

TO ELICIT FAIR CONSIDERATION FOR SINGAPOREAN WORKERS ...

# Go beyond 'nudges' in tackling discrimination

*Go beyond 'nudges'*

EUGENE K B TAN



Workplace discrimination is hard to prove, especially when an employer is determined not to hire on merit and set on preferential hiring for reasons not connected with the job.

Unveiled on Monday, the Fair Consideration Framework (FCF) was described by Acting Manpower Minister Tan Chuan-Jin as a "nudge" to employers to give Singaporean professionals, managers and executives (PMEs) — who constitute about a third of the workforce — a "fair chance" at job and development opportunities.

The Government has generally not been enamoured of legislation to deal with unethical employment practices (be it "hiring-own-kind" or discrimination on the basis of race, gender, age). Enforcement is a perpetual challenge.

Instead, calibrated steps have been preferred. In 2011, the Tripartite

Guidelines on Fair Employment Practices were enhanced to include a section on "Hiring and Developing a Singaporean Core". The FCF, which comes into effect only next August, is another attempt to gently restrain the almost unbridled power of employers to hire at will. Whether the light-touch FCF will be effective remains to be seen.

## S'POREAN CORE AT DISADVANTAGE

Singapore's open economy necessitates a relatively free flow of people, ideas, goods and services and finances. The need to augment the local workforce, quantitatively and qualitatively, has resulted in a fairly liberal policy enabling employers to hire foreign PMEs without quotas or levies. This makes Singapore attractive, business-wise.

It ought to be win-win for all stakeholders: Singaporeans get access to good jobs, employers get the human capital they need. But anecdotal evidence suggests the influx has left citizens disadvantaged or discriminated against.

Some employers prefer to hire foreign PMEs, whether for reasons of national affinity, costs or expediency. Ask a Singaporean PME in the private sector and he/she could probably attest to encountering nationality-based hiring, promotion, retrenchment or dismissal.

The FCF reminds employers that it cannot be business as usual, not when nationality-based hiring has become a visceral political hot potato. There is the reasonable expectation that the Government should protect Singaporean workers from foreign job seekers; workers around the world expect their governments to do the same. Who else, after all, can protect the Singaporean worker?

The FCF has merit and fairness as its cornerstones. But their application has to be contextualised. Just a sliver of the millions of newly-minted graduates and PMEs around the world could overwhelm the Singapore job market. It is within the theoretical realm of possibility that if the thriving economy attracts throngs of qualified



The FCF falls short of requiring employers to demonstrate that there are no suitable Singaporean PMEs for the job advertised. Such a labour market testing requirement, adopted in many other countries, should be seriously considered. Quotas and levies should not be ruled out.

job seekers, many citizens could be displaced.

Notwithstanding the meritocracy principle, there must be adequate protection for citizens, including of the so-called "good jobs" and the opportunity to develop professionally. This is not about preferential treatment, but the need to grow a Singaporean core and sustain the desirability of Singapore as a business hub.

One deep concern has been that the 6.9 million population parameter detailed in the Population White Paper, with the Singaporean core forming only 55 per cent of it, could pose greater problems for local PMEs. Indeed with social mobility moving many more citizens into the PME bracket, the competition for quality jobs would intensify.

## FAIR CONSIDERATION, REALLY?

The FCF rejects an affirmative action approach of "Hire Singaporeans First" or "Hire Singaporeans Only". Fair consideration and opportunity, rather, is its guiding principle. But to what extent will the FCF succeed in effecting this?

The FCF pivots on the requirement for most employers to advertise for at least 14 calendar days their PME job vacancies, which must be open to Singaporeans, through the Workforce Development Agency's jobs bank. Having done that, the prospective employer can submit an Employment Pass (EP) application should it seek to hire a non-citizen PME for the job instead.

The FCF falls short, however, of requiring employers to demonstrate that there are no suitable Singaporean PMEs for the job advertised. Such a labour market testing requirement, adopted in many other countries, should be seriously considered. The use of quotas and levies, as in the case for lowly-skilled workers, should not be ruled out.

It is also possible for an employer to "game" the FCF and indulge in tokenism — in which locals are nominally hired to do the "heavy lifting" so as to get around the tell-tale sign of the firm's disproportionately low concentration of Singaporeans at the PME level.

Yes, the FCF operates on the imperative of cajoling employers to changing their mindsets, and the belief that fair consideration cannot be easily legislated but that patterns of behaviour must be nudged along. The "nudge" is backed up with some teeth: Firms which have room to improve will be scrutinised, and they could have their

EP applications take longer to review or their work pass privileges curtailed.

Still, the Government is unlikely to be unduly interventionist; only the most egregious cases will be sanctioned.

## IT'S A COLLECTIVE FIGHT

The paradox of workplace discrimination is that an employer shortchanges itself by limiting the pool of prospective recruits. It may also lose valuable employees who leave because they are unfairly passed over for promotion and career opportunities. Yet workplace discrimination persists and appears to be a growing problem.

Thus, the FCF nudge must be accompanied by the imperative for employers to critically "think" about their hiring practices. Employers have to be persuaded of their social responsibility to adopt fair and non-discriminatory practices. At the same time, PMEs should be nudged to shift their mindsets to continually develop themselves so they can compete for the good jobs.

Moreover, the FCF will succeed only with a tripartite framing of the issue — workers, employers and Government all helping to implement effective solutions, and impartially considering the interests of all stakeholders (and not driven to compliance merely out of fear of punishment).

Discrimination undermines the meritocratic ethos of our society; we need to rise above the tepid response to the issue. This requires that, individually and collectively, we identify and fight discrimination. Only then can fair consideration and opportunity have true meaning.

● Eugene K B Tan is an Associate Professor at the Singapore Management University School of Law. He is also a Nominated Member of Parliament.