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CONTROVERSIAL EMPLOYMENT POLICIES

Introduction

A popular food chain faced public scrutiny after its controversial employment policies gained attention on social media. Among these practices were policies that levied monetary fines on employees for seemingly minor errors, as well as for taking unpaid or medical leave.

Legality of Controversial Employment Policies

The legality of these employment policies is subject to scrutiny, with several policies warranting closer examination.

Deduction of Wages as a Disciplinary Measure

One of the policies permits the imposition of monetary penalties on employees for various infractions, such as frequent restroom breaks, utensil breakage, or accidental food spillage.

As of 2023, the scope of the Employment Act 1955 ("EA") has broadened to include all employees under

a contract of service. Notably, Section **24** of the EA stipulates that deductions from an employee's wages must strictly adhere to the provisions outlined in the EA.

Under the EA, there are only four specific circumstances in which an employer is legally permitted to deduct from an employee's wages:

- (a) deductions to the extent of any overpayment of wages made during the immediately preceding three months from the month in which deductions are to be made, by the employer to the employee by the employer's mistake;
- (b) deductions for the indemnity due to the employer by the employee under subsection 13 (1);
- (c) deductions for the recovery of advances of wages made under Section 22 provided no interest is charged on the advances; and
- (d) deductions authorised by any other written law.

Hence, deducting wages for poor performance in the workplace is not permissible under the EA.

Imposing Penalty for Medical Leave

Another concerning policy involves the imposition of a monetary penalty on employees who take medical leave. It's important to note that medical leave is a statutory entitlement provided to employees under Section **60 F** of the EA. This sick leave entitlement is granted either after examination at the expense of the employer by, **(a)** a registered medical practitioner duly appointed by the employer; or **(b)** by any other registered medical practitioner or by a medical officer.

Imposing Penalty for Unpaid Leave

An alarming policy was the imposition of monetary penalties on employees who took unpaid leave.

Unpaid leave, while not explicitly governed by legislation, typically follows the general principle of “no work, no pay”. In other words, if an employee does not work, they will not receive compensation for that period. However, it’s crucial to note that if an employee’s application for unpaid leave was approved by the employer, the employee should not face any repercussions for taking such leave.

Penalising employees for approved unpaid leave undermines the trust and understanding between the employer and the employee. Moreover, it contradicts the employer’s acknowledgment of the employee’s need for time off and their agreement to the arrangement. Such actions raise ethical and legal concerns regarding fair treatment and contractual obligations. Employers should honour approved leave arrangements and refrain from imposing unjust penalties.

Potential Legal Actions

Human Resources Minister, Steven Sim Chee Keong, highlighted that affected employees have the option to lodge a complaint with the Department of Labour for further action. This recourse is provided under Section 69 of the EA, which empowers the Director-General to investigate and adjudicate disputes between employees and employers regarding wages or any other payments stipulated in the employment contract or under the EA’s provisions or subsidiary legislation.

Interestingly, if the employer is found to have violated the EA, they may be imposed with penalties. The EA prescribes a general penalty, wherein offences not

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specified within the EA carry a fine not exceeding RM50,000.

Ethical Considerations

Employers should carefully consider the financial impact of monetary penalties on employees, particularly those with lower incomes or facing financial hardships, being mindful of the potential burden on their financial stability and overall well-being.

Employers should also carefully assess the potential impact of monetary penalties on employee morale and trust. It's essential to prioritise maintaining positive relationships with employees and refrain from actions that could erode motivation or loyalty.

Conclusion

The controversy surrounding these employment policies emphasises the broader imperative for employers to uphold safe and equitable workplaces. Compliance with employment laws governing wages, statutory entitlements, and working conditions is paramount.

Furthermore, the implementation of fair and transparent performance management systems is essential. These systems should afford employees regular feedback, avenues for improvement, and acknowledgment of their contributions.

In navigating these responsibilities, employers should seek guidance to create policies that prioritise employee welfare while ensuring business sustainability.

If you have any queries, please contact Associate, **Summer Chong Yue Han** (yhc@lh-ag.com), or her team Partner, **Shariffullah Majeed** (sha@lh-ag.com).