



# LABOUR PROTECTION FOR THE VULNERABLE

**AN EVALUATION OF THE SALARY AND INJURY CLAIMS SYSTEM  
FOR MIGRANT WORKERS IN SINGAPORE**



**CHEN SU LAN TRUST**

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The authors are thankful for the opportunity to contribute to the ongoing dialogue and multi-stakeholder effort to improve employment conditions for migrant workers in Singapore.

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# FOREWORD

## BY WALTER WOON



caught in the net, which of course leaves open the possibility that this is a skewed sample. That should not detract from the usefulness of the research. Whether the sample is truly representative is not the point; the point is that there are many foreign workers who do need help and the system is not addressing their issues adequately. Workers who are injured, whether physically or financially, want not only redress, but justice.

Justice for foreign workers is not a matter of human rights. It is a matter of our responsibility as a society towards those who have come from afar to make Singapore a better place. Recognising the problems is the first step towards solving them.

*Professor Walter Woon is the David Marshall Professor of Law, National University of Singapore, and the former Attorney-General of Singapore*

**T**he Courts, it is said, are open to everyone—just as the Ritz Hotel is open to everyone. For poor people, recourse to the law is all but impossible. There is a clear disjunct between law as a theoretical construct and law as it applies in the real world. Migrant worker protection is one area where the gap between policy and practice is most clearly apparent.

Singapore imports practically everything, especially labour to do the jobs that Singaporeans will not do. The people who perform these tasks for us are lowly-paid and considered by society to be of low status. It is easy for the affluent to avert their eyes and pass on the other side of the road when problems arise for these workers. Fortunately, there are Good Samaritan organisations and people who work to ameliorate the lot of the guest workers who do so much for our economy.

In this useful and interesting report, the authors consider not only the legal framework but, more importantly, how the laws actually work in practice. A person trained in law too often responds that anyone who has his salary withheld or who is injured in the course of his work can make a claim. Theoretically, this is absolutely correct. But in real life there are significant obstacles that impede a claimant from obtaining redress. This study highlights the practical difficulties faced by such claimants.

The authors frankly admit that there are limitations to the scope of the sample used. The 157 workers interviewed were chosen through convenience sampling. Only those who sought help from a non-profit organisation were



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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.

**ACMI.** Archdiocesan Commission for the Pastoral Care of Migrants and Itinerant People. Singaporean non-profit organisation that provides services for and advocates on behalf of migrant workers.

**Adjudication.** In this context, we mean the phase of the dispute resolution process for injury and salary claims that follows the mediation phase. During the period of this research, this phase was conducted at Labour Court for both injury and salary claims. In April 2017 adjudication of salary claims was transferred to the Employment Claims Tribunal and the Singapore courts.

**Agent fees/Recruitment fees.** The fees workers pay to secure a job in Singapore. Agent fees may be paid in the country of origin or in Singapore. The Employment Agencies Act stipulates that Singapore employment agents are allowed to collect no more than one month of the worker's salary for each year of service, capped at two months' salary.

**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 is 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. 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.

**COE.** Change of Employer. MOM may grant workers permission to search for a new employer in Singapore on a case-by-case basis. However, COE does not guarantee that a worker will be able to locate a new job. Some workers report

that they must pay new agent fees to secure a job through COE.

**COL.** Commissioner for Labour.

**Common law.** See civil claim.

**Contingency fee.** A lawyer agrees to accept a fixed percentage of the successful award.

**Contract substitution.** In this context, when an employer changes the terms of a worker's employment such that they become less favorable to the employee.

**Cuff Road.** TWC2's free meal programme.

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

**EAA.** Employment Agencies Act.

**ECA.** Employment Claims Act 2016 took effect in 2017 to resolve salary-related employment claims through mediation and, if required, the Employment Claims Tribunal.

**ECT.** The Employment Claims Tribunal was established in 2017 to replace the Labour Court for salary claims.

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

**FCWDS.** Foreign Construction Worker Directory System in Singapore. It allows workers in the last two months of their contract to seek a new employer. Currently, it does not apply to Special Pass holders, including workers who have made salary or injury claims.

**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.

**Gangsters.** Also known as repatriation agents, they escort workers to the airport, sometimes without notice.

**HealthServe.** Singaporean non-profit organisation that provides health care, casework and counselling services for migrant workers.

**HOME.** Humanitarian Organisation 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.

**Kafala.** A sponsorship system used to employ migrant workers in the construction, marine and domestic sectors.

**KET.** Key employment terms.

**Kickbacks.** In this context, an illegal payment extracted from an employee.

**LCRP.** Labour Court Research Project.

**Labour Court.** Actually an MOM administrative tribunal rather than a court, it is responsible for the adjudication phase of the claim process. During the period of this research, a claim proceeded to Labour Court if it could not be resolved in mediation. In April 2017 adjudication of most salary claims moved to the Employment Claims Tribunal. Injury claim adjudication remains in MOM's Labour Court.

**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 work 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 meal, food, or to eat.

**Mediation.** In this context, we mean the first stage of the dispute resolution process for injury and salary claims. It is also sometimes referred to as conciliation.

**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.

**MRI.** A scan used to diagnose soft tissue injuries.

**NOA.** Notice of Assessment. A document issued by MOM showing 'points' or 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.

**NOE.** Notes of Evidence. In this context, the proceedings and the grounds for decision of Labour Court adjudication.

**NPO.** Non-profit organisation. The Singaporean NPOs referred to in this paper are Transient Workers Count Too (TWC2), the Humanitarian Organisation 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 as non-governmental organisations).

**NUS.** National University of Singapore.

**PHC.** Pre-hearing conference. A series of meetings conducted by an ACL with the employee and the employer (or their legal representatives) that allows the judge to hear arguments from both sides and to assess whether the claim merits being heard at Labour Court. 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. See also NOA.

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

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

**Recruitment fees.** See Agent fees.

**Repatriation.** The act of sending a worker back to his country of origin. In Singapore, Work Permit holders may be repatriated at will by their employer at any time and without cause.

**Salary slip.** The employer's record of employee wages. Also referred to as a pay slip or salary voucher.

**SEC.** Standard Employment Contract.

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

**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 S\$250,000, S\$60,000, and S\$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 S\$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.

**SGH.** Singapore General Hospital.

**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 migrant 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.

**TADM.** The Tripartite Alliance for Dispute Management was established in 2017 to provide mediation between employees and employers with salary-related claims and employment disputes.

**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 is also sometimes referred to as migrant worker, foreign worker, or 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 their Work Permit has been cancelled.

**WPR.** Work pass regulations.

**WSS.** Writ of seizure and sale.

# EXECUTIVE SUMMARY

This research report reviews and analyses the system governing the salary and injury claims process for migrant workers in Singapore. It focuses on 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 total workforce in Singapore. 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 was the persistent number of migrant workers with salary and injury issues who approach Singapore's migrant worker non-profit organisations (NPOs) for assistance. While the Singapore Government has continued to improve employee protections and clarify employer responsibilities—such as recent legislative amendments requiring employers to provide employment terms and pay slips—the persistence of salary and injury issues shows a disconnect between legislative intent and the practical realities for workers on the ground.

We examine the underlying context of worker vulnerability and experiences with the salary and injury claims process. Drawing on legal and sociological analysis, we employed a two-pronged approach. First, through a review of legislation, Parliamentary debates, regulations, case law, and the claims system, we sought to understand the legislative intent behind the current regulatory framework governing resolution of workers' claims. While the framework is designed to protect migrant workers, four factors appear to undermine these protections: migrant worker vulnerability, ambiguous legal language, violations of the law, and gaps in administration and enforcement.





"THE IMPETUS FOR THIS RESEARCH WAS THE PERSISTENT NUMBER OF MIGRANT WORKERS WITH SALARY AND INJURY ISSUES WHO APPROACH SINGAPORE'S MIGRANT WORKER NON-PROFIT ORGANISATIONS FOR ASSISTANCE."

Second, our sociological analysis draws on 157 qualitative interviews with 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 migrant workers in Singapore.

We have developed policy recommendations by consolidating our legal and sociological analysis, reviewing policies and legislation in comparative jurisdictions—Hong Kong, Taiwan, Malaysia, United Arab Emirates, Qatar, Australia, and Germany—and by considering the key principles that undergird labour standards agreed upon by institutions such as ASEAN, the International Labour Organisation, 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 simplify systems and reduce process ambiguity to improve administrative efficiency and create greater deterrence, which together are intended to reduce incidents and costs over the long term. We present an abbreviated version of our recommendations below. Please 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;
- The SEC will be made available to workers before they arrive in Singapore and 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 and agreed to in writing by the employee.

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

- Provide assistance packages to employers to aid their compliance;
- Facilitate accessible and affordable bank transfer or payroll service options for Work Permit holders, in coordination with employers and local banks.

2

3

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

For the Employment Act:

- Simplify rules regarding salary payments;
- Extend the time bar for salary claims from one to three years;
- Require employers to provide and maintain receipts for employee: salary payments and deductions, costs of meals, accommodation, amenities, and medical care;
- Require employers to maintain records of any payments workers make to agents or company representatives to obtain their job or renew their contract.

For the Employment of Foreign Manpower Act:

- Require that any changes to the Standard Employment Contract to reduce employment terms be agreed to in writing by the employee and be reviewed and approved by MOM. This process should involve all parties and take into account the unequal 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 and reduce the burden of proof on the injured worker;
- Create a six-month time limit for MOM's initial determination of the validity of the workplace injury;
- Create an exception to the one-year time bar on medical treatment when employees' medical treatment has been delayed or withheld during the first year.

# 4

## **Improve claims process through access to information and enhancing safeguards.**

- Provide clear information on procedural rules, decision-making criteria, evidentiary requirements, as well as time and costs involved, and ensure this information is available in the languages of Work Permit holders;
- Enhance scrutiny of the credibility of employer witnesses who testify against co-workers;
- Ensure officers at MOM and the Tripartite Alliance for Dispute Management (TADM) with mediation or negotiation responsibility are accredited by a recognised external mediation organisation;
- Increase access to the Change of Employer (COE) scheme for claimants, eliminate the employer permission requirement, and increase incentives for employers to hire through the COE scheme;
- Allow access to the Foreign Construction Worker Directory System (FCWDS) for claimants on Special Pass, and increase incentives for employers to accept workers through FCWDS;
- Enhance employer compliance with employee maintenance obligations during the claim process, such as for the provision of meals and accommodation, through the establishment and monitoring by MOM of specific dollar amounts per month;
- Create a fund to compensate migrant workers when employers fail to pay judgments, orders, or employee maintenance;
- Create time limits for injury claim decisions, including that the validity of the workplace injury be determined within six months of the date of the claim.

## **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 in the evenings;
- Require healthcare providers or their surrogates to report to MOM when a Work Permit holder is issued more than three days of medical certificates (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;
- Increase unannounced worksite safety audits by MOM and other inspectors.

# 5

# 6

## **Ensure Work Permit holders have access to the full range of documentation needed to bring a claim.**

- Ensure access to documents required for salary claims, including the in-principle approval, contract, key employment terms, time cards, pay slips, evidence of hours worked, rate of pay, payment received;
- Ensure access to documents required for injury claims, including the worksite attendance record, incident report, safety report, MCs, medical records;
- For salary or injury claims, if an employer fails to provide these documents, legislation and guidance protocols should direct an adverse inference;
- Utilise the power to order discovery of these documents, and enforce sanctions for failure to produce or maintain such records;
- Require an affordable forensics analysis if the authenticity of a document or signature is reasonably in question;
- Medical providers should ensure that patients have access to their medical documents;
- Create an affordable avenue for medical expert testimony.



7

### **Increase transparency and effectiveness of the mediation and adjudication process.**

- Publish written Labour Court and Employment Claims Tribunal (ECT) decisions and judgments in order to create a body of precedents;
- Provide all parties with information from MOM's investigations;
- Allow access to mediation, Labour Court, Tripartite Alliance for Dispute Management (TADM), and ECT sessions to a limited number of nominated observers;
- Permit migrant workers to be accompanied by volunteer non-legal representatives during mediation and adjudication proceedings;
- Ensure all ACLs and adjudicators have legal training;
- Move Labour Court adjudication for injury claims to the Singapore courts.

### **Improve access to medical care for Work Permit holders.**

- Provide workers with insurance cards to directly access medical care, subject to a maximum amount;
- Require employers to pay for medical treatment and procedures that the doctor deems medically necessary;
- Enhance employer compliance with maintenance obligations, including for employee medical care;
- Maintain a central register of Work Permit holders' insurers accessible to healthcare providers to clarify insurance coverage;
- Require use of the National Electronic Health Record by healthcare providers serving migrant workers;
- Establish a government fund or subsidy for migrant workers whose medical expenses exceed the S\$36,000 insurance coverage threshold and whose employers are unable to pay;
- Publicise services that NPOs, hospitals, and other organisations provide to migrant workers.

8

9

### **Enhance stakeholder engagement and education.**

- Create a central resource centre to provide information to healthcare staff on the injury claim process for migrant workers;
- Enhance education to increase understanding and awareness of migrant worker issues and employer obligations during the claim process among members of the Singapore Medical Council, the Law Society, and the General Insurance Association of Singapore;
- Extend pro bono or legal aid services to migrant workers in need;
- Create a multi-stakeholder committee to provide feedback to MOM on the claims process.



# 10

## **Strengthen enforcement regime.**

- Create a dedicated unit and no-cost mechanism to help Work Permit holders enforce judgments when employers fail to pay;
- Require employers to pay judgments and settlement orders directly to MOM or a Public Trustee;
- Extend the Special Pass period for Work Permit holders until judgments are enforced and amounts are paid;
- Penalties should be increased and strictly enforced for employers who fail to pay judgments or employee salaries, engage in contract substitution or forgery, fail to report workplace injuries within stipulated timelines, fail to meet their employee maintenance obligations, attempt to repatriate workers with claims, coerce witnesses, or demand kickbacks from workers.





# CHAPTER ONE

## Introduction

# CHAPTER ONE

## Introduction

In the past decade, support for migrant workers in Singapore, both formal and informal, has grown considerably. Migrant worker non-profit organisations (NPOs), such as Transient Workers Count Too (TWC2), the Humanitarian Organisation 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 several thousand workers each year with a wide range of services—from food, housing, and financial support, to casework assistance, skills and language training, as well as subsidised medical and dental care.<sup>1</sup> 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.<sup>2</sup> There are also religious-based organisations and other volunteer groups, including arts and community-driven initiatives, that offer outreach and organise activities with, or related to, migrant workers in Singapore.<sup>3</sup>

This expansion has paralleled the growth of the country's migrant worker numbers,<sup>4</sup> 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, 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 casework assistance are increasingly supplementing these efforts with research and policy advocacy. Singapore's labour laws have continued to improve in recent years, with attempts to protect employees and clarify employer responsibilities. Yet workers' on-the-ground experiences, as reported to migrant worker NPOs, expose the gap between legislative intent and reality for migrant workers with salary and injury claims. The report's recommendations aim to reduce these gaps and strengthen the dispute resolution mechanisms available to migrant workers. This research also aims to contribute to the ongoing dialogue and multi-stakeholder effort to improve employment conditions for migrant workers in Singapore.

<sup>1</sup> 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/>.

<sup>2</sup> "Who We Are." *Migrant Workers' Centre* portal. Accessed 8 November 2016. <http://tinyurl.com/mwcsg1>.

<sup>3</sup> Such groups include Geylang Adventures (<http://www.geylangadventures.com/projects/>), SAMASAMA (<https://www.facebook.com/groups/samasama2016/>), and the Migrant Worker Poetry Competition (<http://www.singaporeworkerpoetry.com/>).

<sup>4</sup> "Foreign Workforce Numbers." *Ministry of Manpower, Singapore*. Accessed 12 April 2017. <http://www.mom.gov.sg/documents-and-publications/foreign-workforce-numbers>.



## 1.1. 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 NPOs for support and help with their salary and injury issues. 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. In this context, repatriation means the act of sending a worker back to his country of origin, with or without his agreement. In Singapore, migrant workers on Work Permits may be repatriated at will by their employer at any time and without cause. Workers fear being sent home 'early' before they have repaid their agent fee debt and due to the lack of employment opportunities in their home country.

Injured workers also 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, having contracts that contain terms that violate Singapore law, or simply having no contracts at all. Others report forged signatures or being made to sign blank salary vouchers or incorrect pay slips. Workers may not work during the claim process and may have trouble meeting their basic needs, such as food, accommodation and medical care.

Since 2014, TWC2 has run a weekly clinic to provide additional assistance to migrant workers whose claims were not resolved in mediation and have proceeded to the pre-hearing conference stage 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 assist workers who have limited English language skills and no experience of the law, yet are expected to represent themselves in Labour Court hearings, collect and present evidence, and cross-examine employers' witnesses.

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, and noble in its intentions—becomes so different in its application that legislative intent is sometimes 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 immigration status, often leaves them feeling disempowered.

We attempt to address this issue from two perspectives, 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 and shed light on the dispute resolution processes 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 raised 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. In these semi-structured interviews, workers shared their employment experiences in Singapore and their attempts 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 guided 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 inputs and feedback from MOM prior to publication and dissemination.

## 1.2. 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 claims system based on interviews with 15 employers of migrant workers,<sup>5</sup> off-the-record consultations with practitioners and MOM, 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 Singapore's claims system, as well as other stakeholders' perspectives about the claims process.

### 1.2.1. 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<sup>6</sup> 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 programme 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 sampling and interviewed in English via conference call or at locations suggested by the interviewee.

<sup>5</sup> Stanley Koh. "Paper-Cuts, Unseen Falls and Invisible Back Injuries: Employer Perceptions of Workplace Injuries and Runaway Migrant Workers in Singapore" (Bachelor's thesis, Singapore Management University, 2014).

<sup>6</sup> 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.

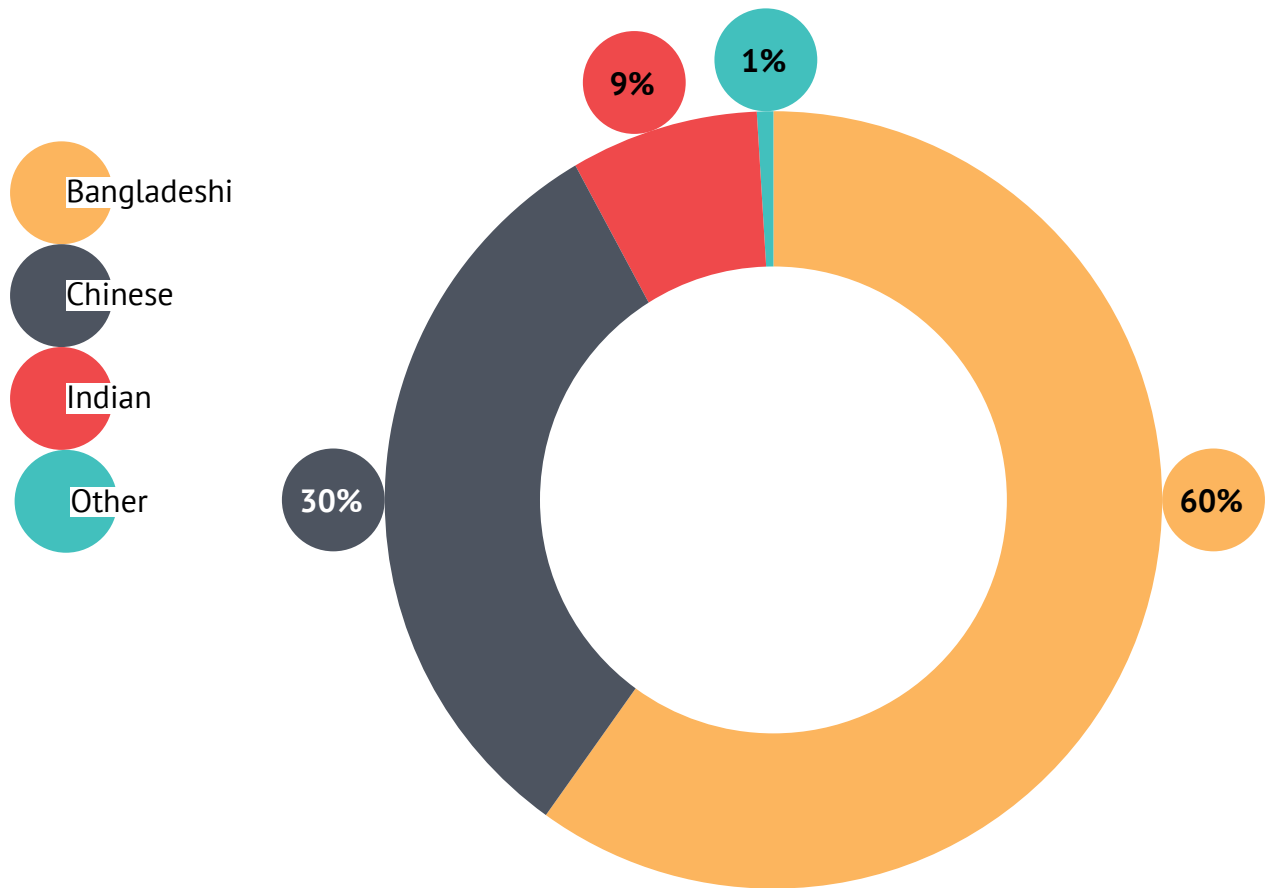
Interviewers carried out semi-structured interviews with migrant workers which covered the following topics: a detailed background of events that led to the making of a claim, experiences of the claim process including mediation and Labour Court, reasons for migrating to Singapore and experiences of 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.

For further information on our methodology, Appendix 1 contains an explanation of the method used to conduct and analyse the interviews, and Appendix 2 contains a complete list of the interview questions that were asked of migrant workers.

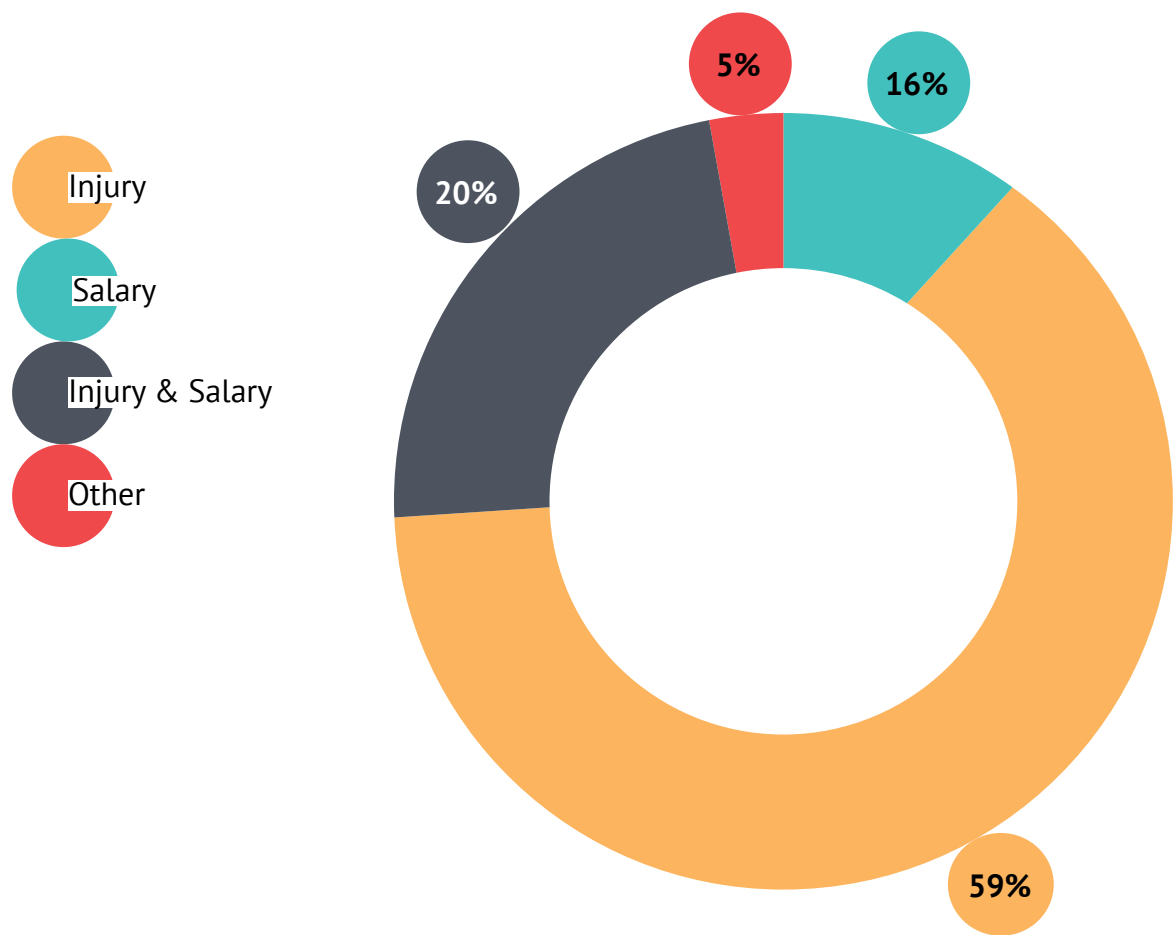
**TABLE 1:** Distribution of interviewed migrant workers by nationality and claim type

	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

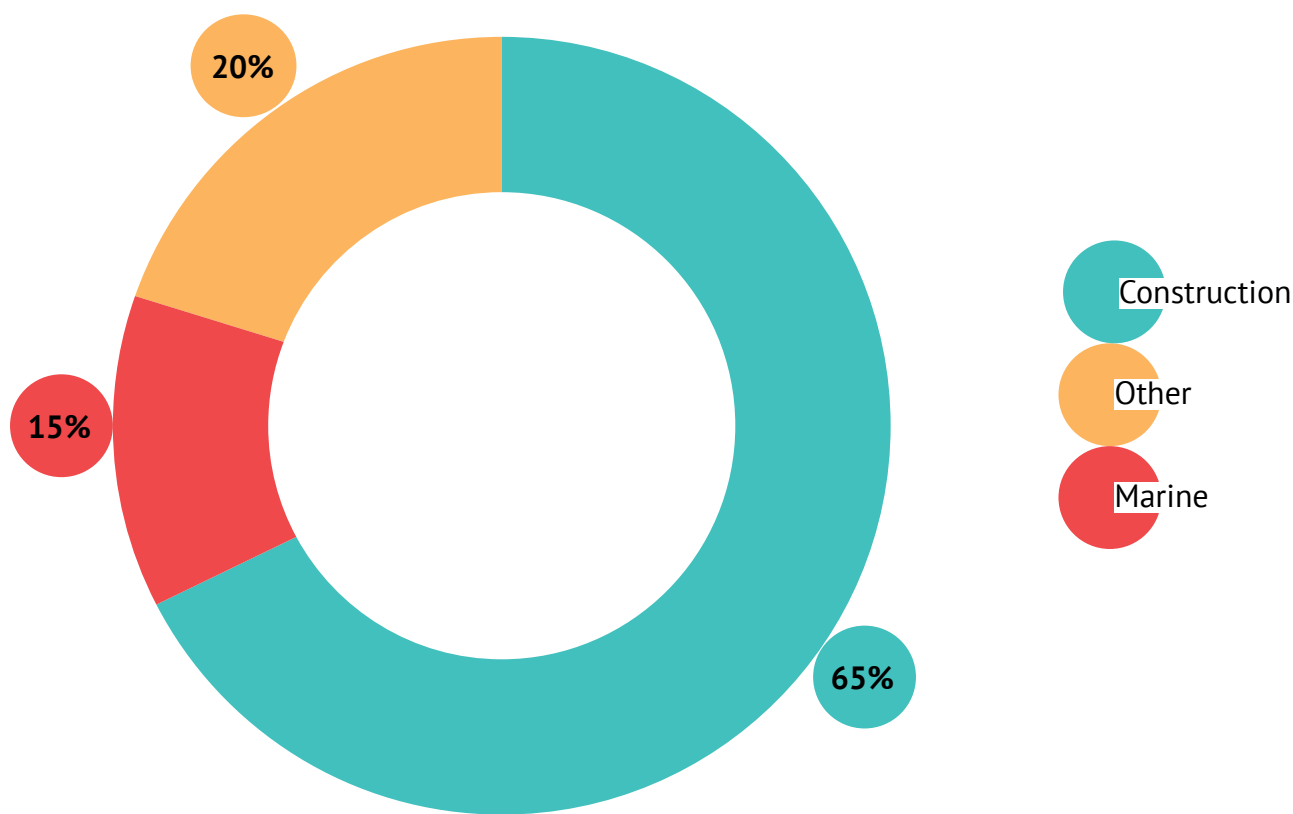
**FIGURE 1:** Nationality of interviewed workers



**FIGURE 2:** Claim type of interviewed workers



**FIGURE 3:** Industry of interviewed workers





### **1.2.2. Profile and background of interviewed workers**

Figure 1 shows the distribution by 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 nationality.

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 by industry 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.

### **1.2.3. Limitations of the study**

One limitation of the study is that the population of sampled workers is biased towards workers who have approached an NPO for assistance with their claim. This method excludes workers who filed a claim and were able to resolve their claims successfully and thus did not need to seek assistance from an NPO. This method also excludes workers who were repatriated before they could file a claim and workers who were unable to seek assistance 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 includes more worker interviews than interviews of other stakeholders. A large reason for this is the difficulty in gaining access to other stakeholders, such as employers, professionals, and policymakers due to their 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 in addition to our interviews with migrant workers.



# CHAPTER TWO

## Legislative and Regulatory Framework







# CHAPTER TWO

## Legislative and Regulatory Framework

In this chapter we review and analyse the existing legislative and regulatory framework governing the employment of migrant workers in Singapore. We seek to 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, we show how the existing legislation and regulations are meant to provide protections to workers. Second, we examine how some of these protections may be undermined by four factors: migrant worker vulnerability, ambiguous legal language, violations of the law, and gaps in administration and enforcement.

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 SEEK TO DRAW THE READER’S ATTENTION TO THE STRENGTHS AND POTENTIAL WEAKNESSES OF EXISTING LEGISLATION AND REGULATIONS.”



## 2.1. MIGRANT WORKERS IN SINGAPORE

Singapore relies heavily 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.<sup>7</sup> About sixty-nine percent of low-wage manual jobs in Singapore are filled by Work Permit holders, the lowest wage category of work passes.<sup>8</sup> In 2016, foreigners numbered almost 1.4 million or 38 percent of Singapore's total workforce,<sup>9</sup> with 27 percent or almost 993,000 hired on Work Permits.<sup>10</sup> The highest concentration of migrant workers is in construction at approximately 75 percent.<sup>11</sup>

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

### 2.1.1. 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 December 2016, 315,500 migrant workers on Work Permits were employed in the construction industry.<sup>12</sup> Specific numbers for those working in the marine sector are unavailable. Singapore's construction and marine sectors, like other industries, are bound by restrictions which determine the nationalities allowed to work in each particular industry.<sup>13</sup> 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<sup>14</sup> and marine industries.

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<sup>7</sup> George Naufal, and Ismail Genc. "Labor Migration in the GCC Countries: Past, Present and Future." *Singapore Middle East Papers* 9, no 2 (3 June 2014): 1–28. Singapore sits behind the GCC countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) where foreign guest workers constitute about 68 percent of all employment. With a few other exceptions such as Brunei and Macau foreign workers on work visas in other mid-to-high income countries are typically much lower than Singapore. For example: Malaysia 9.5 percent ("Immigration in Malaysia: Assessment of its Economic Effects, and a Review of the Policy and System." World Bank, 2013); Taiwan approximately 6 percent (Ministry of Labor); South Korea approximately 3 percent (J Roh, "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% based on total 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 percent of persons in employment in 2015. The split between intra- and extra-EU migrants was 3.6 percent with citizenship from another EU country, and 3.8 percent from outside the EU. Eurostat, Labour Market and Labour Force Survey (2016).

<sup>8</sup> This percentage is as of June 2016 and is an estimate based on Labour Force Survey tabulations of Residents in manual occupational groups and foreign Work Permit numbers. The percentage is approximate as there may be some foreign workers in the S-Pass category undertaking lower skilled manual occupations, and not all foreign Work Permit holders may be undertaking manual occupations. Also, some Residents included under the "Others" occupation category might not be in manual jobs.

<sup>9</sup> "Annual Employment Change by Industry and Residential Status." *Administrative Records and Labour Force Survey*, Manpower Research & Statistics Department, MOM. Accessed 17 April 2017. <http://stats.mom.gov.sg/Pages/EmploymentTimeSeries.aspx>

<sup>10</sup> *Ibid*, as of December 2016.

<sup>11</sup> *Ibid*, as of December 2016. These percentages include foreign workers in all categories (Employment Pass, S-Pass, Work Permit, and domestic workers in the services sector).

<sup>12</sup> Sourced from MOM. Accessed 17 April 2017. <http://www.mom.gov.sg/documents-and-publications/foreign-workforce-numbers>.

<sup>13</sup> See the sector-specific requirements on MOM's website: "Sector-Specific Rules for Work Permit." Ministry of Manpower, Singapore. Accessed 12 April 2017. <http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/sector-specific-rules>.

<sup>14</sup> Maria Platt et al., "Debt, Precarity and Gender: Male and Female Temporary Labour Migrants in Singapore." *Journal of Ethnic and Migration Studies* 43, no 1 (29 August 2016): 119–36.

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\$3,600 a month),<sup>15</sup> the S-Pass (for mid-skilled technical staff who earn at least S\$2,200 a month),<sup>16</sup> and the Work Permit (for those primarily engaged in manual labour and domestic work).<sup>17</sup> There is no minimum salary for Work Permit holders. Work Permits may be renewed every one or two years. The migrant workers who are the focus of this study earn between approximately S\$350 and S\$1,500 per month, with South Asian workers generally earning significantly lower salaries (in the S\$350–S\$800 range) than their Chinese counterparts.<sup>18</sup>

Singapore utilises the sponsorship employment system, also known as the *kafala* system, which makes a migrant worker's employment in Singapore contingent on sponsorship by a prospective employer. While sponsorship systems are present in many countries, including Jordan, Saudi Arabia, Bahrain, Qatar and the United Arab Emirates, their use has been criticised because this contingency increases the bargaining power of employers vis-à-vis workers, and workers generally do not have the right to change jobs or employers without the sponsor's consent.<sup>19</sup> 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 pass system imposes specific regulations and restrictions on Work Permit holders that are not imposed on workers or employers of other (higher paid) work pass categories. Work Permit holders, for example, are not entitled to bring their families to Singapore, and face restrictions on marriage to Singaporeans.<sup>20</sup> 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.<sup>21</sup> This security bond is usually provided in the form of a banker's or insurance guarantee,<sup>22</sup> rather than a full payment of S\$5,000. However, the possibility of losing the S\$5,000 amplifies employers' anxieties around workers' movements and leads to practices such as the withholding of migrant workers' passports.<sup>23</sup>

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.<sup>24</sup> Migrant workers have claimed that their employers recover these costs through deductions from their salaries and through kickbacks,<sup>25</sup> although these are prohibited by law.<sup>26</sup>

<sup>15</sup> "Employment Pass." *Ministry of Manpower, Singapore—Work Passes and Permits*. Accessed 23 February 2016. <http://www.mom.gov.sg/passes-and-permits/employment-pass>.

<sup>16</sup> "S Pass." *Ministry of Manpower, Singapore—Work Passes and Permits*. Accessed 23 February 2016. <http://www.mom.gov.sg/passes-and-permits/s-pass>.

<sup>17</sup> "Annex C—Glossary of Terms." *Ministry of Manpower, Singapore—Press Releases*. Accessed 12 October 2016. <https://tinyurl.com/MOMAnnexC>. The Work Permit is generally issued to foreign basic-skilled workers with a monthly fixed salary not exceeding S\$2,000.

<sup>18</sup> Chia Yan Min and Melody Zaccheus. "Hard Life, But Foreign Workers Labour On." *Straits Times*, 10 December 2012. See Humanitarian Organisation for Migration Economics. "Wage Theft and Exploitation Among Singapore's Migrant Workers." *Humanitarian Organisation for Migration Economics*, January 2017. Accessed 10 February 2017. <https://tinyurl.com/HOMEwagetheft>.

<sup>19</sup> Elizabeth Frantz. "Jordan's Unfree Workforce: State-Sponsored Bonded Labour in the Arab Region." *The Journal of Development Studies* 49, no 8 (2013): 1072–87.

<sup>20</sup> Yap Mui Teng, *Singapore's System for Managing Foreign Manpower*. Edited by Richard H. Adams, Junior and Ahmad Ahsan. Managing International Migration for Development in East Asia. Washington, DC: World Bank Group, 2014.

<sup>21</sup> "Security Bond Requirements for Foreign Workers." *Ministry of Manpower, Singapore—Sector Specific Rules*. Accessed 20 February 2017. <https://tinyurl.com/securitybond>.

<sup>22</sup> Ibid.

<sup>23</sup> Leong Wai Kit. "Little India Riot: COI Focuses on Labour Practices Faced by Foreign Workers." *Channel NewsAsia*. Accessed 7 March 2014.

<sup>24</sup> "Schedule of Foreign Worker Levy Changes." *Ministry of Manpower, Singapore*. Accessed 26 February 2017. <https://tinyurl.com/MOMfwlevy>.

<sup>25</sup> Charanpal Singh Bal. *Production Politics and Migrant Labour Regimes: Guest Workers in Asia and the Gulf*. *Critical Studies of the Asia-Pacific*. London: Palgrave Macmillan, 2016, 37–38; Transient Workers Count Too. "Worse Off for Working? Kickbacks, Intermediary Fees and Migrant Construction Workers in Singapore." *Transient Workers Count Too*, August 2012. <https://tinyurl.com/TWC2kickbacks>; Yeo Sam Jo. 2015. "Some Who Employ Foreign Workers Still Demand Kickbacks." *The Straits Times*. 13 April 2015.

<sup>26</sup> Employment of Foreign Manpower (Work Passes) Regulations 2012. Fourth Schedule, Part III.

These 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; the security bond requirement, which adds to employer costs and leads to the withholding of passports; and the monthly foreign worker levy, which intensifies the employer's cost pressures and increases his incentive to recover costs from the worker.<sup>27</sup>

### 2.1.2. 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 it is the worker's first job, in which case the fees are higher. Research shows that Bangladeshi workers pay the highest agent fees, reportedly between S\$5,000 and \$15,000,<sup>28</sup> while earning the lowest salaries (S\$350–\$800 a month). A 2014 study reported that Bangladeshi construction workers take an average of 16.5 months to repay their recruitment fees.<sup>29</sup> Other research indicates that, while salaries in the construction and marine sectors are flat or declining, agent fees continue to rise.<sup>30</sup>

The migration industry is as complex as it is profitable, with its growth linked to the formalisation of labour recruitment regimes.<sup>31</sup> In the case of Singapore, policy shifts towards hiring skilled labourers<sup>32</sup> in the construction industry mean new skill requirements and a subsequent expansion in the number of training and testing centres in sending countries.<sup>33</sup> In Bangladesh, the more established training centres work with testing centres, employers, as well as agents to provide a host of services, from

skills training and testing to job placement and travel arrangements.<sup>34</sup> Various intermediaries are involved in linking migrant workers with training centres and agents. At each stage of the process, additional payments are demanded, with little or no documentation detailing what these payments are for.<sup>35</sup> The limited number of exam slots vis-à-vis the large number of migrant workers who pay for and undergo skills training also results in practices such as the auctioning of exam slots, further increasing costs for migrant workers.<sup>36</sup> 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 portion of this fee is remitted to agents or employers in Singapore.<sup>37</sup>

Workers who return to Singapore for a new job are made to pay recruitment fees again. Payment may be made in their home country or Singapore, usually without a receipt or mechanism for reimbursement if workers are terminated prematurely or the Work Permit is not issued. While the Employment Agencies Act is meant to regulate the payment of agent fees and curb profiteering,<sup>38</sup> without receipts migrant workers lack evidence to prove payment. Furthermore, MOM's stance is that "debts paid overseas and the regulation of employment agents in foreign countries are beyond the jurisdiction of the Singapore Government."<sup>39</sup>

<sup>27</sup> See Bal, note 25, at 30–32.

<sup>28</sup> "Average Recruitment Cost Hit \$15,000 in 2015 for First-Time Bangladeshi Construction Workers". 2017. *Transient Workers Count Too*. Accessed 12 April 2017. <http://twc2.org.sg/2017/02/05/average-recruitment-cost-hit-15000-in-2015-for-first-time-bangladeshi-construction-workers/>.

<sup>29</sup> Grace Baey and Brenda Yeoh. "Migration and Precarious Work: Negotiating Debt, Employment, and Livelihood Strategies Amongst Bangladeshi Migrant Men Working in Singapore's Construction Industry" (Working Paper). University of Sussex and Migrating Out of Poverty Research Programme Consortium, 2015.

<sup>30</sup> See Humanitarian Organisation for Migration Economics, note 18.

<sup>31</sup> See note 29, at 19.

<sup>32</sup> Singapore's Building and Construction Authority made the attainment of a Skills Evaluation Certificate mandatory in 2005 for all migrant workers who wish to work in the construction industry. See note 29, at 19.

<sup>33</sup> Transient Workers Count Too. "The Name of the Devil Is Process: How Regulatory Process Creates and Sustains the Disempowerment and Injustices Faced by Migrant Labour." *Transient Workers Count Too*. 12 September 2016. Accessed 12 April 2017. <http://twc2.org.sg/2016/09/12/the-name-of-the-devil-is-process/>.

<sup>34</sup> See note 29, at 19.

<sup>35</sup> See Bal, note 25, at 63–65.

<sup>36</sup> See note 33.

<sup>37</sup> 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 *hundi* system to partners in Singapore, and such transactions are not officially documented. See note 25, at 64.

<sup>38</sup> Employment Agencies Act (Cap 92) s 14(2) read with s 15(1).

<sup>39</sup> "MOM Regulates Local Recruitment Fees; Penalises Errant Agencies." *Ministry of Manpower, Singapore*. Accessed 12 April 2017. <https://tinyurl.com/MOMerrantagencies>.

## 2.2. 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, as well as the salary and injury dispute resolution system. The MOM oversees an integrated set of functions—regulatory, educational, investigatory, mediational, and quasi-judicial—which together provide avenues for reducing the number of injury and salary disputes, and for resolving such disputes.

For the period of our research MOM had responsibility for the functions set forth above for both salary and injury claims. In April 2017, the salary dispute mediation process was transferred from MOM to the Tripartite Alliance for Dispute Management (TADM) and adjudication was transferred to the State Courts.

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, ambiguous legal language, violations of the law, and gaps in administration and enforcement.



## EMPLOYMENT ACT (EA) Primary statute governing employer-employee relations in Singapore

LEGISLATIVE INTENT	<ul style="list-style-type: none"> <li>• Safeguard employment rights, with particular protections for vulnerable workers</li> <li>• Regulate employment relations and rights and obligations of employees and employers</li> <li>• Provide effective employment dispute resolution mechanisms</li> </ul>												
WHO IT COVERS	<ul style="list-style-type: none"> <li>• Employees of all nationalities, excluding: <ul style="list-style-type: none"> <li>o Employees in managerial or executive positions earning more than S\$4,500 a month</li> <li>o Foreign domestic workers and seamen</li> </ul> </li> </ul>												
RELEVANT SECTIONS	<table> <tr> <td>s 8</td><td>Requires employment contracts to comply with EA</td></tr> <tr> <td>Part III, Part IV</td><td>Regulates payment of salary, overtime, excessive hours</td></tr> <tr> <td>Part III</td><td>Regulates salary deductions</td></tr> <tr> <td>s 34</td><td>Specifies penalties for salary violations</td></tr> <tr> <td>s 95</td><td>Requires employers to provide key employment terms and pay slips</td></tr> <tr> <td>s 95A</td><td>Defines employer obligations regarding employee records</td></tr> </table>	s 8	Requires employment contracts to comply with EA	Part III, Part IV	Regulates payment of salary, overtime, excessive hours	Part III	Regulates salary deductions	s 34	Specifies penalties for salary violations	s 95	Requires employers to provide key employment terms and pay slips	s 95A	Defines employer obligations regarding employee records
s 8	Requires employment contracts to comply with EA												
Part III, Part IV	Regulates payment of salary, overtime, excessive hours												
Part III	Regulates salary deductions												
s 34	Specifies penalties for salary violations												
s 95	Requires employers to provide key employment terms and pay slips												
s 95A	Defines employer obligations regarding employee records												

## EMPLOYMENT OF FOREIGN MANPOWER ACT (EFMA) Regularises and regulates employment of foreigners

LEGISLATIVE INTENT	<ul style="list-style-type: none"> <li>• Regulate the employment of foreign employees and protect their well-being</li> <li>• Set forth conditions required for the employment of foreign workers</li> </ul>												
WHO IT COVERS	<ul style="list-style-type: none"> <li>• All work pass holders, including Work Permit holders</li> </ul>												
RELEVANT SECTIONS	<table> <tr> <td>EFMA &amp; EFM (Work Passes) Regulations (WPR)</td><td>Regulates IPAs and Work Permits and stipulates employer responsibilities</td></tr> <tr> <td>s 11 EFMA, para 12 WPR</td><td>Specifies levies and security bond</td></tr> <tr> <td>paras 1, 4 WPR First Schedule Part III</td><td>Requires employer to bear costs of upkeep and maintenance, including provision of adequate food and medical treatment, and acceptable accommodation, for each foreign employee</td></tr> <tr> <td>para 6A WPR Fourth Schedule Part IV</td><td>Requires employer to 1) obtain the worker's prior written approval and 2) notify MOM in writing before making reductions to the worker's employment terms</td></tr> <tr> <td>para 4 WPR Fourth Schedule Part III</td><td>Requires payment of full basic salary regardless of hours worked</td></tr> <tr> <td>para 4 WPR Fourth Schedule Part IV</td><td>Stipulates compulsory medical insurance (non-accident) of a minimum of S\$15,000 per year for each foreign employee</td></tr> </table>	EFMA & EFM (Work Passes) Regulations (WPR)	Regulates IPAs and Work Permits and stipulates employer responsibilities	s 11 EFMA, para 12 WPR	Specifies levies and security bond	paras 1, 4 WPR First Schedule Part III	Requires employer to bear costs of upkeep and maintenance, including provision of adequate food and medical treatment, and acceptable accommodation, for each foreign employee	para 6A WPR Fourth Schedule Part IV	Requires employer to 1) obtain the worker's prior written approval and 2) notify MOM in writing before making reductions to the worker's employment terms	para 4 WPR Fourth Schedule Part III	Requires payment of full basic salary regardless of hours worked	para 4 WPR Fourth Schedule Part IV	Stipulates compulsory medical insurance (non-accident) of a minimum of S\$15,000 per year for each foreign employee
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para 4 WPR Fourth Schedule Part IV	Stipulates compulsory medical insurance (non-accident) of a minimum of S\$15,000 per year for each foreign employee												

## WORK INJURY COMPENSATION ACT (WICA) A no-fault work injury compensation system

LEGISLATIVE INTENT	<ul style="list-style-type: none"> <li>• Simplify and expedite work injury compensation</li> <li>• Provide fast, low-cost alternative to court system</li> <li>• Establish no-fault system for work-related injuries with compensation payable up to specified limits</li> <li>• Function as social legislation to compensate injured employees</li> </ul>								
WHO IT COVERS	<ul style="list-style-type: none"> <li>• Any employee injured due to an accident or suffering from illness arising out of and in the course of employment</li> <li>• Excludes foreign domestic workers and independent contractors</li> </ul>								
RELEVANT SECTIONS	<table> <tr> <td>s 23 WICA and para 5 Third Schedule</td><td>Stipulates employer liability and compulsory accident-related medical insurance of S\$36,000 for each employee</td></tr> <tr> <td>s 8 WICA and para 4(1) Third Schedule</td><td>Designates compensation for medical leave wages</td></tr> <tr> <td>s 14(2)-(4)</td><td>Designates compensation for medical treatment</td></tr> <tr> <td>s 3(1), s 7 WICA read with Third Schedule</td><td>Requires lump sum compensation for permanent incapacity or death</td></tr> </table>	s 23 WICA and para 5 Third Schedule	Stipulates employer liability and compulsory accident-related medical insurance of S\$36,000 for each employee	s 8 WICA and para 4(1) Third Schedule	Designates compensation for medical leave wages	s 14(2)-(4)	Designates compensation for medical treatment	s 3(1), s 7 WICA read with Third Schedule	Requires lump sum compensation for permanent incapacity or death
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**TABLE 2:** Legal snapshot: Work Permit holders in Singapore

### 2.2.1. 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.<sup>40</sup> The EA serves a dual function: to safeguard employee rights and to regulate employment relations. As a safeguard of employment rights, Part IV of the EA provides particular protection to the most vulnerable workers—those earning less than S\$2,000 per month—including limitations 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.<sup>41</sup> In enacting the EA, Parliament explicitly aimed to eradicate discrimination<sup>42</sup> and curb intra- and inter-industry malpractice and abuse.<sup>43</sup>

Since 1968, the EA (in both its original form as well as through subsequent amendments) 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.<sup>44</sup> The EA governs employment relationships of most categories of workers in Singapore regardless of nationality, including Work Permit holders. (Those excluded from the Employment Act include foreign domestic workers, seafarers, and those in managerial or executive positions with a monthly salary of more than S\$4,500).<sup>45</sup> The EA 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.

#### 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.<sup>46</sup> This means that contracts may not legally include provisions that run counter to EA provisions, such as provisions where employees agree to be underpaid for overtime, or where employees agree to overtime work in excess of 72 hours a month (the maximum hours allowed by law).<sup>47</sup>

#### 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.<sup>48</sup> This means that employees are to be paid at least once a month.<sup>49</sup> Employees are due overtime wages when they work more than eight hours a day or 44 hours in a single week,<sup>50</sup> and the pay rate for overtime shall be no less than 1.5 times an employee's basic hourly rate of pay.<sup>51</sup>

<sup>40</sup> The Employment Act (Cap 91, 2009 Rev Ed).

<sup>41</sup> Benjamin Yim. *Employment Law in Singapore—Cases and Materials*. Edited by Benjamin Yim. (Monograph Series: Singapore: Academy Publishing, 2016).

<sup>42</sup> *Singapore Parliament Reports* (1968), vol 27, issue 9, at 475–476.

<sup>43</sup> Ravi Chandran. *Employment Law in Singapore*. 4th Edition. (Singapore: LexisNexis, 2015), 115.

<sup>44</sup> *Ibid.*, 116.

<sup>45</sup> Employment Act, Part I, s 2.

<sup>46</sup> Employment Act, Part II, s 8.

<sup>47</sup> Employment Act, Part III, s 21, and, Part IV, s 38(5).

<sup>48</sup> Employment Act, Part III, s 20.

<sup>49</sup> *Ibid.*, at ss 20 and 21. Salary is to be paid within seven days of the expiry of the salary period and overtime is to be paid within fourteen days of the expiry of the salary period during which the overtime work was performed.

<sup>50</sup> *Ibid.*, at s 38(4).

<sup>51</sup> *Ibid.* However, overtime pay rate on a rest day can be below 1.5 times the basic pay rate per s 37 (2) and (3).

Every worker is entitled to one rest day per week.<sup>52</sup> MOM employment guidelines state that the maximum interval allowed between two rest days is 12 days.<sup>53</sup> The EA allows a different rate of pay on rest days depending upon whether the employee or the employer requests the extra work.<sup>54</sup> 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.<sup>55</sup> If an *employer requests* the work, the 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.<sup>56</sup> 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.<sup>57</sup>

The EA caps the amount of overtime allowed at 72 hours per month.<sup>58</sup> 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.<sup>59</sup>

While these provisions provide substantial protections to workers, they also contain potential issues 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 is ambiguous and has the potential to permit employers to pressure workers to request work on rest days so that the lower overtime rate applies. It is not clear in the EA how it should be determined or evidenced which party made the request for work.

Second, in addition to this ambiguity, the calculation of rates of pay for overtime work is confusing and recognisably cumbersome. 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.<sup>60</sup> Determining whether the workweek is five days, five and a half 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 both employees and employers.

Third, as there is no minimum wage in Singapore, the limits on overtime hours and provision of rest days are problematic to enforce—employees may choose excessive working hours for financial reasons, while employers may require excessive working hours in order to meet deadlines and to enhance productivity.

### 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 with Section 27(1) of the EA.<sup>61</sup> 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.<sup>62</sup> 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.<sup>63</sup>

<sup>52</sup> *Ibid.* The employer is not allowed to compel his worker to work on a rest day unless the nature of the worker's job involves a succession of shifts.

<sup>53</sup> "Hours of Work, Overtime and Rest Days". *Ministry of Manpower, Singapore*. Accessed 8 November 2016. <http://www.mom.gov.sg/employment-practices/hours-of-work-overtime-and-rest-days>.

<sup>54</sup> Employment Act, s 37 (2) and (3).

<sup>55</sup> *Ibid.*, at s 37(2).

<sup>56</sup> *Ibid.*, at s 37(3).

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*, at s 38(5).

<sup>59</sup> "Apply for Overtime Exemption." *Ministry of Manpower—eServices*. Accessed 26 February 2017. <http://www.mom.gov.sg/eservices/services/apply-for-overtime-exemption>.

<sup>60</sup> "Paying Salary." *Ministry of Manpower – Employment Practices: Salary*. Accessed 13 July 2016. <http://www.mom.gov.sg/employment-practices/salary/paying-salary>.

<sup>61</sup> Employment Act, s 27(1).

<sup>62</sup> See note 41, at 3.

<sup>63</sup> Employment Act, s 30(1).



"EVERY WORKER IS ENTITLED TO ONE REST DAY PER WEEK. MOM EMPLOYMENT GUIDELINES STATE THAT THE MAXIMUM INTERVAL ALLOWED BETWEEN TWO REST DAYS IS 12 DAYS."



As with overtime and working hours, these protections have the potential to be undermined. Like overtime at the request of an employee, allowing deductions based on acceptance by the worker inaccurately implies that the worker has an ability to refuse.<sup>64</sup> Additionally, Work Permit holders who are paid in cash may have no evidence of the amount paid or no documentation of deductions from their salary, whether legal or illegal,<sup>65</sup> 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 service system). Such a system automatically generates an auditable paper trail.<sup>66</sup>

The provision of food and housing by the employer becomes problematic after a worker has made a claim. Employers often provide for meals and housing through salary deductions. 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.<sup>67</sup> This would also encourage the employer to assist with the prompt resolution of the claim. In addition, the relationship between the employer and employee often breaks down when the employee makes a claim, which can lead to threats or other retaliatory action, resulting in employees leaving or being compelled to leave their employer-provided housing.

### **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.<sup>68</sup> This one-year claim limitation is considerably shorter than the six-year limitation period for civil lawsuits founded in contract and tort in Singapore,<sup>69</sup> and for similar laws in comparative jurisdictions.<sup>70</sup>

This limitation period poses a practical issue because bringing a salary claim to MOM is almost certain to result in job loss, and the claim process may take months to a year to resolve and will likely end with repatriation. The spectre of job loss potentially undermines the intention of the statute of limitations, which is to encourage timely reporting of salary issues. Instead, it appears that workers have no incentive to report salary issues early, except in extreme circumstances, such as when the employer completely stops paying salaries, or when another problem, such as a workplace injury, has already terminated the employee's ability to work.

### **Penalties for payment delays, arrears, and unauthorised deductions**

Under the EA, failure to pay salaries within the prescribed periods and making illegal deductions are both punishable offenses.<sup>71</sup> The Employment of Foreign Manpower Act (EFMA) also makes it an offence for the employer to deduct from the employee's salary any costs it is by law liable for.<sup>72</sup> The effectiveness of penalties in motivating employers to comply with the law depends on the extent to which such penalties, when enforced, outweigh the benefits of engaging in the activity

<sup>64</sup> 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'. Aris Chan. "Research Report: Hired on Sufferance: China's Migrant Workers in Singapore." *China Labour Bulletin* (2011): 29. The deduction may be in the amount of S\$50 to S\$100 a month for the ostensible purpose of helping workers 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 Migrant Chinese Construction Workers in Singapore (Research Report)." *Humanitarian Organisation for Migration Economics (HOME)*, (2011): 7–8. [http://web.archive.org/web/20160902064532/http://www.home.org.sg/wp-content/uploads/2015/07/PRC\\_MCW\\_Report\\_final\\_2011.pdf](http://web.archive.org/web/20160902064532/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 power to terminate and repatriate the worker, but may do so without returning the savings money, especially if the amounts are undocumented. "Allowable salary deductions." *Ministry of Manpower*. 2016. <http://www.mom.gov.sg/employment-practices/salary/salary-deductions>.

<sup>65</sup> See Humanitarian Organisation for Migration Economics, note 18.

<sup>66</sup> 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. <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).

<sup>67</sup> See Chapter 4, Recommendation 4.

<sup>68</sup> Employment Act, s 115(2).

<sup>69</sup> Limitation Act (Cap 163, 1996 Rev Ed) s 6.

<sup>70</sup> For example, the Hong Kong Labour Tribunal applies a six-year time limit. "Court Services and Facilities—Labour Tribunal." *The Hong Kong Judiciary*. Accessed 3 January 2017. [http://www.judiciary.gov.hk/en/crt\\_services/pphlt/html/labour.htm](http://www.judiciary.gov.hk/en/crt_services/pphlt/html/labour.htm).

<sup>71</sup> Employment Act, s 34.

<sup>72</sup> Employment of Foreign Manpower Act (Cap 91A, Rev Ed 2009), s 25(4). Examples include deductions for medical insurance, work pass issuance, security bond, training and repatriation.

that breaches the law. Employers could simply come to regard such fines as a cost of doing business and rely on the possibility of not being caught to rationalise their proscribed behaviour.

## **Recent amendments to the Employment Act**

### **Key employment terms (KETs) and pay slips.**

Recognising the difficulties employees encounter in documenting their claims, the EA was recently amended to require that employers provide employees with key terms of employment and pay slips.<sup>73</sup> 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.<sup>74</sup> 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”.<sup>75</sup> This change has the potential to enable workers to monitor the payments 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 and 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.<sup>76</sup> As listed in the regulations, employee records include personal details, first and last dates of employment, public holidays, annual leave 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.<sup>77</sup>

### **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 penalties<sup>78</sup> rather than a criminal offence. The MOM stated its intention to use “soft enforcement” of the new KET requirements and to focus on employer education for the first year of implementation, through March 2017.<sup>79</sup>

These EA amendments can serve to strengthen the paper trail needed to provide evidence to support a claim. However, potential problems remain. Employers can continue to pay their Work Permit holders in cash. In addition, employees have no way to verify the accuracy of the hours worked or pay rate reported by the employer. Issues relating to illegal deductions and the enforceability of the IPA remain unresolved.

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 or evidence 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—by labelling these 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. Due to their unequal bargaining power, workers may not be in a position to make such a request, and without documented proof of payment (or non-payment), workers face difficulties bringing a successful salary claim.

In addition, workers without contracts rely on their IPA for their KETs. The IPA, further discussed in section 2.2.2, lists the employee’s basic salary, deductions, and allowances that the employer provided to MOM when applying for the employee’s Work Permit. MOM does not always consider the IPA as binding evidence of the terms of employment. Yet, in the absence of a contract, it may be the employee’s only record of the employment terms he agrees to before coming to Singapore to work.

Another shortcoming of the new EA amendments regarding KETs is that they 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

<sup>73</sup> Employment Act, s 95A. “Amendments to the Employment Act.” *Ministry of Manpower—Employment Practices: Employment Act*. Accessed 25 October 2016. <http://www.mom.gov.sg/employment-practices/employment-act/amendments-to-the-act>.

<sup>74</sup> Employment (Employment Records, Key Employment Terms and Pay Slips) Regulations 2016, Third Schedule. “Itemised Pay Slips”. *Ministry of Manpower, Singapore*. Accessed 13 April 2017. <http://www.mom.gov.sg/employment-practices/salary/itemised-payslips>.

<sup>75</sup> Employment Act, s 96(3).

<sup>76</sup> *Ibid*, at s 95.

<sup>77</sup> *Ibid*, at ss 95 and 96.

<sup>78</sup> *Ibid*, at ss 126A and 126B.

<sup>79</sup> Joanna Seow. “Itemised Payslips a Must from Today.” *The Straits Times*, 1 April 2016.

in Singapore, this offers the opportunity for that contract to vary the terms set forth in the IPA to the employee's detriment. 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 lose his job.<sup>80</sup>

### 2.2.2. Employment of Foreign Manpower Act

The Employment of Foreign Manpower Act (EFMA) was enacted to “regulate the employment of foreign employees and protect their well-being”.<sup>81</sup> 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.<sup>82</sup> The EFMA covers all work pass holders, including Work Permit holders, and sets forth the employer's obligations and responsibilities.<sup>83</sup> However, it does not provide a direct right of action for workers.<sup>84</sup>

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

#### In-principle approval and Work Permits

To hire a foreign employee, an employer must declare the terms of employment, including basic salary and deductions, on the application for an IPA for a Work Permit holder.<sup>85</sup> 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.

The EFMA work pass regulations set out the conditions to be complied with by employers of foreign workers on Work Permits. Separate compliance conditions apply to the issuance of an IPA for a Work Permit and for the issuance of the Work Permit itself. Emphasis is added below to draw the reader's attention to the relevant language.

**IPA.** Pursuant to the conditions for the issuance of an IPA for a Work Permit, the employer shall, among other things:

- Be responsible for, and bear the costs of, the upkeep and maintenance (including the provision of adequate food and medical treatment) and acceptable accommodation for the foreign employee in Singapore;<sup>86</sup>
- 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’).<sup>87</sup>

**Work Permit.** In addition to the above, and pursuant to the conditions for issuance of a Work Permit, the employer has the following obligations, including to:

- Purchase and maintain medical insurance with coverage of at least S\$15,000 per year for the foreign employee's in-patient care and day surgery;<sup>88</sup>
- Provide safe working conditions and acceptable accommodation; <sup>89</sup>

<sup>80</sup> See Chapter 4, Recommendation 1 regarding the requirement of a Standard Employment Contract signed prior to an employee's arrival in Singapore.

<sup>81</sup> *Singapore Parliamentary Debates, Official Report* (4 Oct 1990) vol 56 at cols 449-459 (Lee Sock Yuan, Minister for Labour).

<sup>82</sup> See note 41, at 113.

<sup>83</sup> Employment of Foreign Manpower Act and the Employment of Foreign Manpower (Work Passes) Regulations 2012, Fourth Schedule, Parts III and IV.

<sup>84</sup> Justice Without Borders and National University of Singapore, *A Practitioner's Manual for Migrant Workers – Singapore: Helping Victims of Exploitation and Human Trafficking Seek Just Compensation*. (Washington, DC: Justice Without Borders, 2014), 24.

<sup>85</sup> Employment of Foreign Manpower (Work Passes) Regulations, 2012, s 7 and <http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/apply-for-work-permit>.

<sup>86</sup> *Ibid*, at First Schedule, Part III, paras 1 and 4. Such accommodation must be consistent with any written law, directive, guideline, circular or other similar instrument issued by any competent authority.

<sup>87</sup> *Ibid*, para 5.

<sup>88</sup> *Ibid*, at Fourth Schedule, Part IV, para 4. 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.

<sup>89</sup> *Ibid*, at Part III, para 2.





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

Industry	CONSTRUCTION	CPF Submission Number	
Worker's name		Basic monthly salary	S\$ 670
Date of Birth		Fixed monthly allowances	S\$ 0
Nationality	BANGLADESHI	Fixed monthly salary	S\$ 670
Passport number		Monthly housing, amenities and services deductions	S\$ 0
Work Permit number		Other monthly deductions	S\$ 0
Date of Application	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	AGENCY PTE. LTD.
		Agency fee to be paid by worker to Singapore Employment Agency (exclude fees for overseas expenses)	S\$ 0

### 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
	/ MALE	BANGLADESHI
PASSPORT NUMBER পাসপোর্ট নম্বর	WORK PERMIT NUMBER / FIN ওয়ার্ক পারমিট নম্বর / FIN	DATE OF APPLICATION আবেদন পত্রের তারিখ
		2016
NAME OF EMPLOYER চাকরীদাতার নাম	INDUSTRY শিল্পক্ষেত্র	OCCUPATION পেশা
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 বিয়োগপত্রের হিসাবের পর মাসিক বেতন
S\$ 120	S\$ 0	S\$ 384
HOUSING PROVIDED থাকার জায়গা দেয়া হয়	SINGAPORE EMPLOYMENT AGENCY (EA) সিংগাপুর এমপ্লয়মেন্ট এজেন্সী	AGENCY FEE TO BE PAID TO SINGAPORE EA (EXCLUDE FEES FOR OVERSEAS EXPENSES) সিংগাপুর এমপ্লয়মেন্ট এজেন্সীতে প্রদত্ত মাসিক ফি (বিদেশী খরচের পরিমাণ বাদ দি)
YES	PTE. LTD.	S\$ 504

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



- Pay the worker his salary for the month no later than seven days after the last day of the salary period (not less than once a month);<sup>90</sup>
- 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 or work injury compensation under the Work Injury Compensation Act;<sup>91</sup>

Employer obligations to provide upkeep (adequate food and medical treatment) and maintenance and acceptable accommodation continue during the claim process.<sup>92</sup>

### **Changes to terms of IPA, contract substitution**

The EFMA is intended 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:

6A (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.<sup>93</sup>

This regulation sets out an important safeguard for workers which disallows reductions to their key terms of employment without their approval and without notice to MOM. However, there appear to be enforcement gaps. Employers may fail to provide notice of changes to MOM or the worker, as evidenced by the many workers who report reductions to their salary after arrival in Singapore. These salary reductions are made despite the protections set forth in 6A.

Moreover, workers report that MOM sometimes upholds these changed employment terms, including reduced salaries, despite the workers' protestations that they have not agreed to the reductions. NPOs report that there is a lack of administrative clarity about when or whether IPA amounts are upheld by MOM, or whether employees will be prevented from claiming the higher IPA salary if they have accepted some months of lower pay.<sup>94</sup> Enforcing IPA salary amounts would protect workers against unilateral changes to their employment terms.

### **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.<sup>95</sup>

### **Request of payment by bank transfer**

The EFMA regulations for Work Permit holders 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".<sup>96</sup>

<sup>90</sup> *Ibid*, at para 3.

<sup>91</sup> *Ibid*, at para 15.

<sup>92</sup> *Ibid*, at para 16.

<sup>93</sup> *Ibid*, at Fourth Schedule, Part IV, para 6A.

<sup>94</sup> 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 to 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 is that EFMA provisions provide terms implied by statute within employment contracts and breach of those terms amounts to breach of contract. See JWB, note 83, at 24. See also Protecting Low-Wage Foreign Workers in Singapore from Bait-and-Switch Contracts, *Strategic Legal Research Series by Justice Without Borders* (2017). Such arguments have not yet been tested in the courts. Perhaps S-Pass regulations, which apply to workers who make more than S\$2,200, provide an example of note: "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 [\$2,200 or above], shall submit a request to the Controller for reassessment of the foreign employee's work pass eligibility, prior to such salary reduction." Employment of Foreign Manpower (Work Passes) Regulations, Fifth Schedule, Part II, para 12. This protects S-Pass holders by ensuring that S-Passes are only granted or reissued with a salary level reviewed and approved by MOM in an amount above S\$2,200 per month. Because there is no minimum salary amount for Work Permit holders, making them more vulnerable than S-Pass holders, stronger enforcement against such reductions is especially important.

<sup>95</sup> Employment of Foreign Manpower (Work Passes) Regulations (2012), Fourth Schedule, Part III, para 4.

<sup>96</sup> *Ibid*, at Fourth Schedule, Part IV, para 5.

Payment by bank transfer would help to create a paper trail to protect workers from wage manipulation, providing evidence that is unavailable when a worker is paid in cash. However, an employee's ability to request payment by electronic transfer cannot be realised if he feels the request will jeopardise his employment. NPOs report that when suggestions to require electronic payment for Work Permit holders have been discussed, MOM cites the cost and inconvenience to employers. However, since 2011, DBS has operated a POSB Account Services Centre for Work Permit holders at the MOM Services Centre.<sup>97</sup> S-Pass employees earning S\$2,200 and above are required to be paid by electronic transfer. More vulnerable Work Permit holders should be afforded this protection as well.

### Levy and security bond

Pursuant to the EFMA, a monthly foreign worker levy is imposed on employers of Work Permit holders in order to discourage over-reliance on foreign employees.<sup>98</sup> However, few Singaporeans seek employment in the lowest-wage construction and marine sector jobs. Additionally, employers of Work Permit holders are required to furnish a S\$5,000 security bond per worker.<sup>99</sup>

### 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,<sup>100</sup> including expenses for in-patient care and day surgery.<sup>101</sup> 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.

### Penalties

Before 2012, all infringements of EFMA provisions were criminal offences. Since the 2012 amendments were made, some infringements are now classified as less severe offences and are instead subject to administrative financial penalties.<sup>102</sup> 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.<sup>103</sup>

Since 2012, fines and/or imprisonment are prescribed for new offences 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 fail to exercise reasonable supervision over the company will be liable for the criminal offence or administrative infringement penalty.<sup>104</sup>

### Case law

Although the work pass regulations are not legislative in nature, they provide guidance on how to determine a breach.<sup>105</sup> 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.

<sup>97</sup> Amelia Tan. "Easier for Companies to Open Bank Accounts for Foreign Workers." *The Straits Times*. 13 October 2014.

<sup>98</sup> Employment of Foreign Manpower Act, s 11(1). See note 43, at 638.

<sup>99</sup> Employment of Foreign Manpower (Work Passes) Regulations, para 12. See also note 21.

<sup>100</sup> "New \$15,000 Minimum for Foreign Worker Medical Insurance." *Ministry of Manpower, Singapore*. Accessed 31 August 2015. <https://tinyurl.com/MOMinsurance>.

<sup>101</sup> Employment of Foreign Manpower (Work Passes) Regulations, Fourth Schedule, Part IV, s 4. In 2007, government subsidies to foreigners were removed and employers were required to buy compulsory medical insurance for their employees.

<sup>102</sup> See note 41, 121.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*, 128.

<sup>105</sup> See note 43, at 636-7.

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).<sup>106</sup>

This demonstrates that the Singapore courts intend to adopt a strict approach towards disciplining employers who breach EFMA provisions against their workers' interests, with jail time a possible punishment for offenders.

### 2.2.3. Work Injury Compensation Act

The third major piece of legislation that provides protection to workers in Singapore is the Work Injury Compensation Act (WICA).<sup>107</sup> Its 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.<sup>108</sup>

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 or death (through insurance), they are not liable to compensate the injured employee for his pain and suffering.<sup>109</sup> 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 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 favour of the employee.<sup>110</sup> This means that if an injury occurs at work, it is presumed to be work-related.<sup>111</sup>

WICA makes the employer liable if the worker sustains personal injury in a work-related accident, or contracts an occupational disease in the course of employment.<sup>112</sup> 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 death.<sup>113</sup> In order to balance these compensation caps, Singapore's courts have held that WICA "should be interpreted purposively in favour of employees who have suffered injury during their employment".<sup>114</sup> A health incident that occurs during working hours is considered a workplace injury, even when the employee is not working.<sup>115</sup>

With respect to medical expenses, WICA requires employers to pay, and be insured for, up to S\$36,000 of expenses.<sup>116</sup> Employees may bring proceedings to enforce a claim against

<sup>106</sup> *Lee Chiang Theng v Public Prosecutor* [2011] SGHC 252, at [33]. Emphasis in the original.

<sup>107</sup> Work Injury Compensation Act (WICA) (Cap 354, 2009 Rev Ed).

<sup>108</sup> See note 43, 478. The basic aim of the WICA is, in effect, "to provide for prompt payment of compensation to an injured employee or his dependants without requiring the employee or his dependants to sue the employer in common law which may turn out to be a lengthy, costly and uncertain endeavour".

<sup>109</sup> Thomas A. Robinson. "The Role of Presumptions within the Workers' Compensation Arena." *LexisNexis Legal Newsroom—Workers Compensation Law*, 21 January 2014. <https://tinyurl.com/robinsonworkcomp>.

<sup>110</sup> *Ibid.*

<sup>111</sup> This includes injuries that occur on the way to and from work, if in employer-provided transport.

<sup>112</sup> WICA, ss 3 and 4, read with the Second Schedule.

<sup>113</sup> *Ibid.*, s 7, read with the Third Schedule.

<sup>114</sup> *Pang Chew Kim v Wartsila Singapore Pte Ltd* [2012] 1 SLR 15 at [27].

<sup>115</sup> In *Allianz Insurance Co (Singapore) Pte Ltd v Ma Shoudong* [2011] 3 SLR 1167 at [16], the High Court held that the cardiac arrest of a deceased employee arose "in the course of employment" as the incident 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* [2012] at [36], the court held the deceased employee was in the "course of employment" at the material time because he had suffered the cardiac arrest on a working trip, even though there was no actual work being done at the time.

<sup>116</sup> WICA, s 23.

the insurer as if he were the employer.<sup>117</sup> 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”.<sup>118</sup> MOM states that this limit is adequate as it “will fully cover more than 95 percent of claims where hospitalisation is required”.<sup>119</sup>

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 injury claims and rebut the presumption that it was a workplace injury by presenting witnesses. This disadvantages workers by introducing evidentiary burdens. The use of co-workers as witnesses is problematic because their testimony can be coerced by their employer; they comply because they fear job loss. For the same reason, injured workers can rarely find a co-worker willing to testify for them, so it is difficult to refute the testimony of employers’ witnesses. There should be a presumption that an employee who acts as witness to counter a co-worker’s injury claim may be under pressure from his employer.

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. Injuries requiring lengthy hospitalisation or numerous surgeries can result in companies going bankrupt, workers receiving insufficient medical care, or hospitals taking a loss. While the S\$36,000 limit covers the majority of injuries, the current system fails to provide a solution for catastrophic injuries.

## 2.3. THE CLAIMS PROCESS

In this final section we discuss the injury and salary claims system with recommendations to improve the process for migrant workers. Following the review of the three major pieces of legislation protecting and regulating workers, this section gives an overview of the various administrative, mediation, adjudication,

and enforcement steps that a worker and his employer encounter when a salary or injury claim is filed.

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.

### 2.3.1. Process for salary claims

Salary claims can be submitted online by those with a SingPass<sup>120</sup> or through an appointment with an MOM officer.<sup>121</sup> Both present issues for workers, the majority of whom do not have a SingPass and would need to leave work to attend an appointment with MOM, which is only open during weekdays. If MOM accepts the claim, meetings are scheduled with the employer and the worker. Legal representation is not allowed for salary claims, and expeditious settlements are encouraged.

The challenges workers face in establishing and evidencing a salary claim are detailed in Chapter 3.

Figure 5 presents an overview of MOM’s salary claim process in effect during the report research.

Since April 2017 salary claim mediation is conducted by TADM and adjudication has moved to the Employment Claims Tribunal. See section 2.3.4. below.

### 2.3.2. Process for injury claims under WICA

Work Permit holders can claim compensation from their employer under WICA for injuries sustained at work.<sup>122</sup> To succeed in his claim, a worker must establish that his injury arose “out of and in the course of his employment”. 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. Unlike salary claims, legal representation is allowed for workers with injury claims. Figure 6 presents an overview of the MOM work injury claim process.

<sup>117</sup> *Ibid*, s 32.

<sup>118</sup> See note 43, 478.

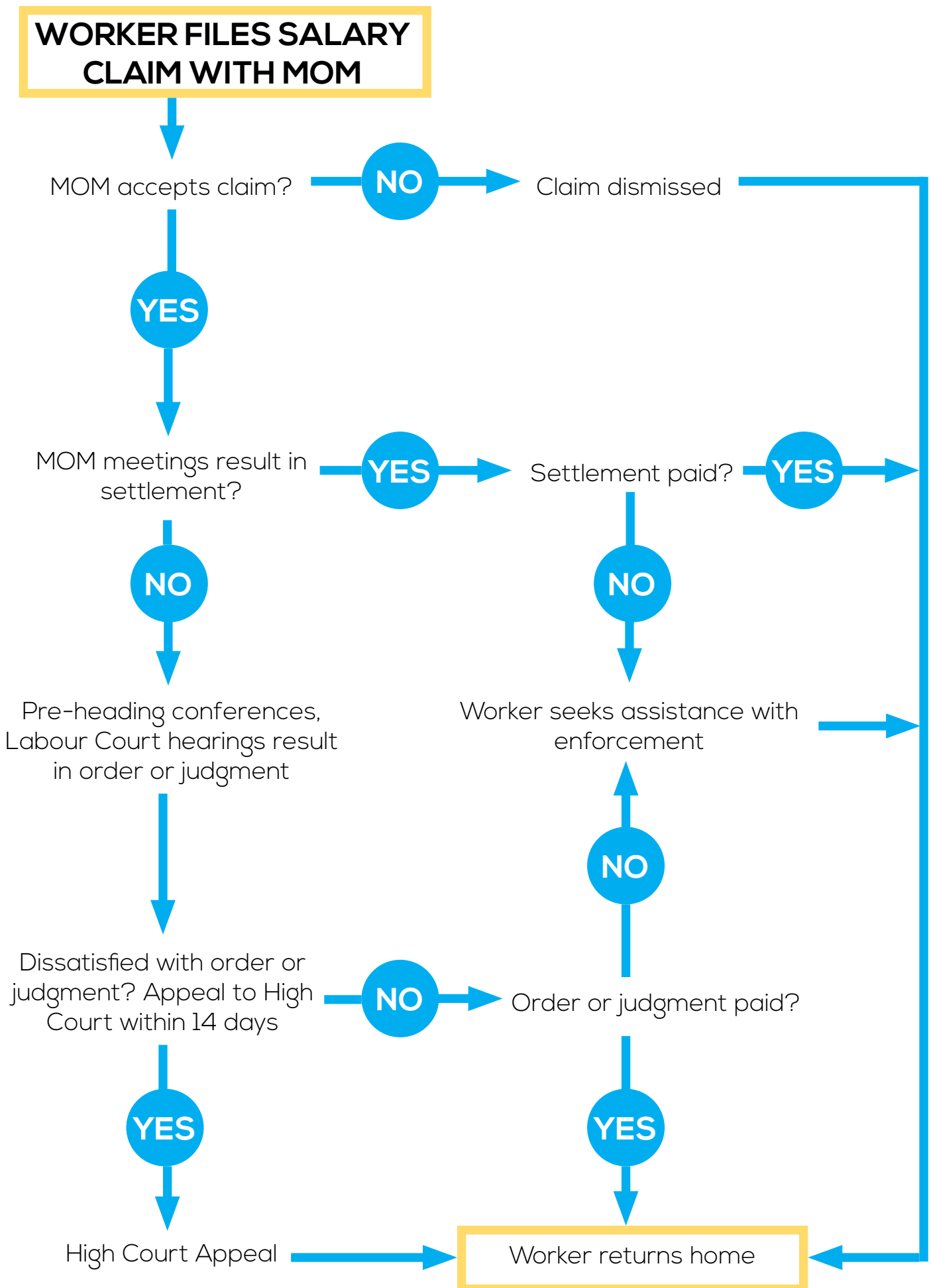
<sup>119</sup> *Singapore Parliamentary Debates*, Official Report (22 January 2008) vol 84, at col 264 (Gan Kim Yong, Minister of State for Manpower).

<sup>120</sup> “SingPass—Frequently Asked Questions.” *Government of Singapore Web Portal*. Accessed 20 February 2017. SingPass refers to Singapore Personal Access, an e-service that links a user to over 60 government agencies in Singapore. Few Work Permit holders have access to SingPass.

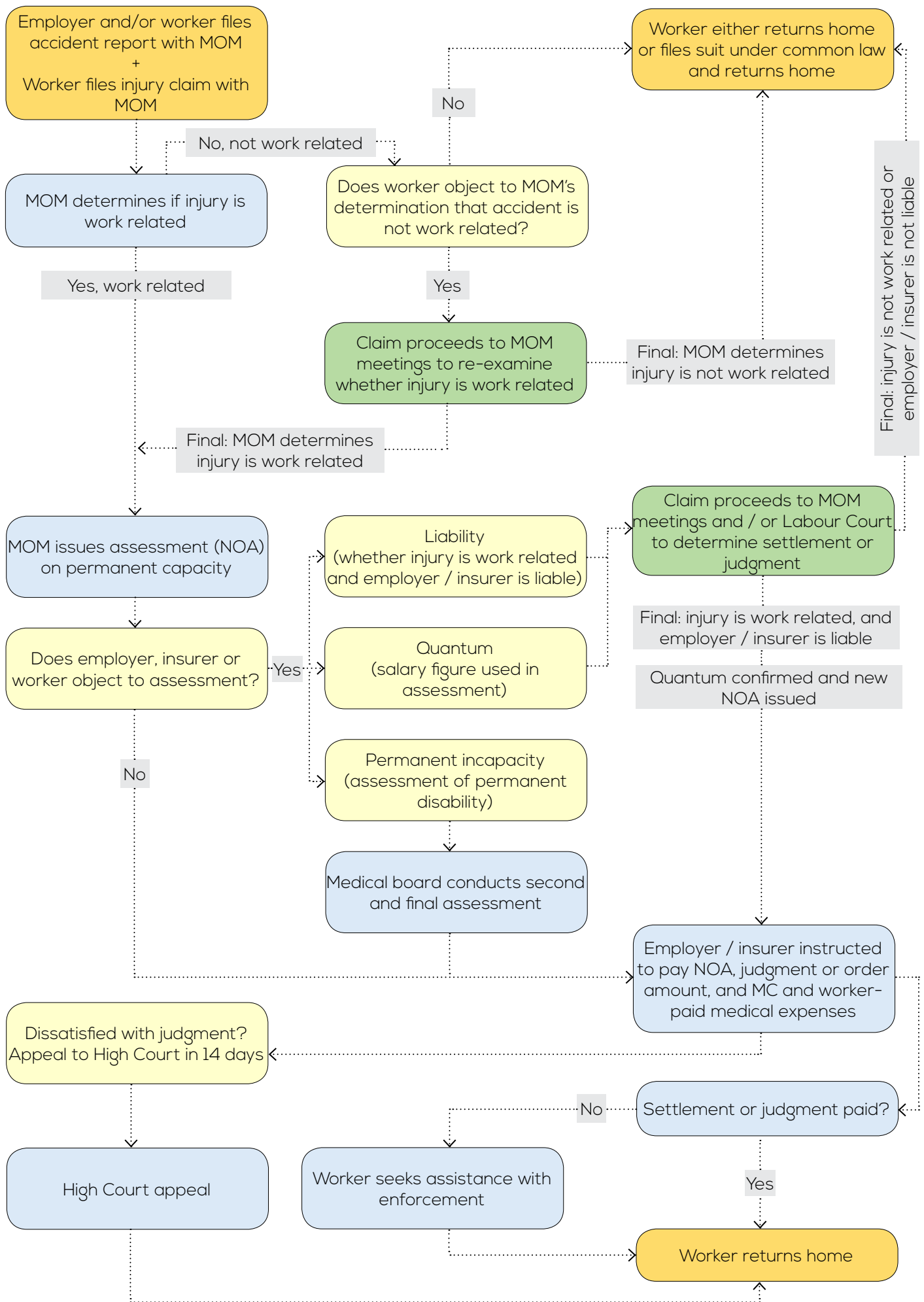
<sup>121</sup> Making an appointment for a meeting at MOM poses difficulties for workers because they would need to take leave from work, as MOM isn’t open evenings or weekends.

<sup>122</sup> WICA, ss 3 and 4. WICA also covers occupational diseases, diseases from exposure to biological or chemical agents contacted at work, and injuries incurred while travelling to or from work in company transport.





**FIGURE 5:** Overview of MOM salary claim process (as of the period of this research)



**FIGURE 6:** Overview of MOM work injury claim 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), and inform the insurer. The employer must file an incident report with MOM within ten days if the worker receives MC for three days or more, is hospitalised for 24 hours or longer, or if an occupational disease has been diagnosed.<sup>123</sup> 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 so.<sup>124</sup> MOM then carries out an investigation into the incident to determine the validity of the claim.

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. The employer is meant to 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 issuance.<sup>125</sup> If no one objects to the NOA, the employer or the employer's insurer is required to pay the NOA compensation amount within 21 days of issuance.

An objection may be made on either quantum or liability. A dispute on quantum is either related to the amount of permanent incapacity assessed or to the average monthly earnings (AME) used to calculate the compensation. If the objection is to liability, meaning a dispute over whether it was a workplace injury, then the case may proceed to MOM's Labour Court. After hearings, which may continue for months, the ACL will issue a judgment or order.<sup>126</sup> If the employer disputes liability, denying that the injury is work-related, then the employer is not responsible for medical leave wages or non-emergency medical treatment until the validity of the claim is established.

While WICA is intended as an efficient administrative process that bypasses the

formality of the courts, and one that is simple enough to be managed without a lawyer, our review of workers' experiences in Chapter 3 suggests considerable obstacles.

### 2.3.3. Labour Court

When a salary or injury claim cannot be settled by mediation, it may then proceed to the adjudication phase of the process. Injury claims proceed to Labour Court and, since April 2017, salary claims adjudication has shifted to the Employment Claims Tribunal (ECT).

Labour Court is an administrative tribunal housed in MOM. Its powers derive from the Employment Act,<sup>127</sup> and it is intended to function as a low-cost dispute resolution alternative to bringing a case through the civil courts. Claimants with injury cases may represent themselves or be represented by a lawyer. Labour Court is presided over by a Commissioner of Labour (COL), an officer appointed by the Minister of Manpower who may delegate duties and powers to an Assistant Commissioner for Labour (ACL). As Labour Court is an administrative body, it is not bound by rules of court, evidence, or procedure, and the ACL has discretion to decide the manner in which proceedings are conducted, including the admission or rejection of evidence and witnesses.<sup>128</sup>

With respect to Labour Court, several issues are important to note. First, unpredictability. The informality of Labour Court—freed from rules of court, evidence, and procedure—creates something of a double-edged sword. While it allows for flexibility, it can also lead to excessive discretion by an ACL. It is unclear what rules apply or whether there is consistency among ACLs. In addition, ACLs are not required to have legal training.<sup>129</sup>

Second, lack of transparency. 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.<sup>130</sup>

Third, workers' unfamiliarity with the Labour Court process. Workers and NPOs report that

<sup>123</sup> Part II of the Work Injury Compensation Regulations; WICA s 11 provides the procedure for making a claim for compensation.

<sup>124</sup> Work Injury Compensation Regulations, Reg 4.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> Employment Act, s 115.

<sup>128</sup> *Ibid.*, s 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." S/he is to "act according to equity, good conscience and the merits of the case without regard to technicalities" Employment Act, s 119(2).

<sup>129</sup> Employment Act, s 3(1).

<sup>130</sup> See notes 64 and 84.

when an injury case proceeds to Labour Court, the employer or insurer is likely to be represented by a lawyer. Workers without representation are disadvantaged. Workers lack the language skills and training to present their claim, collect and organise evidence, and engage in cross-examination. Compounding this, workers report that when their case proceeds to Labour Court, they lose their case officer, leaving them without guidance about how to navigate the process.

### 2.3.4. Employment Claims Tribunal

In April 2017, the ECT replaced the MOM Labour Court for the adjudication phase of salary and contract-related claims. The ECT is governed by the Employment Claims Act (ECA). The ECT falls under the purview of the Singapore courts, rather than MOM, and has jurisdiction over disputes by employees, including Work Permit holders, for claims up to S\$20,000.<sup>131</sup> The definition of employee in the Employment Claims Act (ECA) is broader than in the EA and covers all persons with a “contract of service with an employer”.<sup>132</sup>

For a claim to proceed to the ECT, mediation must first be conducted by the Tripartite Alliance for Dispute Management (TADM) located at MOM.<sup>133</sup> During the public comment period prior to the enactment of the ECA, suggestions were made to move mediation out of MOM and utilise independent mediators certified by a recognised authority such as the Singapore Mediation Centre. At present, it appears that TADM mediators will be MOM or NTUC employees. An additional suggestion was made to lengthen the claim time limit beyond one year to better protect workers; however, the one-year time limitation has been continued in the ECA.<sup>134</sup>

The ECA requires that claimants must act in person and without representation and that ECT hearings are to be held in private.<sup>135</sup> This lack of access to assistance, accompaniment, and representation serves to disadvantage workers who face language and cultural barriers and a lack of familiarity with claims processes. Contrast this with a party that is not an individual, such as a company, which can be represented by an officer or another member of the company. This means that an employer may be represented or accompanied by a company member who has

experience with the claim process, while the employee must represent himself, alone. During the ECA Parliamentary debates, members of Parliament expressed concern that if a worker is unable to express himself or unable to present his case, then the judgment may not be a fair one.<sup>136</sup>

Enforcement of an unpaid order remains problematic. While an ECT order is treated like a court order, this does not translate into an affordable or viable enforcement option. Workers would need to incur additional costs for enforcement, discussed further in section 2.3.5. below, and will be repatriated soon after the ECT process concludes, whether or not the order was paid. In addition, for an appeal of an ECT decision to the High Court, leave (permission) to appeal must first be given by the court.<sup>137</sup>

We note several additional points, with the caveat that the ECT is too new to assess implementation. First, the ECT may be seen as an improvement to the Labour Court system in that it is formally a part of the Singapore courts, and claims must be adjudicated by magistrates who are legally trained.<sup>138</sup> Legal training is not a requirement for ACLs who preside over MOM’s Labour Court.

Second, the ECT is bound to follow the rules of civil procedure, which should remove some of the inconsistencies of the current Labour Court system. However, the ECT is not bound by other procedural statutes, such as the Evidence Act. It has discretion regarding the directions it wishes to issue in respect of the giving of evidence.<sup>139</sup> This may result in a continuation of the evidentiary inconsistencies experienced in Labour Court.

Third, it is not clear how or where claims regarding EFMA protections will be heard. This is noteworthy because EFMA contains employee protections against salary reductions, and includes entitlements to fixed basic monthly salary and maintenance of basic needs, including food, housing, and medical care. It is also not clear how a case which involves both EA and EFMA violations will proceed, and if it would involve two simultaneous cases proceeding through different systems.

<sup>131</sup> Employment Claims Act 2016 (No 21 of 2016), s 12.

<sup>132</sup> *Ibid*, s 2.

<sup>133</sup> *Ibid*, s 3.

<sup>134</sup> The mediation request must be lodged not later than one year after the date the dispute has arisen. *Ibid*, s 3(2).

<sup>135</sup> *Ibid*, s 5.

<sup>136</sup> *Singapore Parliamentary Debates, Employment Claims Bill, Second Reading* (16 August 2016) vol 94.

<sup>137</sup> Employment Claims Act, s 23(2).

<sup>138</sup> *Ibid*, s 9.

<sup>139</sup> Employment Claims Rules 2017, Section 20(1).



Fourth, the ECT, like the Labour Court system, fails to provide workers with adequate assistance and representation to support their claims and ensure access to justice.

### 2.3.5. Enforcement

The final stage of the claims process is enforcement. Employers or insurers are ordered to make payment within 21 days of the final judgment or order. If the employer or insurer fails to pay, the worker's enforcement options are impractical and generally unaffordable. While changes have been made to the system, including penalties for non-compliant employers, challenges remain for the worker. The worker is repatriated soon after the judgment or order is issued, leaving little time to act, and requiring the services of a lawyer or other representative to act in the worker's absence. 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.<sup>140</sup> 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.

#### 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 law firm adds weight to the demand, with the implicit threat of legal action. The LOD, as a mechanism for enforcement, is limited because the 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.

#### Writ of seizure and sale

Under a writ of seizure and sale (WSS), 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 a WSS is approximately S\$1,000, including a S\$60–\$270 filing fee, 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.<sup>141</sup> Seized assets, such as office furniture and equipment, are then generally sold at auction, for which the auctioneer collects a fee. The WSS is a cumbersome mechanism for enforcement because judgment amounts, particularly for salary claims, are too low to outweigh the costs of WSS. The employer's assets can be relocated in advance of a bailiff's action, and those that remain for seizure are often insufficient to provide full recovery of judgment amounts.

#### Garnishee proceedings

Under this process, the worker may recover the amount his employer owes him directly from third parties.<sup>142</sup> Such third parties are described as 'garnishees'. A garnishee order is made against a bank or other deposit-taking institution holding employer assets. The worker would need to know the employer's bank account details or the identity of the employer's debtors, information he is unlikely to obtain. 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 an employer is financially healthy, if the worker has the ability to pay the fees, and if the amount claimed is more than S\$4,000, which is more than many salary claims.

<sup>140</sup> *Singapore Parliamentary Debates, Official Report* (11 May 2015) vol 93. Lim Swee Say, Minister for Manpower stated that of the 1,630 salary cases taken to Labour Court in 2014, one-third of judgments were not fully paid by employers. "...one-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 percent of them were unable to pay due to financial difficulties, and, in some cases [insolvency]. As a result, there was no recourse for the workers and for the Labour Court to recover the payment."

<sup>141</sup> WSS can be issued under O 47 r 1 of the Rules of Court (2014 Rev. Ed.). See <https://www.statecourts.gov.sg/CivilCase/Pages/EnforcementofJudgmentsorOrdersbyWritofSeizureandSale.aspx>. See discussion of WSS in practice at 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), at 10.

<sup>142</sup> Supreme Court of Judicature Act (Cap 322, 2014 Rev Ed) s 80—Rules of Court. O 49, r 1. First Schedule, para 18. O 49 r 1(3) also effectively allows the worker to claim against the employer's accounts.

**Debt collector**

A final option is for workers to engage the services of a debt collection agency, which may charge a fee of up to 40 percent of the total compensation recovered.

**Statutory relief fund**

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

Suggestions regarding a statutory relief fund have been raised in Singapore. In August 2016, the Second Hearing of the Employment Claims Bill discussed a short-term relief fund to be administered by the TADM to help Singaporean employees when their employers are unable to make payment.<sup>143</sup> We suggest extending access to this fund to migrant workers with unpaid judgments. This is discussed further in Chapter 4.

## 2.4. CONCLUSION

This chapter has presented an introduction to migrant workers in Singapore, a review of their legislative and regulatory protections, and a review of the salary and injury claims system. While the purpose of this chapter was to provide an overview, we also presented the ways in which these protections can be undermined. In Chapter 3 we elaborate on this understanding by reviewing primary source evidence collected through interviews with migrant workers and other stakeholders, such as lawyers, medical professionals, and NPO staff and volunteers.

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<sup>143</sup> *Singapore Parliamentary Debates, Employment Claims Bill, Second Reading* (16 August 2016).

The background image shows a modern building with a curved facade and large windows. The letters 'SMU' are prominently displayed on the building's exterior. In the foreground, two workers wearing yellow hard hats and high-visibility vests are performing maintenance. One worker is using a hand brush, and the other is operating a small, motorized steam cleaning machine. A red and white traffic cone is placed on the pavement between them. The scene is set on a paved area with some greenery and a small tree in the background.

# CHAPTER THREE

Key findings from  
interviews



# CHAPTER THREE

## Key findings from interviews

### 3.1. INTRODUCTION

In this chapter, we consolidate our research on the practical functioning of the claims process as experienced by workers and other stakeholders. Chapter 2 reviewed the legislative and regulatory framework and the claims process, as well as potential gaps and issues raised by workers and stakeholders. We now supplement this review with qualitative data, including anonymised interviews with 157 claimant migrant workers, as well as informal discussions 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 for workers can be undermined by four factors: migrant worker vulnerability, ambiguous legal language, violations of the law, and gaps in administration and enforcement.

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 that are illustrative of the larger theme identified and anonymised the speakers. We organise our findings into three sections: context, 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, and highlights are included in the Bibliography. Our study aims to make a unique contribution through analyses of both legislation and the everyday experiences of workers and other stakeholders in the claims system. Our research generally affirms the findings of previous literature on low-wage migrant workers in Singapore, including the types of problems encountered with the claims process and factors that contribute to migrant worker vulnerability.

### LEGAL PROTECTIONS CAN BE UNDERMINED BY:

- MIGRANT WORKER VULNERABILITY
- AMBIGUOUS LEGAL LANGUAGE
- VIOLATIONS OF THE LAW
- GAPS IN ADMINISTRATION AND ENFORCEMENT



## 3.2. THE CONTEXT: MIGRANT WORKER VULNERABILITY

Before discussing migrant worker experiences of the claims process, we provide a brief review of the larger context within which a migrant worker brings a claim. The dominant theme repeated across interviews was migrant worker vulnerability—particularly vulnerability to job loss, repatriation, and the financial hardships associated with making a claim.

### 3.2.1. 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 a Special Pass, and repatriation at the end of (even successful) claims.

When a worker files a salary or injury claim with MOM, his employer usually cancels his Work Permit, which relieves the employer of monthly foreign worker levy payments. Once the claim is filed and the Work Permit is cancelled, MOM issues the worker a Special Pass that allows him to remain in Singapore protected from repatriation while his claim proceeds, but deprives him of the right to work. A worker 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 or the ability to support his family in his home country. Special Pass holders generally are not permitted to resume work when the claim is concluded, no matter the outcome. This means that even at the end of a successful claim, a worker on Special Pass faces almost certain repatriation to his 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 [for a] 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 workers on Special Pass reveal reports of substantial financial hardship, with particularly severe consequences for workers with recruitment fee debt. The quotes below provide examples of workers who struggle to meet their basic living expenses.

[For two and a 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 [medical] 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 [I] have to borrow—so [I] have added pressure of now owing more people money. Especially 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, migrant worker from Bangladesh with a salary claim

Claims can be protracted for many reasons, leaving workers and their families in need of financial support. These workers would benefit from earning an income. Permission to work during the claim process or to change employers in Singapore was only rarely granted during the period of our study. Through Change of Employer (COE), MOM may grant workers permission to search for a new employer in Singapore on a case-by-case basis. However, COE does not guarantee that a worker will be able to locate a new job. Some workers report that they must pay new fees to secure a job through COE. While the ability to work during the claim process would relieve much of the hardship of Special Pass holders, obstacles remain. Unpaid levies can prevent a worker from changing employers, or, as in the case below, the employer prevented a worker from obtaining 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, migrant worker from Bangladesh with a salary claim

### 3.2.2. Repatriation, threats of repatriation, and agent fee debt

A further and related source of vulnerability for migrant workers is the risk and threat of repatriation (being sent back to their home country) before making a claim. Many of our interviewees report receiving threats of repatriation and witnessing or hearing of repatriations of their colleagues. Workers fear repatriation because they may not have repaid their agent fee debt and face poor job opportunities and significantly lower incomes in their home countries.

The following two excerpts capture what workers believe are the motives and mechanisms behind repatriation and the threat of 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, migrant 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, migrant worker from China with an injury claim

Explicit threats, however, were often not necessary for workers who knew of others who were repatriated for attempting to make a claim. They understood their precarious legal and immigration status.

[Mahabur] had [known] another co-worker who had met with an accident. His employer had not given [the co-worker] 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, migrant 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, migrant worker from Bangladesh with a salary claim

These quotes demonstrate the ease with which an employer can repatriate a worker. This puts the worker in a vulnerable position and appears to reduce the likelihood he will bring a claim in a timely manner, if at all.

### 3.3. THE CLAIMS PROCESS

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

#### 3.3.1. Mediation and adjudication process

As discussed in Chapter 2, the injury or salary claims process begins with mediation at MOM or TADM. If the claim cannot be settled, it may proceed to pre-hearing conference and adjudication. We review and discuss major concerns raised by workers and NPOs about the mediation process: pressure to settle, lack of guidance and transparency of decision-making, and consequent confusion and disempowerment of workers.

##### Pressure to settle

The interviews suggest that the current mediation process puts pressure on parties to settle, and this has the potential to disadvantage workers. Workers say they calculate their salary claim amount, but employers offer a settlement far below this amount. In effect, workers are being asked to accept reduced compensation for hours already worked. Workers report feeling pressured to accept the reduced amount, especially as hearings drag on over months and their resources dwindle. In addition, workers may not have the experience or ability to renegotiate the settlement offer upwards.

[Abdul Kalam] discussed the [salary] 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, migrant worker from Bangladesh with a salary claim

When a group of workers have similar claims against their employer, and some individuals opt to settle, others may feel pressured to settle too, despite differences in the settlement amounts offered, or their own beliefs as to the strengths of their 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 the differences.

NPOs point to a case that involved more than 50 employees of Prosper Environmental &

Engineering Pte Ltd. 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.

A week later, additional Prosper 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, 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.<sup>144</sup>

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 where one party is more vulnerable due to a substantial difference in the bargaining power between parties.<sup>145</sup> As noted by M Rajah, traditional mediation models assume that the power between parties must be relatively equal.<sup>146</sup> 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”.<sup>147</sup> Similarly, a failure to acknowledge wrongdoing seems likely to favour the more powerful party—here the employer—as it protects against other workers using the case as precedent in future claims.

### **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 criteria used for previous decisions, 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 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, migrant 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 5pm 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, migrant 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

<sup>144</sup> 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).

<sup>145</sup> 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. See Sonia Shah-Kazemi, “Cross-cultural Mediation: A Critical View of the Dynamics of Culture in Family Disputes.” *International Journal of Law, Policy and the Family* 14, no 3 (2000): 302, 313.

<sup>146</sup> Meera Rajah, “Cooking Curry in a Cultural Melting Pot: An Argument for a Mandatory ‘Community Mediation’ Framework in Singapore.” *Asian Journal on Mediation* (2015): 123.

<sup>147</sup> Gary Chan Kok Yew, “Access to Justice for the Poor: The Singapore Judiciary at Work,” *Pacific Rim Law and Policy Journal* 17, no 3 (2008). Employers may be able to withstand a lengthy mediation process, while workers are disproportionately incentivised to settle because during the mediation process they cannot work and thus are likely to incur costs, adding to their indebtedness.

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 that 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 (NOE) is, in our opinion, prohibitively high when NOE can be 50 pages or more in length.<sup>148</sup>

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 decision 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 Chapter 2, a worker with a salary claim is not allowed legal or other representation 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 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 have historically been unavailable to migrant workers. The problems workers face without dedicated legal or other forms of representation are 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 ... [for claims up to S\$50,000, workers can and 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. 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

### 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, migrant 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

<sup>148</sup> 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. <https://web.archive.org/web/20160731082147/http://www.mom.gov.sg:80/faq/claims-and-complaints/i-want-to-appeal-to-the-high-court-how-do-i-get-documents-of-the-inquiry-proceedings>. 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. Additional copies of the record of proceedings or the Grounds of Decision are 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/Application Form for Court Records - Form 26.docx](http://statecourts.gov.sg/CriminalCase/Documents/Application%20Form%20for%20Court%20Records%20-%20Form%2026.docx).



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, migrant 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 demeanour of MOM staff can vary considerably, and makes a substantial difference to the workers' experience of the claim process.

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, migrant worker from China with an injury claim

In the next 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, migrant worker from Bangladesh with an injury claim

### 3.3.2. Evidence

As discussed in Chapter 2, workers with salary or injury claims face obstacles furnishing the evidence needed to substantiate their claim. In this section, we review two areas of concern raised by workers and NPOs: documentary evidence and witness testimony, particularly the possibility of the coercion of witnesses who work for the employer.

#### Documentary evidence for salary claims

A considerable number of workers reported a lack of access to documentation—including IPAs, contracts, timesheets, and salary slips. We discuss contracts and salary slips in more detail below.

**Contracts.** Many workers report not having employment contracts. A lawyer comments on why this might be so.

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 make sure there is no paper trail, no proof.

—Caleb Tan, lawyer

Many workers 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, migrant 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.

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

The following examples indicate that 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, migrant 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, migrant worker from Bangladesh with an injury claim

The withholding of contracts 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.

**Salary slips and cash payments.** Workers often found obtaining adequate evidence to substantiate their salary claim was frustrated by employers who did not provide timely and truthful itemised salary slips, or who chose to pay workers in cash. There were also reports of cash salary payments that were less than the amount indicated on the salary envelope.

[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 [salary] 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, migrant 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, migrant worker from Bangladesh with injury and salary claims

Again, these interviews indicate that some employers appear to be deliberately preventing the creation of a paper trail, which denies employees access to the documentary evidence they need to bring a salary claim. While the Employment Act amendments regarding pay slips mentioned in Chapter 2 are meant to address this issue, it is still too early to determine their impact.

**Manipulation of documentation.** As illustrated in the following quotes, workers reported a range of employer practices, including forged salary slips and contracts, forced signing of blank documents, and forced signing of documents that were not understood.

The morning I arrived, I was brought to do a medical check-up ... 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, migrant 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 [MOM] officer: Sir, this is not my sign! This one boss is illegal making!”

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

In these quotes, workers accuse their employers of deliberate illegal behaviour. Under duress, workers may comply with these practices as they can’t afford to lose their jobs due to outstanding debt and families at home to support.

Workers report that such manipulation was 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, despite the coercive circumstances, 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 [document] company threatened me to sign.

—Yan Yanjing, migrant 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, migrant worker from Bangladesh with a 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 shown in 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/hour. His basic pay was S\$2.60/hour.

—Field notes from interview with Aynal Haque, migrant 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.*

**FIGURE 7:** Example of Work Permit holder Aynal Haque's employment contract which shows an illegal overtime pay rate of less than 1.5 x the basic rate.<sup>149</sup>

<sup>149</sup> In addition, it states that salary shall be paid within 30 days the following month, while the Employment Act requires that payment be made within seven days after the end of the salary period for basic pay and within 14 days of the salary period for overtime pay.







Note that 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 S\$2.63/hour, but it also specifies an overtime rate of S\$3/hour. This contract clause is illegal under the Employment Act, since overtime is to be paid at 1.5 times the hourly basic pay rate, or S\$3.95/hour in this case.

### **Use of coerced witnesses in absence of contracts.**

Some workers reported that employers use other workers as witnesses in the absence of documentary evidence. Interviewed workers believed that employers instructed, induced or coerced these witnesses to give false testimonies.

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, migrant worker from Bangladesh with a salary claim

Workers without access to their contracts, or workers who have no contracts—the situation for most of our South Asian interviewees—could potentially have their claim undermined by such witness testimony.

Meanwhile, migrant workers who file work injury claims similarly face a range of obstacles in accessing the documentary evidence required to validate their claims.

### **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. In addition, the challenges faced by workers with salary claims are also faced by workers with injury claims because they need to prove their salary in order to calculate their injury compensation amount.

**Withholding of medical documentation.** Workers report that their employers or supervisors keep medical documentation and that it can be difficult to get documentation from some doctors, even upon request. Documents include notice of future appointments, days of medical leave, and injury status, all necessary for filing a claim. In the quotes below we can see one example of the problem a worker faced when trying to access medical documents, and another where the worker implies that his employer kept his medical documentation for reasons that are “not good.”

I went back [to the private hospital] in an attempt to get my hospital records. SGH

(Singapore General Hospital) 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 [them] 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, migrant worker from China with an injury claim

Boss is not good ... Boss has kept all my documents and medical reports.  
—Abdur Rahman, migrant worker from Bangladesh with injury and salary claims

The following quote from a Chinese worker demonstrates how the lack of access to such evidence can create a sense of powerlessness, and reduce the likelihood of a worker reporting his claim 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 [he] 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, migrant worker from China with an injury claim

A related issue is that some doctors fail to provide injured workers with adequate medical leave, apparently at the request of employers (see section 3.4.1.). 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 (AME), which is used in computing medical leave wages and the compensation amount. The following workers claimed that their average monthly earnings were not calculated properly due to the 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, migrant 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, migrant worker from Bangladesh with an injury claim

### Witness testimony

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

### Repatriating and intimidating witnesses.

Interviewees report that employers can manipulate the outcome of injury cases by repatriating and intimidating witnesses, as well as by inducing the claimant worker's colleagues to remain silent or falsely testify against him. Workers state that their colleagues comply with such requests out of fear of losing their jobs and being sent home.

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.

—Akhtaruzzman, migrant 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.<sup>150</sup>

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, migrant 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 [to my injury] at all, but I had to prove him wrong.

—Humayun, migrant worker from Bangladesh with injury and salary claims

In the next quotes, the witnesses were not directly threatened, but they understood the vulnerability of their job status, and acted in fear that they would be repatriated 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 afraid he would be sent home. He said that he knows that that has happened to a few others before.

—Khorshed, migrant 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* [slang for dishonest].

—Rahman Chandu, migrant worker from Bangladesh with an injury claim

**Requesting, inducing, or coercing signing of false testimonies.** A number of workers reported being requested, induced, or coerced to sign false testimonies about their injuries. In this quote, the worker reports 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.

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

<sup>150</sup> While MOM ACLs have the power to summon witnesses, one problem workers report is that witnesses may be 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.

In the following 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 [a company] 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”, [Manik] stood firm and left the office.  
—Field notes from interview with Manik, migrant worker from Bangladesh with an injury claim

In these cases, it appears that employers attempt to refute a workplace injury through the use of intimidation and witness testimony. 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 worker 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. Workers report that finding witnesses willing to testify on their behalf is challenging or impossible.

### 3.3.3. Employer retaliation

Many workers report facing employer retaliation during the claims process, including stalling and/or refusing to communicate; blacklisting, dismissal, repatriation or threats thereof; filing retaliatory counter-claims; and forced confinement and/or physical abuse.

#### Stalling and/or refusing to communicate

Workers reported that their employers appear to deliberately stall or refuse to communicate, causing further delays to the claims process. This is particularly detrimental to workers on Special Passes who are prohibited from working. In the first quote, the worker explains 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 five months.

MOM gave me a salary paper to make a claim. But [I] 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 S\$950, but MOM officer no believe.  
—Gao Weijie, migrant 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, migrant worker from Bangladesh with injury and salary claims

#### 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.

[Monir]’s employer wants him to be sent home and to suffer for making his claim. His employer is also threatening to blacklist [him] so that he cannot come back to Singapore to earn money.  
—Field notes from interview with Monir, migrant 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, migrant worker from Bangladesh with a salary claim

#### Dismissing, repatriating, or threats thereof

Dismissals and repatriation, or threats thereof, are other forms of employer retaliation that are widely reported by workers who file or attempt to file a claim. We can see in this first quote that workers may sometimes be able to report their unpaid salary claims to MOM before their employers are able to repatriate them.

When [Joynal Nazrul] went to MOM, he met the officer and complained that they [his employer’s 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, migrant 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 repatriated.

Manager angry [at] 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 [he] 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, migrant worker from Bangladesh with an injury claim

This last quote shows that a worker understood that his colleague was repatriated after an injury despite the employer offering reassurances. 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 [after the accident] 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.  
—Rafiqul, migrant worker from Bangladesh with injury and salary claims

### Threatening to file retaliatory counter-claims

Employers also reportedly threatened to file retaliatory counter-claims against workers. In the following quote, the interviewee who went to 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 [end] of the month. My supervisor threatened to cut my salary because I went to the hospital without informing them. One week later, my company [tried to] force me to go back to Bangladesh and threatened to falsely accuse me of theft.  
—Mafiz Uddin, migrant worker from Bangladesh with an injury claim

### Forced confinement and physical abuse

A small number of workers reported being forcibly confined, physically abused, or threatened with physical abuse by the employer. The next three quotes are by workers who say that they

were forcibly confined. In the latter two quotes, one worker testifies he was hit by ‘gangsters’,<sup>151</sup> while another says he witnessed co-workers being hit by the 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, migrant 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, migrant 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, migrant 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, migrant worker from Bangladesh with injury and salary claims

### 3.3.4. Enforcement

Interviewees indicated that enforcement issues fall into two domains: first, employer-required support during the claim process, and second, enforcement or payment of successful judgments.

#### Enforcement of existing regulations regarding support

Workers report inconsistent experiences when requesting help from MOM to enforce employers’ obligations to provide support during the claims

<sup>151</sup> Workers tend to 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>.



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 subsequent quote, a worker's employer refused to give him money for his upkeep despite MOM's instruction for the employer to make these payments.

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 [company] never answer.

—Kamrul Hossain, migrant 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, migrant worker from China with an injury claim

In the next quote, an NPO volunteer describes how employers sometimes 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

Other workers reported that MOM helped them obtain support from the employer. In the first quote below, the worker obtained medical treatment with MOM's assistance. In the next quote, the worker successfully claimed his expenses from the employer due to MOM's help.

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, migrant 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, migrant worker from Bangladesh with an injury claim

### 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.

**Failure to enforce successful judgments.** If a worker receives a successful judgment or order for compensation, the employer is 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 orders, and as a result, workers fail to receive their due compensation. In the following quotes, workers describe that there were no enforcement measures brought against the employers who failed to pay.

[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, migrant 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, migrant 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 MOM does not have enforcement powers and viable 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, at MOM, or at the airport just before the worker returns home. Payments can be made in cash or by cheque, and both forms of payment are problematic. Cash payments provide no verifiable paper trail, while cheques require deposit into a bank account. Special Pass holders need their passport (which is typically held by their employer) to open a bank account. In addition, the cheque may bounce.

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. Workers paid at the airport are unable to use payment amounts to settle debts in Singapore before they return home. Workers may also find themselves holding cash that is unsafe to carry, but with no opportunity to remit the money at this last-minute juncture. Payment upon departure can also lead to situations where, despite agreeing to a particular amount, employers either refuse to pay, or pay less than the amount promised.

### 3.4. CRITICAL SUPPORT GAPS

In this section, we discuss the critical support gaps that undermine some of the legislative protections for migrant workers. We examine gaps in the provision of basic needs and representation, and the role that NPOs play in helping to fill these gaps.

#### 3.4.1. Gaps in 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 before their cases are resolved. One survey of over 300 Special Pass holders at the TWC2 meal programme found that workers surveyed had been waiting an average of eight and a half months. For some, the injury occurred more than two years ago.<sup>152</sup> In that time, workers can face challenges accessing food, housing, and medical care, even though EFMA regulations stipulate that employers continue to be responsible for the upkeep and maintenance of employees, even when on a Special Pass.

In the following sections we review support gaps for workers who face extended waits for the resolution of their claims. We focus on three basic physical needs—food, housing and medical care—which, in a number of cases, were not met through the appropriate channels.

**Lack of access to food.** Workers report that their employers do not comply with their obligations to provide meals during the claim process. Employers typically deduct a food allowance from workers' salaries, and once employment ends, there is no salary to deduct from. Frugality of employers is often matched with logistical challenges in providing food. Meals are delivered to the worksite rather than the dorm where injured workers may be staying during their recovery period. 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 or 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. 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 every day 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, migrant 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, 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, migrant worker from China with an injury claim

**Lack of access to housing.** Claimant workers report problems with access to accommodation. Some workers reported that they felt compelled to leave employer-provided housing due to fears of repatriation or retaliation.<sup>153</sup> Others reported they were expelled from employer-provided

<sup>152</sup> Nicholas Harrigan and Chiu Yee Koh. Vital yet Vulnerable: Mental and Emotional Health of South Asian Migrant Workers in Singapore. (Singapore: Singapore Management University, *Social Insight Research Series*. Lien Centre for Social Innovation, 2015), 25.

<sup>153</sup> Once a worker is issued a Special Pass, the employer may not repatriate him. However, a worker may not know this initially, and may move out of employer-provided housing fearing repatriation or retaliation by the employer.

accommodation or were relocated to lower quality accommodation.<sup>154</sup> Deducting the cost of housing from the worker's salary is a common practice, and employers are reluctant to have non-working men taking up dormitory space that could be allocated to able-bodied workers. Workers who leave employer-provided housing must find and pay for lodging. In the following quote, the worker was forced out of his dormitory by the employer.

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

—Akhtaruzzman, migrant worker from Bangladesh with an injury claim

In the following quote, the worker's employer told him he could no longer stay in company-provided accommodation, as punishment for engaging a lawyer for his injury claim. Similarly, the subsequent quote describes how a worker was required to live at the construction site while recovering from his injury.

[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, migrant 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, migrant worker from China with an injury claim

**Lack of access to medical care.** Workers with injury claims report that they may not receive the medical care they require. Lack of access to

adequate medical care comes in a number of forms—employers denying or delaying access to clinics or hospitals, employers failing to issue a letter of guarantee (LOG), and doctors at private clinics or hospitals taking instructions from employers about what treatment to deliver.

The problem is further compounded because WICA benefits apply only when the employee's injury has been determined to be a valid workplace injury. Employers have many motivations for disputing workplace injuries, and establishing a workplace injury may take many months. EFMA requires that employers provide medical care for their employees and requires employers to maintain S\$15,000 in non-accident related medical insurance. NPOs and workers report lapses and a lack of enforcement.

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. Also unclear is how and when the S\$15,000 non-workplace accident medical insurance applies.

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 requirement 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—this leads to confusion in application. Employers may refrain from using the S\$36,000 WICA insurance while the claim proceeds but are not required to use the S\$15,000 EFMA insurance in the meantime, creating a gap in medical coverage. This presents problems for workers awaiting determination of their workplace injury validity. In addition, workers report issues with receiving the non-accident-related medical care they need.<sup>155</sup>

**Employers deny or delay access to clinics and hospitals.** Workers report that employers limit their access to medical facilities, such as clinics or hospitals, by delaying or denying transport to medical treatment. The following quotes illustrate how employers restrict workers' access through methods such as threatening job loss, delaying or denying medical treatment, or giving

<sup>154</sup> 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.

<sup>155</sup> See Joanna Chan Shi-En (Dr). "Gap in Health Care Coverage for Foreign Workers." *The Straits Times*. 17 Dec. 2015.

a worker pain killers 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, migrant 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, migrant worker from Bangladesh with an injury claim

[Matin Chowdury's] supervisor told him, "No need go doctor. I give you painkiller." ... 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, migrant worker from Bangladesh with an injury claim

**Employers fail to provide a letter of guarantee (LOG) to pay for medical care.** In order for hospitals to provide services such as consultation or diagnostic tests, employer payment is required. Many workers report that they are unable to obtain medical treatment because the employer refuses to pay or fails to issue a Letter of

Guarantee (LOG), which would guarantee payment at a later date.<sup>156</sup>

[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, migrant 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, migrant worker from Bangladesh with injury and salary claims

**Private medical providers following employers' instructions.** Interviews with workers, medical professionals, NPOs, and a review of recent court cases, media reports,<sup>157</sup> views published within the medical community<sup>158</sup> and government circulars<sup>159</sup> all 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 for injured workers upon instructions from employers, so as to avoid the requirement to report incidents and accidents to the authorities.<sup>160</sup> Employers may influence doctors to issue light duty certificates instead of medical leave, but, in some cases, there is no light duty work available.<sup>161</sup> In addition, some workers

<sup>156</sup> It should be noted that restructured (ie public) hospitals will not turn a patient away with life-threatening injuries. Most restructured hospitals allow for admission without the LOG if the admitting physician deems the admission medically necessary.

<sup>157</sup> Foo Jie Ying. "Foreign Workers Get Shorter MCs Because..." *The New Paper*. 12 May 2016.

<sup>158</sup> Dr Alex Wong. "The Dilemma of Medical Leave." *Singapore Medical Association News, Opinion*. August 2016, 12-13.

<sup>159</sup> 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 MCs 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 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.

<sup>160</sup> Ronald JJ Wong, Christopher Fong, Terence Tim, and Suah Boon Choong. "Why are Migrant Workers Issued Inadequate Medical Leave?" *HealthServe Quarterly Newsletter*, 2Q 2016. 27 June 2016. Accessed 7 November 2016. <http://www.healthserve.org.sg/news/2016/6/27/why-are-migrant-workers-issued-inadequate-medical-leave>.

<sup>161</sup> Light duty work means the worker is not eligible to claim MC wages. See John Gee. "A Win-Win Way to Help Injured Foreign Workers." *The Straits Times*. 4 December 2014.



claim that certain clinics and doctors refuse to allow them access to physical copies of their medical documents.

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

—Arumugam Piramiah, migrant worker from India with an injury claim

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, migrant worker from China 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, migrant worker from China with an injury claim

Workers report that some private clinics or private hospitals appear to take instructions from the employers, rather than exercise their duty to attend to the medical needs of the patient.

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 Alexandra Hospital of his own accord.

—Field notes from interview with Abul Hossain, migrant 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 (SMC *v 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:

1) drilled a ‘K-wire’ into the Patient’s right hand and discharged the Patient on the same day as surgery; 2) 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 3) backdated the Patient’s MC for more than a month, to cover the Patient’s absence at work.

Judge of Appeal Andrew Phang emphasised the importance of perspective, particularly in the need to be aware of vulnerable patients’ position and welfare.<sup>162</sup> In certifying the Patient fit for light duties, Dr Wong had exhibited an “indifference to the welfare of the Patient”.<sup>163</sup> 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”.<sup>164</sup>

In deciding that Dr Wong was guilty of professional misconduct under Section 53(1)(d) of the Medical Registration Act,<sup>165</sup> 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.<sup>166</sup> 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”,<sup>167</sup> the Court of Appeal ordered that Dr Wong face a suspension of six months

<sup>162</sup> SMC *v Wong Him Choon*, [4].

<sup>163</sup> *Ibid*, [105].

<sup>164</sup> *Ibid*.

<sup>165</sup> (Cap. 174, 2014 Rev Ed).

<sup>166</sup> SMC *v Wong Him Choon*, [84].

<sup>167</sup> *Ibid*, [117].

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.

### 3.4.2. Legal 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 workers. This dependence appears to be fostered by some law firms and results in situations where workers sign agreements which run counter to their interests, such as entering into contingency fee arrangements or agreeing to move their claim to civil court unaware of the WICA option.

#### High reliance on lawyers

The WICA process is designed as a no-fault, expeditious system that workers are meant to be able to navigate without legal representation. Both MOM and NPOs publicly advise workers that lawyers are not necessary, and NPOs generally advise workers that they do not need a lawyer for a straightforward WICA claim. Despite this, NPOs report that use of lawyers by claimant workers is widespread.<sup>168</sup>

Workers engage lawyers for understandable reasons. Many feel they need a strong advocate who understands the system and who can stand up for them, especially if the employer doesn't report the injury, denies the injury is work-related, threatens repatriation, or refuses to provide or pay for medical care. These problems, combined with workers' general lack of confidence in their own ability to navigate the claims process, mean that workers feel their interests are best protected by engaging a lawyer.

Here the worker credits his 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 has done a lot for me, if it had not been for him, I'd be in Bangladesh right now.  
—Shahjahan, migrant 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 care and informed the employer to pay for medical treatment.

Lawyer is good. Lawyer told me that SGH (Singapore General Hospital) 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 pays for my treatments.  
—Manmadhan Raja, migrant worker from India with an injury claim

#### Lawyers encourage dependence

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.

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 law firms sometimes foster dependence by providing clients with housing or loans for living expenses during the claim process, which can be used as leverage to dissuade the client from switching or discharging his law firm.<sup>169</sup>

<sup>168</sup> TWC2 established that "[o]ut 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." Transient Workers Count Too. "Widespread but Unnecessary Reliance on Lawyers." *Transient Workers Count Too*. 14 June 2013. Accessed 13 April 2017. <http://twc2.org.sg/2013/07/14/widespread-but-unnecessary-reliance-on-lawyers/>.

<sup>169</sup> Transient Workers Count Too. "Another Source of Trouble for Workers: Their Own Lawyers." *Transient Workers Count Too*. 2 July 2016. Accessed 13 April 2017. <http://twc2.org.sg/2016/07/02/another-source-of-trouble-for-workers-their-own-lawyers/>.

### Contingency fees and common law

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 firms for either WICA or common law claims. This allows the worker to access otherwise unaffordable legal services by paying the lawyer a percentage of a successful settlement. While this is generally a prohibited practice in Singapore,<sup>170</sup> it is reported to occur widely, and can substantially reduce the size of settlement to an injured worker. The quote below shows that a worker has agreed to pay his lawyer a 20 percent fee.

In addition, some NPOs report that law firms encourage workers to pursue a civil law claim rather than utilising WICA. While a civil lawsuit can potentially result in higher compensation—and thus higher fees to the law firm—it requires a higher burden of proof on the part of the injured worker and may take longer. Unlike WICA, the civil law route means that a worker may not remain in Singapore and thus may experience difficulty maintaining contact with the firm, monitoring his case or verifying the final settlement amount.<sup>171</sup>

[Faruq Uddin] has now decided to pursue the claim through common law... 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, migrant 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 highlighted in our recommendations, fewer problems with navigating the process and predictable enforcement of the law would reduce dependency on lawyers and thus worker vulnerability.

### 3.4.3. Support gaps filled by NPOs

To fill the various support gaps earlier identified, many workers on a Special Pass turn to migrant worker NPOs and other charitable organisations

which provide basic needs support, administrative and liaison assistance and, occasionally, rescue operations.

### Food, housing, transport, and medical needs support

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

I have no money for food. Daily, I have breakfast and dinner at Isthana [TWC2's free meal programme]. 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, migrant 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, migrant worker from China with injury and salary claims

NPOs may support workers when their employers fail to provide medical care. NPOs provide free medical clinics<sup>172</sup> and subsidise workers' medical treatment in hospitals as needed.

TWC2 helped me with money for the shoulder surgery.  
—Humayun, migrant worker from Bangladesh with injury and salary claims

Every month, S\$200 TWC2 give for treatment ... Sometimes TWC2 helps me with hospital bills.  
—Raihan, migrant worker from Bangladesh with injury and salary claims

<sup>170</sup> Contingency fee arrangements are prohibited under s 18, Legal Profession (Professional Conduct) Rules 2015. The Court of Three Judges in *Law Society of Singapore v Kurubalan s/o Manickam Rengaraju* [2013] 4 SLR 91 drew an exception to this rule, for cases where the worker would not otherwise be able to afford legal representation. It did not wish to deprive an impecunious party of access to justice he may otherwise not have. In practice, unscrupulous lawyers may take advantage of this exception and take a larger portion of the settlement sum than they otherwise would be entitled to.

<sup>171</sup> Workers report experiencing such difficulties after departing Singapore. Note that failure to keep clients abreast of case developments is contrary to the rules of professional behaviour. The Legal Profession (Professional Conduct) Rules 2015 state that 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).

<sup>172</sup> HealthServe has clinics in Geylang, Jurong, and Mandai that offer subsidised health services to injured migrant workers. TWC2 and HOME also offer medical clinic services.

### Advice and administrative assistance

Many workers rely on NPOs for help with their claims—assistance with salary calculations, collection and collation of evidence, filling out forms, liaison with MOM and others, and guidance on how to conduct themselves during hearings. The quotes below describe workers' experiences with NPO assistance.

[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 [TWC2] 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, migrant 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, migrant worker from China with an injury claim

### Liaising with others

NPOs assist workers through liaising with various institutions and parties—employers, doctors, and hospitals, MOM, ICA, and the police. NPOs also connect migrant workers to pro bono legal services, and pro bono lawyers may rely on NPO assistance throughout the process. NPO volunteers may accompany workers on hospital visits or to meetings or hearings and liaise 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, migrant 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, migrant worker from China with an injury claim

### Rescue

Some NPOs also engage in rescue work, which usually involves interventions to free 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 him. 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 [Abdul Hossain] 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, migrant 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 men 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, migrant worker from India with an injury claim



### 3.5. CONCLUSION

While the trajectory of legal reforms for migrant workers over recent years has been positive, our interviews show substantial room for improvement remains. Despite existing legal protections, and a claims process designed to be low-cost and expedient, significant obstacles and uneven enforcement can prevent migrant workers from obtaining 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 unnecessarily complex or unclear, leading to confusion and disempowerment for the worker.

The mediation process for the settlement of claims, through its focus on compromise, can fail to take into consideration the unequal bargaining power of workers vis-à-vis employers. 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 violations of the law during the claim process. The alleged behaviour includes threats of and actual attempts at blacklisting, dismissal and repatriation, 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 enforcement. Errant employers' failure to pay judgments or 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 migrant workers' hardship. Penalties must be increased and strictly enforced to deter employers from these violations. The lack of viable enforcement options leaves migrant workers vulnerable to being short-changed by their employers.

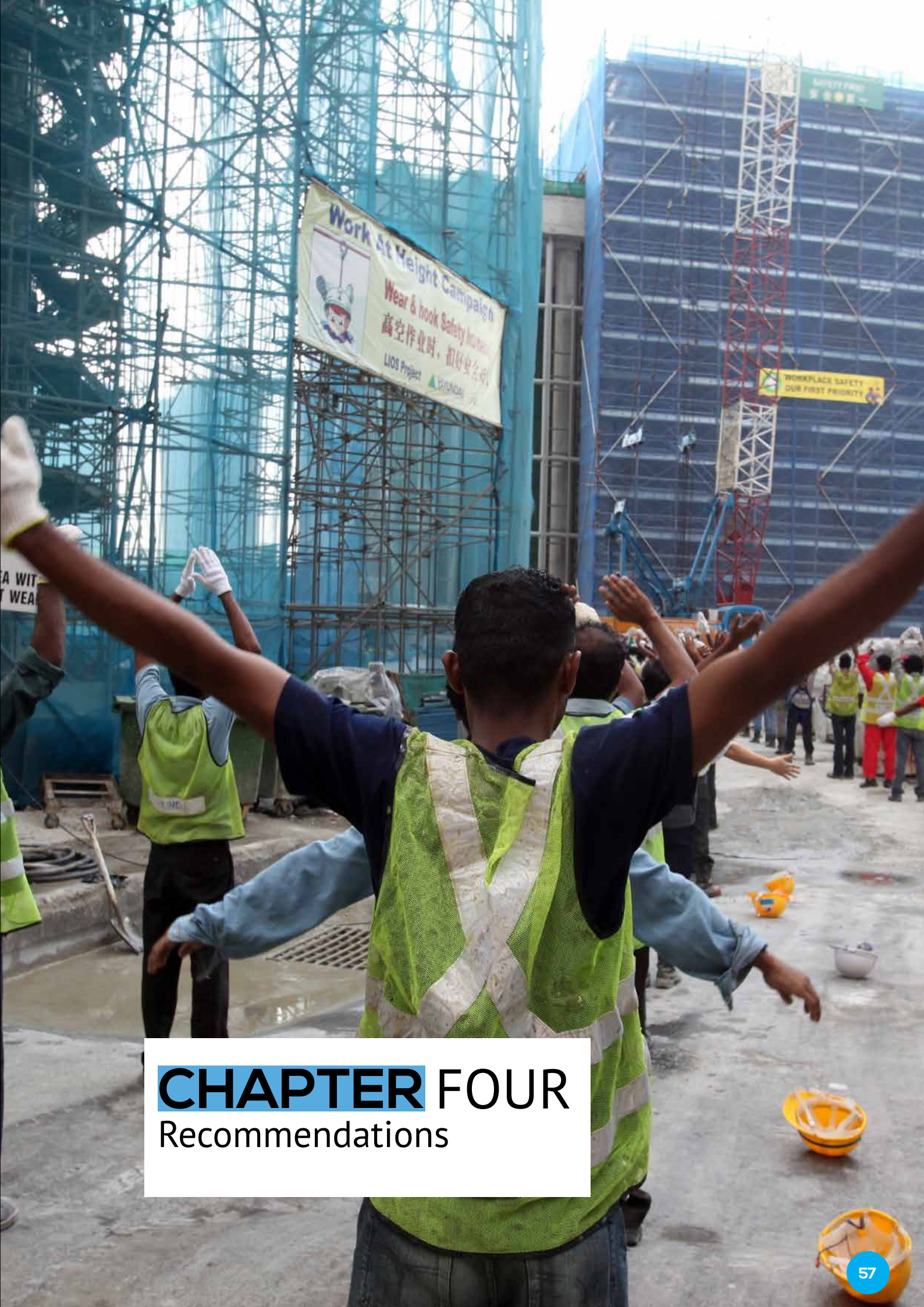
Additional complexities arise from the external interventions of a growing number of practitioners in the claims process. These include legal and medical practitioners, as well as NPO support staff and volunteers. While their involvement can facilitate the claims process and provide vital support for 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 claim process and could be reduced by simplifying the system, enhancing worker access to MOM or other non-legal guidance to better understand and navigate the process, and ensuring that employers comply with their support responsibilities during the claims process.

Finally, while our research shows that the various forms of support provided by NPOs are positively received by migrant workers and serve 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 are needed to tackle the root causes of salary- and injury- related problems encountered by migrant workers. Additionally, more can be done by the authorities to support and liaise with such NPOs.

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







## CHAPTER FOUR

### Recommendations



# RECOMMENDATIONS

In this chapter we present a range of policy recommendations to address the issues identified in Chapters 2 and 3. Our recommendations examine four factors that undermine worker protections found in existing legislation, regulations, and policy, namely: migrant worker vulnerability, ambiguous legal language, violations of the law, and gaps in administration and enforcement.

Our recommendations were developed 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. We reviewed policies and legislation in comparable jurisdictions, including 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 Organisation, and United Nations agencies.



**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 they arrive in Singapore 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 and agreed to in writing by the employee.<sup>173</sup>

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

- Provide assistance packages to employers to aid their compliance, similar to the advisory services and financial assistance<sup>174</sup> provided to employers to aid 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. These options should be accessible and affordable, with waivers for balance minimums and per-transaction costs in recognition of Work Permit holders' low wages and remittance requirements.<sup>175</sup>



<sup>173</sup> See related Recommendation 3 regarding EFMA. The SEC is recommended as an alternative to the IPA, which is not uniformly considered contractually binding by MOM.

<sup>174</sup> "Templates and Resources for KETs and Payslips." *Ministry of Manpower, Singapore*. Accessed 13 April 2017. <http://www.mom.gov.sg/employment-practices/employment-act/employer-assistance-package>.

<sup>175</sup> 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 "For Foreigners: POSB Payroll Account". POSB. Accessed 13 April 2017. <http://www.posb.com.sg/personal/deposits/for-foreigners/posb-payroll-account>; Amelia Tan. "Easier for Companies to Open Bank Accounts for Foreign Workers." *The Straits Times*. 13 October 2014.



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



- For the Employment Act:
  - 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 and clarify the number of days in the work week;
  - 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;<sup>176</sup>
  - Extend the time bar for salary claims from one to three years;<sup>177</sup>
  - Require employers to provide and maintain receipts for payments of salary and deductions, meals, accommodation, amenities, and medical treatment;
  - Require employers to maintain records of any payments workers make to agents or company representatives to obtain their job or renew their contract.
- For the Employment of Foreign Manpower Act:
  - Require that any changes to the IPA or Standard Employment Contract resulting in lower basic salaries or higher deductions be agreed to in writing by the employee and be reviewed and approved by MOM. This review and approval process should involve all parties and take into account the unequal bargaining power of migrant workers who have already committed substantial resources for their job in Singapore.<sup>178</sup> Any move to disadvantage a worker's contract terms should involve a tripartite approach in which migrant workers are able to consult with and rely on union and/or NPO support.
- For WICA:
  - To better reflect legislative intent, clarify and strengthen application of the presumption that an injury is related to work if it occurred at the workplace<sup>179</sup> and reduce the burden of proof on the injured worker;
  - Create a six-month time limit for MOM's initial determination of the validity of the workplace injury;<sup>180</sup>
  - Create an exception to the one-year time bar on medical treatment when employees' medical treatment has been delayed or withheld during the first year.<sup>181</sup>

<sup>176</sup> See discussion in Chapter 2 of ambiguities and complexities of current language.

<sup>177</sup> 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 his employment in order to bring a claim for underpayment. Instead, workers 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.

<sup>178</sup> In addition to diminished bargaining power, migrant workers, unlike Singaporeans, will have incurred significant agent fees for their employment and are not at liberty to change jobs if their terms or conditions of employment deteriorate. While protections against reductions to the salary are set forth in the IPA, migrant workers report that MOM does not uniformly enforce the IPA salary. Reasons given include that the IPA is not a binding contract, or that the worker has agreed to a lower salary by accepting a lower salary for a number of months.

<sup>179</sup> As discussed in Chapter 2, the courts have broadly adopted a 'pro-employee' construction of Sections 3(1) and (6) of WICA. A health incident that occurred during working hours was considered a workplace injury, even though the employee was not working: see *Allianz Insurance Co (Singapore) Pte Ltd v Ma Shoudong* [2011] 3 SLR 1167 and *Pang Chew Kim* [2012] 1 SLR 15. Employers should not be able to overcome this presumption by producing witnesses who say they did not see the injury, where there are reasonable grounds to believe that these employees are under pressure from the 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. See also the discussion of presumption-like doctrines in the US (see note 109).

<sup>180</sup> These time limits serve as guidelines and protect the parties in the system against undue delays and can be waived in extraordinary cases.

<sup>181</sup> Workers report that employers deny or delay treatment perhaps to take advantage of the one year limitation of responsibility for medical expenses under WICA.



#### 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 this information into Bengali, Mandarin, and Tamil and ensure information is accessible to Work Permit holders;
- Enhance scrutiny of the credibility of employer witnesses who testify against co-workers, taking into consideration possible coercion by the employer;
- Ensure officers at MOM and the Tripartite Alliance for Dispute Management with mediation or negotiation responsibilities are accredited by a recognised external organisation such as the Singapore Mediation Centre;
- Allow independent external mediators such as in the Small Claims Tribunal;<sup>182</sup>
- Increase access to the Change of Employer (COE) scheme for claimants, eliminate employer permission requirement for COE, and increase incentives for employers to hire through the COE scheme:
  - 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 filing 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 and increase incentives for employers to accept workers through FCWDS;<sup>183</sup>
- Enhance employer compliance with employee maintenance obligations during the claim process, such as for the provision of meals and accommodation, through the establishment and monitoring by MOM of specific dollar amounts per month;<sup>184</sup>

<sup>182</sup> Independent external mediators are used by the Consumer Association of Singapore and in the Small Claims Tribunal.

<sup>183</sup> 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](http://www.fcwds.com.sg). MOM should ensure that workers on Special Pass are able to access this scheme and the COE without paying agent or employer fees.

<sup>184</sup> 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.

- Create a fund<sup>185</sup> to compensate migrant workers when employers:
  - fail to pay judgments and orders,<sup>186</sup> including extending the Short-Term Relief Fund to migrant workers;<sup>187</sup> or
  - fail to pay for employee meals, accommodation, and medical care during the claim process;
- Create time limits for injury claim decisions:
  - Require that the NOA or initial assessment of liability (the validity of the workplace injury) be determined within six months from the date a claim is lodged;<sup>188</sup>
  - Require that the Average Monthly Earnings be established and agreed upon by all parties prior to issuing the NOA;
  - Require that the NOA includes the insurance company's reference and policy number.

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<sup>185</sup> 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 worker's Work Permit is cut but before the claim is resolved and used to establish such a fund. In Hong Kong, the Protection of Wages on Insolvency Fund provides payment of amounts owed to employees, including migrant workers, if employers wind up their companies. See "Guide to the Protection of Wages on Insolvency Ordinance and Points to Note for Making Application to the Protection of Wages on Insolvency Fund". *Hong Kong Labour Department*. Accessed 13 April 2017. <https://tinyurl.com/HKinsolvencyfund>; Chan, *China Labour Bulletin* (note 64, at 55) also makes this recommendation.

<sup>186</sup> This includes settlement agreements registered with MOM, Labour Court judgments or orders, ECT judgments or orders and WICA orders, among others.

<sup>187</sup> Singapore's new Short-Term Relief Fund aims to provide financial relief to Singaporean low-wage workers with unpaid salaries when employers face financial difficulties, from 1 April 2017. It was created to make up for the limited methods available to enforce ECT Orders (namely, WSS or garnishee proceedings), and is meant as a last resort, ie, in the event that the company has wound up. <http://www.todayonline.com/singapore/new-fund-help-low-wage-workers-salary-woes>

<sup>188</sup> For example, the Singapore courts use time limits to protect all parties against undue delays.



## 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;<sup>189</sup>
- Require healthcare 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;<sup>190</sup>
- If the doctor issues a light duty certificate, the doctor should ensure that light duties are available and appropriate;<sup>191</sup>
- Employ independent safety supervisors on worksites, and strengthen employee representation on workplace safety and health committees;<sup>192</sup>
- Increase unannounced worksite safety audits by MOM, external auditors, and/or inspectors.<sup>193</sup>

<sup>189</sup> 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.

<sup>190</sup> In 2012 the ILO published guidelines for establishing and improving national reporting systems. 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. See ILO. "Improvement of National Reporting, Data Collection and Analysis of Occupational Accidents and Diseases." International Labour Organisation. 2012, 43. Accessed 13 April 2017. <https://tinyurl.com/ILOoccupationalaccidents>.

<sup>191</sup> See discussion in Chapter 3, section 3.4 regarding that doctors may issue light duty certifications when a MC would be more appropriate.

<sup>192</sup> Workplace Safety and Health Act (Chapter 354A) Part VII, Safety and Health Management Arrangements Section 29(2) states: "Every workplace safety and health committee of a workplace shall comprise representatives of employees of the workplace as well as employers."

<sup>193</sup> 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.



**Ensure Work Permit holders have access to the full range of documentation that may be needed to bring a claim.**

- Documents required for salary claims, including IPA, Standard Employment Contract or contract, key employment terms, time cards, pay slips, evidence of hours worked, rate of pay, and payment received;
  - Legislation and guidance protocols should direct an adverse inference if an employer fails to provide these documents;
- Documents required for injury claims include the worksite attendance record, incident report, safety report, MCs, medical records;
  - Legislation and guidance protocols should direct an adverse inference if an employer fails to provide these documents and ensure penalties against employers who fail to report injuries for workers with three or more days MC, 24 hours hospitalisation, 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 expert testimony;<sup>194</sup>
- Medical providers should ensure that patients have access to their medical documents.



<sup>194</sup> The Singapore Medical Council (SMC) should help establish a scheme, similar to the Law Society's pro bono services, to provide affordable access to medical expert testimony. SMC should also ensure that doctors clearly record who gives information about the accident when the patient is first seen.

## Increase transparency and effectiveness of the mediation and adjudication process.



- Publish written Labour Court and Employment Claims Tribunal (ECT) decisions and judgments through the MOM website or in the Singapore law reports in order to create a body of precedents available to all parties;<sup>195</sup>
- Provide all parties to the claim with documents provided by other parties and information from MOM's investigations;
- Allow access to settlement, mediation, Labour Court, Tripartite Alliance for Dispute Management (TADM), 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,<sup>196</sup> ombudsman,<sup>197</sup> NPO representative, social worker or counsellor,<sup>198</sup> student, a friend or family member, or other representative, as determined by MOM or the Employment Claims Tribunal;
- Ensure all ACLs and adjudicators have legal training;<sup>199</sup>
- Consider moving Labour Court from MOM to the Singapore courts system, to enhance procedural safeguards and consistency, similar to the new Employment Claims Tribunal.

<sup>195</sup> See section 3.3.1. While claimants can request Notes of Evidence, they are priced at S\$5 per page, and are only issued if an appeal is lodged.

<sup>196</sup> 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. See Ansley Ng. "Law Undergrads in Court's Pilot Scheme". *TODAY*. 5 January 2007.

<sup>197</sup> An ombudsman 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.

<sup>198</sup> 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.

<sup>199</sup> This is to ensure an understanding of how to weigh evidence and witness testimony.

## Improve access to medical care for Work Permit holders.

- Provide workers with insurance cards in order to directly access medical care, subject to a maximum amount;
- Require employers to pay for medical treatment and procedures that the doctor deems medically necessary for diagnosis or treatment;<sup>200</sup>
- Enhance employer compliance with maintenance obligations, including for employee medical care;
- 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 (for 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 threshold and whose employers are unable to pay;<sup>201</sup>
- Publicise services that NPOs, hospitals, and other community, religious, and charitable organisations provide to migrant workers in need.<sup>202</sup>



## Enhance stakeholder engagement and education.

- Create a central resource centre to provide information to healthcare staff on the injury claim process for migrant workers, including injury and MC reporting guidelines, employer responsibilities for care, and information on medical, legal, and charitable assistance 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 worker issues, employer obligations before and during the claims process, and worker access to medical and legal resources;
- Extend pro bono or legal aid services to migrant workers in need through the Law Society or the Ministry of Law;<sup>203</sup>
- 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 the claims process.<sup>204</sup>



<sup>200</sup> Medical treatment and procedures include surgery, or X-rays, scans or MRIs that are necessary to determine the extent of the injury for diagnosis and serve to guide medical care. Such medical records also serve as evidence of an injury.

<sup>201</sup> This would improve migrant workers access to essential care for serious injuries and ease the hospital's debt and the employer's financial burden.

<sup>202</sup> Require hospitals to provide migrant workers with an information sheet about resources upon discharge.

<sup>203</sup> Civil legal aid (as provided by the Legal Aid Bureau (LAB)) is limited to Singapore citizens and permanent residents, whereas criminal legal aid (as provided by the Criminal Legal Aid Scheme (CLAS)) is open to citizens of all nationalities. The Pro Bono Guide, published by the Law Society of Singapore, at 11, 16-17.

<sup>204</sup> A multi-stakeholder claims process committee could be modelled on the Non-Injury Motor Accident/Personal Injury Motor Accident (NIMA/PIMA) committee that provides recommendations to the courts regarding guidelines and procedures.

## Strengthen enforcement regime.



- Create a dedicated unit and no-cost mechanism to help Work Permit holders enforce judgments;<sup>205</sup>
- For each claim, require employers to deposit a minimum sum or a percentage of the claim amount to MOM or a Public Trustee;<sup>206</sup>
- Require employers to pay judgments and orders directly to MOM or a Public Trustee;<sup>207</sup>
- Extend liability for judgments and orders to company directors in exceptional circumstances;<sup>208</sup>
- Create a system for tracking individuals and companies who:
  - Fail to pay judgments and orders;
  - Have a record of winding up companies and creating 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;<sup>209</sup>

<sup>205</sup> 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).

<sup>206</sup> This amount will be returned in full if the claim is unsuccessful.

<sup>207</sup> 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).

<sup>208</sup> 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.

<sup>209</sup> 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 after the Labour Court order is made. In cases where monies are recovered after the worker is repatriated, MOM would remit the monies to the employee.



- Penalties should be increased and strictly enforced for employers who:
    - Fail to pay judgments and 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.
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## CONCLUSION

These recommendations are 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. They also would improve the efficiency of the claims system for all stakeholders. To bolster these recommendations, we suggest:

- Continued stakeholder consultations with policymakers 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
- Discussions 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 that appear to undermine the protective intentions of existing legislation. The proposed measures—such as the adoption of Standard Employment Contracts, requiring electronic transfer of salaries, removing ambiguous language related to requesting overtime work, clarifying the presumption that an injury is a workplace injury if it occurs at work, and strengthening the enforcement regime—would all bolster existing laws. Improving access to information about the claims system, and increasing the transparency of mediation and adjudication processes would also help to close gaps in the administration of the law. Improving claims reporting processes, 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 employers without the permission of their current employer would address problems of migrant worker vulnerability and ensure access to basic rights. Finally, stronger enforcement of existing laws—particularly with respect to contracts that violate the Employment Act, forgery of salary documents, illegal deductions, and failure of some employers to meet their maintenance obligations or to pay judgments—would help prevent employers from violating the law.

It is our hope that this report will create more opportunities for multi-stakeholder discussions among policymakers, corporate leaders, migrant workers, migrant worker advocates, as well as the wider community, about the best methods to ensure Singapore's employment laws protect the most vulnerable working in Singapore. Through this discussion, we hope to foster a greater understanding of the migrant worker experience 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 the interviewee's nationality, and then uploaded onto a web-based qualitative data analysis software, Dedoose Version 7.1.3.<sup>210</sup>

The analysis was conducted by two lead academic researchers and a team trained in qualitative data analysis. Theoretical and investigator triangulation was employed in the coding process to increase the validity of our findings and reduce investigator bias.<sup>211</sup> 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. 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.

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<sup>210</sup> Dedoose Version 7.1.3. "Web Application for Managing, Analysing, and Presenting Qualitative and Mixed Method Research Data." Los Angeles, CA: SocioCultural Research Consultants, LLC. 2016. ([www.dedoose.com](http://www.dedoose.com))

<sup>211</sup> Norman Denzin. *The Research Act in Sociology: A Theoretical Introduction to Sociological Methods* (London: Butterworths, 1970); Norma Denzin. *Sociological Methods: A Sourcebook* (New York: 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

The following pages present the current draft (in English) of the “Workers’ Guide to Injury and Salary Claims.” The draft will be updated to reflect recent changes in the salary claim process and made available to workers in Bengali, Chinese, and Tamil.

# SALARY AND INJURY CLAIMS

## Guide for Workers

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### GENERAL GUIDANCE

#### Remember:

- You need strong evidence for your claim to be successful
- Your claim may take a year or more to resolve
- Even if your claim is successful, your employer may not pay
- Workers on Special Pass may not work

#### In MOM meetings:

- Ask for an interpreter
- Speak clearly in short sentences
- Answer questions consistently and concisely
- Write detailed notes of each meeting, including MOM’s instructions
- Bring these notes to each subsequent meeting
- If someone asks you to sign a document, make sure you understand the document. You can request time to get advice before you sign

#### Tell MOM if:

- You need housing, food, transport, or medical care
- You have been threatened by someone in your company
- You paid agent fees in Singapore

**Make copies of all documents, store them safely, and give copies to MOM**

## **SALARY CLAIMS**

### **FOR THE LAST 12 MONTHS OF WORK, YOU CAN CLAIM FOR INCOMPLETE PAYMENT OF:**

- Basic monthly salary (even if your employer did not give you full-time work)
- Weekday and Saturday overtime (1.5x)
- Rest day or Sunday and public holiday overtime (2x)

### **OR DEDUCTIONS:**

- In excess of your IPA or contract
- Illegal deductions: Savings or deposit money, renewal fees, medical fees, airfare costs

### **HOW TO MAKE A CLAIM**

#### **You need to prove you didn't receive your full salary:**

- Calculate your salary based on your IPA or contract
- Show that you were not paid this amount based on the documents below
- Tell MOM if you believe your signature was forged

#### **You need these documents:**

- IPA or contract
- Time cards, pay slips, salary envelopes, bank records, or other receipts
- Your own records of the hours or days you worked
- Names and contact numbers of co-workers with similar salary issues

### **DURING MEETINGS**

- You must bring your documents and clearly explain your claim
- You will be encouraged to compromise and settle your claim

## INJURY CLAIMS

### YOU CAN CLAIM FOR

- MC wages (based on your AME) for up to one year from date of accident
- Medical expenses for up to one year
- Compensation for permanent loss of function (your “points”)
- A workplace injury can occur anytime you are on the worksite, on a break, or when travelling in a company vehicle

### HOW TO MAKE A CLAIM: You must prove your injury occurred at work

#### You need documents and evidence:

- Injury report, i-Report, or safety report
- MCs
- Medical bills (paid by you or employer)
- Medical records from all clinics or hospitals you visited
- Time cards or pay slips to show you were working on the date of injury
- Witnesses who saw you get injured at work or saw your injury later
- Photos and videos of your injury

#### MOM will ask:

- Date, time, location and description of injury
- How injury occurred and injured body part(s)
- Who saw the accident and what actions were taken immediately afterwards
- Address of worksite
- Name of company responsible for worksite where the injury occurred
- Name and contact numbers of your boss, supervisor, safety supervisor, witnesses
- How you went to clinic or hospital, and with whom

### DURING MEETINGS

- You must bring your documents
- Clearly explain the facts surrounding your injury
- MOM officers will encourage you to compromise and settle your claim

## **IF MY CLAIM MOVES TO LABOUR COURT**

For advice about taking your claim to Labour Court, consult TWC2, HOME or HealthServe

### **LEGAL REPRESENTATION**

- For salary claims, no lawyers are permitted. The Employment Claims Tribunal has replaced the Labour Court
- For injury claims, lawyers are permitted. If you cannot afford a lawyer, ask TWC2, HOME, HealthServe or the Law Society for help

### **IN PRE-HEARING CONFERENCE OR LABOUR COURT**

- You must present your case clearly and concisely
- You must question and cross-examine witnesses

### **AFTER SETTLEMENT OR ORDER**

- If your claim is successful, the order shows the amount your employer must pay you within 21 days. If your employer doesn't pay, consult a lawyer, TWC2, HOME, or HealthServe immediately
- If your claim is not successful, you can appeal within 14 days of the order. Consult a lawyer, TWC2, HOME, or HealthServe for help. You cannot stay in Singapore during the appeal

### **CONTACT INFORMATION**

- HealthServe: 6743-9774
- HOME: 1-800-7-977-977 (24-hr hotline)
- MOM: 6438-5122
- MWC: 6536-2692 (24-hr hotline)
- TWC2: 6297-7564, 1-800-888-1515 (10 am – 10 pm)

*Printed: May 2017*



#### Appendix 4. Prevalence of injured Work Permit holders experiencing difficulties with the existing claim system

MOM reported 12,729 workplace injuries<sup>212</sup> 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 meals<sup>213</sup> for 1,125 Bangladeshi and Indian workers who had been injured in 2013<sup>214</sup> and were awaiting the outcome of their injury claims.<sup>215</sup> 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 percent of all reported

workplace injuries in Singapore that year. It should be noted that the 8.8 percent 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.<sup>216</sup>

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.<sup>217</sup> This is shown in the following table and reveals that one in five sought support from TWC2.

**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 and number of these workers employed in companies undertaking or contracting to the construction and marine sectors, and in landscaping or cleaning activities. <sup>a</sup>	90.9% 1,023
3. Total reported injuries in marine, construction, architecture and engineering, cleaning and landscaping, and metal manufacturing industries <sup>b</sup> in 2013.	5,089
4. Proportion of injured workers in these sectors supported by TWC2	20.1%

<sup>a</sup> The percentage is based on identifying the industry from company names. This was possible in the majority of cases.

<sup>b</sup> WSH 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).

<sup>212</sup> Total of major and minor injuries and occupational diseases, excluding deaths. WSH Institute "Workplace Safety and Health Report, 2013". Table 1.1.

<sup>213</sup> TWC2 maintains 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.

<sup>214</sup> 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.

<sup>215</sup> 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.

<sup>216</sup> If resident worker injury numbers are taken out of the denominator, then the percentage must rise.

<sup>217</sup> 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 and equipment, and electrical machinery and apparatus.

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 and 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 and engineering, cleaning, landscaping, and metalwork manufacturing industries in 2013

When interpreting this percentage, consideration needs to be given to a number of factors.

First, some workers supported by TWC2 would have had their injury claims ultimately deemed ineligible<sup>218</sup> for various reasons such as being non-workplace injuries or possibly self-inflicted.<sup>219</sup> 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 support<sup>220</sup> to workers of these and other nationalities. For example, Work Permit holders from China are not included, and some would have also experienced difficulties<sup>221</sup> 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.<sup>222</sup>

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 of an enduring problem.

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<sup>218</sup>A 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.

<sup>219</sup> Sometimes workers do this to avoid premature termination, especially when large agent fee debts have been incurred.

<sup>220</sup> For example, HealthServe operates the Geylang Food Project.

<sup>221</sup> Chinese workers represented 30% of those interviewed for this study.

<sup>222</sup> However, Singapore citizens and permanent residents are more able to access support through their families and to use programmes such as the Special Relief Fund.

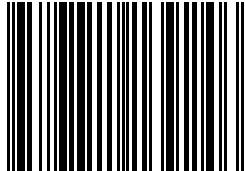






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