICA and S4(1) of Third Schedule S14((2)-(4) S3(1) of WICA read with S1 and	Stipulates compulsory accident-related medical insurance of S\$36,000 for each employee Designates medical leave wages Designates medical expenses Requires lump sum compensation for permanent incapacity or death

2.1. Employment Act

The Employment Act (EA) is the primary statute governing employer-employee relations in Singapore for those earning less than S\$4,500 a month.⁴¹ The EA serves a dual function: to safeguard employee rights; and to regulate employment relations. As a safeguard of employment rights, the EA provides particular protection for vulnerable workers, such as restrictions on working hours, mandated rest days, and rates for overtime pay. The EA outlines the rights and obligations of employees and employers, and provides an employment dispute resolution mechanism.⁴² In enacting the EA, Parliament explicitly aimed to eradicate discrimination⁴³ and curb intra- and inter-industry malpractice and abuse.⁴⁴

Since 1968, the EA (in both its original form as well as through subsequent amendments reflected therein) has attempted to achieve a balance among the Government's interests in job creation and economic growth, employers' interests in keeping business costs low, and employees' need for protection and the provision of minimum safeguards.⁴⁵ The EA governs employment relationships of most categories of workers in Singapore

regardless of nationality, including Work Permit holders (with the exception of foreign domestic workers and seamen).⁴⁶ It sets forth provisions governing payment of salary, overtime rates, work hours, employment terms, and deductions from salary.

The major provisions of the EA applicable to Work Permit holders are:

- the terms of contracts;
- the payment of salary, overtime and excessive hours;
- deductions from salary;
- the statute of limitations for salary claims;
- penalties for violations of the EA.

Following a review of these provisions, we consider recent amendments to the EA, such as mandated key employment terms (KETs), pay slips, and record-keeping.

2.1.1. Terms of contracts

The EA specifies that any contractual employment terms or conditions that are less favourable than the terms prescribed by the EA are illegal, null and void to such extent, pursuant to Section 8.⁴⁷ This means that contracts may not legally include provisions that run counter to EA provisions, such as

⁴¹ The Employment Act (Cap 91, 2009 Rev Ed) came into force on 15 August 1968. It does not cover foreign domestic workers or seamen.

⁴² Yim, B *Employment Law and Materials*, citing Singapore Parliamentary Debates, 2008.

⁴³ “[a] prerequisite for the growth of an industrial society is respect and status for those who work with their hands as well... [as it is] iniquitous that those in the factory floor and in the servicing industries whose creative skills are required for economic growth are given less favourable terms than those who sit in offices...” Singapore Parliament Reports (1968), Vol 27, Issue 9, 475–476.

⁴⁴ “[W]ithout discipline, there can be no efficiency and without efficiency, it is impossible to increase productivity”, to attract investments. Singapore Parliament Reports (1968), Vol 2 573. See Chandran, Ravi (2015) *Employment Law in Singapore* (4th Ed) p 115, Singapore, Lexis Nexis.

⁴⁵ Chandran, Ravi (2015) *Employment Law in Singapore* (4th Ed), p. 116 Singapore, Lexis Nexis.

⁴⁶ Work Permit holders are defined as any person “under a contract of service with an employer”, except for any person who is employed in a managerial or executive position, seaman, domestic worker or person employed by a Statutory Board or the Government. The EA also applies to persons employed in a managerial or executive position. The EA excludes domestic workers and seamen.

⁴⁷ Every term of a contract of service which provides a condition of service which is less favourable to an employee than any of the conditions of service prescribed by this Act shall be illegal, null and void to the extent that it is so less favourable. Employment Act (Cap 91, 2009 Rev Ed) Part II, s 8.

provisions where employees agree to be underpaid for overtime, or where employees agree to work in excess of 72 hours a month (the maximum hours allowed).⁴⁸

2.1.2. Payment of salary, overtime, rest days and excessive hours

The EA also specifies that the time period for the calculation of an employee's salary may not exceed one month.⁴⁹ This means that employees are to be paid at least once a month.⁵⁰ Employees are due overtime wages when they work more than eight hours a day or 44 hours in a single week,⁵¹ and the pay

rate for overtime shall be no less than 1.5 times an employee's basic hourly rate of pay.⁵²

Every worker is entitled to one rest day per week.⁵³ MOM employment practice guidelines state that the maximum interval allowed between two rest days is 12 days.⁵⁴ The EA allows a different rate of pay on rest days, depending upon whether the employee or the employer requests the extra work.⁵⁵ If the employee requests the work, the rate is then calculated at the basic rate of pay for up to a full day's work, or at 1.5 times the hourly basic rate of pay for more than a full day's work. If an employer requests the work, the

⁴⁸ Employment Act (Cap 91, 2009 Rev Ed) Part III, s 21, and, Part IV, 38(5).

⁴⁹ Employment Act (Cap 91, 2009 Rev Ed) Part III, s 20.

⁵⁰ Employment Act (Cap 91, 2009 Rev Ed) Part III, ss 20 and 21. Salary is to be paid within seven (7) days of the expiry of the salary period and overtime is to be paid within fourteen (14) days of the expiry of the salary period during which the overtime work was performed. The requirement of payment within seven (7) days of the salary period expiry is also replicated in the EFMA Regulations. EFMA Regulations, Fourth Schedule, Part III at 3.

⁵¹ Employment Act (Cap 91, 2009 Rev Ed) Part IV, s 38(4),

⁵² *Ibid.* However, the overtime pay rate on a rest day can be below 1.5 times the basic pay rate per Section 37 (2) and (3).

⁵³ Employment Act (Cap 91, 2009 Rev Ed) Part IV, s 37, EA. The employer is not allowed to compel his worker to work on a rest day unless the nature of the worker's job involves that of a succession of shifts.

⁵⁴ Ministry of Manpower (2016) Hours of work, overtime and rest days <http://www.mom.gov.sg/employment-practices/hours-of-work-overtime-and-rest-days> (accessed November 8, 2016); Ministry of Manpower (2015) Calculate pay for work on rest day (<http://www.mom.gov.sg/employment-practices/salary/calculate-pay-for-work-on-rest-day>) (accessed November 8, 2016)

⁵⁵ Employment Act (Cap 91, 2009 Rev Ed) Part IV, s 37(2) and (3) (emphasis added):-

- (2) An employee who **at his own request** works for an employer on a rest day shall be paid for that day—
 - (a) if the period of work does not exceed half his normal hours of work, a sum at the basic rate of pay for half a day's work;
 - (b) if the period of work is more than half but does not exceed his normal hours of work, a sum at the basic rate of pay for one day's work; or
 - (c) if the period of work exceeds his normal hours of work for one day—
 - (i) a sum at the basic rate of pay for one day's work; and
 - (ii) a sum at the rate of not less than one and a half times his hourly basic rate of pay for each hour or part thereof that the period of work exceeds his normal hours of work for one day.
- (3) An employee who **at the request of his employer** works on a rest day shall be paid for that day—
 - (a) if the period of work does not exceed half his normal hours of work, a sum at the basic rate of pay for one day's work;
 - (b) if the period of work is more than half but does not exceed his normal hours of work, a sum at the basic rate of pay for 2 days' work; or
 - (c) if the period of work exceeds his normal hours of work for one day—
 - (i) a sum at the basic rate of pay for 2 days' work; and
 - (ii) a sum at the rate of not less than one and a half times his hourly basic rate of pay for each hour or part thereof that the period of work exceeds his normal hours of work for one day.

rate is calculated at the basic rate of pay for less than half a day's work and two times the hourly rate for one half to one full day's work. For hours worked in excess of a full day's work on a rest day, the overtime rest day rate of 1.5 times the basic rate of pay is used.⁵⁶

The EA caps the amount of overtime allowed at 72 hours per month.⁵⁷ If an employee works over 12 hours a day, the employer must request an overtime exemption from the ministry three months in advance of the work performed.⁵⁸

While these provisions provide substantial protections to workers, they also contain potential issues that are relevant to our discussion of the claims process for migrant workers. First, the difference in rates of pay for employer- and employee-requested overtime on rest days has the potential to permit employers to pressure workers to request work on rest days. It is not clear in the EA how it should be determined or evidenced who made the request for work. Second, the calculation of rates of pay for overtime work is recognisably cumbersome.⁵⁹ Considering whether the workweek is five days or six days, whether the Saturday overtime rate applies, and how to calculate the overtime rate on Sundays and public holidays is difficult for employees and employers. Third, as there is no minimum wage in Singapore, the limits on overtime hours and provision of rest days are difficult for employers, employees, and regulators to

“ Every worker is entitled to one rest day per week. MOM employment practice guidelines state that the maximum interval allowed between two rest days is 12 days. ”

enforce, as excessive working hours may be necessary for a worker to sustain himself.

2.1.3. Salary deductions

The EA specifies that employees may only have certain authorised deductions made from their salary. Such deductions may include the actual costs of meals, housing, and services, among others, in accordance

⁵⁶ *Ibid.*

⁵⁷ Employment Act (Cap 91, 2009 Rev Ed) Part IV, s 38(5).

⁵⁸ Ministry of Manpower (2016) Hours of work, overtime and rest days <http://www.mom.gov.sg/employment-practices/hours-of-work-overtime-and-rest-days> (accessed November 8, 2016). An overtime exemption must be applied for three months in advance of the performance of the work. Ministry of Manpower (2016) Apply for overtime exemption <http://www.mom.gov.sg/eservices/services/apply-for-overtime-exemption>. (accessed November 8, 2016)

⁵⁹ For example, MOM policy does not include an easy guide to when employees are entitled to 1x, 1.5x or 2x salary for overtime or what constitutes a request for overtime. Ministry of Manpower (2016) Paying Salary (<http://www.mom.gov.sg/employment-practices/salary/paying-salary>).

with Section 27(1) of the EA.⁶⁰ EA amendments added in 2014 provide that deductions shall not constitute more than 25 percent of total salary in each salary period, down from the previous limit of 50 percent.⁶¹ Section 30 of the EA allows deductions for the actual costs of housing, amenities, or services only where such housing, amenities or services have been accepted by the worker.⁶²

As with overtime and working hours, these provisions provide protections. However, such protections have the potential to be

undermined. As with overtime at the request of an employee, allowing deductions based on acceptance by the worker implies that the worker has an ability to refuse.⁶³ Additionally, Work Permit holders who are paid in cash may have no documentation of deductions from their salary, whether legal or illegal, rendering them unable to prove that deductions have taken place. In contrast, employment systems in many other jurisdictions require payment of salaries through third party transfers (such as payment through a bank account or a payroll

⁶⁰ Employment Act (Cap 91, 2009 Rev Ed) Part III, s 27(1). Such deductions include:

- (a) deductions for absence from work;
- (b) deductions for damage to or loss of goods expressly entrusted to an employee for custody or for loss of money for which an employee is required to account, where the damage or loss is directly attributable to his neglect or default;
- (c) deductions for the actual cost of meals supplied by the employer at the request of the employee, subject to the overall cost limitation placed in section 32(1);
- (d) deductions for house accommodation supplied by the employer, unless house accommodation is accepted by the employee as a term of his employment; in any event, the deduction shall not exceed (i) an amount equivalent to the 'value' of the accommodation and/or (ii) one-quarter (or such other proportion prescribed by the Minister) of the salary payable to the employee in respect of any one salary period;
- (e) deductions for such amenities and services supplied by the employer as the Commissioner may authorise;
- (f) deductions for recovery of advances or loans or for adjustment of over-payments of salary;
- (g) deductions for Cooperative Society Dues, such as, *inter alia*, income tax payable by the employee, Central Provident Fund contributions as well as those (made at the request of the employee) for the purpose of a superannuation scheme or provident fund or any other scheme which is lawfully established for the benefit of the employee and is approved by the Commissioner;
- (h) any other deductions which may be approved from time to time by the Minister.

⁶¹ Yim, Benjamin (2016) *Employment Law In Singapore: Cases and Materials*, Singapore Academy publishing p. 3

⁶² Employment Act (Cap 91, 2009 Rev Ed) s 30(1), EA: A deduction under section 27(1)(d) or (e) shall not be made from the salary of an employee unless the house accommodation, amenity or service has been accepted by him, as a term of employment or otherwise. See also ss 30(2)-(3): Such deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity or service supplied and, in the case of a deduction under section 27(1)(e), shall be subject to such conditions as the Commissioner may impose. As described herein, this acceptance may not be realisable and the EA does not include how it should be confirmed or evidenced.

⁶³ There is no mention of how acceptance should be confirmed or documented. Additionally, another situation where migrant workers may be unable to refuse deductions is the case of 'savings money'. Chan A. *Hired on Sufferance, China's Migrant Workers in Singapore*. p 29. NPOs report the persistent practice of deductions for savings money, particularly among subcontractors in construction. The deduction may be in the amount of \$50 to \$100 a month for the ostensible purpose of helping the worker save for their eventual return to their home country. Employers also tell their workers that this deduction is used to ensure their "good behaviour". HOME, The exploitation of migration Chinese construction workers in Singapore, 2011, p.7-8, http://www.home.org.sg/wp-content/uploads/2015/07/PRC_MCW_Report_final_2011.pdf. While savings money is not an allowable deduction, it is difficult for migrant workers to refuse or contest this deduction. Savings money can become a further point of vulnerability, since the employer not only holds the potential power to terminate and repatriate the worker, but to do so without returning the savings money, especially if the amounts are not documented. Ministry of Manpower (2016) Allowable salary deductions <http://www.mom.gov.sg/employment-practices/salary/salary-deductions>.

service system). Such a system automatically generates an auditable paper trail.⁶⁴

The provision of food and housing becomes difficult after a worker has made a claim. Employers provide for meals and housing through deductions from salary. When salary ceases post-claim, there is no salary to deduct from. This could be addressed by MOM establishing and monitoring requirements that the employer monetise food and housing costs during the claim process, irrespective of whether these allowances were agreed upon as an employment term. This would also encourage the employer to assist with the prompt resolution of the claim.

2.1.4. Statute of limitations for salary claims

The EA gives the Commissioner of Labour the power to investigate salary claims within one year of the offence and issue orders in respect of that claim.⁶⁵ This one-year claim limitation is considerably shorter than the six-year limitation period for civil lawsuits founded in contract and tort in Singapore,

and for similar laws in comparative jurisdictions.⁶⁶

This limitation period poses a practical issue because bringing a salary claim to MOM is almost certain to result in job loss and an investigation that may take months to a year to resolve, and likely end with repatriation. This job loss has the potential to undermine the intention of the statute of limitations, which is to bring about timely reporting of salary issues. Instead it appears that migrant workers are disinclined to exercise the right to protection of their salaries except in extreme circumstances, such as complete non-payment of salaries for extended periods, or when another problem, like a workplace injury, has already resulted in a breakdown in their relationship with their employer

2.1.5. Penalties for payment delays, arrears, and unauthorised deductions

Under the EA, failure to pay salary within the prescribed periods and making illegal deductions are both punishable by a

⁶⁴ See Chapter 4, Recommendation 2. Since 2015 Qatar and the UAE have required payment of migrant workers through an electronic transfer system to ensure payments are made and documented. (##) Khatri, S.S & Kovessy, P (2015) “Qatar Emir approves law mandating electronic wage payments for workers”, *Doha News* February 8 <http://dohanews.co/qatars-emir-approved-changes-countrys-labor-law/> (accessed 16 Nov 2016). See UAE Ministry of Labour, Wages protection system guidelines <https://www.mol.gov.ae/newmolgateway/english/wpsGuidelineEng.aspx#1> (accessed 16 Nov 2016).

⁶⁵ The one (1)-year time limit is pursuant to the Employment Act (Cap 91, 2009 Rev Ed) s 115(2). In effect from 1 April 2016.

⁶⁶ The Hong Kong Labour Tribunal applies a six (6)-year time limit. Limitation Ordinance (Cap. 347) http://www.judiciary.gov.hk/en/crt_services/pphlt/html/labour.htm. According to Section 6 of Singapore’s Limitation Act, the time limit for contract and tort actions is 6 years. However, in a legal claim against negligence, nuisance, and breaches of duty where the damages claimed consists of or includes personal injuries, the limitation period is either: 3 years from the date on which the cause of action accrued; or 3 years from the earliest date on which the plaintiff has the knowledge required for bringing an action for damages in respect of the relevant injury whichever is the later date. <http://statutes.agc.gov.sg/aol/search/display/view.w3p?id=ef1a385d-131a-406b-9522-bca3a6546299;page=0;query=DocId%3A%2291ce1da3-ed28-4047-a82d-2bcd69c78bfe%22%20Status%3Ainforce%20Depth%3A0;rec=0#pr24A-he-> <https://singaporelegaladvice.com/law-articles/what-are-limitation-periods-and-how-do-they-affect-my-capacity-to-sue/>

minimum fine of S\$3,000 for first-time offenders and S\$6,000 for repeat offenders.⁶⁷ The effectiveness of these penalties in motivating employers to comply with the obligation to pay salaries depends on the extent to which such penalties, when enforced, would outweigh the benefits of engaging in the activity that breaches the EA.

2.1.6. Recent amendments to the Employment Act

Key employment terms (KETs) and pay slips. Recent amendments to the EA mandate that employers provide employees with key terms of employment and pay slips.⁶⁸ The related regulations list the details which must be itemised in salary slips and include basic salary, overtime hours worked, salary period, specific allowances and deductions.⁶⁹ This information can be given in paper form or electronically “in a manner that enables the information contained in the electronic record to be accessible and useable by the employee for subsequent reference”.⁷⁰ This change has the potential to enable workers to monitor the payment they receive, and

determine the accuracy of the amounts paid and deducted. It also has the potential to create a paper trail to serve as evidence for a salary claim in the case of employer non-compliance.

Record-keeping / reporting requirements. Section 95 of the EA was amended to require employers to make and keep employment and salary records relating to each employee for a prescribed period. These records must be readily accessible to employees.⁷¹ As listed in the regulations, employee records include personal details, first and last dates of employment, public holidays, holidays and leave taken, and, for each salary period, the hours worked, overtime worked, overtime paid, itemised deductions taken from salary, and net salary paid in total.⁷²

Penalties specific to KETs, pay slips and records. Failure to provide key employment terms, pay slips and/or maintain adequate employee records are considered less severe breaches of the EA, resulting in administrative penalties⁷³ rather than a

⁶⁷ The 2014 EA Amendment sec. 34(2). Employment Act (Cap 91, 2009 Rev Ed) Part III, s 34. The EFMA also authorises the imposition of fines of up to S\$20,000 where an employer deducts salary for, or forces an employee to pay, “any fee, cost, levy, penalty, charge or amount that the employer shall bear and be liable for” such as costs for medical insurance, work pass issuance, security, training and repatriation. Employment of Foreign Manpower Act (Cap 91A, Rev Ed 2009) Part V, s 25(4).

⁶⁸ S, Employment (Amendment) Act 2015; s 10; Employment Act (Cap 91, Rev Ed 2009) Part XII, s 96.

⁶⁹ Employment (Employment Records, Key Employment Terms and Pay Slips) Regulations 2016, Third Schedule.

⁷⁰ Employment Act (Cap 91, Rev Ed 2009) Part XII, s 96(3).

⁷¹ Employment (Amendment) Act 2015, s 9; Employment Act (Cap 91, 2009 Rev Ed) Part XII, s 95.

⁷² Ministry of Manpower (2016) Employment Records <http://www.mom.gov.sg/employment-practices/employment-records>. Ministry of Manpower (2016) Guide to key employment terms and itemised payslips <http://www.mom.gov.sg/~media/mom/documents/employment-practices/kets/guide-to-kets-and-itemised-pay-slips-english.pdf> (accessed 10 December 2016). The *EFMA Regulations* also require employers to maintain a record of monthly salary paid to employees and to provide this information to public officials on request. Employment of Foreign Manpower (Work Passes) Regulations (Cap 91A 2012) Fourth Schedule, Part IV, paragraph 6 and Fifth Schedule, Part II, paragraph 4.

⁷³ Employment Act (Cap 91, 2009 Rev Ed) Part XVA, ss. 126A and 126B. See Ministry of Manpower (2016) Amendment to the Employment Act <http://www.mom.gov.sg/employment-practices/employment-act/amendments-to-the-act>. Where MOM has issued an order for an employer to furnish records or rectify a breach and the employer does not comply, they may be penalised with a fine of up to S\$5,000 and/or imprisonment of up to six months. Employment Act (Cap 91, 2009 Rev Ed) Part XII, s 101.

criminal offence. The MOM has signalled its intention to provide “soft enforcement” of the new KET requirements and to focus on employer education in the first year of implementation.⁷⁴

The EA amendments can serve to strengthen the paper trail needed to provide evidence to support a claim. By making it compulsory for employers to generate documentation related to payments and deductions, these amendments help to effect the protections set forth in the EA.

There are, however, potential gaps in this paper trail, namely, that employers can continue to pay their work Permit holders in cash, and potential issues around illegal deductions and the IPA remain.

The amendments do not require employers to produce or maintain receipts for agent fees paid in Singapore, or for deductions made from employee salaries for actual costs of meals and lodging incurred or amenities provided, or require documentation of an employee’s acceptance. Without these requirements, employers could potentially overstate costs deducted or mask illegal deductions, such as savings money or renewal fees, as legal deductions on pay slips and salary records.

Electronic or third party payment of wages remains optional; it is only required if the employee requests it. For the reasons discussed above, migrant workers may not be in a position to make such a request, and

without documented proof of payment (or nonpayment) workers would have difficulty bringing a successful salary claim.

Another potential issue rests with the IPA (in-principle approval—more details on IPAs are provided in a later section of this chapter), which lists the employee’s basic salary, deductions, and allowances that were provided to MOM when the employer applied for the employee’s Work Permit. MOM does not always consider the IPA as binding evidence of the terms of employment. Yet it may be the employee’s only record of the employment terms he agrees to in coming to Singapore to work. The new EA amendments regarding KETs do not mention the IPA, so legislative intent regarding the employment terms set forth in the IPA is unclear. If MOM requires a contract signed by both parties as evidence of employment terms, and this contract is not signed until the worker arrives in Singapore, this offers the opportunity for that contract to decrease the terms set forth in the IPA. The worker will already have incurred the costs of coming to Singapore to work and will not be in a position to contest these terms, because in doing so he may forfeit his employment.⁷⁵

2.2. Employment of Foreign Manpower Act

The Employment of Foreign Manpower Act (EFMA) was enacted to “regulate the employment of foreign employees and

⁷⁴ “Itemised pay slips a must from today” *Straits Times*, 1 April 2016.

⁷⁵ See Chapter 4, Recommendation 1 regarding the requirement of a Standard Employment Contract signed prior to an employee’s arrival in Singapore.

protect their well-being.”⁷⁶ The EFMA and its precursor legislation sought to regularise and regulate employment of foreigners via the work pass system in response to the unacceptable and unregulated presence of illegal foreign workers.⁷⁷ The EFMA covers all work pass holders, including Work Permit holders, and sets forth the employer’s obligations and responsibilities.⁷⁸ It does not provide a direct right of action for workers.⁷⁹

EFMA provisions and regulations relevant to low-wage migrant workers, including Work Permits, changes to IPA terms, salary payments, levies, quotas, security bond, compulsory S\$15,000 medical insurance, and

penalties, are discussed below.

2.2.1. In-principle approval and Work Permits

To hire a foreign employee, an employer must include the terms of employment, including basic salary and deductions, on the Work Permit application.⁸⁰ If approved, MOM issues an in-principle approval (IPA) showing these terms and provides it to the employer who sends it to the worker in the country of origin, usually through an agent. Figure 4 shows two examples of redacted IPAs. The Singapore immigration authorities will only allow a worker to enter Singapore with a valid IPA.

Check the details. If you have any corrections, please send in your amendments with the supporting documents to www.mom.gov.sg/isubmit. We will inform you whether a new application is required.

Industry	CONSTRUCTION	CPF Submission Number	[REDACTED]
Worker's name	[REDACTED]	Basic monthly salary	S\$ 670
Date of Birth	[REDACTED]	Fixed monthly allowances	S\$ 0
Nationality	BANGLADESHI	Fixed monthly salary	S\$ 670
Passport number	[REDACTED]	Monthly housing, amenities and services deductions	S\$ 0
Work Permit number	[REDACTED]	Other monthly deductions	S\$ 0
Date of Application	[REDACTED] 2016	Monthly salary after taking into account fixed monthly allowances and deductions	S\$ 670
Occupation	CONSTRUCTION WORKER	Housing provided	YES
Sex	MALE	Monthly Levy Rate	S\$ 950
		Singapore Employment Agency	[REDACTED]
		Agency fee to be paid by worker to Singapore Employment Agency (exclude fees for overseas expenses)	S\$ 0
			AGENCY PTE. LTD.

⁷⁶ Ministry of Manpower (2016) Employment of Foreign Manpower Act, <http://www.mom.gov.sg/legislation/employment-of-foreign-manpower-act> (accessed 10 December 2016). On legislative purpose, see also Singapore Parliament Reports, Vol 56, 1990 at 449. The EFMA was originally enacted in 1965 as the Regulation of Employment Act, which became the Employment of Foreign Workers Act in 1990, which was renamed as the Employment of Foreign Manpower Act (Cap 91A) in 2007. Yim, B *Employment Law in Singapore*, p. 113-118.

⁷⁷ See Yim, B *Employment Law in Singapore*, p. 113, regarding the history of regulation of non-citizen employment and the Regulation of Employment Act, Cap 272, 1985 Ed.

⁷⁸ Employment of Foreign Manpower (Work Passes) Regulations, 2012. EFMA, Part II, Section 5(1).

⁷⁹ Justice without Borders Manual (2014) *A Practitioner's Manual for Migrant Workers* p. 24. JWB & NUS.

⁸⁰ Employment of Foreign Manpower (Work Passes) Regulations, 2012. EFMA Section 7.

Check your employment details
 If you find a problem, please contact your employer or employment agent.
আপনার চাকরির বিবরণিত যাচাই করুন
 কোন সমস্যা দেখলে, অনুগ্রহ করে আপনার নিয়োগকর্তা বা নিয়োগকারী এজেন্টের সঙ্গে যোগাযোগ করুন।

YOUR NAME আপনার নাম	DATE OF BIRTH / SEX জন্ম তারিখ / লিঙ্গ	NATIONALITY জাতীয়তা
[REDACTED]	[REDACTED] / MALE	BANGLADESHI
PASSPORT NUMBER পাসপোর্ট নম্বর	WORK PERMIT NUMBER / FIN ওয়ার্ক পেরমিট নম্বর / FIN	DATE OF APPLICATION আবেদন পত্রের তারিখ
[REDACTED]	[REDACTED]	[REDACTED] 2016
NAME OF EMPLOYER চাকরীদাতার নাম	INDUSTRY শিল্পক্ষেত্র	OCCUPATION পেশা
[REDACTED] PTE LTD	MARINE	LABOURER
BASIC MONTHLY SALARY মূল মাসিক বেতন	FIXED MONTHLY ALLOWANCES নির্দিষ্ট মাসিক ভাতা	FIXED MONTHLY SALARY নির্দিষ্ট মাসিক বেতন
S\$ 504	S\$ 0	S\$ 504
MONTHLY HOUSING, AMENITIES AND SERVICES DEDUCTIONS মাসিক ঘর ভাড়া, সুযোগ-সুবিধাদি ও পরিষেবা খরচ বাবদ কর্তন সমন্বয়	MONTHLY DEDUCTION FOR OTHERS মাসিক অন্যান্য খরচ বাবদ কর্তন সমন্বয়	MONTHLY SALARY AFTER TAKING INTO ACCOUNT FIXED MONTHLY ALLOWANCES AND DEDUCTIONS নির্দিষ্ট মাসিক ভাতা ও বিয়োপনূপিত হিসাবের পর মাসিক বেতন
S\$ 120	S\$ 0	S\$ 384
HOUSING PROVIDED থাকার জায়গা দেয়া হয়	SPORE EMPLOYMENT AGENCY (EA) সিংগাপুর এমপ্লয়মেন্ট এজেন্সী	AGENCY FEE TO BE PAID TO SPORE EA (EXCLUDES FEES FOR OVERSEAS EXPENSES) সিংগাপুর এমপ্লয়মেন্ট এজেন্সীতে প্রদত্ত দ্বারা প্রদেয় এজেন্সী ফি (বৈদেশী খরচের পরিমাণ বাদ দিয়ে)
YES	[REDACTED] PTE. LTD.	S\$ 504

FIGURE 4. Examples of in-principle approvals for Work Permit applicants

The EFMA work pass regulations set out the conditions of employment required of employers of foreign workers. Pursuant to the IPA for a Work Permit holder, employers shall, among other things:

- Be responsible for, and bear the costs of, the upkeep (including the provision of food and medical treatment) and maintenance of the foreign employee in Singapore;
- Ensure that the foreign employee has acceptable accommodation;⁸¹

- Not demand or receive any sum or other benefit from an employment agency or any other person in connection with the employment or change in employment of a foreign employee (that is, demand or accept ‘kickbacks’).⁸²

Pursuant to the Work Permit, employers shall, among other things:

- Purchase and maintain medical insurance with coverage of at least

⁸¹ Such accommodation must be consistent with any written law, directive, guideline, circular or other similar instrument issued by any competent authority.

⁸² Employment of Foreign Manpower (Work Passes) Regulations 2012, First Schedule, Part III, para 5.

S\$15,000 per year for the foreign employee's in-patient care and day surgery;⁸³

- Provide safe working conditions and acceptable housing;⁸⁴
- Pay the worker his salary for the month no later than seven days after the last day of the salary period;⁸⁵
- Not repatriate the foreign employee when such repatriation would frustrate or deny any statutory claim that has been filed or is intended to be filed by the foreign employee for salary arrears under the Employment Act (Cap. 91) or work injury compensation under the Work Injury Compensation Act (Cap. 354);⁸⁶
- Give the foreign employee reasonable notice of his repatriation and bear the cost thereof.⁸⁷

2.2.2. Changes to terms of IPA/ contract substitution

The EFMA aims to protect workers against contract substitution or a reduction in employment terms by their employer once they arrive in Singapore. The EFMA work pass regulations specifically require as a Work Permit condition:

- 1) The employer shall not —
 - (a) reduce the foreign employee's basic monthly salary or fixed monthly allowances to an amount less than that declared in the work pass application, or
 - (b) increase the amount of fixed monthly deductions to more than that declared in the work pass application,... except with the foreign employee's prior written agreement; and that:
 - (2) Before implementing such reduction or increase the employer shall inform the Controller [MOM] in writing of the proposed reduction or increase.⁸⁸

This regulation sets out an important safeguard for workers which disallows changes to their key terms of employment without notice to MOM. However, when employers fail to provide notice of reductions to the MOM, there appear to be enforcement gaps, with workers who seek assistance at NPOs reporting cases of contract substitution or similar practices, in which their terms of employment are reduced upon arrival in Singapore without penalty.

⁸³ Where the employer purchases a group medical insurance policy for his foreign employees, the employer shall not be considered to have satisfied the obligation under this condition unless the terms of the employer's group medical insurance policy are such that each and every individual foreign employee is concurrently covered to the extent required under the conditions in this Part. Employment of Foreign Manpower (Work Passes) Regulations 2012, First Schedule, Part IV, para 2.

⁸⁴ Such accommodation must be consistent with any written law, directive, guideline, circular or other similar instrument issued by any competent authority. *Ibid.*

⁸⁵ Employment of Foreign Manpower (Work Passes) Regulations, Fourth Schedule, Part III, para 3.

⁸⁶ Employment of Foreign Manpower (Work Passes) Regulations, Fourth Schedule, Part III, para 15.

⁸⁷ Unless the Controller permits the foreign employee to bear such costs, once the foreign employee consents in writing: see the Employment of Foreign Manpower (Work Passes) Regulations 2012, Reg. 18(2) and, *ibid.*, Fourth Schedule, Part IV, para 13.

⁸⁸ Employment of Foreign Manpower (Work Passes) Regulations, Fourth Schedule, Part IV, paragraph 6A. Violation of this provision may result in the employer being fined up to S\$10,000 or imprisoned. Employment of Foreign Manpower Act (Cap 91A, Rev Ed 2009) Part IV, s 22(1)(a)(i). However, as noted above, the worker has no direct right of action for a breach of this provision.

Moreover, the new contract terms may be upheld. A lack of clarity in administrative decisions regarding the rates of pay and deductions shown in the IPA vis-a-vis employment contracts and actual payment terms further complicates the salary claim process.⁸⁹

2.2.3. Payment of full basic salary regardless of hours worked

The EFMA work pass regulations stipulate that employers must pay employees the full amount of their basic monthly salary in accordance with the IPA, regardless of whether the employer provides full-time work.⁹⁰

Pursuant to the EFMA, the monthly foreign worker levy is imposed on employers of Work Permit holders in order to discourage

2.2.4. Request of payment by bank transfer

The EFMA work pass regulations state that if an “employee so requests, the salary shall be paid through direct transfer into the foreign employee’s bank account in a bank established in Singapore”.⁹¹

Payment by bank transfer or third party provides the paper trail to protect workers from wage manipulation, evidence that is unavailable when a worker is paid in cash. As discussed above, this regulation is effective only when the worker is in a position to make such a request.⁹²

2.2.5. Levies, quotas, and security bond

over-reliance on foreign employees.⁹³ The quota on the number of Work Permits issued further restricts the hiring of foreign

⁸⁹ As discussed in Chapter 3, it is reported that MOM officers sometimes uphold these new contract terms rather than the IPA terms when a dispute arises. NPOs and workers report that MOM officers have stated that the IPA is not a binding contract of employment. Rather, it is the approval of an application for a Work Permit only and, as such, is merely an administrative document. There is a legal argument that could be made that EFMA *does* provide an indirect right of action. For instance, it could be argued that a contract in violation of EFMA, such as a reduction of salary without notifying MOM, is illegal and therefore gives right to a civil action under contract law. An alternative argument proposed is that the provisions in EFMA provide an implied statutory term of employment contract and a breach of that term amounts to breach of contract. Maclean D, Yap C., Mitsugi M, Jayaraman S, Teh S, Hayre S. (2014) *A Practitioner’s Manual for Migrant Workers: Pursuing Civil Claims in Singapore and from Abroad. Singapore*. Prepared by Justice Without Borders, in partnership with the National University of Singapore, Faculty of Law, Pro Bono Group, p. 24. However such arguments have not been tested in the Courts. Perhaps S Pass regulations, which apply a minimum floor salary, provide an example of note. The EFMA Regulations require as a condition of S Passes that: Any employer who intends to reduce the fixed monthly salary of the foreign employee, below that of the fixed monthly salary as declared in the work pass application [S\$2,200], shall submit a request to the Controller for reassessment of the foreign employee’s work pass eligibility, prior to such salary reduction. This establishes a framework to ensure that S Passes are only granted/reissued with a salary level reviewed and approved by MOM in an amount above S\$2,200 per month. There is no similar minimum salary amount for Work Permit holders, so stronger enforcement against reductions from the IPA basic salary is especially important. Employment of Foreign Manpower (Work Passes) Regulations, (Fifth Schedule, Part II, p 12.

⁹⁰ [T]he employer shall, regardless of whether there is actual work for the foreign employee but subject to any other written law, pay the foreign employee not less than the amount declared as the fixed monthly salary in the work pass application ... or if the amount of fixed monthly salary is at any time subsequently revised in accordance with paragraph 6A of Part IV, the last revised amount. Employment of Foreign Manpower (Work Passes) Regulations (2012) Fourth Schedule, Part III, para 4.

⁹¹ Employment of Foreign Manpower (Work Passes) Regulations, (Fourth Schedule, Part IV, para 5.

⁹² NPOs report that when this suggestion has been raised, MOM cites the cost and inconvenience to employers and that employees already have the right to ask. See Tan, Amelia (2014) Easier for companies to open bank accounts for foreign workers (13 October) <http://www.straitstimes.com/singapore/easier-for-companies-to-open-bank-accounts-for-foreign-workers>

⁹³ Section 11(1), EFMA; see Chandran, *Employment Law*, *supra* n 8, p 638. The levy also applies to S-Pass holders.

workers.⁹⁴ Additionally, employers of non-Malaysian Work Permit holders are required to furnish a S\$5,000 security bond per worker.⁹⁵

2.2.6. Compulsory S\$15,000 medical insurance

Since 2010, MOM has required employers to maintain S\$15,000 in medical insurance for their employees to cover non-workplace accident medical needs,⁹⁶ including expenses for in-patient care and day surgery.⁹⁷ This medical insurance is meant to ensure that employers meet their obligations under the EFMA to bear the costs of a Work Permit holder's upkeep and maintenance, including medical treatment.

2.2.7. Penalties

Before 2012, all infringements of EFMA provisions were criminal offences. Since the 2012 amendments were made, some infringement are now classified as less severe, and are instead subject to administrative financial penalties.⁹⁸ The employer is now required to pay a fine for the failure to comply with regulatory conditions of the IPA and for making deductions from a foreign employee's salary without prior notification to MOM.⁹⁹

Since 2012, fines and/or imprisonment are prescribed for new offenses including deducting salary from a foreign employee as a condition of employment or continued employment. Also introduced was a presumption that officers of a company who

⁹⁴ *Ibid*, p 639. Upon issuance, the Work Permit should be provided to the employee to be kept in his possession. Section 13(1), EFMA. The Work Permit should not be held by any other person other than the Work Permit holder, including the employer of the Work Permit holder. Workers report that employers routinely hold their passports and Work Permits. Retention of passports is an offense under Section 47(5) of the Passports Act(Cap 220, 2008 Rev Ed).

⁹⁵ Chandran, R at 639 citing the Employment of Foreign Manpower (Work Passes) Regulations, Reg 12(1) ; Ministry of Manpower (2016) Security bond requirements for foreign worker, <http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/sector-specific-rules/security-bond> (accessed 8 November 2016). MOM submission to COI 18 Mar 2014 following "Little India Riots" show Malaysian Work Permit holders at 400,000. Employers of Malaysian Work Permit holders, estimated at more than half of all male Work Permit holders in 2013, do not need to furnish a security bond.

⁹⁶ Ministry of Manpower (2010) New S\$15,000 minimum for foreign worker medical insurance, <http://www.mom.gov.sg/newsroom/announcements/2010/new-15000-minimum-for-foreign-worker-medical-insurance> (accessed 8 November 2016).

⁹⁷ Employment of Foreign Manpower (Work Pass) Regulations, Fourth Schedule, Part IV, para 4. Prior to 2006, Public Hospitals and Polyclinics treated foreigners and citizens alike in terms of access to government health subsidies. This was revised at the end of 2007, when government subsidies to foreigners were removed and transited to a model where employers were required to buy compulsory medical insurance for their employees to cover non-workplace accident medical needs. The initial amount set in 2007 was a minimum of \$5, 000, which was subsequently revised to a minimum of \$15,000 in 2010. https://www.moh.gov.sg/content/dam/moh_web/PressRoom/Articles/2006/FAQs_subsidy_revision_v1.pdf
<http://www.mom.gov.sg/newsroom/press-releases/2007/introduction-of-employer-financed-medical-insurance-requirement-for-foreign-workers>
<http://www.mom.gov.sg/newsroom/announcements/2010/new-15000-minimum-for-foreign-worker-medical-insurance>

⁹⁸ Yim, B p. 121.

⁹⁹ Where a prescribed infringement has a corresponding criminal offence, then the Government can decide based on the culpability of the wrongdoer. For example, an employer who failed to purchase medical insurance for his Work Permit holders might be treated differently depending on whether his failure was due to his intention to save cost or due to his negligence: Yim, B p. 121.

fail to exercise reasonable supervision over the company will be liable for the criminal

offence or administrative infringement penalty.¹⁰⁰

2.2.8. Case law

Although the work pass regulations are not legislative in nature, they provide guidance on how to determine a breach.¹⁰¹ As former Justice of Appeal VK Rajah JA observed in *Lee Chiang Theng v Public Prosecutor*:

The importance of regulating employers of foreign workers was clearly expressed in Hansard [Parliamentary intention] across the years. When moving the amendment bill in 2007, Dr Ng Eng Hen, then the Minister for Manpower, stated that (Singapore Parliamentary Debates, Official Report (22 May 2007) vol 83 at col 928):

The ability of our companies to access foreign manpower is a comparative advantage. But our foreign worker policy cannot be based on a laissez-faire approach, which will be detrimental to our overall progress. To protect the well-being of foreign workers, we have imposed conditions on employers for their housing, remuneration and medical coverage. ...

... [I]t is important to emphasise that employers who persistently fail to discharge their legal responsibilities towards foreign workers will ordinarily have custodial sentences imposed on them. I ought to also emphasise that a single serious transgression in relation to this genre of offences might also attract a custodial sentence. When precisely the custody threshold is crossed will necessarily have to be fact centric. The seriousness of the offence will, of course, be exacerbated when a large number of foreign workers are brought to Singapore and the employer fails to fulfil their legal responsibilities towards them.

Other possible aggravating considerations are, *inter alia*: (a) a persistent failure by an employer to discharge his responsibilities, eg the employer has been in continuous breach for an extensive period of time with no efforts of rectification, (b) an employer's failure to discharge its responsibility that renders the employee susceptible to physical harm or otherwise results in a situation that compromises the worker's overall welfare or well being, and (c) an employer's cumulative commission of various offences under the EFMA or different conditions in the Work Permit with regard to the same worker (eg failing to pay the salary *and* housing the worker in unacceptable conditions).¹⁰²

This demonstrates that the Singapore Courts will adopt a strict approach towards disciplining employers who breach EFMA provisions, against their workers' interests.

2.3. Work Injury Compensation Act

The third major piece of legislation that provides protection to migrant workers in Singapore is the Work Injury Compensation Act (WICA). The legislative intention is to simplify and expedite work injury compensation by providing an alternative to a civil suit through the Singapore Courts. WICA is designed to balance the interests of injured workers with those of the employer or insurer. Similar to work injury compensation regimes in other countries, WICA balances these interests by providing a no-fault system, with statutory limits on compensation.¹⁰³

¹⁰⁰ Yim, B p. 128.

¹⁰¹ Chandran, R *Employment Law*, *supra* n 8, pp 636-637.

¹⁰² [2012] 1 SLR 751 at [33].

¹⁰³ The basic aim of the WICA is, in effect, "to provide for prompt payment of compensation to an injured employee or his dependents without requiring the employee or his dependents to sue the employer in common law which may turn out to be a lengthy, costly and uncertain endeavor". Chandran, R *Employment Law*, *supra* n 8, p 478.

“ WICA is designed to balance the interests of injured workers with those of the employer or insurer. ”

Each party receives and gives up something of value for a more streamlined system of handling injured workers' claims. Employers are spared the expense of defending themselves against civil actions filed against them by injured employees, and in return receive a cap on damages for permanent incapacity suffered by the injured employee. While employers are required to provide medical care, medical leave wages and lump sum compensation for permanent incapacity and death (through insurance), they are not liable to compensate the injured employee for his pain and suffering.¹⁰⁴ Injured employees do not need to prove that the employer was at fault, or that they were fault-free, only that the injury is work-related. WICA is meant to offer a quicker resolution of the claim than through the Singapore Courts.

While the core of worker compensation law reflects a compromise between the employer and the injured employee, the equilibrium between the two competing interests is not evenly balanced. In order to effect the remedial intent of worker compensation legislation, meaning to create a remedy for the harm to the injured party, presumptions are used to help tilt the scales in favor of the

employee.¹⁰⁵ This means that if an injury occurs at work, it is presumed to be work-related.¹⁰⁶

“ With respect to WICA, it is important to highlight two potential issues. First, while WICA is designed to be an expeditious, no-fault system, employers are able to contest the claims and rebut the presumption of a workplace injury through presentation of witnesses. ”

WICA makes the employer liable if the worker (i) sustains personal injury in a work-related accident, or (ii) contracts an occupational disease in the course of employment.¹⁰⁷ WICA provides statutory limits on compensation through specifying the calculation and caps for medical leave wages, medical expenses and lump-sum payment for permanent incapacity or

¹⁰⁴ Thomas A. Robinson, Thomas A., J.D. (2014) The Role of Presumptions Within the Workers' Compensation Arena <https://www.lexisnexis.com/legalnewsroom/workers-compensation/b/recent-cases-news-trends-developments/archive/2014/01/21/the-role-of-presumptions-within-the-workers-compensation-arena.aspx?Redirected=true> (accessed November 9, 2016).

¹⁰⁵ Ibid.

¹⁰⁶ This also includes injuries that occur on the way to and from work if in employer-provided transport.

¹⁰⁷ WICA, ss 3 and 4, read with the Second Schedule.

death.¹⁰⁸ In order to balance these compensation caps, the system is meant to interpret favorably that a worker's injury related to work is a valid workplace injury. In line with its aims and function as 'social legislation', Singapore's courts have held that

WICA "should be interpreted purposively in favour of employees who have suffered injury during their employment".¹⁰⁹ The courts have construed the statutory presumption that an injury is related to work insofar as it occurs at the workplace¹¹⁰

¹⁰⁸ WICA, s 7, read with the Third Schedule. The WICA Compensation Limits are, as follows:

The amount of compensation payable depends on several factors, namely, whether (a) the injury is of a permanent nature or (b) death results. A lump sum compensation is calculated in accordance with the following formula set out in the Act -

- *In the event of Permanent Incapacity:* Employee's Average Monthly Earnings x Age Multiplying Factor x Percentage of Earning Capacity
- *In the event of Death:* Employee's Average Monthly Earnings x Age Multiplying Factor

The First Schedule to WICA lists the injuries that are deemed to result in permanent incapacity, and the extent to which earning capacity is lost for each of such injury. For example, the loss of two limbs is listed in the First Schedule as an injury of permanent incapacity, which causes a 100 percent loss of earning capacity. If a worker suffers an injury that is deemed to result in permanent incapacity, the amount of compensation payable is calculated by multiplying the percentage of incapacity by the average monthly earnings of the employee by an appropriate factor set out in the Third Schedule to the WICA, in accordance with the age of the worker.

In the event of permanent total incapacity, additional compensation amounting to one-quarter of the amount otherwise payable can be claimed.

The monetary limits on the amount of Compensation receivable under WICA were increased in 2015, as follows:

(i) For accident from 1 January 2016, the current limits on compensation claimable under the WICA are –

- Death: A maximum of S\$204,000 (instead of S\$170,000), and a minimum of S\$69,000 (instead of S\$57,000);
- Total Permanent Incapacity: A maximum of S\$262,000 (instead of S\$218,000), and a minimum of S\$88,000 (instead of S\$73,000);
- Medical Expenses: Up to S\$36,000 (instead of S\$30,000) or 1 year from the date of the accident (whichever first); and

(ii) Compensation under the WICA can now be made for Return to Work (RTW) treatments which help injured workers recover and transit to their existing jobs, including case management, functional capacity evaluation and rehabilitative assessment for purposes of rehabilitating injured workers.

See Third Schedule, WICA.

¹⁰⁹ *Pang Chew Kim v Wartsila Singapore Pte Ltd* [2012] 1 SLR 15 at [27].

¹¹⁰ WICA (Chapter 354) Part II, Compensation for Injury, section 3, Employer's liability for compensation:

3.—(1) If in any employment personal injury by accident arising out of and in the course of employment is caused to an employee, his employer shall be liable to pay compensation in accordance with the provisions of this Act.

Section 3(1) must be read with s 3(6) which states:

(6) For the purposes of this Act, an accident arising in the course of an employee's employment shall be deemed, in the absence of evidence to the contrary, to have arisen out of that employment.

broadly. A health incident that occurs during working hours is considered a workplace injury, even when the employee is not working.¹¹¹

With respect to medical expenses, WICA requires employers to pay, and be insured for, up to S\$36,000 of expenses.¹¹² Like other compensation payable under WICA, a determination of a valid work injury must first be made. The intention of the S\$36,000 WICA insurance coverage is to ensure “a fair balance between compensation for employees and the obligations placed on employers and their insurers”.¹¹³ MOM states that this limit is adequate as it “will fully cover more than 95 percent of claims where hospitalisation is required”.¹¹⁴

With respect to WICA, it is important to highlight two potential issues. First, while WICA is designed to be an expeditious, no-fault system, employers are able to contest the claims and rebut the presumption of a workplace injury through presentation of witnesses. This adversarial contestation can delay resolution and thus medical care, and

also disadvantage workers by introducing evidentiary burdens. The use of migrant workers or others on an employer’s payroll is also problematic, for it is not clear that such persons, when asked to appear or give testimony, are in a position to say no. The ACLs should be astute not to readily accept witness testimony from former work colleagues who say they did not see the injury, where there are reasonable grounds to believe that these colleagues are under pressure from their employer to give such evidence.

The second issue is the amount of WICA insurance coverage for medical care. The S\$36,000 insurance coverage means that catastrophic injuries are not fully covered by WICA insurance. Injuries requiring lengthy hospitalisation or numerous surgeries can result in employers going bankrupt, workers receiving insufficient medical care, or hospitals taking a loss. While the S\$36,000 limit does cover the majority of injuries, the current system fails to provide a solution for the payment of medical treatment for catastrophic injuries, which leaves hospitals to manage the debt.

¹¹¹ In *Allianz Insurance Co (Singapore) Pte Ltd v Ma Shoudong* [2011] 3 SLR 1167, the High Court held that the cardiac arrest of a deceased employee arose in the course of employment as the cardiac arrest that led to the employee’s death occurred while the employee was resting during work hours. The burden of proof thus shifted to the employer under s 3(6) of the Act to show that the accident had not arisen out of the employment. Similarly, in *Pang Chew Kim* [2015] 1 SLR 15, the employee suffered cardiac arrest at a hotel where he was waiting to be picked up by colleague to the meeting venue as part of working trip. The court held the employee was in the “course of employment” at the material time because the entire trip was a working trip, although there was no actual work being done at the time.

¹¹² WICA Section 23. Employees may bring proceedings to enforce a claim against the insurer as if he were the employer. Section 32, WICA. The amount for expenses has gone through several revisions, notably in 2012 (from \$25,000 to \$30,000)¹ and in 2016 (from \$30,000 to \$36,000). <http://www.mom.gov.sg/newsroom/announcements/2012/changes-to-work-injury-compensation-act>
<http://www.mom.gov.sg/workplace-safety-and-health/work-injury-compensation/changes-to-wica-in-2016>

¹¹³ Yim, B p. 285, Chandran, R. *Employment Law in Singapore*, 4th Ed, p. 478 citing Singapore Parliament Reports, Vol 84, Issue 2, 2008 at Col. 260.

¹¹⁴ “Committee of Supply Speech by Mr Hawazi Daipi, Senior Parliamentary Secretary for Manpower, 09 March 2015, 5:00 PM, Parliament.” Mr Hawazi Daipi, Senior Parliamentary Secretary for Manpower, Parliament <http://www.mom.gov.sg/newsroom/speeches/2015/committee-of-supply-speech-by-mr-hawazi-daipi-senior-parliamentary-secretary-for-manpower-09-march-2015-500-pm-parliament>

3. THE CLAIMS PROCESS

In this final section we discuss the injury and salary claims process with a view to proposing recommendations to improve the process for migrant workers. Following the review of the three major pieces of legislation protecting and regulating migrant workers, this section gives an overview of the various administrative, mediation, adjudication, and enforcement steps that a worker (and his employer) encounters when filing a formal salary or injury claim.

This review of the claims process contains five subsections: the salary claim process, the injury claim process, Labour Court, the newly created Employment Claims Tribunal, and enforcement. We highlight the protections for migrant workers, and also explain the factors that can undermine these protections.

3.1. Process for salary claims

Salary claims¹¹⁵ can be formally submitted online by those with a SingPass¹¹⁶ or through an appointment with an MOM labour relations officer.¹¹⁷ The officer will determine if the claim meets EA guidelines and respond within three working days with a decision on whether to permit or deny the claim. If MOM accepts the claim, investigations will ensue, followed by mediation meetings led by MOM involving the employer and the migrant worker. Legal representation is not allowed for salary claims, and expeditious settlements are encouraged.

With respect to the salary claim process, we note that the adjudication phase of the salary claim process for claims arising from the EA or employment contracts will move to the Employment Claims Tribunal in April 2017. This is discussed below in 3.4.

Figure 5 presents an overview of MOM's salary claim process.

¹¹⁵ For the purposes of the Employment Act (Cap. 91), any person "under a contract of service with an employer" except for any person who is employed in a managerial or executive position (unless his/her basic monthly salary falls below S\$4,500 a month), or a seaman, domestic worker or person employed by a Statutory Board or the Government, qualifies as an "employee" and is thus covered by the Act: see EA, s 2, within which the respective terms referred to herein are defined.

¹¹⁶ SingPass refers to Singapore Personal Access, basically an e-service that links a user to over 60 Government agencies in Singapore. Only select Work Permit holders have access to SingPass, but it is not specified how eligibility for SingPass is granted. See Singpass (2016) SingPass: Frequently asked questions http://www.ifaq.gov.sg/SINGPASS/apps/fcd_faqlmain.aspx#FAQ_130407 (accessed 29 October 2016).

¹¹⁷ Making an appointment for a meeting at MOM poses a hardship for workers because they have to leave work, alerting employer, or may have to pay to take day off; MOM isn't open evenings or weekends. The following information is needed to make a salary claim: SingPass account (for online submissions); details of the company that the case is made against, eg, name, Unique Entity Number (UEN), mailing address and contact details; Personal particulars, eg, name, NRIC/FIN number, home address and contact details; Employment details, eg, period of employment (start date and end date), occupation and salary.

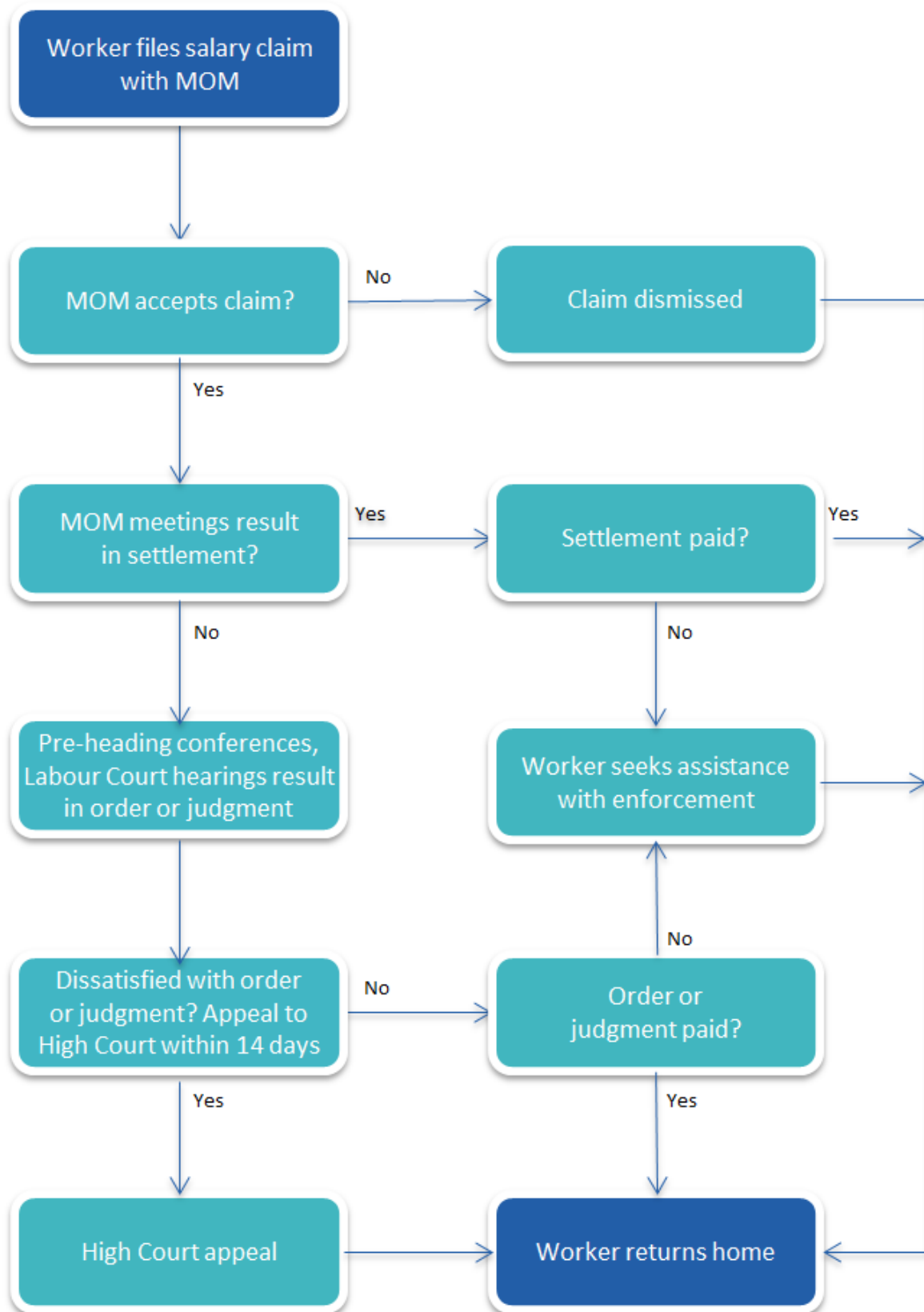


FIGURE 5. Overview of the MOM salary claims process (working draft - in progress)

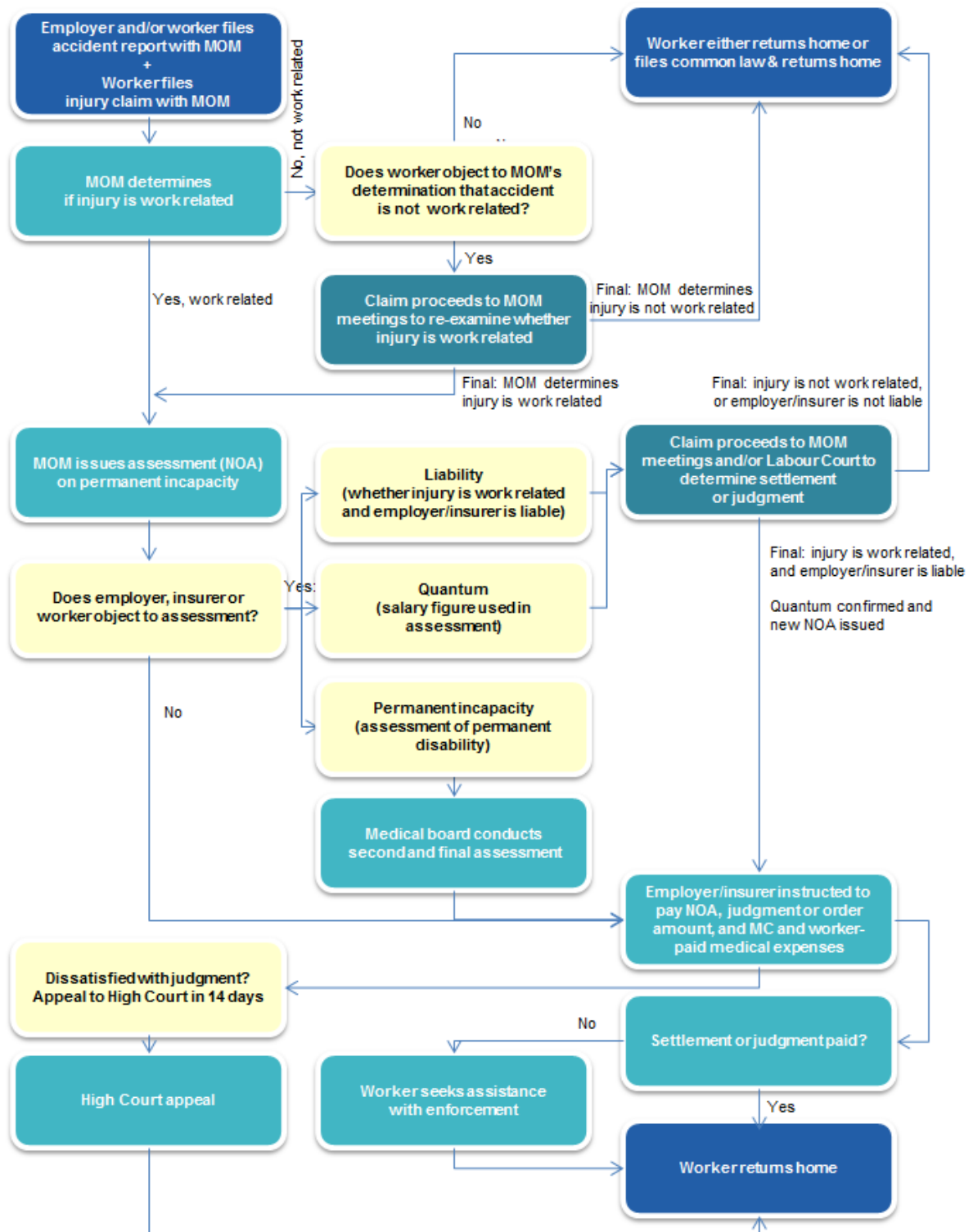


FIGURE 6. Overview of the MOM work injury compensation process (working draft - in progress)

3.2. Process for injury claims under WICA

Eligible employees can claim compensation from their employer under WICA for injuries sustained at work.¹¹⁸ To succeed in his claim, a worker must establish that his injury arose “out of and in the course of his employment”.¹¹⁹ Like a salary claim, the statute of limitations is one year, meaning the injury claim must be made within one year of the date of injury. The compensation amount is bound within a minimum and maximum amount to adequately compensate workers with very low salaries, and limit compensation for workers with high salaries.

Figure 6 presents an overview of the MOM work injury process.

Pursuant to WICA and MOM guidelines, the employer bears the responsibility to pay the worker’s medical bills, provide medical leave wages upon receiving Medical Certificates (MCs), inform the insurer, and file an incident report with MOM. If the worker receives MC for three days or more, is hospitalised for 24 hours or longer, or if an occupational disease has been detected, a report must be filed within ten days of the incident.¹²⁰ The worker is to alert MOM if the employer fails to pay medical bills or medical leave wages. The worker may also file an incident report whether or not the employer does.¹²¹ MOM then carries out an investigation into the

incident to determine the validity of the claim and whether a workplace safety violation has occurred.

Once the injury or condition has stabilised, the medical facility treating the worker is requested by MOM to provide a medical assessment regarding the percentage of permanent incapacity. The MOM then issues a Notice of Assessment (NOA), which includes the amount of compensation payable to the worker for the permanent incapacity, any unpaid medical leave wages and any out-of-pocket medical expenses paid by the worker. The employer should pay the MC wages on a monthly basis, and the medical costs in a timely manner. Any party (the worker, the employer or the insurer) may object to the NOA, by written notice, within 14 days of the NOA.¹²² If there are no objections to the NOA, the employer or the employer’s insurer is required to pay the compensation amount within 21 days of service of the NOA.

An objection may be made either to the (i) quantum or (ii) liability, ie, the basis of the injury compensation itself (eg. where a party disputes whether there was, in fact, a valid workplace injury or not). If the objection is to (i) the quantum, or amount, of the compensation (the issues here could be either the percentage of permanent incapacity as assessed by the doctor or the average monthly

¹¹⁸ WICA also covers occupational diseases, or a disease from exposure to biological or chemical agents contacted at work. It also includes injuries incurred while travelling to or from work in company transport: see WICA, ss 3 and 4.

¹¹⁹ WICA, s 3. The following caps apply to WICA claims:

- (a) Medical Expenses (including treatments facilitating early return to work) - Up to S\$36,000 or one year from accident date, whichever is reached first
- (b) Medical Leave Wages – Up to 60 days of hospitalisation medical leave at full pay and up to 14 days outpatient medical leave at full pay. Thereafter, medical leave at 2/3 pay for up to a year from the accident date.
- (c) Permanent Incapacity (PI) – Minimum S\$88,000 multiplied by %PI, Maximum S\$262,000 multiplied by % PI. Death - Minimum S\$69,000, Maximum S\$204,000.

¹²⁰ Part II of the Work Injury Compensation Regulations; WICA 2011 s 11 provides the procedure for making a claim for compensation.

¹²¹ Work Injury Compensation Regulations (Cap 354, Rg 1, 2010 Rev Ed), Reg 4.

¹²² Ibid.

earnings used to calculate the compensation amount rather than whether it was a valid workplace injury), then MOM will convene an Injury Compensation Medical Board examination to conduct a new medical assessment. The decision of the compensation board is final. If the objection is to (ii) liability, then the case may proceed to MOM's Labour Court. After hearings, the ACL will issue a judgment.¹²³

As discussed earlier, if the employer denies the injury is work-related, then the employer is not responsible for payment of medical leave wages and may delay paying for medical treatment until the validity of the claim is established. Legal representation is allowed for workers with injury claims and the system remains in MOM (rather than move to the Singapore Courts as is the case for salary claims under the Employment Claims Tribunal). While WICA is intended to be an efficient administrative system outside the court process, and simple enough to be managed without a lawyer, our review of experiences of WICA in Chapter 3 suggest considerable issues.

3.3. Labour Court

When either a salary or injury claim cannot be settled by mediation, it may then proceed—

after pre-hearing conferences—to Labour Court, an administrative tribunal housed in MOM. Its powers derive from the Employment Act, and it is designed to “inquire into and decide any dispute between an employee and his employer or any person liable”.¹²⁴ Labour Court is intended to function as a low-cost dispute resolution option to bringing a case to the Singapore Courts for resolution. Labour Court is presided over by a Commissioner for Labour (COL), an officer appointed by the Minister of Manpower who may, in his/her discretion, confer his/her duties and powers upon the Assistant Commissioner for Labour (ACL). As Labour Court is meant to be a low-cost system in which individuals can represent themselves without a lawyer, it is not bound by rules of court, evidence or procedure. This gives the presiding ACL the discretion to decide the manner in which proceedings should be conducted, including the evidence to be admitted and the witnesses to be allowed.¹²⁵ The Employment Act specifies that the ACL may adjudicate by ordering payment to either party as he/she considers just.¹²⁶

With respect to Labour Court, several issues are important to note. First, the informality of Labour Court—freed from traditional rules of court, evidence, and procedure—

¹²³ Ibid.

¹²⁴ Employment Act Section 115.

¹²⁵ Employment Act Section 119(2). The COL “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 and in such manner as he thinks just.” He is to act according to equity, good conscience and the merits of the case without regard to technicalities. Section 119(2), Employment Act.

¹²⁶ Section 116, *ibid.* The ACL is authorised under the law to pass sentences and prohibition orders, order redress, and impose fines and/or prison terms depending on the severity of the offence. *Ibid.*

creates something of a double-edged sword. While it allows for flexibility, it can also lead to excessive discretion, by an ACL, who are public officers (or senior officers) of MOM, who is not required to have legal training.¹²⁷ Second, the Labour Court system has been criticised for a lack of transparency about its procedures and process.¹²⁸ Labour Court hearings are not open to the public, decisions are not published, and participants report that they are not informed about evidentiary standards or criteria used to make decisions beforehand. Third, migrant workers, who must represent themselves in salary cases and who often also do represent themselves in injury cases, lack the language skills and training to develop and present their argument, collect and organise evidence, and engage in cross examination as opposed to the trained lawyers appointed by the employers or the employer's insurance company. These issues will be discussed in further detail in Chapter 3.

3.4. Employment Claims Tribunal

In April 2017, the ECT will replace the MOM Labour Court for salary-related claims arising from the EA, Retirement and Re-Employment Act, the Child Development Co-Savings Act, and salary-related contract issues.¹²⁹ It will reside in the Singapore Courts, rather than in the MOM. The ECT will cover employees of all salary levels including Work Permit holders for claim amounts up to S\$20,000.¹³⁰ Mediation, to be conducted by the Tripartite Alliance for Dispute Management (TADM),¹³¹ will be mandatory before the ECT hears a claim. During the public comment period prior to the finalisation of the ECT, suggestions were made to move mediation out of MOM and utilise independent mediators certified by a recognised mediation authority such as the Singapore Mediation Centre. At present it is not clear if the mediators appointed to the TADM will be officers or ex-officers from MOM. The current time limits for making

¹²⁷ Section 2A of WICA and <http://www.mom.gov.sg/newsroom/press-releases/2009/labour-court-recovers-800000-in-salary-claims-from-jan--apr09>. ACLs are "senior officers of MOM": see Annex A.

¹²⁸ Justice without Borders Manual (2014) *A Practitioner's Manual for Migrant Workers* p. 24. JWB & NUS. Chan, Aris. "Hired on Sufferance: China's Migrant Workers in Singapore." Hong Kong SAR: China Labour Bulletin (2011). http://www.labour.gov.hk/eng/public/pdf/wsd/PWIO%20guide_eng.pdf. Often workers do not know if they have moved into the adjudication phase of the claims process or at what stage they are. The MOM forms and Labour process steps do not use uniform names or titles. When workers move to Labour Court, they lose their MOM case officer, leaving them without access to information about how to navigate the process.

¹²⁹ Employment Claims Act. The ECT will take over the Labour Court's function of hearing statutory salary-related disputes on employee entitlements under the Employment Act, Retirement and Re-employment Act and the Child Development Co-Savings Act. These include unpaid salary, overtime pay, salary in lieu of notice, employment assistance payment and maternity benefits. In addition, the ECT will hear contractual salary-related claims from employees. Such claims include payment of allowances, bonuses, commissions, salary in lieu of notice and retrenchment benefits, provided that these are expressed in monetary terms in the contract. Straits Times (2016) Singapore Parliamentary Debates, Employment Claims Bill (16 August 2016) vol 94 (Mr Lim Swee Say, the Minister for Manpower). <http://www.straitstimes.com/politics/parliament-employment-claims-tribunal-will-start-in-april-2017-with-more-salary-protection>. Second reading: http://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00009809-WA¤tPubID=00009800-WA&topicKey=00009800-WA.00009809-WA_3%2Bid-79677a08-c88f-4099-b610-770ca0f74f27%2B.

¹³⁰ Or S\$30,000 for claims with union involvement. Ministry of Manpower (2016) Employment Claims Bill 2016, Second Reading Speech at Parliament <http://www.mom.gov.sg/newsroom/speeches/2016/0816-employment-claims-bill-2016-second-reading-speech-by-minister>. (accessed 9 November 2016).

¹³¹ This Tripartite Alliance for Dispute Management will be set up by April 2017. See Seow, J (2016) "Parliament: Employment Claims Tribunals will start in April 2017 with more salary protection for PMEs", *Straits Times*, August 16 <http://www.straitstimes.com/politics/parliament-employment-claims-tribunal-will-start-in-april-2017-with-more-salary-protection> (accessed 7 November 2016).

claims and limiting liability—one year for salary disputes and six months for salary in lieu of annual leave and salary in lieu of notice—will continue to apply.

How EFMA protections for migrant worker salary claimants will be adjudicated in the future is unclear. The ECT will only hear claims pursuant to the EA and salary-related contract issues (the other Acts included are not likely to apply to migrant workers). The Minister stated in the second reading of the Employment Claims Bill (the Bill) that the MOM Commissioner for Labour will only continue to hear non-salary-related disputes, transfer for employment, and recovery of salary not paid in legal tender.¹³² It is not clear how or where EFMA protections for Work Permit holders will be enforced. These include protections against decreases in salaries, increases in deductions, entitlements to fixed basic monthly salaries, and maintenance of basic needs. It is also not clear how a case which involves both EA and EFMA violations would proceed, and if it would involve two simultaneous cases proceeding through different systems.¹³³

Suggestions were also raised during the public comment period regarding non-legal representation, to enable workers to avail themselves of assistance with the claims and adjudication process. The Bill's final hearing

clarified that “generally speaking, claimants must make their claims in person”,¹³⁴ meaning without representation. Some Members of Parliament expressed the concern that if the worker is unable to express himself or unable to present his case, then the judgment may not be a fair one.¹³⁵ However, MOM has confirmed in its guidance that no representation will be allowed.¹³⁶

We note several points, with the caveat that many details of the ECT have been left to subsidiary legislation that has not yet been finalised and so cannot be commented upon. First, the ECT may be seen as a promising improvement to the Labour Court system, in that it is to formally be part of the Singapore Courts (namely, the Community Justice and Tribunals Division (CJTD) of the State Courts) and claims will be adjudicated by magistrates who are legally trained.¹³⁷ Additionally, the Rules of Court can be used to summon witnesses, establish facts and give evidence,¹³⁸ removing some of the evidentiary inconsistencies present in the current Labour Court system. Second, it is unclear how well EFMA protections will be upheld once the ECT is in effect, as the ECT does not have authority for claims under the EFMA. Third, the ECT appears to lack the same safeguards that the current salary

¹³² Singapore Parliamentary Debates, Employment Claims Bill, *ibid*; <http://www.mom.gov.sg/newsroom/speeches/2016/0816-employment-claims-bill-2016-second-reading-speech-by-minister>.

¹³³ It is not clear if EFMA violations will result in civil liability.

¹³⁴ But in cases where the employee does not have the capacity to represent himself, his next-of-kin may apply to the courts to be appointed as a deputy under the Mental Capacity Act. Once appointed as a deputy, the next-of-kin may then submit a mediation request on behalf of the employee”. Singapore Parliamentary Debates, Employment Claims Bill, *ibid*.

¹³⁵ The reply was that the Tribunal Magistrates appointed to the ECT will be legally qualified and they will decide on each case, its merits and in accordance with the relevant legislation, case law and legal principles. Singapore Parliamentary Debates, Employment Claims Bill, *ibid*.

¹³⁶ See point 24: Singapore Parliamentary Debates, Employment Claims Bill, *ibid*; <http://www.mom.gov.sg/newsroom/speeches/2016/0816-employment-claims-bill-2016-second-reading-speech-by-minister>.

¹³⁷ Employment Claims Act ss 9 and 11. See also <http://www.mom.gov.sg/newsroom/speeches/2016/0816-employment-claims-bill-2016-second-reading-speech-by-minister>.

¹³⁸ Employment Claims Act 33(2)(g) and (h) .

mediation and adjudication system lacks relating to assistance and representation.

3.5. Enforcement

The final stage of the claims process is enforcement. Employers or insurers are ordered to make payment within 21 days of a successful final judgment or order for compensation by Labour Court. If the employer fails to pay, the worker's enforcement options are impractical and unaffordable. We observe that the costs—in terms of both time and money, as well as the complexity of enforcing an order through the Singapore Courts—are serious obstacles, while outcomes are unpredictable and recovery rates low.¹³⁹ Here is a summary of the key options currently offered by the system to enforce claim judgments, as well as commentary on the limitations of each option.

3.5.1. Letter of demand

If an employer does not pay the judgment sum stated in the court order, a letter of demand (LOD) may be sent on behalf of a worker setting out the list of outstanding amounts. While it need not be drafted by a lawyer, it is unlikely a migrant worker could prepare an LOD without legal assistance. An LOD from a lawyer or law firm may add weight to the demand, with the implicit threat

of legal action. The LOD, as a mechanism for enforcement, is limited because the migrant worker is unlikely to be able to afford the legal fee required to draft the letter, and the employer can ignore the LOD without penalty.

3.5.2. Writ of seizure and sale

Under a writ of seizure and sale (WSS),¹⁴⁰ the worker requests the court to seize and sell movable property belonging to the employer to pay the judgment debt. Stakeholders report that the current cost to workers of WSS is approximately S\$1,000, including a S\$270 stamp duty charge, and S\$50 an hour for bailiff charges (a bailiff is required to seize the debtor's property). The worker may also be required to make a minimum deposit of between S\$150 to S\$800 depending on the value of the debtor's property.¹⁴¹ Seized assets, such as office furniture and equipment, are then generally sold at auction, for which the auctioneer collects a fee. The WSS is an inappropriate mechanism for enforcement because judgment amounts, particularly for salary claims, are too low to outweigh the costs, and the employer's assets available for seizure are often of such low value that they are rarely worth seizing.

3.5.3. Garnishee proceedings

Under this process, the worker may recover the amount his employer owes him directly

¹³⁹ Minister for Manpower Lim Swee Say in Parliamentary Debates 11 May 2015 that of the 1,630 salary cases taken to Labour Court in 2014, one-third of judgments were not fully paid by employers. "... [O]ne-third of them, due to financial difficulties faced by the companies, received either partial payment or, in some cases, no payment. We investigated further into those employers who were not able to make full payment and we discovered that 80% of the employers were able to make full payment but 20% of them, were unable to pay due to financial difficulties and, in some cases, even closing down of business. As a result, there was no recourse for the workers and for the Labour Court to recover the payment."

¹⁴⁰ WSS can be issued under O 47 r 1 of the Rules of Court (2014 Rev. Ed.)

¹⁴¹ *Justice Delayed Justice Denied*, p. 10.

from third parties in debt to his employer.¹⁴² Such third persons are described as ‘garnishees’. A garnishee order could be ordered against a bank or other deposit-taking institution in respect of the judgment debtor’s credit balance.¹⁴³ The worker would need to know the employer’s bank account details, or the identity of the employer’s debtors. These garnishees would then be notified by the court, resulting in court costs, excluding lawyers’ fees, of between S\$600 and S\$2,000. As with other enforcement methods, the costs of garnishee proceedings mean that this option is only viable if a company is financially healthy, and if the amount claimed is more than S\$4,000 (more than most salary claims). Furthermore, the worker is not likely to have information about the employer’s bank account details or debtors.

3.5.4. Debt collector

A final option is for workers to engage the services of a debt collector, who usually charges a commission fee of up to 40 percent of the total compensation recovered.

3.5.5. Statutory relief fund

One alternative enforcement mechanism, not currently available in Singapore, but used in a number of other jurisdictions, is the creation of a statutory relief fund. Such a fund could be established by the Government (or by a tripartite alliance of the Government, employers, and unions) to provide compensation in cases where employers do not or cannot pay.

Suggestions about such a system are not new in Singapore. The Second Hearing of the Employment Claims Bill in August 2016 highlighted a short-term relief fund to be administered by the Tripartite Alliance for Dispute Management, available to help local employees when companies are unable to make payment due to insufficient assets or halted operation.¹⁴⁴ One potential alternative to the existing enforcement mechanisms would be to extend the short-term relief fund of the Tripartite Alliance to migrant workers with a successful judgment but without recourse against employers who cannot or will not pay. This recommendation is discussed further in Chapter 4.

4. CONCLUSION

This chapter presents an introduction to migrant workers in Singapore, a review of their legislative and regulatory protections, and of the salary and injury claims system. While the purpose of this chapter is to provide an overview, we also present our understanding of how the current system that is intended to provide protections for migrant

workers, can be undermined by various factors. In Chapter 3 we elaborate on this understanding by reviewing primary source evidence that we collected through interviews with claimant migrant workers and other stakeholders such as lawyers, medical professionals, and NPO staff and volunteers.

¹⁴² Singapore Civil Procedure (2016) at [49/0/2].

¹⁴³ Paragraph 18 of the First Schedule, Supreme Court of Judicature Act empowers the court to attach deposits even if they have not matured and despite restrictions imposed on the mode of withdrawal. O 49 R 1(3) of the ROC further states that “any debt due or accruing due” includes current or deposit account with a bank or other financial institution, whether or not the deposit has matured and notwithstanding any restriction as to the mode of withdrawal. This effectively allows the worker to claim against the employer’s accounts, which is a useful point to bear in mind.

¹⁴⁴ Singapore Parliamentary Debates, Employment Claims Bill, *ibid*; http://sprs.parl.gov.sg/search/topic.jsp?currentTopicID=00009809-WA¤tPubID=00009800-WA&topicKey=00009800-WA.00009809-WA_3%2Bid-79677a08-c88f-4099-b610-770ca0f74f27%2B; <http://www.mom.gov.sg/newsroom/speeches/2016/0816-employment-claims-bill-2016-second-reading-speech-by-minister>.



CHAPTER 3

KEY FINDINGS
FROM INTERVIEWS

CHAPTER 3: KEY FINDINGS FROM INTERVIEWS

1. INTRODUCTION

In this chapter we consolidate our research on the practical functioning of the claims process. Chapter 2 shows the intent of the law and the claims process, and also raises theoretical areas of concern with the laws and issues raised by stakeholders. We now supplement this legal analysis with a review of our qualitative data, which includes interviews with 157 claimant migrant workers as well as informal discussion with a range of stakeholders, including academics, industry representatives, legal and medical practitioners, and NPO staff and volunteers. This is further supported by relevant literature on low-wage migrant workers in Singapore. Through this, we examine how efforts to provide legal protections to workers can be undermined by four significant factors: migrant worker vulnerability, ambiguous legal language, violations of the law, and gaps in administration.

The analytical methods used in this chapter are outlined in Appendices 1 and 2, and involved the identifying of key themes that emerged from the interviews and consultations. The quotes we present are a sample of the comments made by interviewees with respect to each finding; they are either the direct words of the interviewee in first-person form or field notes that capture the interviewee's words in third person form (field notes are indicated where applicable). We chose quotes which are clearly illustrative of the larger theme identified. The rest of the chapter progresses systematically through the findings of our research. We

“ Our research generally affirms the findings of previous literature on low-wage migrant workers in Singapore, including the types of the problems encountered with the claims process and factors that contribute to migrant worker vulnerability. ”

organise the findings under three main sections: the context, the claims process, and critical support gaps.

There is a growing body of work on migrant workers in Singapore, with recent research focusing on male migrant workers in

particular.¹⁴⁵ Our study aims to make a unique contribution through analyses of both legislation and the everyday experiences of workers and other stakeholders in the claim system. Our research generally affirms the findings of previous literature on low-wage

migrant workers in Singapore, including the types of the problems encountered with the claims process and factors that contribute to migrant worker vulnerability.

2. THE CONTEXT: MIGRANT WORKER VULNERABILITY

Before discussing migrant worker experiences of the claim process itself, we provide a brief review of the larger context within which a migrant worker brings a claim. The most important dimensions of this context which

came up repeatedly in interviews was migrant worker vulnerability, particularly migrant worker vulnerability to job loss, repatriation or deportation, and the financial hardships associated with these events.

¹⁴⁵ Bal, Charanpal Singh, "Dealing with Deportability: Deportation Laws and the Political Personhood of Temporary Migrant Workers in Singapore" *Asian Journal of Law and Society*. 2 (2015): 267-284.

Bal, Charanpal Singh, *Production Politics and Migrant Labour Regimes: Guest Workers in Asian and the Gulf* (US: Palgrave Macmillan, 2016).

Chan, Aris. "Hired on Sufferance: China's Migrant Workers in Singapore." *Hong Kong SAR: China Labour Bulletin* (2011). http://www.labour.gov.hk/eng/public/pdf/wsd/PWIO%20guide_eng.pdf. <http://www.clb.org.hk/en/content/hired-sufferance-chinas-migrant-workers-singapore>

Chok, Stephanie J.M. "Labour Justice and Political Responsibility: An Ethics-Centred Approach to Temporary Low-Paid Labour Migration in Singapore" (PhD Thesis, Murdoch University, 2013).

Harrigan, Nicholas, and Koh Chiu Yee 'Vital Yet Vulnerable: Mental and emotional health of South Asian migrant workers in Singapore'. *Lien Centre for Social Innovation Social Insight Research Series*, Singapore Management University (2015).

Harrigan, N.M., Koh, C.Y. & Amirrudin, A. (2016) 'Threat of Deportation as Proximal Social Determinant of Mental Health Amongst Migrant Workers.' *J Immigrant Minority Health*. doi:10.1007/s10903-016-0532-

Humanitarian Organization for Migration Economics and Transient Workers Count Too. *Justice Delayed, Justice Denied: The Experiences of Migrant Workers in Singapore*. Singapore: HOME and TWC2, 2010. <http://twc2.org.sg/2010/12/15/justice-delayed-justice-denied/> (accessed October 12, 2016).

Justice without Borders Manual (2014) *A Practitioner's Manual for Migrant Workers* p. 24. JWB & NUS.

Koh, Stanley, "Paper-cuts, unseen falls and invisible back injuries: employer perceptions of workplace injuries and runaway migrant workers in Singapore." (Bachelor dissertation, School of Social Sciences, Singapore Management University, 2014).

Ministry of Manpower and Migrant Workers Centre, "Ministry of Manpower and Migrant Worker Centre Foreign Worker Study 2011," www.mom.gov.sg/Documents/statisticspublications/MOM-and-MWC-FW-survey.pdf;

Ministry of Manpower and Migrant Workers Centre, "Ministry of Manpower and Migrant Worker Centre Foreign Worker Survey 2014", www.mom.gov.sg/Documents/statisticspublications/Foreign%20Worker%20Survey%202014.pdf

Platt, Maria, Grace Baey, Brenda SA Yeoh, Choon Yen Khoo, and Theodora Lam. "Debt, precarity and gender: male and female temporary labour migrants in Singapore." *Journal of Ethnic and Migration Studies* (2016): 1-18.

Junjia Ye, "Migrant landscapes: A spatial analysis of South Asian male migrants in Singapore", in *Changing Landscapes of Singapore: Old Tensions, New Discoveries*, eds. Ho, E., Woon, C.Y. and Ramdas, K. (Singapore: NUS Press) pp 142-157; Junjia Ye, *Class Inequality in the Global City: Migrants, Workers and Cosmopolitanism in Singapore* (UK: Palgrave Macmillan, 2016).

2.1. Job loss for those who make claims

Among our 157 interviewees, the problem of job loss as a consequence of making a claim was prevalent. This happened in three ways: cancellation of Work Permits, inability to work on Special Pass, and repatriation at the end of (even successful) claims.

When a migrant worker files a salary or injury claim with the Ministry of Manpower, the employer usually cancels the claimant's Work Permit within a month or two of the claim. This relieves the employer of the requirement to pay the foreign worker levy. The MOM then issues the migrant worker a Special Pass, which allows him to remain in Singapore protected from repatriation while the claim is investigated and processed, but deprives him of the right to work. Workers may remain on Special Pass for months or years, without the legal ability to work and so without the means to pay for food, lodging, and medical expenses. Special Pass holders are not permitted to resume work when the claim is concluded, no matter what the outcome. This means that even at the end of a successful claim, a worker on Special Pass faces almost certain repatriation to their country of origin.

Lawyers interviewed affirm this sequence of events, and the punitive consequences of the Special Pass system:

[If workers file a claim,] eventually [the] company is going to cancel your Work Permit and apply Special Pass for you.

—Jenny Lim, Lawyer

[The current] system ... cannot achieve the objectives of the [Employment] Act [for fair resolution of claims]. For example, the Special Pass. The current

system puts many workers on Special Pass. Workers have to languish in Singapore until their claim finishes.

—James Ng, Lawyer

Our interviews with migrant workers on Special Pass reveal reports of substantial financial hardship, with particularly severe consequences for workers with recruitment fee debt, and those with dependent families. The first quote below is from a worker who has been on Special Pass for two and half years, and doesn't have enough money for basic living expenses. Both workers quoted needed to borrow money for basic living expenses like food.

[For two and half years] I have been holding the Special Pass as my Work Permit had been cancelled by my employer ... I don't have any money for salary, transport, food, and my other expenses. ... my employer gave me S\$2-5 every two to three days ... I do not have any money to pay for my treatment. I sleep ... at the worksite, and I have to borrow money for my transport and food.

—Liu Minmin, migrant worker from China with an injury claim

While I was going through all this to get my money back, MOM was okay. But to survive day to day I need more money, so have to borrow—so have added pressure of now owing more people money. Especially now, now they are coming back to me asking for the money. I also have family members I need to support. So very stressful, money [I owe to other people is] piling up. I wait for Labour Court money, I can't work, I spend money to be here. I told my family I am getting the MOM money, as MOM said I would get the

Labour Court money, but the current state is that I might not get the money, as the company is winding up and cannot pay. If I was just allowed to work, then I would at least have some money to support myself—for food, lodging, etc. Then I could support myself and would not have to borrow. Even going to MOM cost money.

—Kamal Islam, worker from Bangladesh with a salary claim

Permission for workers to change employers is granted only in exceptional cases, and at present is not granted for men who are waiting for salary or injury cases to conclude. Offering the opportunity to work might not seem sensible for men whose injuries prevent them from engaging in strenuous manual work, which is the norm for construction and shipyard workers. But for workers with relatively minor injuries, and those whose injuries heal sufficiently for the worker to rejoin the workforce, earning a salary would relieve the previous employer of the need to fund basic needs for this man who is no longer in his employ.

Salary claims can be protracted for many reasons, leaving the men and their families in need of financial support. These men would benefit from earning an income especially when the company accused of non-payment may be in financial straits and ultimately

unable to abide by the settlement order if in favour of the workers.

While the ability to work while waiting for a claim would relieve much of the hardship of the Special Pass, workers' experiences tend to be like the one quoted below, who is prevented by his previous employer from obtaining a change of employer (COE):

[Monir] asked his MOM officer for a COE [change of employer] so that he could [work and] finish paying his agent fees. However, his MOM officer said that this was up to his employer, and his employer had to consent to it. He feels that this is very stupid because after he has made a claim against his employer, there is no way his employer will approve his COE. His employer wants him to be sent home and to suffer for making his claim.

—Field notes from interview with Monir, worker from Bangladesh with a salary claim

2.2. Repatriation and threats of repatriation

A further and related source of vulnerability for migrant workers is the risk and threat of repatriation before making a claim. Many of our interviewees report threats of repatriation against themselves and actual repatriations of colleagues. Repatriation is

“ If I was just allowed to work, then I would at least have some money to support myself—for food, lodging, etc. Then I could support myself and would not have to borrow. Even going to MOM cost money. ”

—Kamal Islam, worker from Bangladesh with a salary claim.

generally feared by workers because of the poor economic opportunities in their home countries, the significantly lower income that they can earn in their home countries in comparison to in Singapore, and the debt burden they may still have because of the large recruitment fee they had to pay initially.

The following two excerpts capture what workers believe are the motives and mechanisms behind threats of repatriation and actual repatriation:

My employer threatened to end my contract and send me home. He did not want to pay me or let me receive treatment.

—Zhou Weimin, worker from China with an injury claim

My employer was explaining to me that reporting it [the accident] to MOM will tarnish the company's reputation. He was willing to give me money for my medical fees and let me continue working for two more years once I recovered, if I chose not to report it to MOM. However, if I still wanted to report it to MOM, he will end my contract and send me home.

—Cui Lijing, worker from China with an injury claim

Explicit threats of deportation, however, were often not even necessary for workers who know of other workers who were repatriated and understood their precarious legal and immigration situation.

[Mahabur] had [known] another co-worker who had met with an accident. His employer had not given him any problem with the injury at the start but sent the worker back after one month. [Since Mahabur was now injured, he] was scared this would happen to him.

—Field notes from interview with Mahabur, worker from Bangladesh with an injury claim

If I went to MOM earlier, I would have lost my job because my employer will want to send me back to Bangladesh.

—Farhan Sarder, worker from Bangladesh with a salary claim

These quotes show how the ease with which an employer can repatriate (or deport) a worker puts the worker in a vulnerable position, appearing to reduce the likelihood a worker will bring a claim in a timely manner, or even bring a claim at all.

3. THE CLAIMS PROCESS

In this section, we discuss stakeholder experiences and appraisals of the claims process. We review four different dimensions of the claims process: mediation and adjudication, evidence, employer retaliation, and enforcement.

3.1. Mediation and adjudication process

As discussed in Chapter 2, workers with salary or injury claims go through a mediation process at MOM. If the claim cannot be settled through mediation, then it may proceed to pre-hearing conference and adjudication in MOM's Labour Court. We review and discuss three major concerns raised by workers and NPOs about the mediation process: pressure in mediation to 'meet in the middle', lack of guidance and transparency of decision-making, and consequent confusion and disempowerment of workers.

3.1.1. Meeting in the middle

Our review of the interviews suggest that the current mediation process can sometimes put pressure on parties to meet in the middle and this has the potential to disadvantage workers with legitimate claims. Workers explain that their employer's initial offer for settlement was significantly below what they had claimed. In effect, workers are being asked to accept a reduced amount of compensation for hours they have already worked. Workers told interviewers that if the employer objected to the amount proposed, then the mediated settlement was lowered. The claimant workers, not fully apprised of the

mediation process and its objectives, may not be aware that they can 'walk away' from this voluntary settlement offer. In the belief that this was all that was on the table, the claimant workers may feel coerced into accepting a proposal that they feel is less than satisfactory. Moreover, even if they understand it is possible, workers may not have the experience or ability to renegotiate the settlement offer upwards.

[Abdul Kalam] went to MOM around mid May to make a claim. They gave an appointment for late May, then he discussed the issue with his boss and supervisor. They reached a settlement when the worker agreed to accept a lower sum than what he was due.

—Field notes from interview with Abdul Kalam, worker from Bangladesh with a salary claim

Where a group of workers has similar claims against their employer and some individuals opt to settle, others often feel pressured to do the same, despite inconsistencies in the settlement amounts offered or their own beliefs as to the strength of their legal claims. In such circumstances, dealing with individual cases one-by-one (as opposed to mediating a multi-disputant settlement) results in inconsistencies. Workers with similar claims may receive significantly different settlement sums, without transparent reasoning for or explanation of differences.

NPOs point to a 2014 case involving more than 50 men from the same company, Prosper Environmental & Engineering Pte

Ltd.¹⁴⁶ An early group of eight men filed complaints over salary short payment and deductions from salary that were not agreed to; the claim amount was an average of S\$8,000 per worker. After mediation at MOM, the men were repatriated after receiving an average of S\$4,808 each. The men felt they had little choice but to accept the lower amounts and return home.¹⁴⁷

A week later, additional Prosper migrant workers came forward and filed claims related to similar salary underpayments and deductions by the employer. They were told by MOM that if their employer refused to pay, they would have to apply to the High Court and would need to pay for the filing costs and legal assistance required. When asked about the different responses given to the first group of eight men and the subsequent employees, they said that “MOM explained that the claims for the first group of workers were settled at a conciliation meeting as the employer wanted to resolve the issue quickly. It was not meant as an

acknowledgement of the legitimacy of the workers’ demands” or, presumably, of the employer’s wrongdoing.¹⁴⁸

We note that these problems—of workers feeling pressured to settle for a reduced amount, and the failure to acknowledge the employer’s wrongdoing—are related to the larger problem of using mediation to resolve disputes with vulnerable groups due to the substantial difference in bargaining power between parties.¹⁴⁹ As noted by M. Rajah, traditional mediation models assume that the power between parties must be relatively equal.¹⁵⁰ Mediation involves an emphasis on compromise, but as another commentator notes, mediation may not be “suitable in a case of great power inequality, as the stronger party lacks the incentive to compromise”.¹⁵¹ Similarly, a failure to acknowledge wrongdoing seems likely to favour the more powerful party—in this case the employer—as it protects them from the case being used as precedent for future claims by other workers.

¹⁴⁶ TWC2 (2016) Who prospers in this salary saga? <http://twc2.org.sg/2014/03/18/who-prospers-in-this-salary-saga/> (accessed 8 November 2016)

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ An effective mediation that takes into account differences in bargaining power would be culture-sensitive and adaptive, having considered the particular vulnerabilities of migrant worker disputants. Mediators ought to be trained to be personally aware of all cultural factors and how they may impact the mediation process. For example, certain ethnic minorities may be alarmed by raised voices. See Sonia Shah-Kazemi, “Cross-cultural Mediation: A Critical View of the Dynamics of Culture in Family Disputes” (2000) 14(3) *International Journal of Law, Policy and the Family* 302, 313. Similarly, some Bangladeshi and Indian workers interviewed reveal a lack of understanding of the importance of documentary evidence – cultural ‘mismatches’, such as this, ought to be carefully explained to disputants by the mediator. It is critical that both the mediator and the mediation process accommodate the specific ethnocentric needs that arise in the context of cross-cultural worker-employer disputes, to insure a fair and just mediation outcome.”

¹⁵⁰ Rajah, M. (2015) “Cooking Curry in a Cultural Melting Pot: An Argument for a Mandatory ‘Community Mediation’ Framework in Singapore” *Asian Journal on Mediation* p.123

¹⁵¹ Chan, G. K. Y. (2008) “Access to Justice for the Poor” *The Singapore Judiciary at Work, Pacific Rim Law and Policy Journal* 17 (3). Employers may be able to withstand a lengthy mediation process, while workers are disproportionately incentivized to settle because during the mediation process they cannot work and thus are likely to incur costs, adding to their indebtedness.

“ [Abdul Kalam] did not have necessary evidence and timesheets. The judge scolded him and gave him an ultimatum and told him to submit all the necessary evidence by 5 pm the next day. [Abdul Kalam] managed to submit some evidence, but it was incomplete, and the judge got angrier, telling him to find a lawyer to sort out his documents within one week. ”

—Field notes from interview with Abdul Kalam, worker from Bangladesh with a salary claim

3.1.2. Lack of guidance and transparency

The effectiveness of mediation is also compromised by a lack of guidance around the evidentiary requirements for successful claims, the decision-making criteria used for previous adjudications, and the general practice of barring NPOs and other support persons from attending mediations and hearings with migrant workers.

Workers express concerns about not being told, or not understanding the evidentiary requirements for both injury claims and salary claims. Lawyers and NPOs expressed similar concerns about the difficulty workers have preparing their own evidence for mediation or Labour Court.

I went there the very first time to report my injury case. The [MOM] officer got me to sign a form, but I am not sure what I signed. Then, he asked me to go to another officer to write my statement. I had to pay S\$10 for them to write it out for me. But, throughout this whole process [more than six months], the procedure or required documents were not made known to me.

—Ma Weifang, worker from China with an injury claim

[Abdul Kalam] did not have necessary evidence and timesheets. The judge scolded him and gave him an ultimatum and told him to submit all the necessary evidence by 5 pm the next day. [Abdul Kalam] managed to submit some evidence, but it was incomplete, and the judge got angrier, telling him to find a lawyer to sort out his documents within one week.

—Field notes from interview with Abdul Kalam, worker from Bangladesh with a salary claim

It's technically possible for a worker [to prepare their own evidence], but difficult. The person helping the worker to prepare must have some legal knowledge and must be able to communicate with the worker. Otherwise it is impossible for the worker to figure it out. To take a matter through the WICA process, let alone Labour Court, you need a lot of experience and guidance. The workers lack even the basics. A lot of times, the workers are unsure about the date of the accident. They don't know what information to bring. They explain one way and then explain another way, without realising the issue this presents.

—James Ng, lawyer

Lawyers and NPO staff also expressed frustration about their inability to access

records of previous decisions, which would assist them to understand the grounds for decisions and would enable them to help future workers prepare their claims. Lawyers and NPO staff reported that access to Notes of Evidence, the court documents which explain the grounds for a Labour Court decision, is only available if the worker appeals the decision to the Singapore High Court and pays the corresponding filing fees. This poses a problem because the claimant often doesn't know if grounds for an appeal exist without knowing the grounds for the decision. The S\$5 per page fee for Notes of Evidence are prohibitive when the Notes can be 50 pages or more in length.¹⁵²

MOM should give the grounds of decision so parties can make informed objections. Take adjudication out of MOM ... [Notes of evidence] are relevant in making the decisions as to whether the case should proceed to trial. Parties should get a copy of the Notes of Evidence [but don't].

—James Ng, lawyer

As explained in the previous chapter, a worker with a salary claim is not allowed legal or other representational help in mediation or adjudication. This requires a worker to represent himself without being accompanied

in the hearing. For injury claims, a worker may engage a lawyer, but the WICA system is meant to be able to be navigated without legal help. Hiring a lawyer to present a strong case is unaffordable to many workers with injury claims, while pro bono schemes in Singapore are not available to migrant workers. The problems workers face without dedicated legal or other forms of representational support is articulated by one lawyer familiar with the migrant worker claims context:

[W]hen I see the migrant workers at Labour Court, they seem very helpless ... it is very important they get a lawyer. Just imagine them not being able to write a coherent written submission! Even if you don't have a lawyer, you need a competent person to be able to advise the court by helping the worker. There are so many angles to it, if you are not an expert, you can't turn the attention of the court ... [Up to S\$50,000 cases they can or should get help from NGOs] ... but beyond that [they] must get a lawyer.

Here's an example of [what is expected in] the written submission, where you see there are many details and exactly what the respondent is disputing. For instance, what happened during the whole process and what could have aggravated the situation.

¹⁵² MOM website: "I want to appeal to the High Court. How do I get documents of the inquiry proceedings?" Answer: "Make a request to the MOM officer listed in the Order's cover letter, asking for notes of evidence related to your case. We will give you a certified copy of those notes, at the cost of \$5 per page. You'll need to make a non-refundable partial payment in advance. The notes should be ready within a month, depending on the complexity of your case."

Ministry of Manpower (2015) I want to appeal to the high court how I get documents of the inquiry proceedings <http://www.mom.gov.sg/faq/claims-and-complaints/i-want-to-appeal-to-the-high-court-how-do-i-get-documents-of-the-inquiry-proceedings> (accessed 8 November 2016). Compare this with access and costs in the Singapore Courts. The Appellant is entitled to the first set of record of proceedings and the Grounds of Decision at no charge. Subsequent sets of record of proceedings or the Grounds of Decision will be charged at a rate of \$0.50 for each page subject to a minimum of \$10. <https://statecourts.gov.sg/CriminalCase/Pages/InformationaboutFilingaNoticeOfAppeal.aspx>.

<http://statecourts.gov.sg/CriminalCase/Documents/ApplicationFormforCourtRecords-Form26.docx>

Lastly, it is pertinent to explain what exactly is the claimant trying to get. Then, I follow it up with the law. How can a layman be expected to do this?

—Hiran Devan, lawyer

3.1.3. Confusion and disempowerment

One of the consequences of inadequate guidance, language barriers, and lack of legal or other experience to navigate the claims process was that workers express feelings of confusion and disempowerment.

The whole Labour Court process is extremely disorganised. There were a few times when my company changed their mind [about attending] and cancelled the hearing, I was not informed at all. ... I wasn't sure what was going on in a few hearings and wasn't asked to prepare any materials ... I wish MOM or my company would have explained the whole process for me, as I was very confused. It was such a difficult time for me, and I was still injured on top of that ... Also, why did my case drag on for so long? I can't afford the additional expenses since I've stopped working.

—Yan Yanjing, worker from China with an injury claim

[Ali Sultan] was advised by another Bangladeshi man to make a claim with MOM. It went to Labour Court from there. There was no one to guide him through the process. ... He didn't prepare. He didn't know what was going on. He just submitted his documents/evidence at the beginning of the case, and then just went with whatever happened during his hearings. ... He was confused. He said a lawyer would have been nice, but he couldn't afford one.

—Field notes from interview with Ali Sultan, worker from Bangladesh with injury and salary claims

This sentiment of confusion, while prevalent, was not uniform, and workers' varied experiences point toward potential solutions. Workers' reports of their experiences with the claims process tend to focus on two issues: first, whether the worker is treated with courtesy, care, and respect; and second, whether he receives appropriate quasi-legal support, whether from MOM officers, lawyers, doctors or NPO staff. We can see in this first quote that the manner, communication skills, and demeanor of MOM staff can vary considerably, and makes a substantial difference to the workers' experience of the claim process.

“ [Ali Sultan] was advised by another Bangladeshi man to make a claim with MOM. It went to Labour Court from there. There was no one to guide him through the process. ... He didn't prepare. He didn't know what was going on. He just submitted his documents/evidence at the beginning of the case, and then just went with whatever happened during his hearings. ... He was confused. He said a lawyer would have been nice, but he couldn't afford one. ”

—Field notes from interview with Ali Sultan, worker from Bangladesh with injury and salary claims

Yes, I went to MOM twice. The first time I went there, I spoke with this older lady MOM officer, but her attitude was very bad. A lot of things I didn't understand, so I went back, and during the second time, a younger woman spoke with me and she was very good. She asked me for all the details and wrote everything down. I think overall MOM was very helpful and gave me confidence in seeking justice so far.

—Xiong Xiali, worker from China with an injury claim

In the second quote the worker explains that MOM staff was proactive in urging the employer to follow the law, giving the worker confidence in the claims process.

Yes, I went to MOM and the MOM officer was very helpful. When manager took me to cancel my Work Permit, MOM case officer ask manager why no take me to proper hospital. He told manager, if next time still never take me to hospital, will go police and many, many problem.

—Selim Miah, worker from Bangladesh with an injury claim

3.2 Evidence

As discussed in Chapter 2, workers with salary or injury claims can have considerable problems furnishing the evidence required to substantiate their claim. In this section we review and discuss three major areas of concern with evidence brought up by workers and NPOs: documentary evidence for salary claims, documentary evidence for injury claims, and witness testimony, particularly the possibility of the coercion of witnesses who work for the employer.

3.2.1. Documentary evidence for salary claims

Analysis of our interviews with workers revealed that a considerable number report a lack of access to documentation required to substantiate salary claims. This includes difficulty accessing IPAs, contracts, time sheets, pay slips, and receipts for deductions.

Contracts. Workers raised issues relating to employment contracts. Many workers report not having employment contracts. As explained by the workers quoted below, many who did sign employment contracts reported that they were not allowed to read the contract or were not given a copy.

I signed a contract in China and one in Singapore. ... Even if my employer gives me less than what is stated on the contract, I have nothing to fight against him. He keeps the contract after we have signed it.

—Cai Weiwei, worker from China with an injury claim

[Interviewer: Before coming to Singapore, did you sign a contract?]

I did, but it didn't have the other party's signature! It's a useless piece of paper because I could sue in court but have no evidence since I was the only one who signed it. I don't even have a copy of it! The contract was taken to me by my agent.

—P0060, Zhou Yangfang, worker from China with an injury claim

As we can see in the following examples, withholding of contracts from workers appears to be deliberate and not simply for safekeeping.

[Kamrul Islam] signed a contract but was not allowed to keep a copy of it. He tried

to take a picture of it once but was told that this was not allowed.

—Field notes from interview with Kamrul Islam, worker from Bangladesh with injury and salary claims

[Mahabur] demonstrated that the company man had a hand on the paper as he was signing, and snatched the contract away as soon as he had finished signing. He asked if he could have a copy. When I asked what the man's response was, he said, "Company man many angry."

—Field notes from interview with Mahabur, worker from Bangladesh with an injury claim

Some bosses might not give contracts because they are not legally trained so don't know how to draft legal contracts, or they are outside all day, or they don't have time. But, from the other side of things, sometimes they want to as to make sure there is no paper trail, no proof.

—Caleb Tan, lawyer

The withholding of contracts from some of our interviewees suggests that some employers are consciously trying to stop the creation of a paper trail, and prevent workers from having the documentary evidence to bring a salary claim if they are ever underpaid.

Deductions and cash salary payments. Some workers also report deductions from their salary that were not previously agreed upon or that appeared to be illegal. There were also reports of instances where amounts of payment given in cash were less than the amount indicated on the salary envelope. The quotes below show examples of each of these situations.

[Aynal Haque and his co-workers] had no evidence. The company took back all papers. Nothing was given to them to prove they had received payment. There were no itemised pay slips, and they were not allowed to keep a copy of their contract. There was also no record of the illegal deductions as payment was made in cash.

—Field notes from interview with Aynal Haque, worker from Bangladesh with a salary claim

[Rafiqul] gave an example of how the deduction would be made from his salary: if he was owed S\$500 in wages, his employer would give him an envelope which stated S\$500 on the outside, but in fact only contained S\$400. This happened to many workers. "One month S\$500 coming, boss gave S\$400, paper writing S\$500. So many people have." [Rafiqul] was very upset that this deduction was not documented and that he was not able to understand what sums were being deducted from his salary.

—Field notes from interview with Rafiqul, worker from Bangladesh with injury and salary claims

Again, we can see from these quotes that some employers appear to be deliberately preventing the creation of a paper trail, and denying employees access to the documentary evidence they would need to bring a salary claim.

Manipulation of documentation. Workers reported a range of employer practices including the creation of false pay slips, forced signing of blank documents, forced signing of documents that were not understood, and forging of signatures and pay slips. The following two cases are illustrative of the problems workers faced.

“The first time the boss claimed the [salary] withholdings were repayment for a loan. The second time, he printed a salary slip and forged a signature. “I say to officer, Sir, this is not my sign! This one boss is illegal making!””

—Farhad Ali, worker from Bangladesh with injury and salary claims

The morning I arrived, I was brought to do a medical check-up and the factory that I was working at ... After that, boss passed 28 blank salary vouchers to me to sign. He told me to write my name, FIN number and just sign. He said everyone else did it too, so I didn't dare to disobey.

—Sarwar Khan, worker from Bangladesh with a salary claim

The first time the boss claimed the [salary] withholdings were repayment for a loan. The second time, he printed a salary slip and forged a signature. “I say to officer, Sir, this is not my sign! This one boss is illegal making!”

—Farhad Ali, worker from Bangladesh with injury and salary claims

In these quotes, workers accuse their employers of deliberate illegal behaviour. We note that if a worker signs blank documents, such as blank salary vouchers, it would be

almost impossible for him to prove a future salary claim.

Manipulation of contract terms. Other workers report that their contract terms were manipulated in ways that appear to be illegal under the Employment Act, such as specifying an overtime rate that was less than the mandated legal rate of 1.5 times the basic pay rate. An example of this is explained in the quote below, and also Figure 7. The quote and the contract are from the same interviewee.

[Aynal Haque] was also unable to claim his extra pay for overtime as he had signed a contract that set a fixed amount for overtime. The fixed amount was S\$3.00/hr. His basic pay was S\$2.60/hr.

—Field notes from interview with Aynal Haque, worker from Bangladesh with a salary claim

Employment Agreement

This is to confirm that the following employee of ABC Construction Pte. Ltd. agreed to the following employment terms:

Name of Employee: _____

FIN/Work Permit No.: _____

Date of Employment: _____

1. Basic Monthly Salary: SGD\$ 21.00 per day
2. Working Hours: 8 a.m. to 5 p.m. Overtime starts from 5.01 p.m. onwards.
3. Over Time Rate: SGD\$ 3.00 per hour, including weekends
4. Salary Payment: The salary shall be paid within 30 days the following month.

As agreed and accepted by:

(Name and Signature)

Date: _____

Note: Although minor changes were made to the contract's text to protect the worker's identity, no changes were made to wage rates, working hours, or terms of contract that are relevant to this example.

FIGURE 7. Example of a Work Permit holder's employment contract which shows an illegal overtime pay rate.¹⁵³

Notice how the contract specifies an eight hour day (8am to 5pm, assuming a one hour lunch break), and a daily rate of pay (\$21) equivalent to \$2.63/hour, but it also says that overtime is at a flat \$3/hour. This contract clause should be illegal under the

Employment Act, since overtime should be paid at 1.5 times the hourly basic pay rate.

Use of coerced witnesses in absence of contracts. Some workers reported that employers use other migrant workers as witnesses in the absence of necessary

¹⁵³ In addition, it states that salary shall be paid within 30 days in the following month, while the Employment Act requires that payment be made within 7 days after the end of the salary period for basic pay and within 14 days of the salary period for overtime pay.

documentary evidence. Interviewed workers believed that employers instructed, induced or coerced these witnesses to give false testimony. This is an example from the fieldnotes from one interview:

There is some dispute over his basic salary. His employer is trying to understate his salary, but there is no contract or other documentary evidence. The employer is relying on witnesses to make up for [the lack of] documentary evidence. These witnesses are all employees of the company but are being admitted.

—Field notes from interview with Monir, worker from Bangladesh with a salary claim

Note that any workers without access to their contracts—which was the case for most of our South Asian interviewees—could potentially have their claim undermined by such witness testimony.

Manipulation of documents affected outcomes of cases. Workers report that these manipulations were effective in undermining their claims and negatively affecting outcomes. As illustrated in the quotes below, some workers report being blamed by authorities for signing documents they were forced to sign, while others say that because employers had deliberately withheld receipts, they were unable to prove that illegal deductions had occurred.

All I wanted to get back was my salary during my injured days, but company kept cheating me, and MOM blamed me for signing whatever company threatened me to sign.

—Yan Yanjing, worker from China with an injury claim

They were unable to prove that the illegal deductions had occurred because they were paid in cash and made to sign off on a sheet prior to receiving the money. After they signed, the supervisor would take out a significant amount of cash from the bundle (around 40 percent), claiming it was for housing, food, or for contract renewal.

—Field notes from interview with Aynal Haque, worker from Bangladesh with a salary claim

In these cases, workers claim that employers took advantage of their vulnerability by withholding or manipulating documents, thus affecting the decisions of authorities.

3.2.2. Documentary evidence for injury claims

Workers and NPOs report a number of problems with documentation for injury claims, including employers taking all documentation from doctors or hospital visits, and a lack of pay slips or time sheets for the calculation of average monthly earnings.

Withholding of medical documentation. Workers report that their employers or supervisors would routinely keep medical documentation and that workers found it difficult to get documentation from doctors, even when workers explicitly requested it. In addition, considerable numbers of workers report difficulties obtaining documentation from hospitals upon request. In the quotes that follow we can see one example of the problems one worker faced when trying to access medical documents, and another example where the worker implies that his employer kept all medical documentation for reasons that are “not good”.

I went back [to the private hospital] in an attempt to get my hospital records. SGH wanted it. But the private hospital said that my records were sent to boss. When I asked boss, he said that he didn't receive and asked me to check with the safety officer who accompanied me to all the check-ups at the private hospital. (Interviewer: What did the safety officer say?) He said he didn't get anything!

—Zheng Jingqiang, worker from China with an injury claim

Boss is not good ... Boss has kept all my documents and medical reports.

—Abdur Rahman, worker from Bangladesh with injury and salary claims

As illustrated in the following quote from a Chinese worker, the lack of access to such evidence creates a sense of powerlessness and futility, reducing the likelihood that workers report their claims to authorities.

No, I don't think I can [approach MOM]. I don't even have my MC slips! I don't dare to go take my MC slips because if boss finds out, he will send people to beat me up and send me home. His attitude is very bad and kept wanting to settle this on our own and don't involve MOM. Manager said last time got another worker similar problem, he got a lawyer and lawyer helped. But I don't even have basic evidence like MC slip, how to get lawyer?

—Zhang Jinglei, worker from China with an injury claim

A related issue, which is covered below, is that some doctors fail to provide injured workers with adequate medical leave, apparently at the request of employers. This too prevents workers from acquiring documentary evidence of a workplace injury needed to bring a claim.

Lack of documentation for calculation of average monthly earnings. The lack of salary documentation also creates problems for workers with injury claims. Such documentation is required for the calculation of average monthly earnings, which is used in computing medical leave wages and the compensation amount. The following are quotes from workers who claimed that their average monthly earnings (AME) were not calculated properly because of lack of salary documentation.

[Rasel] did not have enough evidence to dispute the AME [average monthly earnings] figure, as he did not sign any timesheets during his short period of work.

—Field notes from interview with Rasel, worker from Bangladesh with an injury claim

Also, [the company did not] calculate the AME properly—[Nazrul Islam] says that the figure they used was lower than any of each individual month's wages.

—Field notes from interview with Nazrul Islam, worker from Bangladesh with an injury claim

3.2.3. Witness testimony

Interviews with workers, NPOs and lawyers uncovered grievances about the use of witness testimony in injury cases, as set forth below.

Repatriating and intimidating witness. Workers, NPOs and lawyers accuse employers of manipulating the outcomes of injury cases by repatriating and intimidating witnesses, as well as inducing the claimant worker's colleagues to remain silent or falsely testify against him. Workers stated that their

colleagues complied with such requests because of a fear of job loss and repatriation. In this first quote, workers who refused to give false testimony to MOM were later deported by the employer.

My manager and supervisor had wanted [two of my colleagues] to act as false witnesses. They wanted them to tell MOM at the meeting that the three of us had gotten into a fight, and I got injured. But they refused. They told MOM the actual story. They were sent home sometime in January to February 2016.

—Akhtaruzzaman, worker from Bangladesh with an injury claim

In this next quote, one witness was repatriated before he could make a statement in support of the injured worker.¹⁵⁴

Two co-workers were present at the time of accident, then one of them ran away ... Boss sent the other witness back home before he could go to MOM.

—Abdur Rahman, worker from Bangladesh with injury and salary claims

In the case below, the employer is accused of producing a false witness, and the worker says that the Labour Court official put the onus on him to prove that the witness testimony was false.

The people who actually witnessed the problem are no longer in Singapore. I don't know how to get them. The 'witness' who has been given by the company wasn't even there when I was injured! He was not a witness at all, but I had to prove him wrong.

—Humayun, worker from Bangladesh with injury and salary claims

The next two quotes show that that interviewees believe that their fellow workers did not testify because they fear deportation. In these cases, the witnesses were not directly threatened, but they understood the vulnerability of their job status, and assumed that they would be deported for defying the employer.

His supervisor asked about what exactly happened and if there was any witness. His friend who helped him saw the accident, but did not dare to speak up as he was

“ The people who actually witnessed the problem are no longer in Singapore. I don't know how to get them. The 'witness' who has been given by the company wasn't even there when I was injured! He was not a witness at all, but I had to prove him wrong. ”

—Humayun, worker from Bangladesh with injury and salary claims

¹⁵⁴ While MOM ACLs have the power to summon witnesses, the problem may be that witnesses have been sent home before they have a chance to provide testimony. Bringing medical personnel to testify (at roughly a S\$5,000 per day rate) is unaffordable for workers.

afraid he would be sent home. He said that he knows that that has happened to a few others before.

—Khorshed, worker from Bangladesh with an injury claim

[Interviewer: Do you have any witnesses?] No witnesses because nobody support me. They all support boss because they thinking, if they support me, boss will send them to Bangladesh. I understand. Boss very *ali baba* [dishonest, unscrupulous].”

—Rahman Chandu, worker from Bangladesh with an injury claim

Requesting, inducing, or coercing signing of false testimonies. A number of workers report being requested, induced or coerced to sign false testimonies about their injuries. The worker reports in this quote being locked in an office for 11 hours without a mobile phone and being coerced to sign a false document.

On the eighth day after the accident, the safety officer asked [Kamrul Islam] to sign a report he had prepared about the accident. [Kamrul Islam] refused because it only mentioned his thumb injury, not his back injury. They [the employer and others] kept him in the office from 8 am to 7 pm. Eventually he was forced to sign it. He has made a police report stating that he was forced to sign the false report. They took away his mobile phone during this period, so he could not call anyone.

—Kamrul Islam, worker from Bangladesh with injury and salary claims

In this excerpt, the worker says that his employer threatened to call the police if he did not sign documents that he did not understand.

On that same day, [Manik] went back to the main office and gave the letter to an officer. Once again, the officer took the letter from him. He thought that the company would finally agree to giving him proper medical treatment. Instead, the officer got angry and questioned why he went to a different doctor. The officer also accused him of lying and insisted that the injuries became bad because of self-inflicted acts. The officer then returned with a bunch of paperwork and requested for his signature. Since [Manik] did not understand the content and was previously advised by friends to be wary about signing documents, he disagreed. The officer then threatened to call the police if [Manik] did not comply. In his own words, “I call now, I call police” (while gesturing to make a call using a phone), [Manik] stood firm and left the office.

—Field notes from interview with Manik, worker from Bangladesh with an injury claim

In these cases, it appears that employers are attempting to take advantage of their ability to rebut the presumption of a workplace injury through the use of witness testimony (see Chapter 2). Despite the existence of medical evidence of an injury, an employer may contest the validity of the injury by bringing in witnesses to testify that they did not see the injury occur at work, or that it didn’t happen as the injured man described. If an employer provides such witness testimony, workers must then furnish other evidence, in addition to medical evidence, to prove that the injury occurred at work. This appears unlikely if witnesses who might otherwise testify for the worker have been repatriated, intimidated, or are too fearful to testify against their employers.

3.3. Employer retaliation

Our interviews revealed that many workers report facing employer retaliation during the claims process. The main types of retaliation reported: stalling and/or refusing to communicate; threats of blacklisting, dismissing, repatriating, or threatening to dismiss or repatriate; threatening to file baseless counter-claims; and, forced confinement and/or physical abuse.

3.3.1. Stalling and/or refusing to communicate

A substantial number of workers report that their employers appear to be deliberately stalling or refusing to communicate, causing further delays to the claims process. This appears to be particularly harmful to workers as most are required to stay in Singapore on a Special Pass, and thus are prohibited from working. The worker explains in the first quote that he cannot make a claim because his employer refuses to answer his calls or indicate in writing the worker's salary. In the second quote the worker says that he believes his employer has been stalling for the last five months.

MOM gave me a salary paper to make a claim. But need boss to write down the salary I get every month to submit the claim. Boss no answer call and no want to write. I say I one month \$950, but MOM officer no believe.

—Gao Weijie, worker from China with injury and salary claims

My claim has been going on for five months already. It is taking a lot of time. Every time I go to MOM or go to my boss, they keep stalling and delaying.

—Zahangir Kabir, worker from Bangladesh with injury and salary claims

3.3.2. Threats of blacklisting

Another form of employer retaliation reported is threatening to blacklist workers from future entry into Singapore if they make a claim. In the first quote, the worker says he was explicitly threatened with blacklisting, while in the second the worker says his friends did not make salary claims for fear of being blacklisted.

His employer wants [Monir] to be sent home and to suffer for making his claim. His employer is also threatening to blacklist his passport so that he cannot come back to Singapore to earn money.

—Field notes from interview with Monir, worker from Bangladesh with a salary claim

[Abdul Kalam's] friends have been underpaid, but they are scared to claim because they think that if they make claim, they will be blacklisted and cannot return to Singapore. Unless the underpayment amount is very severe, he thinks it is not worth the headache for the worker to pursue the claim.

—Field notes from interview with Abdul Kalam, worker from Bangladesh with a salary claim

3.3.3. Dismissing, repatriating, or threatening to dismiss or repatriate

Dismissing, repatriating or threatening to do so is another form of employer retaliation that is widely reported by workers who file or attempt to file a claim. We can see in this first quote that the workers may sometimes be able to report their unpaid salary claims to MOM before their employers are able to deport them.

When [Joynal Nazrul] went to MOM, he met the officer and complained that they

[his employer company] still owed [him and his co-worker] six months of salary and also were threatening to deport them the next day.

—Field notes from interview with Joynal Nazrul, worker from Bangladesh with a salary claim

The following quote shows that a worker was threatened after making an injury claim, and says that many of his injured co-workers were deported.

Manager angry me after he found out that I have lawyer and want to go Labour Court. He called me to tell me to relax but I cannot, so he said wanted to send me back to Bangladesh. Many people in my company got same problem, they all injury, then got send back so we all no like this company because no take care of us.

—Selim Miah, worker from Bangladesh with an injury claim

This last quote shows that a worker understood that his fellow worker was repatriated after an injury despite the employer offering reassurances, and hence the interviewee feared the same would happen to him.

Somebody accident, boss already last time was talking good, good. [Then] two days, four days, one month send back. Then I also scared. I working, Singapore money coming okay. I injury, company send [me]

back. This man something problem send [him back] already. I also something problem, send already. Boss never tell me anything.

—Rafiqul, worker from Bangladesh with injury and salary claims

3.3.4. Threatening to file baseless counter-claims

Employers also reportedly have threatened to file baseless counter-claims against migrant workers. In the following quote, the interviewee who went to the hospital without employer permission claimed that he was threatened with an accusation of theft that was false.

I kept working while I was injured till the rest of the month. My supervisor threatened to cut my salary because I went to the hospital without informing them. One week later my company forced me to go back to Bangladesh and threatened to falsely accuse me of theft.

—Mafiz Uddin, worker from Bangladesh with an injury claim

3.3.5. Forced confinement and physical abuse

A small number of claimant workers report being forcibly confined, physically abused, or threatened with physical abuse by the employer. In the first three quotes which follow, we have examples of workers who say

“ When [Joynal Nazrul] went to MOM, he met the officer and complained that they [his employer company] still owed [him and his co-worker] six months of salary and also were threatening to deport them the next day. ”

—Field notes from interview with Joynal Nazrul, worker from Bangladesh with a salary claim

that they were forcibly confined in a dorm, house, and an office respectively. In the later two quotes, one worker testifies he was hit by ‘gangsters’,¹⁵⁵ while another testifies he witnessed co-workers being hit with a hammer and broom by a family member (son) of the employer.

Boss reaction to injury—very bad. Threatened to buy me plane ticket and send me home. Boss put a security guard on me in dorms. I cannot go out. I was so scared.

—Sabbir, worker from Bangladesh with injury and salary claims

After [Rasel] got injured, his boss intended to transfer him to another worksite but he protested, saying that it was too painful for him to work. His supervisor subsequently locked him in a private house in Little India and did not give him any money for food or for his medical bills.

—Field notes from interview with Rasel, worker from Bangladesh with an injury claim

After [Abul Hossain] was discharged from the hospital the second time, ‘gangsters’ were waiting outside where they tried to bring him forcefully back to the office. He mentioned that the ‘gangsters’ pulled him roughly, and when he fell, hit him. ... He was brought straight to the office where he was locked in an office and told that he would be deported the next day.

—Field notes from interview with Abul Hossain, worker from Bangladesh with an injury claim

Sometimes boss’s son hit workers with hammer or broom. Once he kicked a worker and caused swelling and injury. Worker complained to police. Boss’s son threatened all workers to not give evidence, so no action was taken and [the worker] was sent home.

—Nizam Ahmed, worker from Bangladesh with injury and salary claims

3.4. Enforcement

Interviewees indicated that enforcement efforts are, in some areas, highly uneven and, in others, inadequate. These experiences are evident in two domains: enforcement of existing legislative and regulatory protections so that workers have adequate basic needs support during the claims process, and enforcement of successful judgments or orders.

3.4.1. Enforcement of judgments and settlement orders

Interviews with workers and other stakeholders suggest major obstacles with fulfilling successful judgments and settlement orders. Interviews revealed two major problems with the enforcement of judgments: failure to enforce successful judgments, and lack of a consistent process for payment of settlements, which results in no payment or short payment, sometimes at the airport when the worker is leaving Singapore.

Failure to enforce successful judgments. If a worker receives a successful judgment or order for compensation, the employer is

¹⁵⁵ Workers tend use the term ‘gangsters’ to refer to either (1) employees of repatriation agencies, services which assist employers with the return of workers to their home countries; or (2) in-house staff of a company who are responsible for worker repatriation. <http://twc2.org.sg/2011/12/15/mom-warns-2-repatriation-companies/> <http://newsinfo.inquirer.net/578460/migrants-say-repatriation-firms-force-workers-out-of-singapore>

required to make payment within 21 days. However, interviews with workers and NPOs indicate that a significant number of employers fail to comply with judgments and Labour Court orders, and as a result workers fail to receive their compensation due. In the following quotes, workers describe how their employers did not pay the compensation amount owed to them upon a successful judgment but yet there were no enforcement measures brought against the employers to compel them to do so.

[MOM's] behaviour was fine, they said they would help and they did, they said it would go to Labour Court and it did. But problem is that MOM is a ministry, and they said I deserved the money, gave the judgment, but they could not enforce the judgment to actually get me the money ... Because [if] MOM cannot actually do anything, what is the point? If boss decide that he will not give the money then what can anyone do ... Labour Court decision should be enforced. How can MOM say pay, and boss is allowed not to pay?

—Kamal Islam, worker from Bangladesh with a salary claim

I don't like the process. Labour Court has made an order for S\$16,000 and boss did not pay it. Boss say me also [no money]. So now MOM has bought my air ticket and I have to go back to Bangladesh, and I have not been paid.

—Abdul Sattar, worker from Bangladesh with a salary claim

Non-compliance takes various forms. Some employers simply refuse to pay, some negotiate downwards and some declare bankruptcy or wind up the company to avoid making payment. It appears that some employers fail to comply out of intransigence,

while others are genuinely unable to pay. For employers who can afford to pay but refuse, the difficulty appears to be that enforcement is not provided by MOM and affordable options do not exist for the worker.

Lack of consistent process for payment of settlements. With MOM-mediated settlements for salary claims a lack of procedural consistency exists, with reports that the claim amounts are sometimes paid at the company office, sometimes at MOM, and sometimes at the airport just before the migrant worker boards his plane to return home. Payments are made in cash or by cheque, and both are problematic: cash payment provide no verifiable paper trail, while crossed cheques require the worker to open a bank account (not easy for workers on Special Pass) and may not clear.

The practice of paying workers at the airport is reportedly due to employers' fear that the worker may abscond and fail to board the plane. The employer's security bond would then be at risk of forfeiture. NPOs report that this practice leads to unnecessary stress and complications for migrant workers, who are unable to use these claim amounts to settle debts in Singapore before they return home. Workers may also find themselves saddled with cash amounts that are illegal to transport across international borders and unsafe to carry on their person as they travel home, but with no opportunity to remit the money at this last minute juncture. Payment upon departure can also lead to situations where, even after agreeing to a particular settlement amount, employers either still don't pay at all, or pay less than promised. This excerpt from an NPO volunteer highlights why airport payments are problematic:

Employers are aware that the man would have informed his family of his flight and arrival time. The family may have travelled a long distance en masse to receive him at the airport, putting the worker in a bind if he doesn't board the plane, leaving him no room to negotiate if he doesn't receive the agreed amount, without money to return to the city and without a dorm to return to.

Having accompanied men to the airport whenever possible I've been able to offer them a solution if the employer doesn't pay what they're owed: finding the man a place to stay until the money situation is settled, notifying MOM, and contacting the employer to discuss the settlement.

—Anne Chong, NPO volunteer

MOM gave me a letter when I filed the injury claim to give to company. I go office and give letter. I talk to boss, I say I want to stay in room, but boss madam say cannot stay. After two person came and they threw me out. I called police and police came to office, and they say [to] me, tonight you sleep outside, after we can settle and you can stay. But after one month, still no settle. For one month I was sleeping outside on the street. Also MOM cannot settle. They call many times company but never answer.

—Kamrul Hossain, worker from Bangladesh with injury and salary claims

I went to MOM with manager, and MOM official said company must provide money for food and accommodation during my MC days. However, when I asked manager for the money afterwards, he just told me to scram and also threatened to send me back to China.

—Yan Yanjing, worker from China with an injury claim

3.4.2. Enforcement of existing regulations regarding support

Workers report uneven success when requesting help from MOM to enforce employers' obligations to provide support during the claims process. Employers are obliged to provide accommodation, meals, and payment for medical care, but workers and NPOs report that, despite MOM intervention, their employers fail to do so. In the first quote, the worker was not allowed to stay at his employer provided accommodation and was therefore homeless for a month. In the following quote, a worker's employer refused to give him money for his upkeep despite MOM's instruction for the employer to do so.

In the next quote, an NPO volunteer describes how employers continue to refuse to provide medical treatment despite MOM's instruction for the employer to do so.

Despite having a letter from the doctor that this surgery was "immediately and medically necessary", MOM could not convince the employer to pay and the worker's condition continued to deteriorate.

—Lynn Leong, NPO volunteer

Others report success in accessing MOM's help in obtaining this support from the employer. In the first quote below, the worker was able to get medical treatment with MOM's assistance. In the next quote, the worker successfully claimed his expenses from the employer due to MOM instructing the employer to do so.

When I went to the hospital, they wanted me to pay, but I did not have money. So the doctor wrote a letter for me to pass to

my employer. I took that letter and went MOM instead. MOM helped me by pressurising my employer to pay. My employer paid my medical bills in the end.
—Cai Weiwei, worker from China with an injury claim

[My employer] paid my out-of-pocket expenses when MOM told boss to. MOM made them pay my receipts.
—Farhad Haque, worker from Bangladesh with an injury claim

“ Despite having a letter from the doctor that this surgery was “immediately and medically necessary”, MOM could not convince the employer to pay and the worker’s condition continued to deteriorate. ”

—Lynn Leong, NPO volunteer

4. CRITICAL SUPPORT GAPS

In this section, we discuss the critical support gaps that undermine some of the legislative protections for migrant workers. We divide this discussion into three parts: gaps in the provision of basic needs such as food, housing, and medical care; gaps in the provision of representation, such as legal representation; and the role that NPOs play in helping to fill these gaps.

4.1. Basic needs: food, housing and medical care

Workers with salary and injury claims, especially those who approach NPOs for help, often endure a lengthy wait for the resolution of their cases. In that time, claimant workers can have trouble accessing food, housing, and medical care. A sense of the waiting time for resolution can be gleaned from one survey of over 300 Special Pass

holders at a TWC2 meal program whose claims were not yet resolved: on average, the injuries these workers sustained occurred eight and a half months ago; for some the injury occurred more than two or three years earlier.¹⁵⁶

In this section, we review the gaps in the support needs for workers who face extended waits for the resolution of their claims. We focus on three basic physical needs of workers—for food, housing, and medical care—which, in a number of cases, seem not to have been met by the appropriate channels.

4.1.1. Gaps in the provision of food

As discussed in Chapter 2, EFMA regulations require that while a Work Permit holder is in Singapore his employer is responsible for his meals, accommodation, and medical costs

¹⁵⁶ Harrigan, Nicholas Michael, and Chiu Yee Koh (2015) "Vital Yet Vulnerable: Mental and Emotional Health of South Asian Migrant Workers in Singapore." *Lien Centre for Social Innovation Social Insight Research Series, Singapore Management University* p. 25.

even after his Work Permit is cancelled and replaced with a Special Pass. Many employers make deductions from a worker's salary to provide food, and once the man is no longer working, there is nothing to deduct from. Frugality of employers is often matched with logistical challenges in providing food. Meals are delivered to the worksite, not the dorm, where injured workers may be staying during mealtime. Or if the worker usually uses his own money to buy food and cook for himself at the dorm, after the injury he may not have money and he may have limited mobility making it difficult to go out to purchase food. For these reasons, and others, workers report that their employers do not comply with their obligations to provide meals maintenance. The quotes below illustrate workers' experiences of not being able to get money from the employer to pay for meals and therefore having to source for their own meals, in some instances, with much difficulty.

MOM also said [that] boss should give me S\$3 everyday for *makan* [food], until he pays me the salary. But [it is] now four months [later], still no money for anything and no salary [either].

—Hasan Mahabur, worker from Bangladesh with injury and salary claims

Boss did not provide *makan* [food] money so I get food from HealthServe. But my accommodation is in Woodlands industrial dorms, so I stay on the overhead bridge near HealthServe most of the week and go back to Woodlands by MRT [train] once or twice to shower. HR lady says boss no

approve food money and my MC money only came after two months, so I have no money.

—Zhu Jingjie, worker from China with an injury claim

4.1.2. Gaps in the provision of housing

Claimant workers report problems with access to accommodation. Some migrant workers say that they feel compelled to leave employer-provided housing fearing repatriation or other types of employer retaliation.¹⁵⁷ Others report being expelled from employer-provided accommodation or being shifted to lower quality accommodation.¹⁵⁸ Deducting the cost of housing from the worker's salary is common practice, and employers are reluctant to have non-working men, who may require special attention, taking up dormitory space meant for able-bodied workers. Workers who leave or are forced out of employer-provided housing must find the means to pay rent to stay elsewhere, an additional expense that aggravates their hardship and increases their vulnerability. In the following quote, the worker was kicked out of his dormitory by the employer and had to live with his brother who was in Singapore.

I messaged my boss in late September 2015 to tell him I am in discomfort and that I won't be coming to work. My boss tells me that I should go back to Bangladesh to get treated. I said no, I got injured here in Singapore, I should get treated in Singapore. My boss told me to go back to Bangladesh, or he will get gangsters to send me back. In late

¹⁵⁷ Once a claim is made, and a worker is issued a Special Pass, employers are not allowed to repatriate them. However, often workers do not know this initially, and they move out of housing due to fear. NPOs report that many workers only find out they can't be repatriated after they have moved out of the employer-provided dorm.

¹⁵⁸ It is possible that one of the reasons for expelling workers from employer-provided accommodation, or moving them to lower quality accommodation is that, if an employer had been deducting housing from a worker's salary, then once a worker stops working, it is not possible for an employer to recover this cost from the worker.

September 2015, I moved out of the dormitory to stay with my brother at Tampines [and pursue my claim].

—Akhtaruzzman, worker from Bangladesh with an injury claim

In the following quote, the worker’s employer kicked him out of the company- provided accommodation as punishment because the worker had engaged a lawyer to help him with his injury claim. Similarly, the next quote describes how a worker was kicked out of his accommodation by the employer as punishment, in this case, for taking MC when he was injured.

[Rafiqul] continued to stay at the company dormitory one and a half months after his accident. His employer found out that he had engaged a lawyer, and called the worker to come to his place. His employer asked him why he was still staying at the dormitory if he had a lawyer, and told him that he should leave. The worker responded that he went to MOM because the company had not taken care of him.

—Field notes from interview with Rafiqul, worker from Bangladesh with injury and salary claims

After my injury, the company offered me the choice to work or not to work. When I was on MC, my employer asked me to shift

from living at the dormitory to living on the construction site.

—Qin Leimin, worker from China with an injury claim

4.1.3. Lack of access to necessary medical care

Workers with injury claims report that they may not receive the medical care they require. Lack of adequate medical care or delays in accessing necessary medical care comes in a number of forms, notably: employers denying or delaying access to clinics or hospitals; workers’ inability to access treatment due to employers’ failure to issue a letter of guarantee (LOG); and workers’ inability to access treatment because doctors at private clinics or hospitals take instructions from employers about what treatment to deliver.

It is important to note that legal gaps and administrative implementation serve to compound the problem. The benefits pursuant to WICA apply only when the employee’s injury has been determined to be a valid workplace injury. As discussed earlier, this may take many months to determine. Although the EFMA requires that employers provide for the employee’s basic needs, including medical care, during employment and the claims process, and maintain S\$15,000 in non-accident related medical insurance, NPOs and workers report lapses and a lack of enforcement.

“After my injury, the company offered me the choice to work or not to work. When I was on MC, my employer asked me to shift from living at the dormitory to living on the construction site.”

—Qin Leimin, worker from China with an injury claim

Employers deny or delay access to clinics and hospitals. A significant number of workers report that employers limit their access to medical facilities, such as clinics or hospitals. The following quotes illustrate how employers restrict workers' access through methods such as threatening job loss, delaying or denying medical treatment, or giving a worker a painkiller instead of taking him to the doctor.

My employer did not allow me to go hospital or clinic ... My employer keep telling me that he will bring me to the hospital later, but it never happened. My supervisor then gave me some medicine and asked me not to report this case to MOM. He told me that if I do not report to MOM, then I will be able to keep my job here.

—Kannu Radhakrishnan, worker from India with an injury claim

If you get accident, big problem is that the treatment [in private clinics] is bad, boss only let you go to private clinic, which can't really help. But if you go to government hospital, then big problem with boss.

—Farhad Haque, worker from Bangladesh with an injury claim

[Matin Chowdury] supervisor told him, "No need go doctor. I give you painkiller." He laughed and waved his finger again. After [Matin Chowdury] went to the polyclinic and was written a referral letter to go immediately to a hospital, his supervisor took his letter and kept saying, "We go tomorrow," but they never went. [Matin Chowdury] went back to the polyclinic a second time to get his letter written again, and then went to TTSH by himself because he knew the company

wouldn't allow him to get proper medical care at a hospital.

—Field notes from interview with Matin Chowdury, worker from Bangladesh with an injury claim

Employers fail to provide a letter of guarantee (LOG). An LOG from the employer is required when payment is not made directly for MRIs and tests needed for diagnostics, consultation, hospitalisation and surgery. Many workers report that they are not given diagnostic tests or medical treatment because the employer refuses to pay or fails to issue an LOG.¹⁵⁹

[Shahnaz Ferdous] X-ray appointment had been postponed three times because his employer has not issued an LOG. The MOM officer told his employer that the worker has to receive medical treatment, and that he must issue an LOG. As of the date of the interview, the employer still had not issued an LOG, and the worker was at a meeting earlier to inform the MOM officer of that.

—Field notes from interview with Shahnaz Ferdous, worker from Bangladesh with injury and salary claims

MOM has said that the company must pay [Kamrul Islam] this since he was still employed by them when the accident occurred. MOM has asked him to get the MRI report and the X-ray report from the hospital, but the hospital has not given this because the company has not paid and has not given them a guarantee letter.

—Field notes from interview with Kamrul Islam, worker from Bangladesh with injury and salary claims

¹⁵⁹ It should be noted that restructured hospitals will not turn a patient away with life threatening injuries. Most restructured hospitals do allow for admission without the LOG should the admitting physician deem the admission medically necessary.

“ My employer did not allow me to go hospital or clinic ... My employer keep telling me that he will bring me to the hospital later, but it never happened. My supervisor then gave me some medicine and asked me not to report this case to MOM. He told me that if I do not report to MOM, then I will be able to keep my job here. ”

—Kannu Radhakrishnan, worker from India with an injury claim

Withholding WICA insurance coverage when the employer denies that the claim is a workplace injury is allowable under WICA. What is less clear, however, is how the employer’s affirmative responsibility to provide medical care under EFMA is expected to be undertaken, and how and when the S\$15,000 non-workplace accident medical insurance is to be utilized.

EFMA states that the S\$15,000 non-workplace accident insurance can be used for inpatient care or day surgery. EFMA also makes employers responsible for the general medical care of employees during employment and the claim process, but

doesn’t attach an insurance amount to this responsibility. While the insurance seems to be designed to help employers provide medical care for migrant workers with non-workplace injury-related medical expenses (since workplace injuries should be covered by WICA insurance), there is confusion in application. Presumably payments for employee medical needs not covered by the S\$36,000 WICA insurance or the S\$15,000 EFMA insurance are to be made from the employer’s pocket.

This lack of clarity and related gaps in enforcement present problems for workers with non-accident related medical needs. As one doctor who works in emergency medicine notes, “there are many accounts of

migrant workers who refuse emergency life-saving treatment for conditions such as heart attacks, and risk permanent disability or death because their companies will not pay for non-work-related illnesses”.¹⁶⁰

Private medical providers following employer’s instructions. Interviews with workers, medical professionals, NPOs, and a review of recent court cases,¹⁶¹ media reports,¹⁶² views published within the medical community¹⁶³ and government circulars¹⁶⁴ suggest that misconduct by a small number of medical professionals under the influence of employers causes hardship for injured workers. Reports suggest a number of troubling issues, with the most common being inadequate medical leave upon instructions from employers so as to avoid the requirement to report incidents and accidents to the authorities.¹⁶⁵ Or the

approval by doctors of light duty work when such may not be available due to the nature of construction work.¹⁶⁶ Workers assert that certain clinics and doctors refuse to allow them access to physical copies of medical certificates.

At [the private] clinic, [Deng] asked why he was given one month of light duties and no medical leave despite being diagnosed with a fractured rib. He told the doctor he could barely stand, let alone perform light duties. The doctor said that he did not have the power to assign him medical leave.

—Field notes from interview with Deng Qiangjun, worker from China with an injury claim

¹⁶⁰ “Gap in health care coverage for foreign workers” *The Straits Times*, 17 Dec. 2015, Joanna Chan Shi-En (Dr)

¹⁶¹ For example, on 10 May 2016, the Court of Three Judges heard an appeal filed by the Singapore Medical Council against the decision of a Disciplinary Tribunal to acquit Dr Wong Him Choon of professional misconduct. The case was associated with the issuing of insufficient leave to a construction worker who had a fractured hand and been inappropriately certified as being fit for light duties at work.

¹⁶² “Foreign workers get shorter MCs because...” *The New Paper* 12 May 2016, Foo Jie Ying. <http://www.tnp.sg/news/singapore-news/foreign-workers-get-shorter-mcs-because> (accessed 7 Nov. 2016)

¹⁶³ “The Dilemma of Medical Leave”, Dr Alex Wong, Singapore Medical Association News, Opinion. August 2016, Pages 12-13.

¹⁶⁴ On 19 June 2013, MOM and MOH issued a circular (MOH No. 17/2013) informing all registered medical practitioners of their role and responsibilities in the issuance of medical certificates in workplace injury cases. From 6 January 2014 employers were required to report to MOM all workplace accidents which rendered their employees unfit for work for more than three days, regardless of whether these were consecutive days. This change was in response to evidence that employers could bypass the previous reporting requirements by breaking up medical leave of injured employees so that it was not more than three consecutive days. On 16 September 2016 MOM and MOH (MOH Circular 42/2016) again reminded medical practitioners of their responsibilities in light of the 10 May 2016 Court of Three Judges decision.

¹⁶⁵ “Why are migrant workers issued inadequate medical leave”, 27 June 2016, Healthserve Quarterly Newsletter, 2Q 2016. <http://www.healthserve.org.sg/news/2016/6/27/why-are-migrant-workers-issued-inadequate-medical-leave> (accessed 7 Nov. 2016)

¹⁶⁶ Light duty work means the worker is not eligible to claim MC wages. As explained in Chapter 2, when an injured worker is issued a medical leave certificate of three days or more, the employer is required to file an incident report. The employer must also pay the worker his average salary for the first two months of medical leave, followed by two thirds of his average salary for up to one year. However, if the doctor issues a certificate allowing the worker to perform light duty, the employer is neither obliged to offer him light duty, nor to pay wages for that time. It is unlikely that the employer would be able to offer light duty in any case due to the nature of work in construction and shipbuilding, nor would a worker be able to perform light duty if the injury is debilitating. *Straits Times*, John Gee, 4 December 2014, “A Win-Win way to help injured foreign workers.”

If they give me MC, they will probably have to report to MOM, so they called it light duty instead.

—Arumugam Piramiah, worker from India with an injury claim

I went to the clinic with my supervisor, so the doctor will inform my employer whenever he gives me light duties or MC. When I went to the clinic on my own and lied that my employer has reported my injury, the doctor gave me 17 days of MC almost immediately. But after the doctor called my employer to inform him that he has given me 17 days of MC, the doctor took back my MC and gave me light duties instead.

—Cui Lijing, worker from China with an injury claim

Workers report that private medical providers, generally at a private clinic or private hospital, appear to take direction from the employer, rather than prioritize the needs of the patient. The following excerpt gives a sense of the types of comments workers make about being denied adequate medical leave (MC).

His company delayed sending him to the clinic for two days after the injury. When he was at the clinic, he told the doctor both times that his MC was not long enough for him to recover from his injuries. According to him, the doctor only said, “I dunno. Company don’t allow.” Because of this, he chose to go to Alexander Hospital of his own accord.

—Abul Hossain, worker from Bangladesh with an injury claim

The issue of inadequate medical leave, and potential misconduct by employers and private doctors was recently considered by Singapore’s High Court in the case *Singapore Medical Council v Wong Him Choon* [2016] SGHC 145 (*Wong Him Choon*). This case demonstrates how Singapore’s appellate court approaches inconsistencies in the way the doctor reconciles his ethical duties towards the patient and his personal interest. In this case, the patient was a Chinese-national construction worker (the Patient). Dr Wong Him Choon, an orthopaedic surgeon at Raffles Hospital (Dr Wong) had:

- (a) drilled a ‘K-wire’ into the Patient’s right hand and discharged the Patient on the same day as surgery;
- (b) issued the Patient a two-day MC and a certificate to state he was “fit for light duties” for one month from the first post-operative day; and
- (c) backdated the Patient’s MC for more than a month, to cover the Patient’s absence at work.

Andrew Phang JA emphasised the importance of perspective, in particular, the need to be aware of vulnerable patients’ position and welfare.¹⁶⁷ In certifying the Patient fit for light duties, Dr Wong had exhibited an “indifference to the welfare of the Patient”.¹⁶⁸ He had effectively let the employer “decide the extent to which the Patient should rest”, and appeared “keen in maximising the value that the employer could extract from the construction worker”.¹⁶⁹

In deciding that Dr Wong was guilty of professional misconduct under Section 53(1)

¹⁶⁷ Wong Him Choon, [4].

¹⁶⁸ *Ibid*, [105].

¹⁶⁹ *Ibid*.

(d) of the Medical Registration Act,¹⁷⁰ the Court overturned the findings of the Disciplinary Tribunal appointed by the Singapore Medical Council, which had dismissed the charge against Dr Wong. The Court found that, on the facts of the case, the Disciplinary Tribunal had “slipped into error” in focusing on whether Dr Wong had certified the Patient fit for light duties with the knowledge that such duties were not available.¹⁷¹ Instead, the issue at the heart of the matter was whether Dr Wong had certified the Patient fit for light duties without first establishing the existence of such duties, and with the knowledge that it was incumbent on him, as a doctor, to ascertain the existence of such duties from the Patient.

Observing that “public interest considerations weigh heavily in imposing deterrent sentences on errant doctors who are found guilty of misconduct”,¹⁷² the Court ordered that Dr Wong face a suspension of six months and a censure. The tough

approach that the Court adopted towards greater professional responsibility is a reminder that doctors must adhere to the professional rules that bind them, irrespective of the patient’s nationality or migrant worker status.

4.2. Representation

Interviews with various stakeholders reveal gaps in representational support. While lawyers are not allowed for salary claims, they are allowed for WICA claims and there appears to be a high demand for and dependency on lawyers among injured migrant workers with WICA claims. This dependence appears to be fostered by some law firms, and is said to lead to problems where migrant workers sign agreements which run counter to their interests, such as following a common law route, or entering into contingency fee arrangements.

“ My lawyer has been very helpful. He gave me some papers and said that these will protect me from the police. My lawyer asked me to go to MOM the week after I had approached him, but I went that day itself already. The MOM case officer then gave me a Special Pass because my Work Permit was cut. My lawyer has done a lot for me, if it had not been for him, I’d be in Bangladesh right now. ”

—Shahjahan, worker from Bangladesh with an injury claim

¹⁷⁰ (Cap. 174, 2014 Rev Ed).

¹⁷¹ Wong Him Choon, [84].

¹⁷² *Ibid*, [117].

4.2.1. High reliance on lawyers

The WICA process is designed as a no-fault expeditious system that workers should be able to successfully navigate without legal representation. Both MOM and NPOs publicly advise workers that lawyers are not necessary, and NPOs generally advise workers to discharge lawyers for injury claims that appear unproblematic, with the exception of common law claims. Despite this, NPOs report that use of lawyers by claimant workers is widespread.¹⁷³

Workers engage lawyers for understandable reasons. Many workers believe that legal representation is necessary to lodge the claim with MOM and to ensure employer compliance. As detailed elsewhere, many migrant worker encounter difficulties in the WICA claim process—such as an employer not reporting the injury, denying the injury is work-related, threatening repatriation, or refusing to provide or pay for medical treatment—and these problems, combined with worker’s general lack of confidence in his own ability to navigate the claims process, mean that workers feel their interests are best protected through engaging a lawyer.

As can be seen in the following comment, workers can appreciate their lawyers’ assistance with their cases. In this quote the worker credits the lawyer with preventing his repatriation.

My lawyer has been very helpful. He gave me some papers and said that these will

protect me from the police. My lawyer asked me to go to MOM the week after I had approached him, but I went that day itself already. The MOM case officer then gave me a Special Pass because my Work Permit was cut. My lawyer has done a lot for me, if it had not been for him, I’d be in Bangladesh right now.

—Shahjahan, worker from Bangladesh with an injury claim

Other workers report that their lawyers help them navigate the medical system. In the following quote, the worker reports that his lawyer directed him to a public hospital where he would receive appropriate medical leave (MC), and informed the employer to pay for medical treatment.

Lawyer is good. Lawyer told me that SGH is good. I go to SGH on the same month. SGH gave me more MC days. Boss has to pay for my treatment because lawyer asked him to pay. ... my lawyer is good—my lawyer can ask boss to pay, and boss pay for my treatments.

—Manmadhan Raja, worker from India with an injury claim

4.2.2. Lawyers encourage dependence

However, some lawyers appear to foster and encourage dependence. As this NPO volunteer explains, law firms can insert themselves into the claims process, while offering only minimal assistance.

¹⁷³ TWC2 (2013) Widespread but unnecessary reliance on lawyers <http://twc2.org.sg/2013/07/14/widespread-but-unnecessary-reliance-on-lawyers/>;

TWC2 (2016) Another source of trouble for workers: their own lawyers <http://twc2.org.sg/2016/07/02/another-source-of-trouble-for-workers-their-own-lawyers/> ; “Out of 483 injured workers we saw March to May 2013 at our Cuff Road Project, 456 (94.5%) had already engaged lawyers by the time they came to us.” TWC2 (2013) Widespread but unnecessary reliance on lawyers <http://twc2.org.sg/2013/07/14/widespread-but-unnecessary-reliance-on-lawyers/>.

Even though the work injury compensation system is meant to be simple enough for the worker to file his own claim, a small group of law firms has emerged to deal with these emergencies by assisting the injured man to file a work injury claim and thereby avoid repatriation. The law firms insert themselves between the worker and MOM. They offer a valuable service of preventing the injured man from being repatriated, provide minimal assistance for the duration of the no-fault claim process, and finally extract a percentage of the compensation amount when the case is finished ... Sometimes their legal assistants prey on the injured workers' vulnerability and lack of understanding of the system, soliciting for clients at common gathering spots for out-of-work migrant workers, including hospitals and the MOM building.

—Anne Chong, NPO volunteer

Workers and NPOs report that dependence is sometimes fostered by providing clients with housing or loans for living expenses while the claim is in process, which offers much needed financial assistance but can also be used to dissuade the worker client from changing or discharging his law firm.¹⁷⁴ In the following quote we can see that the worker says that he has borrowed money from his lawyer (or his lawyer's legal assistant), but does not know the amount.

[Johirul] says his lawyer has been helpful. He has written letters, has come with him to MOM, and has come with him for the

pre-hearing conferences. He said his lawyer had given him some makan money—S\$5 or S\$10 at a time. He does not know how much money he has taken from the lawyer. —Field notes from interview with Johirul, worker from Bangladesh with an injury claim

4.2.3. Common law and contingency fees

Some NPOs report that dependence on lawyers can lead to lawyers encouraging workers to pursue their case through common law in the Singapore Courts, rather than WICA, even when such action may be contrary to the interest of their clients. While a lawsuit can potentially result in higher compensation for a severely injured worker and thus higher fees to the law firm, the risk of losing the case also exists. The common law route also puts the worker at a disadvantage in that he is no longer permitted to remain in Singapore, and he may experience difficulty monitoring the progress of the case, verifying the final settlement amount negotiated by the lawyer or awarded by the court, or maintaining contact with the law firm.¹⁷⁵

A further problem with dependence on lawyers and the vulnerable position of migrant workers is that many workers enter into contingency fee arrangements with law

¹⁷⁴ See for example: TWC2 (2014) Another source of trouble for workers: their own lawyers <http://twc2.org.sg/2016/07/02/another-source-of-trouble-for-workers-their-own-lawyers/> (accessed 2 July 2016)

¹⁷⁵ It should be noted that failure to keep the client abreast of developments or withholding information from the client runs contrary to the rules of professional behaviour. The Legal Profession (Professional Conduct) Rules 2015, it is the duty of the advocate and solicitor to keep the client reasonably informed of the progress of the client's matter (Rule 17) and according to Rule 21, it is the duty of the advocate and solicitor to explain in a clear manner, proposals of settlement, other offers or positions taken by other parties which affect the client (worker).

firms. While this is an illegal practice,¹⁷⁶ it is reported to occur widely, and can substantially reduce the size of a successful settlement to an injured worker. We see in the following quote from a worker, that he has agreed to pay his lawyer 20% of the compensation he receives.

[Faruq Uddin] has now decided to pursue the claim through common law because he wanted to go back to Bangladesh. He is leaving for Bangladesh in July 2016. His case has not been concluded. He said he has not paid the lawyer anything and will only have to pay the lawyer 20 percent of any compensation he receives.

—Field notes from interview with Faruq Uddin, worker from Bangladesh with an injury claim

In conclusion, it appears that reliance on lawyers is a function of the gaps in the provision of assistance by other aspects of the claims process. As will be discuss in our

recommendations, fewer problems with navigating the process, and predictable enforcement of the law, would reduce dependency on lawyers and thus worker vulnerability.

4.3. Support gaps filled by NPOs

To fill the various support gaps earlier identified, many migrant workers on Special Passes turn to migrant worker NPOs, who provide basic needs support, administrative and liaison assistance and, occasionally, rescue operations.

4.3.1. Food, housing, and transport support

Basic needs support is primarily provided through free meal programs, medical clinics and emergency accommodation, as well as financial assistance in the form of transport allowances, medical fees, and other basic needs. The following quotes are examples of instances where workers rely on NPOs and

¹⁷⁶ Such contingency fee arrangements are arguably champertous in nature, and proscribed under Section 107(1) of the Legal Profession Act (Cap. 161, 2009 Rev Ed), which stipulates that:

“107 – (1) No solicitor shall –

purchase or agree to purchase the interest or any part of the interest of his client or of any party in any suit, action or other contentious proceeding brought or to be brought or maintained; or
enter into any agreement by which he is retained or employed to prosecute any suit or action or other contentious proceeding which stipulates for or contemplates payment only in the event of success in that suit, action or proceeding.”

However, there is one exception to this rule. It does not extend to cases where the worker would otherwise be unable to afford legal representation. The Court of Three Judges in *Law Society of Singapore v Kurubalan s/o Manickam Rengaraju* [2013] 4 SLR 91 (“*Kurubalan*”) drew a distinction between “impecunious clients who would not otherwise be able to afford legal representation” and other litigants. The reasoning behind this is simple. The courts do not wish to deprive an impecunious party of access to justice he may otherwise not have but, at the same time, wish to safeguard vulnerable litigants as well as the honour of the legal profession. As Chief Justice Menon elaborates:

“... one of the key elements in effectively representing a client’s interest is the ability of the lawyer to maintain a sufficient sense of detachment so as to be able to discharge his duty to the court. That duty is ultimately paramount and trumps all other duties. It follows that the considerations most engaged by the offence of champerty are those concerning the administration of justice and the related need to safeguard confidence in and the honour of the profession that is tasked with the vital role of assisting the judiciary in their mission...” (*Kurubalan*, [45])

See also *The Law Society of Singapore*, “PDR 2013, PARAGRAPH 58, FEE ARRANGEMENT WITH CLIENTS”. <https://www.lawsociety.org.sg/DesktopModules/EthicsPortal/attachment/PDR%202013,%20PARAGRAPH%2058%20-%20Fee%20Arrangements%20with%20Clients.pdf> (accessed 18 August 2016, 13:30).

other charitable organisations to provide them with daily necessities.

I have no money for food. Daily, I have breakfast and dinner at Isthana [TWC2's free meal program]. Once a week, on Tuesday, I go to Chinatown Fairfield Methodist church; I pray and then they give S\$20, which I then use to eat lunch [for the] full week.

—Gopalan, worker from India with an injury claim

My money is my livelihood! So many people at home count on my money to live. Without money, I cannot even take transport to go around Singapore. Lucky got HealthServe, give me transport money (\$40) for this period. And provide my lunch and dinner.

—Meng Weijie, worker from China with injury and salary claims

4.3.2. Medical needs

NPOs may step in with support when employers fail to provide medical care. Medical needs can vary considerably, from major surgery to assistance with monthly hospital bills. NPOs fill this gap for medical needs by providing financial assistance to subsidize workers' medical treatment and

through setting up clinics for workers to access low-cost medical care.¹⁷⁷ In the following quotes workers describe NPOs financing their medical treatment and helping to pay hospital bills.

TWC2 helped me with money for the shoulder surgery.

—Humayun, worker from Bangladesh with injury and salary claims

Every month S\$200 TWC2 give for treatment ... Sometimes TWC2 helps me with hospital bills.

—Raihan, worker from Bangladesh with injury and salary claims

4.3.3. Advice and administrative assistance

Many workers rely on NPOs for advice—primarily on the claims process and employment laws in Singapore—and administrative assistance, including help with the calculation of salaries, collection and collation of evidence, writing statements, filling out forms, and guidance on how to conduct themselves during hearings. These quotes below describe workers' experiences with NPOs during their claim process.

“ My money is my livelihood! So many people at home count on my money to live. Without money, I cannot even take transport to go around Singapore. Lucky got HealthServe, give me transport money (\$40) for this period. And provide my lunch and dinner. ”

—Meng Weijie, worker from China with injury and salary claims

¹⁷⁷ HealthServe has clinics in Geylang, Jurong, and Mandai that offer subsidized health services to injured migrant workers not receiving health assistance from their employers.

[Manik] approached a lawyer but lawyer did not render help as he expected. He felt completely lost and if it weren't for his friend and a TWC2 social worker, he would still be [lost]. ... [Manik] now receives help in making the claim from a social worker. Prior to this, he had no knowledge of the process and only showed up whenever MOM called him ... [He is now] advised by a social worker at TWC2 and would listen to her instructions now to prepare for meetings with MOM [or the] doctor.

—Field notes from interview with Manik, worker from Bangladesh with an injury claim

I was very confused and desperate so I went to the NGOs recommended by my friends—HOME and HealthServe. They recommended that I bring my case to Labour Court and I raised my case there.

—Yan Yanjing, worker from China with an injury claim

4.3.4. Liaising with institutions

NPOs assist workers through liaising with various institutions and institutional actors, including employers, doctors and hospitals, MOM, ICA, and the police. NPOs also connect migrant workers to pro bono legal services, and pro bono lawyers who take on such cases often rely on NPO assistance and advice throughout the claims process. NPO volunteers and staff may accompany workers on hospital visits or to hearings. Though NPO staff and volunteers are not allowed to attend mediation or Labour Court hearings, they may wait outside and use the

opportunity to provide moral support to migrant workers, and to speak with lawyers, company representatives and MOM staff. The following quotes illustrate how NPOs assist workers by communicating with other parties, helping them to write letters to MOM or talking to the employer on their behalf.

TWC2 wrote a letter [to MOM] for me in early May asking that the assessment of my claim proceed without the results of the MRI since I was unable to obtain a letter [of guarantee] from my employer ... to pay for the MRI. There is a follow-up hearing in June.

—Ramesh, worker from India with an injury claim

After that I went to HOME to ask for help. ... After [HOME] contacted my employer, I got 14 days of MC without any questioning.

—Lin Leijing, worker from China with an injury claim

4.3.5. Rescue

Some NPOs also engage in rescue work, which usually involves interventions to free migrant workers from confinement and prevent repatriation. In the first quote below, the worker was confined in a room by the employer and had to seek the help of an NPO to free himself. The next quote describes the experience of a worker whose movement was restricted by a repatriation company's staff hired by his employer and how an NPO volunteer intervened to prevent him from being forcefully repatriated.

[Abdul Hossain] was brought straight to the office where he was locked in an office and told that he would be deported the next day. Because [Rahaman] was afraid to make the phone call knowing that his phone would be confiscated if he did (there were people outside), he asked a friend to call TWC2. Someone came to get him out.

—Field notes from interview with Abul Hossain, worker from Bangladesh with an injury claim

Two days after my injury ... my supervisor called me into his office. When I went in, I saw many man inside the

room, but I did not know who they were. Later, I found out that they are gangsters [from a repatriation company] and they took me to my dormitory. At my dormitory, they instructed me to take all my belongings and pack up. After that, they brought me to Serangoon. They held me at the Serangoon place and did not allow me to go anywhere.”... [My employer tried to send] me to the airport twice. But the first time, my brother called HOME to help intervene. The second time, a volunteer took me back from the airport. After that, I came to HOME to write a letter of appeal and went to MOM. —Kannu Radhakrishnan, worker from India with an injury claim

“ [Manik] approached a lawyer but lawyer did not render help as he expected. He felt completely lost and if it weren’t for his friend and a TWC2 social worker, he would still be [lost]. ... [Manik] now receives help in making the claim from a social worker. Prior to this, he had no knowledge of the process and only showed up whenever MOM called him ... [He is now] advised by a social worker at TWC2 and would listen to her instructions now to prepare for meetings with MOM [or the] doctor. ”

—Field notes from interview with Manik, worker from Bangladesh with an injury claim

5. CONCLUSION

We conclude that, while the trajectory of legal reforms for migrant workers over recent years has been positive, substantial room for improvement remains. While protections exist in law, and the design of the claims system was meant to ensure it is low-cost and expedient, significant obstacles remain in preventing migrant workers with salary and injury claims from achieving remedial justice. Some of these obstacles are structural, and relate to the work pass system and specific regulations tied to the Work Permit and Special Pass. Others are procedural, for example, the ways in which decision-making criteria and adjudication processes are either unnecessarily complex or unclear, leading to confusion on the part of migrant workers and a sense of disempowerment.

The mediation process for the settlement of claims, through its focus on compromise, frequently fails to take into account the diminished bargaining power of migrant workers vis-à-vis employers. In circumstances where a group of workers have similar claims against their employer, eg in the event of redundancy, mediating a multi-disputant settlement for the workers as a group (as opposed to individually) may create a more fair and consistent outcome. This will, hopefully, preclude workers with near-identical claims from receiving drastically different mediation settlement offers, unlike the claimant workers in the unfortunate *Prosper* saga.

In general, migrant workers' recollections of interactions with Ministry of Manpower staff demonstrated high variance, including both positive as well as unpleasant encounters. There should be greater procedural

consistency and attention to the ways power asymmetries create coercive circumstances, such that migrant workers under duress are assumed to have consented to signing blank documents, contracts with illegal or unreasonable terms, or false testimonies.

The claims process contains two problematic issues relating to evidence and enforcement. Workers lack access to the evidence required to substantiate their claims, while employers are accused of manipulating evidence to their advantage. Our research suggests the existence of errant employer behaviour such as retaliation and violation of law during the claim process. The alleged retaliation includes threats of and actual attempts at blacklisting, dismissal and deportation, filing baseless counter-claims, offering inducements not to file claims, and confinement and/or physical abuse.

The current system allows errant employers to derive greater benefit from violations than compliance due to the lack of or light legislative enforcement. Errant employers' failure to comply with judgments and settlement orders deals a severe blow to migrant workers, who endure financial hardship during a fraught and protracted claims process. Employers' avoidance of responsibilities to provide basic needs such as food, housing and access to the necessary medical care increases the workers' hardship. Penalties must be increased and strictly enforced to deter employers from these violations. The lack of appropriate enforcement options for migrant workers must also be addressed, including practices for settlement orders that leave migrant

workers vulnerable to being short-changed or unpaid by employers.

Additional complexities arise from the external interventions of a growing number of practitioners in the claims process. These include legal and medical practitioners, as well as NPO support staff and volunteers. While their involvement can facilitate the claims process and provide vital support for migrant workers in distress, unethical practices by some legal and medical practitioners are a cause for concern. Doctors play an integral role in the injury claims process and the provision of medical care. Maintenance of professional ethical standards and greater regulatory oversight are required to ensure that allegations of collusion with employers are addressed. A dependency on legal representation for WICA claims continues, despite assurances by MOM that lawyers are not necessary. This dependency is partly fuelled by fear and confusion during the injury claims process, and could be reduced by simplifying the system, enhancing worker

access to MOM or other non-legal guidance to the system, and ensuring that employers comply with their support responsibilities during the claim process.

Finally, while our research shows that the various forms of support provided by NPOs is positively received by migrant workers and serves a vital need, the continual filling of this critical gap by NPOs raises longer-term questions about fostering dependencies on a sector that is generally under-funded and largely volunteer-driven. Greater attention and resources need to be directed towards prevention efforts and tackling the root causes of salary and injury related problems encountered by migrant workers. Additionally, more can be done by authorities to support and liaise with such NPOs.

Our next chapter, Chapter 4, details our recommendations, which are shaped by the key issues and legal and administrative gaps which have surfaced in this analysis.



CHAPTER 4

— RECOMMENDATIONS —

CHAPTER 4: RECOMMENDATIONS

1. INTRODUCTION

In this chapter we present a range of policy recommendations to address the issues identified in Chapters 2 and 3. We believe that policy changes need to address four main factors that serve to undermine the intended protections of existing legislation, regulations and policy: migrant worker vulnerability, interpretation of legal language, violations of the law, and gaps in administration.

Our recommendations were developed both through consolidating our legal and sociological analysis, and also through consultations with migrant workers, migrant

worker NPOs and other experts in the fields of employment law, legal aid, and healthcare. In each recommendation area, we reviewed policies and legislation in comparative jurisdictions, such as Hong Kong, Taiwan, Malaysia, United Arab Emirates, Qatar, Australia, and Germany. The development of our recommendations was also guided and informed by the key principles that undergird regional and international benchmarks and labour standards agreed upon by member states of international institutions such as ASEAN, the International Labour Organization, and United Nations agencies.

2. RECOMMENDATIONS

1 **Require that before arrival in Singapore, Work Permit holders sign a Standard Employment Contract (SEC) that sets forth minimum standards of the Employment Act (EA), Employment of Foreign Manpower Act (EFMA), and other relevant legislation.**

- The SEC will include 1) predetermined minimum contractual parameters and 2) key employment terms, such as basic salary, overtime pay rate, rest-day pay rate, total monthly deductions, the nature and scope of work, working hours and rest days, among others;
- The SEC will be made available to workers before the Work Permit is issued in a language the worker understands;
- Changes to employment terms and conditions set forth in the SEC made after the employee's arrival in Singapore that are less favourable to the employee must be authorised by MOM.¹⁷⁸

¹⁷⁸ See recommendation 3 regarding EFMA.

2 **Require payment of salaries and allowances by electronic transfer or through payroll services for all Work Permit holders.**

- Provide assistance packages to employers (eg the advisory services and financial assistance¹⁷⁹ currently available to employers to aid with compliance with the Employment Act amendments regarding the provision of key employment terms, itemised pay slips and record-keeping).
- Facilitate compulsory bank or payroll accounting options for Work Permit holders, in coordination with employers and local banks, that are accessible and affordable, with waivers for balance minimums and per-transaction costs in recognition of their low wages and remittance requirements.¹⁸⁰

3 **Amend EA, EFMA and WICA legislation and related regulations and policies.**

- EA: Simplify rules regarding payment of salary for basic, overtime, and rest day work to clarify when an employee is entitled to 1x, 1.5x and 2x basic salary pay; set mandatory standards and remove language related to *requests* (by employer or employee) to work on rest days, *requests* (by employee) of electronic transfer of payments, or that an employee may *accept* accommodation, amenity or service;¹⁸¹ extend one-year time bar to three years for salary claims;¹⁸² and require employers to provide and maintain receipts for salary payments, for payments made for actual costs of meals, accommodation and amenities provided to employees, for employee medical payments, and for deductions made from salaries. Employers should also maintain records of any payments workers make to agents.
- EFMA: Require that any changes to the Standard Employment Contract to decrease basic salaries or increase deductions or allowances be reviewed and approved at MOM in order to be enforceable. The review and approval process should involve all parties and take into account the diminished bargaining power of migrant workers who have already

¹⁷⁹ Ministry of Manpower (2016) Employment Records <http://www.mom.gov.sg/employment-practices/employment-records> ; Ministry of Manpower (2016) Templates and resources for KETs and payslips <http://www.mom.gov.sg/employment-practices/employment-act/employer-assistance-package>

¹⁸⁰ In 2014, MOM and POSB bank launched a one-stop process to facilitate the opening of bank accounts for Work Permit holders; their services also include a POSB Payroll Account, “a specially designed account for Work Permit worker to receive salary payment”. These are positive steps and more banks should consider similar collaborations. However, revisions to current bank charges for minimum bank balances and cash withdrawals need to be made for Work Permit holders in order for the scheme to work. See Tan, Amelia (2014) Easier for companies to open bank accounts for foreign workers, *Straits Times* 13 October <http://www.straitstimes.com/singapore/easier-for-companies-to-open-bank-accounts-for-foreign-workers> ; see <http://www.posb.com.sg/personal/deposits/for-foreigners/posb-payroll-account>

¹⁸¹ See discussion in Chapter 2 of ambiguities and complexities of current language related to calculation of salary.

¹⁸² This limitation of liability principle restricting wage claims to no more than one year undermines employee protections set forth in the Employment Act. A standard work contract runs for an extendable two-year term. It is unlikely a migrant worker will sever their employment in order to bring a claim for underpayment. Instead, they will usually only make a claim when there has been a lengthy period of nonpayment. Three years would be a more equitable limitation for wage claims for the reasons discussed in Chapters 2 and 3.

committed substantial resources to secure a job in Singapore.¹⁸³ The review process to decrease contract terms should not be unilateral and should involve a tripartite approach, in which migrant workers are able to consult with and rely on union and/or NPO support.

- WICA: Clarify and strengthen application of the presumption that an injury is related to work if it occurred at the workplace to better reflect legislative intent;¹⁸⁴ create a six-month time limit for MOM's initial determination of the validity of the workplace injury;¹⁸⁵ and create an exception to the one-year time bar on medical treatment when employees have not yet received medical treatment in the first year.¹⁸⁶

4 Improve claims process through access to information and enhancing safeguards.

- Provide clear information on the time and costs required, applicable rules and decision criteria, evidence needed, and access to guidance and/or representation. Translate into Bengali, Mandarin and Tamil and ensure information is accessible to Work Permit holders;
- Enhance assessment of the credibility of employer witnesses, taking into consideration whether the witness works for the employer and whether the witness has an interest in the outcome of the claim;
- Ensure MOM or other officers with mediation or settlement responsibility are accredited by a recognised external organisation such as the Singapore Mediation Centre and have

¹⁸³ In addition to diminished bargaining power, migrant workers, unlike resident workers in Singapore, are not at liberty to change jobs if their terms of conditions of employment deteriorate. Resident workers usually do not have fixed-term contracts of employment, and would also not have incurred significant fees and or debts for their employment.

¹⁸⁴ As discussed in Chapter 2, the courts have broadly adopted a 'pro-employee' construction of sections 3(1) and (6) WICA. A health incident that occurs during working hours is considered a workplace injury, even when the employee is not working; see *Allianz Insurance Co (Singapore) Pte Ltd v Ma Shoudong* [2011] 3 SLR 1167 and *Pang Chew Kim* [2012] 1 SLR 15. This presumption should not be overcome by witness testimony from former work colleagues who say they did not see the injury, where there are reasonable grounds to believe that these colleagues are under pressure from their employer to give such evidence. If an injury occurs during working hours, it should be considered a valid workplace injury as far as possible, unless an exception applies (eg. where the worker was under the influence of alcohol or had been fighting). As discussed in Chapter 2, more weight should be given to evidence other than witness testimony, such as medical evidence of an injury. This should be accompanied by increased penalties for false claims. See also the discussion of presumption-like doctrines in the US: Robinson, T.A (2014) "The Role of Presumptions Within the Workers' Compensation Arena" Lexis Nexis <https://www.lexisnexis.com/legalnewsroom/workers-compensation/b/recent-cases-news-trends-developments/archive/2014/01/21/the-role-of-presumptions-within-the-workers-compensation-arena.aspx?Redirected=true#sthash.hUlqi2j9.dpuf> (accessed 22 November 2016).

¹⁸⁵ These time limits serve as guidelines and protect the parties in the system against undue delays and can be waived extraordinary cases.

¹⁸⁶ Workers report that employers deny or delay treatment perhaps knowing that they are only responsible for one year of medical expenses under WICA.

legal training, and also allow independent external mediators such as is currently the case in the Small Claims Tribunal;¹⁸⁷

- Increase access to the Change of Employer scheme for claimants and abolish employer permission requirement for COE;
 - Workers with salary claims or who are involved in investigations related to employer violations should be granted automatic COE as soon as the claim is resolved, but no later than three months after initiating a claim;
 - Workers with injury claims and whose Work Permits have been cancelled should be granted COE as soon as their medical leave ends if they have been assessed fit to work;
 - Concerns over workers resorting to making frivolous salary and injury claims in order to qualify for COE can be addressed by a longer term move towards making job mobility a standard employment right that does not require employer or MOM permission;
- Allow access to FCWDS for claimants on Special Pass;¹⁸⁸
- Enhance employer compliance with responsibilities to employees during the claims process, such as for the provision of meals, accommodation and medical care, through the establishment and monitoring by MOM of requirements to provide specific amounts per month for food and housing, regardless of whether such allowances were agreed upon earlier as a term of employment;¹⁸⁹
- Create a fund to compensate employees when employers:¹⁹⁰
 - fail to pay judgments¹⁹¹ and settlement orders; or
 - fail to pay for employee meals, accommodation and medical care during the claims process.
- Create time limits for injury claim decisions:

¹⁸⁷ Independent external mediators are used by the Consumer Association of Singapore and in the Small Claims Tribunal.

¹⁸⁸ FCWDS is the Foreign Construction Workers Directory System which allows workers to change employers towards the end of their Work Permit period. See www.fcwds.com.sg. MOM should ensure that workers are able to access this scheme and the COE without paying high recruitment fees.

¹⁸⁹ Clarify and publicise employer responsibilities during the claims process. Clarify and monitor specific amounts employers must pay for meals per day/month and accommodation per day/month.

¹⁹⁰ This fund can be established from the foreign worker levy, security bond, or other fees. Levy fees could continue to be charged of employers after a migrant worker's Work Permit is cut but before the claim is resolved. This amount of additional levy could help support the establishment of the fund. In Hong Kong, the Protection of Wages on Insolvency Fund provides payment of a migrant worker's salary arrears and other amounts owed if employers wind up their companies, including "pay for untaken annual leave, pay for untaken statutory holidays, wages in lieu of notice and/or severance payment owed by their employer"; Guide to the protection of wages on insolvency ordinance and points to note for making application to the portection of wages on insolvency fund http://www.labour.gov.hk/eng/public/pdf/wsd/PWIO%20guide_eng.pdf; China Labour Bulletin (2011) Hired on Sufferance, p.55, also makes this recommendation.

¹⁹¹ This includes settlement agreements registered with MOM, Labour Court judgments or orders, Employment Court Tribunal judgments and Notice of Assessment orders under WICA, among others.

- Require that the NOA or initial determination of liability (the validity of the workplace injury) be determined within six months from the date a claim is lodged;¹⁹²
- Require that the Average Monthly Earnings is established and agreed upon by all parties prior to issuing the NOA;
- Require that the NOA includes the insurance company reference and policy number.

5 Improve claims reporting mechanisms and injury prevention.

- Extend MOM hours and create alternative sites so workers can access information or file claims on Sundays and evenings;¹⁹³
- Require health care providers or their surrogates (those instructed to report on their behalf) to report to MOM when a Work Permit holder is issued more than three days MC or is hospitalised for 24 hours;¹⁹⁴ If the doctor issues a Light Duty certificate, the doctor should ensure that light duty is available and appropriate.¹⁹⁵
- Employ independent safety supervisors on worksites and strengthen employee representation on workplace safety and health committees;¹⁹⁶
- Increase surprise worksite safety audits by MOM, external auditors, and/or inspectors.¹⁹⁷

¹⁹² Use similar time limits in the Singapore Courts as a model for the claims system. These time limits serve as guidelines and protect all parties against undue delays.

¹⁹³ For example, in order to provide easy access to support for foreign workers in Taiwan, the Ministry of Labor (MOL) established a 24-hour toll free “1955” Consultation & Protection line in 2009 to assist them in areas including: complaints, free legal consultations, referrals for protective placements, assistance with medical care and information on government services. By 2013 the service had expanded to 18 lines and 44 operators speaking migrant languages. In addition, there are physical Counselling and Service Centers operated by local governments (subsidised by MOL) to further assist them. Source: “Protection of the Rights for Foreign Workers”, Council of Labor Affairs (now MOL), Revised Jan. 2014, Section 5, p. 9.

¹⁹⁴ In 2012 the ILO published guidelines for establishing and improving national reporting systems in a publication called “Improvement of National Reporting, Data Collection and Analysis of Occupational Accidents and Diseases”. Under 9.2, Arrangements for Reporting, the ILO highlighted that in countries where the number and costs of accidents can affect employer costs, there can be underreporting. They recommend adopting “control elements”, such as separate reporting from both the employer and medical provider. P. 43.

¹⁹⁵ Light duty certificates are issued by the treating doctor to advise on an injured employee’s fitness for work. The doctor may specify modified or restricted duties which do not interfere with a worker’s recovery from an injury. Often light duties are not available for Work Permit holders employed in construction and marine worksites. This recommendation would create a check on the provision of light duties by requiring that the doctor specify with the employer the nature of the light duty work available so as to ensure it is medically appropriate and does not interfere with the worker’s recovery.

¹⁹⁶ Workplace Safety and Health Act (Chapter 354A) Part VII, Safety and Health Management Arrangements section 29(2) states that “Every workplace safety and health committee of a workplace shall comprise representatives of employees of the workplace as well as employers.”

¹⁹⁷ These audits could improve safety as well as check compliance with other employer responsibilities. For example, these could include checks on whether employees are insured under WICA, or that employees on “light duties” are fit to be on site or are being given light duties. See Workplace Safety and Health Act (Chapter 354A), Part IX, Inspections and Other Powers of Enforcement and Part VII, Safety and Health Management Arrangements.

6 Ensure Work Permit holders have access to the full range of documentation that may be needed to bring a claim.

- For salary claims: the IPA, SEC and any other properly signed contract; key employment terms; time cards; pay slips; evidence of hours worked; rate of pay; and payment received. Legislation or guidance protocols should direct an adverse inference and ensure penalties if employer fails to provide these documents.
- For injury claims: the incident report, MCs, medical records, scans. Legislation or guidance protocols should direct an adverse inference if employer fails to provide these documents and ensure penalties against employers who fail to report injuries within ten days or fail to provide employee access to medical care.
- Utilise the power to order discovery of these documents, and enforce sanctions for failure to produce or maintain legally mandated records.
- Require an affordable and expedient forensics analysis in cases where the authenticity of a document or signature is reasonably in question.
- Create an affordable avenue for medical witness testimony.¹⁹⁸
- Medical facilities should ensure that patients have access to their medical documents.

7 Increase transparency and effectiveness of the mediation and adjudication process.

- Publish written Labour Court decisions and judgments through the MOM website (or, in the alternative, the law reports), to create a body of precedents available to all parties who wish to access them;
- Provide all parties with information from MOM's investigations;
- Open settlement, mediation, Labour Court and ECT sessions to a limited number of observers nominated by any party to the dispute;
- Permit migrant workers to be accompanied by volunteer non-legal representatives during mediation and adjudication proceedings. Such assistance or support could include a McKenzie friend,¹⁹⁹ an ombudsman,²⁰⁰ NPO representatives, social workers or counsellors,²⁰¹ volunteer students, a friend or family member, or other representatives, as determined by MOM or the Employment Claims Tribunal;

¹⁹⁸ The Singapore Medical Council (SMC) should help establish a scheme, similar to the Law Society's pro bono scheme, to provide affordable access to medical testimony. SMC should also ensure that doctors clearly record who gives information about the accident when the patient is first seen.

¹⁹⁹ Where there is an unrepresented party, a McKenzie friend is someone allowed to assist by attending hearings with the party, advising them on non-legal issues and helping with administrative tasks. Ng, A (2007) "Law undergrads in court's pilot scheme" Today, 5 January https://law.nus.edu.sg/about_us/news/2007/TODAY050107.pdf

²⁰⁰ Ombudsmen in this context could help claimants understand and navigate the claims process. An ombudsman is generally appointed by a public agency and is independent of the parties involved in the dispute.

²⁰¹ The mediation process in family dispute resolution in the Family Court system can serve as a model, where social workers or counsellors are allowed in mediation sessions to support parties. Judges sit as mediators in Family Court.

- Ensure all ACLs and adjudicators have legal training;²⁰²
- As an alternative, consider moving Labour Court for injury claims out of MOM and integrating it into the Singapore Courts system, to create more institutional formality, ie, a similar model to the new Employment Claims Tribunals for salary claims.

8 Improve access to medical care for Work Permit holders.

- Provide workers with insurance cards in order to directly access medical care up to a limited amount;
- Require employers to pay for medical treatment and procedures that the doctor deems medically necessary for diagnosis or treatment without a Letter of Guarantee (LOG);²⁰³
- Maintain a central register of all Work Permit holders' insurers accessible to healthcare providers to clarify insurance coverage;
- Require use of the National Electronic Health Record (all case notes, investigations, and discharge summaries) for healthcare providers serving migrant workers to facilitate continuity of care and access to medical records;
- Establish a government fund or subsidy for migrant workers whose medical expenses exceed the S\$36,000 insurance coverage limit and whose employers are unable to pay.²⁰⁴
- Publicise services that NPOs, hospitals and other community, religious and charitable organisations provide to migrant workers in need.²⁰⁵

9 Enhance stakeholder engagement and education.

- Create a central resource center that provides healthcare providers with information on the injury claim process, injury and MC reporting guidelines, employer responsibilities, and information on medical, legal and charitable assistance for migrant workers for migrant workers.
- Enhance education to increase understanding by members of the Singapore Medical Council, the Law Society and the General Insurance Association of Singapore about migrant workers issues, employer responsibilities before and during the claim process, and worker access to medical and legal resources.
- Extend pro bono or legal aid services to migrant workers through the Law Society or the Ministry of Law.

²⁰² To ensure an understanding of how to weigh evidence and witness testimony.

²⁰³ Medical treatment and procedures include X-rays, scans or MRIs to determine the extent of the injury necessary for diagnosis, guide medical treatment, and as evidence regarding injury claim.

²⁰⁴ This would improve migrant workers access to essential care for serious injuries and ease the hospital's debt and the employer's financial burden.

²⁰⁵ Require hospitals to provide migrant workers with an information sheet about resources upon discharge.

- Improve regulatory oversight and censure of practitioners by professional bodies such as the Singapore Medical Council, the Law Society and the Monetary Authority of Singapore.
- Create a multi-stakeholder committee to provide feedback to MOM on ways to streamline claims processes.²⁰⁶

10 Strengthen enforcement regime.

- Create a dedicated unit and no-cost mechanisms to help Work Permit holders enforce judgments.²⁰⁷
- Require employers to deposit a minimum sum or percentage of claim amount for each claim to MOM or a Public Trustee.²⁰⁸
- Require employers to pay judgments and settlement orders directly to MOM or a Public Trustee.²⁰⁹
- Extend liability for judgments and settlement orders to company directors in exceptional circumstances.²¹⁰
- Create a system for tracking individuals and companies who:
 - Fail to pay judgments and settlement orders;

²⁰⁶ A multi-stakeholder claims process committee could be modeled on the Non-Injury Motor Accident/Personal Injury Motor Accident (NIMA/PIMA) committee that provides recommendations to the courts regarding guidelines and procedures.

²⁰⁷ Former Nominated Member of Parliament (NMP), Siew Kum Hong suggested the creation of a dedicated unit to help workers enforce their Labour Court orders. He suggested the costs for rendering such services could be recoverable from employers as legal expenses that can be used to fund this unit's operations. See *Singapore Parliamentary Debates, Official Report* (18 November 2008) vol 85 at col 968 (Siew Kum Hong).

²⁰⁸ This amount will be returned in full if the claim is unsuccessful.

²⁰⁹ Former Nominated Member of Parliament (NMP), Siew Kum Hong, suggested expanding the powers of Labour Court to make orders for employers to pay the sum of an award to a Labour Court account held for the worker; the Labour Court will then, in turn, pay the worker. This suggestion assumes that employers are less likely to withhold the ordered amount when it is payable to the Labour Court instead of the worker. This seems a fair assumption, given the fact that withholding payment would mean MOM (rather than just the worker) would be aware of the breach of its orders, and in a better place to effect enforcement. He suggested MOM may be in a better position to take on the initial costs, as the sum owed to it would enjoy priority as a debt due to the Government under Section 10(1) of the Government Proceedings Act. In the case of WICA compensation, the amount would be paid to the Public Trustee to pay the lawyer's itemised legal fees and pay the rest to the claimant. This would help to avoid the current situation where the total compensation amount is paid to the lawyer, who then pays out a certain amount to the claimant after subtracting legal fees without oversight. Stakeholders and workers report that lawyers currently have the opportunity to take substantial fees. See *Singapore Parliamentary Debates, Official Report* (18 November 2008) vol 85 at col 968 (Siew Kum Hong).

²¹⁰ Directors should only be held personally liable for sanctions if they refuse to pay a judgment or order in exceptional circumstances, ie, where it becomes apparent that they were not acting in good faith, and had no reasonable commercial grounds for believing their actions would benefit the company. Some practitioners take the view that directors may close a company in an effort to avoid liability to employees, and then reopen another similar company shortly thereafter.

- Have a record of winding up companies and reconstituting new ones. Make these individuals and companies subject to additional reporting requirements to ensure they comply with their responsibilities in a timely manner.
- Extend the Special Pass period for Work Permit holders until judgments are enforced.²¹¹
- Penalties should be increased and strictly enforced for employers who:
 - Fail to pay judgments and settlement orders;
 - Fail to pay or underpay employee salaries;
 - Engage in contract substitution and manipulation of documentation (eg forged signatures on contracts or pay slips);
 - Fail to report workplace injuries within stipulated timelines;
 - Fail to meet their responsibilities in paying for meals, accommodation and medical care of employees;
 - Repatriate or attempt to repatriate workers with claims or potential claims;
 - Coerce or attempt to coerce migrant worker claimants and their witnesses;
 - Demand and collect kickbacks from workers.

²¹¹ Enforcing a Labour Court order is problematic when the worker's Special Pass is not renewed after the order is issued. This point was addressed by then Acting Minister for Manpower Gan Kim Yong in a Parliamentary Debate on the 2008 amendments to the Employment Act. Gan explained that MOM generally allows workers to remain in Singapore for a short period of time to enforce their claims because complex claims take longer to resolve, and the worker would have insufficient financial support to support himself in Singapore. In such cases, MOM would remit the monies when they are received from the employers. If prosecution against employers were at the discretion of MOM and not the worker's right, the worker would be left in an uncertain and precarious position, unable to influence or decide the course of action taken on his behalf.

3. CONCLUSION

This set of recommendations is meant to serve as a starting point for a robust engagement and redoubled commitment to the goal of improving access to justice for migrant workers. To strengthen these recommendations, we suggest:

- Continued stakeholder consultations with policy-makers and knowledge specialists in the relevant areas, including labour and migration law, healthcare, migration studies, and supply chain management in the key industries under review;
- Engagement with regional and international migrant worker NPOs and researchers; and
- Extensive consultation with migrant workers, including focus groups to determine priority areas, feasibility, and the empirical realities that may impede certain recommendations or lead to other potentially unfavourable consequences.

These recommendations are intended to address the major factors which appear to undermine the protective intentions of existing legislation. Standard Employment Contracts, requiring electronic transfer of pay, removing ambiguous language related to requesting overtime, and strengthening the enforcement regime would bolster existing law. Improving access to information about the claim system, and increasing the

transparency of mediation and adjudication would help to close gaps in the administration of the law. Improving claims reporting, ensuring workers have access to all required documentation, providing workers with insurance cards, allowing workers access to necessary medical treatment without a Letter of Guarantee, and allowing claimant workers to change employer without permission of their current employer, would address problems of migrant worker vulnerability and ensure access to basic rights despite workers' structural weakness. Finally, enforcement of existing laws, particularly with respect to contracts that violate the Employment Act, forgery of salary documents, illegal deductions, and failure of employers to meet their legal responsibilities, would help prevent errant employers from violating the law to the disadvantage of migrant workers.

It is our hope that this report will enrich and create more opportunities for multi-stakeholder discussions among policy makers, corporate leaders, migrant workers and migrant worker advocates, as well as the wider community, about the best methods to ensure Singapore's employment laws serve to protect the most vulnerable in society. Through this discussion, we hope to foster a deeper understanding of the complex and sometimes troubling experiences of migrant workers in Singapore and contribute to the development of a more just and equitable society for all.

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APPENDICES

APPENDICES

Appendix 1. Background on qualitative interview methodology

The team members who conducted the interviews were trained in interview techniques and research ethics. Interviewers used a set of standard questions, and were given the discretion to ask supplementary questions based on the interviewee's response. They then wrote up field notes. All field notes were anonymised: names were replaced with pseudonyms reflecting interviewee's nationality, and then uploaded onto a web-based qualitative data analysis software, Dedoose Version 7.1.3.²¹²

Two lead researchers with academic experience in qualitative analysis and members of the team who had gone through training on conducting qualitative data analysis conducted the analysis. Theoretical and investigator triangulation was employed in the coding process to increase validity of

findings and reduce investigator bias.²¹³ The lead researchers and key team members conducted an initial round of coding the field notes to identify a preliminary list of codes for use by the data analysts. After the first round, the analysts reconciled interpretations of the codes, determined the relevance of the pre-set codes, identified further emerging codes and produced an updated codebook. The analysts then applied the updated codebook to a second round of coding of the field notes. The coded-up content was then cross-checked by a different analyst to ensure inter-coder reliability in the application of the codes were applied. The lead researchers, together with the authors, then went through the coded-up content to identify generalised stakeholder perspectives, which are discussed in the findings.

²¹² Dedoose Version 7.1.3, web application for managing, analyzing, and presenting qualitative and mixed method research data (2016). Los Angeles, CA: SocioCultural Research Consultants, LLC (www.dedoose.com)

²¹³ Denzin, Norman. *The research act in sociology: A theoretical introduction to sociological methods*. London: Butterworths, 1970. Denzin, Norman. *Sociological methods: A sourcebook*. McGraw-Hill Companies, 1978.

Appendix 2. Interview questions for migrant workers

Below are the questions in English. In addition, all interviewers and interviewees had access to written translations of the questions in Bengali, Chinese, and Tamil.

Note to interviewers

The questions below provide a general guide to the types of questions to be asked of interviewees. These questions are not exhaustive, but rather indicative. Interviewers will follow up on issues as they emerge through the course of the interview or of the larger study. *Please ask for specifics and for examples for any important points.*

Part 1: Background on injury/salary claim

1. What sort of claim did you make?
2. What were your initial concerns before you made the claim?
3. Please tell me the background to your claim and how and why you made the claim.

Probes include:

For injuries:

- i. What was the injury?
- ii. When did it happen?
- iii. Why did it happen?
- iv. What medical treatment did you get? Where did you go first? Where did you go later?
- v. Did you go to a private clinic/company doctor? Public hospital? How/why did you go to private/company/public hospital/clinic? If went to two or more, was the treatment different?
- vi. How much MC did you get in each clinic/hospital? Did you also get 'light duties'? If yes, how long was 'light duties'? What did you do for 'light duties'?
- vii. Who spoke to the doctors (you, supervisor, or whom?)?
- viii. What was your employers reaction to the injury? [probe for *exact* wording of conversation if you can: he said... I said... he said... etc.]
- ix. Did you have trouble accessing medical care? If yes, why?
- x. Did your employer agree to pay for medical care? If no, why? What happened exactly?
- xi. Have you had any problems with your employer because of the injury or medical costs? Explain.
- xii. Have you used any self-treatment; traditional medicine, or medicine from your home country (family) to treat your workplace injury? If yes, why did you use this as well or instead of Western medicine? [Note to interview: expected reasons may include personal preference/thinks it is better, or because can't afford/employer won't pay for western medicine.

For salary claim:

- i. What was the problem?
- ii. Why did it happen?
- iii. When did you raise the issue?
- iv. What did employer say?
- v. Why did you go to MOM?
- vi. What happened after you went to MOM?

4. Did anyone help you in making the decision to make the claim?

- Did you get advice from friends, relatives, lawyers etc.?
- Did you hear of similar experiences from other people who ended up having to make a claim?

Part 2: Claim Process and Labour Court

1. Have your claims reached the Labour Court?

If "No", your claims have not reached Labour Court:

2. What stage is your claim up to? What has happened so far with your claim? [Probe about first reporting to MOM; Probe about MOM interview; Probe about investigation; Probe about mediation meetings]
3. How long did your claim take to settle/how long has it been going [if still current]?
4. What was the initial compensation you sought? What did you eventually get?
5. Were you provided any form of guidance throughout the process of making a claim? Please provide details.
6. Were you involved in, or subject to, any negotiation, inducement, pressure, or coercion to accept lesser compensation? If so, can you provide details?
7. How long did the claim take? How long have you been waiting?
8. What are your feelings with regard to this process? Do you feel that you have received fair treatment and a fair outcome?
9. Were there any witnesses to aid your claim?
10. Were you able to furnish the evidence required of you?

If "Yes", your claim has reached Labour Court:

11. How long did the negotiation process take? What stage is your claim up to? What has happened so far with your claim? [Probe about first reporting to MOM; Probe about MOM interview; Probe about investigation; Probe about mediation meetings]
12. Were you encouraged, persuaded or coerced to accept lesser compensation? If so, can you provide details?
13. How did you find out about Labour Court processes?
14. Who encouraged you to pursue your case through Labour Court?
15. How long have you been waiting to conclude this matter?
16. Were you provided any guidance throughout the various stages of the mediation and Labour Court process? Please provide details. Was the information provided sufficient to understand the process? How could it have been improved?
17. How did you prepare for each mediation meeting and Labour Court meeting?
18. Did you have to incur any additional costs throughout the entire process?
19. Were you aware of the type of material or evidence you needed to provide to MOM or in court? [If yes, do you have the evidence with you? Can you show me? Do you mind if I photograph?]
20. Were there any witnesses to aid your claim? (If not, why not?)

21. Do you know of anybody who has not stepped up as a witness for fear of losing their jobs?
22. Did you have any reference material to inform you on how the claims process and the Labour Court works?
23. How does it feel having to represent yourself? Did you feel you needed a lawyer? Or other representative?
24. Who represented your employer in mediations and in Labour Court?
25. Do you know if it is possible to appeal to a higher court? Do you know what the requirements are?
26. What is your current opinion(s) and feeling(s) regarding the entire claims process and Labour Court process?
27. What is your advice to other workers who wish to make claims against their employers?
28. If you could name three things to improve the injury and salary claims system, including Labour Court what would they be and why?
29. Some stakeholders say that there is an over-reporting of injury claims (a lot of false claims), while others say that there is under-reporting of injury and salary claims (a lot of problems that don't get reported). Do you believe there is under-reporting, over-reporting, or both? Why do you think these problems occur? Can you give examples? How would you like the system to change to fix these problems?
30. If employers have insurance, why do you think NGOs and workers report that many employers refuse to pay for medical or compensation claims? What interest do employers have in not paying for medical or compensation claims if they already have insurance?

Part 3: Background questions (general)

First I am going to ask you some questions about your life in your home country and why you decided to come to Singapore. This is important as it helps us to understand why this job is important to you.

1. When did you come to Singapore?
2. What is your country of origin?
3. What is your job here in Singapore?
4. What is your age?
5. Why did you decide to come to Singapore to work? [If they say job prospects/wages were poor in home country, probe to find out how much they were.]
6. Did you have to pay any agent fees to come to Singapore? Who did you pay them to? How much were they? Have you finished paying them? Do you have any other debt?
7. How many people (wife, children, parents, other family) depend on your income in Singapore?
8. Do you feel fortunate to be able to work in Singapore? Why or why not?

Part 4: Background questions (about employer)

1. How many people worked for the company that employed you?
2. Was it a contractor/subcontractor for a larger business?
3. Did your employers business seem to be profitable and secure? How do you know this? Examples.

4. Before your accident/claim, how did employer/manager/supervisors treat you? Were they fair? Can you give examples of fair or unfair treatment of you or other employees? Wages fair? Working hours fair? Talk to you good or bad or what? Examples.
5. After your accident/claim, what was employer like? Fair? Talk good? Examples.

Part 5: Background questions (contract)

1. Were you asked to sign an employment contract?
2. Were you given a copy in your language?
3. Was it easy to understand?
4. Could you ask your employer questions about the terms and/or change any of the terms in the contract?
5. Were you told anything about the consequences of not signing the contract?
6. Did your employer let you keep a copy of your employment contract? Do you have it with you now? May I see it and/or photograph it (if relevant)?

Part 6: Background questions (overtime)

1. What were/are your normal working hours? Are they different on Saturdays? Sundays?
2. How many days per week or month do you get off? [If they say 'Sunday' ask "Every Sunday, or every second Sunday"]
3. Do you work public holidays?
4. If they work more than 44 hours per week or on public holidays, ask: When you work overtime or on public holidays, do you get extra pay or just normal pay? [They should get 1.5 or 2 times normal pay if they boss asked them to work]
5. Did you request to work overtime, or did boss request? Did you request work on public holiday or did boss request?

Part 7: Background questions (claims process in Singapore and home country)

1. If have this problem (claim) back home, how would employer and government deal with it? Is home or Singapore fairer? Stricter? Better or worse than Singapore? Why? Explain.

Appendix 3. Brochure (English version) to guide workers with salary or injury claims

On the following pages is the current draft (in English) of the 'Workers' Guide to MOM Labour Court". It is still in draft format, and will be finalised for the public launch in Feb

2017. For the launch, the brocher will be reviewed further my NPOs, lawyers, and MOM, and translated into Chinese, Bengali, and Tamil.

DRAFT

WORKERS' GUIDE TO MOM LABOUR COURT



1

WHAT IS THE LABOUR COURT?

A court set up by the Ministry of Manpower (MOM) to hear **salary and injury claims** made by workers.

Do all claims go to the Labour Court?

Not every salary or injury claim will go to the Labour Court as some employers and employees may agree to **settle earlier** before the matter proceeds to Labour Court.

Do I need a lawyer?

No lawyer is needed. For salary claims, you must represent yourself while for injury claims, you may appoint a lawyer.

How long does the process take?

Usually **3 to 9 months** before the final judgment is made. Some cases have taken as long as 15 months to conclude.



2

WHAT IS THE LABOUR COURT?

A court set up by the Ministry of Manpower (MOM) to hear **salary and injury claims** made by workers.

What factors affect the speed of my claim?

The **seriousness** of your claim, your **evidence**, and your **employer's willingness** to accept your claim.

What will the results of my claim be?

Depends on the **strength of your evidence**, and the **law**. You will probably be asked to accept an amount lower than your claim. Overall, you are entitled to your claim **if MOM decides that your claim is valid**.



3

YOUR RIGHTS AND WHAT YOU SHOULD KNOW

FOR INJURY CLAIMS



You can claim for:

- **MC wages** (including overtime) while you were on medical / hospitalisation leave
- **Medical bills** for the treatment of your work injury
- **Compensation for any permanent incapacity** (your "points")

Your employer is liable to **compensate you fully** even if you were injured in the toilet on your worksite, during meal times, or the way to work in company-provided transport.

FOR SALARY CLAIMS



You can claim for **underpayment** or **non-payment** of:

- Basic monthly salary
- Weekday and Saturday overtime hours at 1.5x your basic rate
- Sunday and Public Holiday overtime hours at 2x your basic rate
- Annual leave which you were entitled to but did not take
- Salary in lieu of termination notice

4

YOUR RIGHTS AND WHAT YOU SHOULD KNOW

FOR SALARY CLAIMS

You are entitled to your **full monthly basic wage** each month even if full-time work was not made available by your employer. Bring your Work Permit to prove your period of employment.



It is **illegal** for your employer to **deduct savings money, work permit renewal costs, or training costs** from your salary. You can claim for illegal deductions if you can (1) prove the deductions were made and (2) prove the deductions were illegal. You will need to bring time cards, payslips and/or receipts.



One-year time bar. File your claim early. You cannot claim for non-payment/underpayment of salary or for illegal deductions if these occurred more than one year before your claim date.

Overtime rates are either 1.5x or 2x the basic rate. Even if your contract says a lower rate (e.g. \$2/hour), your employer is required by Singapore law to pay overtime at a rate of 1.5x. Similarly, Sundays or rest days and public holidays must be paid at 2x your basic rate.

5

HOW TO PREPARE BEFORE GOING TO LABOUR COURT?

FOR INJURY CLAIMS



- Try to find people, such as your colleagues, who are willing to say in Labour Court that they saw you get injured at work. These people are your **witnesses**.
- Bring any **SMS, phone records or photos** of your injury or worksite.
- Try to obtain the **original medical documents** from the clinics and hospitals where you were treated, including your medical leave and hospital leave (MC) documents.

FOR SALARY CLAIMS



- First, show how much your employer was **supposed to pay** you.
- Next, show that you were **not paid** this amount.
- You should be entitled to receive the **difference** between what you **should** have been paid and what you were **actually** paid.
- Calculate **exactly the amount that is owed to you** and explain to the Labour Court Judge how you arrived at this amount.

If your employer presents **forged documents** to MOM, you can consider filing a police report and/or getting a forensic analysis of the forged documents by Health Sciences Authority (HSA) to prove that the documents were forged. TWC2 can assist you.

6



DURING THE HEARING

FOR INJURY CLAIMS

(1) WHAT DO I HAVE TO PROVE?

- You will have to prove to the Judge that **the accident took place at the workplace** and that you have suffered **injuries** for which you should be compensated.

(2) WHAT DO I SAY?

- Tell the Court **exactly** when the accident occurred and how it occurred.
- Give **evidence** to prove that the accident did in fact take place.
- Remember to give all the details **early on**, don't wait till later in the hearings to present new evidence.
- It is very important to tell your story **truthfully and consistently** – the court will be comparing what you say with your statement in the WICA claim.

(3) WHAT MIGHT MY BOSS SAY?

- If the employer does not want to compensate you, it is likely that he will try to present his story that **you were not injured at the workplace, or that you were not injured as you described**.
- The employer may also call **witnesses** to say the accident did not occur as you say.



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DURING THE HEARING



FOR INJURY CLAIMS

(4) WHAT WOULD HELP MY CASE?

- It is helpful if **witnesses** who saw the accident or photographed you at the site or saw you afterwards, will come to Court to explain what they saw.
- Bring your **timecard or toolbox report** showing that you worked on that day and a **hospital report** showing that you went to the hospital on that day or soon thereafter.



(5) WOULD I GET TO ASK QUESTIONS?

- You may have the opportunity to ask the **witnesses** and/or your **boss** some questions.
- The **Judge** may also ask you questions at any point in time.

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DURING THE HEARING

FOR INJURY & SALARY CLAIMS

(1) WHAT IS THE PROCESS?

- You will present **your story**, and your employer will present his.
- Speak slowly** and allow the translator to translate each sentence. Others in the Court will be recording your words, so be sure to **speak accurately**.
- If possible, try to find someone with good English to help you write your **story and arguments** on a piece of paper.

(2) WHAT IF THE WITNESS/BOSS IS LYING?

- If you feel the witnesses or boss is lying in Court, remember or **write down notes** of what they said.
- When it is your turn to talk, **ask them questions** to show the inconsistencies or untruthfulness in their story. Refer to your notes to remember all the questions you want to ask.

(3) WHAT WOULD THE JUDGE DO?

- The Judge will give you **instructions and advice**. Follow them.

(4) CAN I TELL THE JUDGE MY ISSUES?

- Either at the **start or at the end** of the hearings **briefly** tell the Judge the various issues you currently face (for example, the need for an MRI or for housing and meal allowance).
- Do not talk excessively** about your family, your debt or your personal problems. The Court is focused **only on the details of your claim** and does not encourage such discussion.

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AFTER THE HEARING



WHAT HAPPENS?

The Judge will issue a decision or Order **within about a month** from the date of your final hearing.

WHAT IF I SUCCEEDED?

If you are successful in your claim, the Order will state the amount of money that your employer must pay you **within 21 days**.

WHAT IF I'M NOT SATISFIED?

If no money was awarded to you or if you are unhappy with the amount awarded, you can **appeal** the Labour Court's decision to the **High Court**.

WHAT HAPPENS IF I APPEAL?

If you appeal, you need a **lawyer**'s help which is expensive. You will also have to **return to your home country** and wait for your lawyer to finish your case. You should only appeal if you have **new evidence** to show or **new arguments** to make.

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AFTER THE HEARING

WHAT IF BOSS REFUSES TO PAY?

(1) Approach **MOM**.

- Cost = \$0.

(2) Engage a **lawyer** to help you enforce the Order. The lawyer may write letters of demand and/or begin a **Writ of Seizure and Sale (WSS)**.

- Cost = About \$400 to file a WSS.
- You will likely need to return to your home country and the lawyer will contact you if successful.
- The lawyer will bank transfer you any payment obtained.

(3) Engage the services of a **private debt collection company**. TWC2 can assist you.

- Cost = Usually charge fees of around 20% to 40% of the payment.
- There is no guarantee that they will be able to recover the whole of the amount that is due to you.



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INJURY CLAIM NECESSARY MATERIALS



DOCUMENTS CHECKLIST

- Medical bills**
- Medical or hospital certificates (**MCs**)
- Medical reports** from all the clinics / hospitals / specialists that you visited for your injury
- Records of **physiotherapy** sessions, if any
- Safety report / injury report / incident report**, if any
- All the documents required for **salary claims** (to calculate your salary)

INFORMATION TO PREPARE

A. Basic Information

- Date of incident, time of incident
- Exact location of site where injury occurred
- Owner of site where injury occurred
- Name, job title and contact numbers of your:
 - Supervisor
 - Manager
 - Foreman
 - Safety supervisor
 - Other workers who saw the incident or your injury or who you informed about your injury



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INJURY CLAIM NECESSARY MATERIALS

INFORMATION TO PREPARE (CONT.)

B. What happened?

- ④ The activity you were doing at the time of injury
- ④ Description of injury – for example: fracture, sprain or burn
- ④ Description of what happened immediately after your injury
- ④ Description of the immediate response by your supervisor / manager / others around you

C. What treatment did you get?

- ④ Treatment given on site and name of person providing treatment
- ④ Name, job title and contact numbers of the person(s) who accompanied you to the clinic / hospital
- ④ Date, time, location and description of the first treatment you received
- ④ Date, time, location and description of the subsequent treatments you received
- ④ All the medical diagnoses you received
- ④ Dates and duration of MCs (medical & hospital leave)

D. What is the current status?

- ④ Current status of injury (Are you waiting to receive medical treatment?)
- ④ Whether the injury incident was reported to MOM or to anyone else. If so, who reported and when was the incident reported?

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SALARY CLAIM NECESSARY MATERIALS

DOCUMENTS CHECKLIST

- In-principle approval (**IPA**) letter
- Employment contracts**, if any
- Financial documents**: payslips, salary vouchers, salary envelopes, bank book, and any bank transfer receipts made by your employer
- Police reports** of harassments and forgeries, if any
- Your employer's written **notice of termination**
- Timesheets**
- (Good to have) A **log or spreadsheet** that clearly lists the days/hours that you worked and provides an itemised breakdown of the amount that is owed to you.

INFORMATION TO PREPARE

- ④ Job start date and date of termination
- ④ Date of approval of your Work Permit
- ④ Names and contact number of other workers who were not paid (they can serve as your witnesses)



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Appendix 4. Prevalence of injured Work Permit holders experiencing difficulties with the existing claims system

The MOM reported 12,729 workplace injuries²¹⁴ involving more than 24 hours of hospitalisation or more than three days of medical leave in 2013. TWC2 through its Cuff Road Project (TCRP) provided meals²¹⁵ for 1,125 Bangladeshi and Indian workers who had been injured in 2013²¹⁶ and were awaiting the outcome of their injury claims.²¹⁷ These workers were assisted by TCRP because they were having difficulties with the claims system and were not adequately supported by their employers. As a group, they represented about 8.8% of all reported workplace injuries in Singapore that year. It should be noted that the 8.8% considers only

foreign workers in the numerator while the denominator covers total workplace injuries among resident and foreign workers. Therefore, the percentage among Work Permit holders with injuries is higher.²¹⁸

To help provide a clearer indication of the incidence of difficulties among Work Permit holders, we identified the industry sectors where the majority of these injured Bangladeshi and Indian workers were employed and compared this to total injury levels in similar sectors.²¹⁹ This is shown in the following table.

TABLE 3. TWC2 Cuff Road assistance levels relative to workplace injuries

1. Number of workers injured in 2013 and subsequently supported by TWC2's Cuff Road Project while awaiting resolution of injury claims.	1,125
2. Proportion & number of these workers employed in companies undertaking or contracting to the construction & marine sectors, and in landscaping or cleaning activities. ^a	90.9% 1,023
3. Total reported injuries in marine, construction, architecture & engineering, cleaning and landscaping, and metal manufacturing industries ^b in 2013.	5,089
4. Proportion of injured workers supported by TWC2	20.1%

²¹⁴ Total of major and minor injuries and occupational diseases. Sources, MOM & WSH Institute.

²¹⁵ TWC2 maintain data on the users of the services provided by their Cuff Road Project (TCRP). For information on the statistics see "Cuff Road Project 2013: Statistics", TWC2, 6 April 2014.

²¹⁶ As there can be a long period between the time of injury and resolution of claims, workers injured in 2013 were used for this analysis. Most of these workers visited TCRP in 2013 and 2014, together with a few in 2015. Similar numbers of workers injured in 2014, 2015, and 2016 have utilised TCRP assistance.

²¹⁷ Many of these workers were on Special Passes awaiting resolution of medical claims and were experiencing difficulties. They had problems with the system and/or were not being adequately supported by their employers as required under law while they were awaiting case outcomes. There will be some workers in these numbers with injury claims that are ultimately deemed ineligible or who may be exploiting the system. Sometimes workers do this to avoid premature termination especially when large placement fee debts are incurred.

²¹⁸ If resident worker injury numbers are taken out of the denominator then the percentage must rise.

²¹⁹ Even though many of the injuries experienced by the TCRP recipients are associated with companies in construction and marine activities, we could not be sure their injuries would be reflected in the total injury numbers for only these two sectors. We therefore broadened our reported 2013 injury base to include the engineering, metalwork manufacturing, cleaning and landscaping sectors which commonly provide inputs or services to the construction and marine industries. Metalwork manufacturing includes the manufacture of basic metals, fabricated metal products, machinery & equipment and electrical machinery & apparatus.

^aThe percentage is based on identifying the industry from company names. This was possible in the majority of cases.

^bWSH Institute, Workplace Safety and Health Report 2013. Major and minor Injuries and confirmed occupational diseases by industry. Supplemented by Ministry of Manpower (2016) Workplace Injuries by Industry and Degree of Injury, 2013; Workplace Safety and Health Indicators by Industry, 2013; Confirmed Cases of Chronic Occupational Disease by Type of Disease and Industry, 2013; <http://www.mom.gov.sg/workplace-safety-and-health/wsh-reports-and-statistics> (accessed 22 November 2016). Metal

As can be seen in the table, some 91% of Work Permit workers with 2013 injuries and assisted by TWC2 were employed in companies contracting to or undertaking construction & marine activities, or in landscaping or cleaning jobs. These workers accounted for about one in five (20.1%) of all workers injured in Singapore in the construction, marine, architecture & engineering, cleaning, landscaping, and metalwork manufacturing industry sectors in 2013.

When interpreting this percentage consideration needs to be given to a number of factors. Firstly, some workers supported by TWC2 would have had their injury claims ultimately deemed ineligible²²⁰ for various reasons such as being non-workplace injuries or possibly self-inflicted.²²¹ While this would overstate the percentage somewhat, there are other reasons that result in understatement. Aside from injured resident employees being included in the denominator (mentioned above), the injured foreign workers in the

numerator only includes Bangladeshi and Indian workers who sought support from TWC2's Cuff Road Project. There are other NPOs providing similar types of support²²² to workers of these and other nationalities. For example, Work Permit holders from China are not included, and some would have also experienced difficulties²²³ when making claims and hence increase the percentage. There could be other foreigners such as Malaysians who may have problems with the system but are much less likely to be assisted by Singapore-based NPOs, and there will, of course, be some injured low-income resident employees who also experience difficulties.²²⁴

While we cannot be precise about the exact percentage of injured foreign low-wage employees experiencing difficulties with injury claims or related employer support under the current system, the number and persistence of foreign workers seen by TWC2 alone provides evidence that there is a problem.

²²⁰A review by TWC2 in 2014 of a sample of 268 WICA claims by workers using TCRP revealed that 7.5% had been assessed as not eligible for compensation.

²²¹Sometimes workers do this to avoid premature termination especially when large placement fee debts have been incurred.

²²²For example, HealthServe operates the Geylang Food Project.

²²³Chinese workers represented 30% of those interviewed for this study.

²²⁴Singapore citizens and permanent residents are however more able to access support through their families and use programs such as the Special Relief Fund.

