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Comparative
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Practical cross-border insights into employment and labour law

Employment & Labour Law 2023

13th Edition

Contributing Editors:

Stefan Martin & Jo Broadbent
Hogan Lovells

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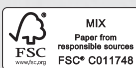

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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The Employment Act 1968 ("**EA**") is the main legislation governing employment in Singapore. The common law may also apply in various situations.

Other sources of employment law include but are not limited to the following:

- Child Development Co-Savings Act 2001 ("**CDCSA**").
- Employment of Foreign Manpower Act 1990.
- Retirement and Re-employment Act 1993 ("**RRA**").
- Work Injury Compensation Act 2019.
- Workplace Safety and Health Act 2006 ("**WSHA**").

Guidelines and advisories on employment-related issues are regularly issued by the tripartite partners of the Tripartite Alliance for Fair and Progressive Employment Practices ("**TAFEP**"), namely the Ministry of Manpower ("**MOM**"), the National Trades Union Congress and the Singapore National Employers Federation. Although these guidelines and advisories are strictly not legally binding, employers who do not abide by them may face scrutiny from the MOM and have their work pass privileges curtailed.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

The EA generally covers all employees but does not cover the following:

- seafarers;
- domestic workers; and
- statutory board employees or civil servants.

Part IV of the EA, which sets out rest days, hours of work and other conditions of service, and only applies to the following categories of employees ("**Part IV Employees**"):

- workmen (doing manual labour) with a basic monthly salary not exceeding S$4,500; and
- employees who are not workmen but are covered by the EA with a basic monthly salary not exceeding S$2,600.

Part IV of the EA does not cover all managers or executives, regardless of their salaries.

Guidelines and advisories issued by TAFEP are generally applicable to all employees and employers.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Employment contracts can be in writing, verbal, expressed or implied. However, the MOM recommends that employment contracts be in writing to minimise disputes on the agreed terms and conditions. In practice, employees are typically employed under written employment contracts.

Further, employers must issue a written record of key employment terms ("**KETs**") to all employees covered under the EA who enter into an employment contract on or after 1 April 2016 and are employed under that contract for 14 days or more.

The KETs include:

- The employer's full name and trade name.
- The employee's full name.
- The job title.
- A description of main duties and responsibilities.
- The first day of employment.
- The duration of employment.
- Working arrangements, such as the daily working hours, number of working days per week and rest days.
- The salary period.
- The basic rate of pay.
- The fixed allowance.
- The fixed deduction.
- The payment period for overtime pay (if different from the salary period).
- The rate of overtime pay.
- Other salary-related components, such as bonuses and incentives.
- Leave entitlement.
- Medical benefits.
- The probation period.
- The notice period for dismissal or termination.

The MOM also strongly encourages that the employee's place of work should be included, especially if this differs from the employer's address.

1.4 Are any terms implied into contracts of employment?

The EA states that every term of an employment contract which is less favourable to an employee than any of the conditions of service prescribed by the EA is illegal, null and void to the extent that it is so less favourable. Thus, the conditions of service prescribed by the EA are implied in an employment contract if the terms in the contract are less favourable to an employee or where the contract is silent on such points.

At common law, there is some judicial recognition by the Singapore High Court that an implied duty of mutual trust and confidence exists. However, it is unclear whether the apex court will endorse the same view. Where applicable, such an implied duty of mutual trust and confidence may include more specific duties such as:

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- a duty not to act in a corrupt manner which would clearly undermine the employee's future job prospects;
- a duty not to unilaterally and unreasonably vary the employment contract's terms;
- a duty to redress complaints of discrimination or provide a grievance procedure;
- a duty not to suspend an employee for disciplinary purposes without proper and reasonable cause;
- a duty to enquire into complaints of sexual harassment;
- a duty to behave with civility and respect;
- a duty not to reprimand without merit in a humiliating circumstance;
- a duty not to behave in an intolerable or wholly unacceptable way; and
- a duty of fidelity, i.e. a duty to act honestly and faithfully.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Yes. Employers of Part IV Employees must abide by the conditions set out in Part IV of the EA relating to the following:

- Minimum number of rest days.
- Maximum hours of work.
- Minimum overtime pay.
- Compulsory retrenchment benefits in certain circumstances for Part IV Employees who have worked for the employer for at least two years.

The EA also prescribes the minimum number of days of paid public holidays, annual leave and sick leave that all employees covered under the EA are entitled to.

Employers shall also refrain from implementing incentive schemes which are tied to statutory sick leave utilisation. From 1 January 2023, employers with incentive schemes that consider statutory sick leave utilisation will face enforcement action. For illustration, the following incentive schemes are disallowed:

- Providing incentives to employees for not taking any statutory paid sick leave for any period of time.
- Offering the encashment of unused statutory paid sick leave.
- Using the number of paid sick leave days taken as "demerit points" during appraisal and promotion.

However, employers may provide incentives for not taking no-pay leave, offer flexible benefits (e.g. covering medical treatment) that are encashed at the end of the year if unused, and/or provide incentives for hitting key performance indicators (e.g. an incentive for handling at least X calls per month, incentive for selling Y quantity of products).

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Over the past 15 years, there have been about 350 to 480 certified collective agreements per year. Either the employer or the trade union can initiate the collective bargaining process by serving a notice to the other party.

Bargaining typically takes place at the company level. That said, in certain industries, such as the banking industry, industry unions conduct negotiations with several major employers while taking into consideration their respective circumstances.

1.7 Can employers require employees to split their working time between home and the workplace on a hybrid basis and if so do they need to change employees' terms and conditions of employment?

Employers may require employees to split their working time between home and the workplace on a hybrid basis. As an employee's working arrangements are a key employment term, employers seeking to implement the same should seek the employee's consent before implementing such arrangements.

1.8 Do employees have a right to work remotely, either from home or elsewhere?

At present, employees do not have a right to work remotely. However, the tripartite partners comprising the MOM, the National Trades Union Congress, and the Singapore National Employers Federation have strongly encouraged employers to continue offering flexible working arrangements ("**FWA**") to employees and to promote FWAs as a permanent feature of the workplace in order to help employees achieve better work-life harmony and promote a more engaged and productive workforce.

The upcoming Tripartite Guidelines which will be introduced by 2024 will make it a requirement for employers to fairly and properly consider FWA requests by employees. In the same vein, employers shall retain the prerogative to assess and decide on FWA requests based on their business and operational needs.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Before a trade union can represent its members in collective bargaining, it must be accorded recognition by the employer.

The rules relating to trade union recognition are stated in the Industrial Relations (Recognition of a Trade Union of Employees) Regulations. A trade union may serve on an employer a claim for recognition.

An employer shall, within seven working days after the service of the claim, either give recognition to the trade union or notify the MOM in writing of its reasons for disputing the claim.

If the MOM has been notified, the MOM may, in its discretion, take a secret ballot in which the employees may vote for the purposes of determining whether the majority of the employees are members of the trade union. If the results of the secret ballot show that the majority of the employees are members of a trade union, the employer must give recognition to that trade union within three working days of receiving the results.

2.2 What rights do trade unions have?

Trade union rights are set out in the Industrial Relations Act 1960. A trade union which has been accorded recognition by an employer may set out proposals for a collective agreement in relation to any industrial matters and invite the employer to negotiate with a view to arriving at a collective agreement.

However, trade unions may not negotiate on the following matters:

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- Promotion.
- Transfer of an employee within the organisation that does not adversely affect the employment terms.
- Employment of any person in the event of a vacancy arising.
- Termination by reason of redundancy or reorganisation.
- Dismissal and reinstatement of an employee in certain circumstances.
- Assignment or allocation of duties consistent with the employment terms.

According to the Trade Unions Act 1940, no legal proceedings may be brought against any registered trade union or any officer or member of such registered trade unions with reference to any act carried out in furtherance of a trade dispute unless and only on the grounds that:

- the act induces some other person to break an employment contract; or
- it interferes with the trade, business or employment of some other person or with the right of another to dispose of his capital or labour as he wills.

Further, a suit against a registered trade union or any of its officers or members with reference to any tortious act by or on behalf of the trade union would not be entertained by any court.

2.3 Are there any rules governing a trade union's right to take industrial action?

The TUA prohibits a registered trade union from commencing, promoting, organising or financing any strike or any form of industrial action affecting its members without obtaining the consent of the majority of the members affected by a secret ballot.

Further, a registered trade union with a majority comprising non-executive employees is not permitted to commence, promote, organise or finance any strike or industrial action in relation to any trade dispute between members who are executive employees represented by the trade union and their employer.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

No, employers are not required to set up works councils in Singapore.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

Please see our response to question 2.4.

2.6 How do the rights of trade unions and works councils interact?

Please see our response to question 2.4.

2.7 Are employees entitled to representation at board level?

There are no express statutory provisions entitling employees to be represented at board level.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Yes. The RRA prohibits employers from dismissing any employee below the age of 63 (or the prescribed minimum retirement age) on the ground of age. The Minister for Manpower can prescribe a minimum retirement age and re-employment age of up to 65 and 70, respectively.

Employers cannot terminate the services of female employees who are absent due to their maternity leave benefits under the EA or the CDCSA. Further, female employees who have served their employer for three months or more and who are dismissed without sufficient cause or on the ground of redundancy or restructuring would be statutorily entitled to all maternity leave payments (but for the termination notice) that they would have been entitled to receive as part of their maternity benefits.

The following general protections against discrimination may also apply in the employment context:

- The Tripartite Guidelines on Fair Employment Practices ("**Fair Employment Guidelines**") stipulate that employers must recruit and select employees on the basis of merit such as skills, experience or ability to perform the job, regardless of age, race, gender, religion, marital status and family responsibilities or disability. The Prime Minister announced in his National Day Rally Speech on 29 August 2021 that the Government intends to enshrine the Fair Employment Guidelines into law.
- Further, according to the Tripartite Guidelines on Wrongful Dismissal, dismissing an employee on the basis of the aforementioned grounds is also considered wrongful.
- There is also some judicial recognition of the implied duty of mutual trust and confidence between employer and employee, which may require the employer to redress complaints of discrimination.

3.2 What types of discrimination are unlawful and in what circumstances?

Please see our response to question 3.1. As an example, using age, gender, race, religion, nationality or marital status as a selection criterion without a valid reason would generally be considered discriminatory.

3.3 Are there any special rules relating to sexual harassment (such as mandatory training requirements)?

Employers are required under the WSHA to take reasonably practicable measures to ensure workplace safety and health. In this regard, the Tripartite Advisory on Managing Workplace Harassment ("**Harassment Advisory**") issued by TAFEP considers that harassment and other psychosocial risks should be included in the overall workplace health and safety risk management of the organisation.

The Harassment Advisory also provides guidance on what employers can do to manage the risk of sexual harassment in the workplace. Employers should abide by the following principles:

- Zero-tolerance.
- Leadership commitment.
- Everyone plays a part.
- Holistic management.
- Early prevention.

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- Confidentiality.
- Neutrality.
- Non-retaliation.
- Accountability.

Employers are also encouraged to develop a harassment prevention policy, provide information and training on workplace harassment, and implement reporting and response procedures.

More generally, victims of sexual harassment may seek protection orders under the Protection from Harassment Act 2014.

3.4 Are there any defences to a discrimination claim?

In relation to the recruitment of employees, the Fair Employment Guidelines suggest wording that employers may adopt to avoid a discrimination claim. Generally, a discrimination claim is unlikely to succeed if an employer recruits on the basis of merit such as skills, experience or ability to perform the job and/or has a valid reason for stipulating certain selection criteria. For example, if the job requires the applicant to perform religious functions, the employer may state so and use religion as a selection criterion.

In relation to the dismissal of employees, if an employer decides to provide a reason for dismissal, a true valid reason such as redundancy would be a defence against a claim against wrongful dismissal on the grounds of discrimination.

3.5 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

In relation to discriminatory hiring, presently, a job applicant may file a complaint with the TAFEP online.

In relation to wrongful dismissal, an employee may file a wrongful dismissal claim with the Tripartite Alliance for Dispute Management ("**TADM**") within one month from the last day of his or her employment. If the wrongful dismissal cannot be resolved at TADM, it will be referred to the Employment Claims Tribunal ("**ECT**").

Managers and executives dismissed with notice or salary *in lieu* of notice may only file a wrongful dismissal claim if they have served their employer for at least six months.

Employers may settle claims before they are initiated. Claims may also be settled via mediation facilitated by the TADM.

When the Fair Employment Guidelines are enshrined into law, the Government also intends to create a Tribunal to deal with workplace discrimination such as discrimination based on nationality, age, race, religion and disability.

3.6 What remedies are available to employees in successful discrimination claims?

If the ECT decides that a dismissal is wrongful, the employer may be ordered to either reinstate the employee to his or her former job and pay the employee for any income loss due to the wrongful dismissal or pay the employee a sum of money as compensation.

More generally, employers that do not comply with the Fair Employment Guidelines may have their work pass privileges curtailed. The MOM will also hold culpable key decision makers such as the CEO, chief HR Officer or line managers responsible and may name such officers publicly or revoke their work passes if they are foreigners.

3.7 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

No, atypical workers do not have any additional protection.

3.8 Are there any specific rules or requirements in relation to whistleblowing/employees who raise concerns about corporate malpractice?

In the context of workplace harassment, the Harassment Advisory stipulates that employers should create a safe environment for reporting and ensure that whistle-blowers will not be penalised. This can include providing multiple reporting channels, anonymous reporting channels and creating a safe environment for employees to speak up about their concerns.

In relation to EA violations, employees may lodge an anonymous report on such violations with the MOM.

Further, the Prevention of Corruption Act 1960 provides that no witness shall be obliged or permitted to disclose the name or address of any informer or state any matter which might lead to his or her discovery.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Based on the CDCSA, the duration of maternity leave depends on the citizenship of the child and other criteria.

An employee is eligible for 16 weeks of maternity leave if:

- the child is a Singapore citizen; and
- she has been employed by that employer for a continuous period of at least three months before the birth of her child.

If the child is not a Singapore citizen or an employee has not been employed for at least three months, an employee covered under the EA is nonetheless entitled to 12 weeks of maternity leave.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

Please see our response to question 4.1 for details on maternity leave entitlement.

Where the child is a Singapore citizen and the mother is entitled to 16 weeks of maternity leave, she must be paid at her gross rate of pay for 16 weeks.

Where the child is not a Singapore citizen, a working mother who is entitled to 12 weeks of maternity leave must be paid at her gross rate of pay for the first eight weeks of leave if:

- she is covered under the EA;
- she has been employed by that employer for a continuous period of at least three months;
- she currently has fewer than two children; and
- she has given sufficient notice.

Further, employers are not permitted to dismiss an employee while she is on maternity leave.

4.3 What rights does a woman have upon her return to work from maternity leave?

A working mother is entitled to six days of paid childcare leave per year if:

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- the child is a Singapore citizen;
- the youngest child is below seven years old; and
- the employee has been employed by that employer for a continuous period of at least three months.

If the child is not a Singapore citizen and the rest of the criteria above are satisfied, a working mother would be entitled to two days of paid childcare leave.

4.4 Do fathers have the right to take paternity leave?

Yes. An employee is entitled to two weeks of paid paternity leave if:

- the child is a Singapore citizen;
- the employee is lawfully married to the child's mother between conception and birth; and
- the employee has been employed by that employer for a continuous period of at least three months.

4.5 Are there any other parental leave rights that employers have to observe?

Each parent is entitled to six days per year of childcare leave until the child turns seven years old, regardless of the number of children. Childcare leave is capped at 42 days for each parent.

Working fathers may, subject to the wife's agreement, apply to share up to four weeks of his wife's maternity leave if:

- the child is a Singapore citizen;
- the child's mother qualifies for government-paid maternity leave; and
- the father is lawfully married to the child's mother.

Working parents are also eligible for six days of unpaid infant care leave per year if:

- the child is a Singapore citizen;
- the child is below two years of age; and
- the employee has been employed by the employer for a continuous period of at least three months.

A mother of an adopted child is also entitled to 12 weeks of paid adoption leave if:

- the adopted child is below the age of 12 months at the point of the formal intent to adopt;
- the adopted child is a Singapore citizen or one of the adoptive parents is a Singapore citizen and the child becomes a Singapore citizen within six months of the adoption;
- the mother has been employed by that employer for a continuous period of at least three months; and
- the adoption order is passed within one year from the formal intent to adopt.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

The EA does not entitle employees to work flexibly. However, employees may be contractually entitled to do so depending on the provisions of the employment contract or employee handbook.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

Yes. The EA provides that a transfer does not operate to terminate the employment contract between any person employed by the transferor and that such employment contract will have the effect as if originally made between the employee and the transferee.

A "transfer" includes the disposition of a business as a growing concern and a transfer affected by sale, amalgamation, merger, reconstruction or operation of law.

The following are not transfers:

- Transfer of assets only.
- Transfer of shares.
- Transfer of operations outside Singapore.
- Outsourcing of supporting functions.
- An incoming service provider taking over an outgoing service provider during competitive tendering.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

Please see our response to question 5.1. An employee's contractual rights in the original employment contract with the transferor remain the same following the transfer. The corresponding employer's obligations will be transferred to the new employer.

The new employer is required to take over the previous employer's rights, powers, duties and liabilities which are part of any agreement with the employees' union before the transfer.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

Employees have the right to:

- be notified of the transfer and the matters relating to the transfer;
- have no break in employment during the transfer;
- be given the opportunity to consult their employer; and
- preserve the original terms of the employment contract.

To enable consultations to take place, employers are required to:

- notify the employees or their union of the transfer and the implications of the transfer within reasonable time;
- inform the employees about the terms of the transfer in order for them or their union to hold consultations with the company;
- ensure there is no break in employment during the transfer; and
- ensure that the terms of employment are not less favourable after the transfer.

Either party may refer any disagreements relating to the transfer to the Commissioner for Labour, which may delay or prohibit the transfer of the employee, or order the transfer of the employee on terms that are considered just.

It is an offence for any employer who enters into a contract of service or collective agreement contrary to the above requirements.

5.4 Can employees be dismissed in connection with a business sale?

Both the employer and employee have the right to terminate the employment with notice if they are unable to agree to the new terms.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

New employers must keep the same terms of employment for

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the transferred employees unless the transferred employees agree to a change of the terms.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

According to the MOM's website, a termination letter is mandatory. Any notice of termination, either by the employee or employer, must be in writing.

It is generally possible to terminate a contract without waiting for the period of notice to end by paying the employee compensation *in lieu* of notice, which is money equivalent to the salary that the employee would have earned during the required notice period.

The notice period should be found in the employment contract. For employees covered by the EA who enter into the employment agreement on or after 1 April 2016 and are employed for a continuous period of 14 days or more, a written record of the notice period must be given to the employees. In the absence of an agreement between the employer and the employee, the following notice periods stipulated in the EA will apply:

Length of employment	Notice period
Less than 26 weeks	One day
26 weeks or more but less than two years	One week
Two years or more but less than five years	Two weeks
Five years or more	Four weeks

Where the EA does not apply, and in the absence of an express termination notice clause, common law generally requires that reasonable notice be given before terminating the employment relationship. What is considered to be reasonable is determined on the facts of the case.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

There is no prescribed right for the employer to require the worker to be put on garden leave. Employment agreements may specifically provide for this. If not provided for in the employment agreements, employers may generally put an employee on garden leave if the employee continues to be paid his or her entitlements and salary.

However, the period of garden leave should not be so long as to render the employee's skills obsolete. For certainty, it would be advisable for the employer to clearly set out its right to put the employee on garden leave in the employment agreement.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

An employee may bring a claim for wrongful dismissal. Please see our response to question 6.7 for more details.

According to the MOM's website, an employee is dismissed when his or her employment agreement is terminated in the following circumstances:

- With notice from the employer.
- With salary *in lieu* of notice from the employer.
- Without notice by the employer on the grounds of misconduct or otherwise.
- Where the employee resigns involuntarily.

There is generally no requirement to obtain the permission of or to inform a third party before being able to validly terminate the employment relationship, unless the termination of the employment relationship is due to retrenchment, or a collective agreement requires the employer to notify and/or consult the trade union in advance.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

Employers cannot terminate the services of female employees who are absent due to their maternity leave benefits under the EA or the CDCSA.

The RRA also prohibits employers from dismissing any employee below the age of 63 (or the prescribed minimum retirement age) on the ground of age. Employers must offer re-employment to eligible employees who turn 63, up to age 68. If the employer is unable to offer that employee a position, the employer must transfer the re-employment obligation to another employer, with the employee's agreement, or offer the employee a one-off Employment Assistance Payment ("**EAP**").

The EAP is a one-off payment equivalent to three and-a-half months' salary subject to a minimum of S$6,250 and maximum of S$14,750. For employees who have been re-employed for at least 30 months since age 63, a lower EAP amount of two months of salary could be considered, subject to a minimum of $4,000 and maximum of $8,500.

In addition to the EAP, employers are encouraged to provide outplacement assistance, to help employees find alternative employment.

At present, the minimum retirement age is 63 and re-employment age is 68.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so, how is compensation calculated?

An employer is not required to provide a reason for dismissal if the employee is terminated in accordance with the notice provisions of his or her employment contract.

If an employer wishes to provide a reason for termination, certain categories of reasons will trigger the application of relevant rules. For example, dismissal for reasons related to the individual employee such as misconduct or poor performance requires the employer to conduct due inquiry. Further, dismissal for business-related reasons such as redundancy may trigger notification requirements, among others.

An employer who terminates *in lieu* of notice must compensate the employee with a salary that the employee would have earned during the required notice period.

An employer who terminates an employee on the grounds of misconduct would generally not be required to provide compensation if a case of misconduct can be established after due inquiry.

An employer who terminates an employee due to redundancy may be required to provide retrenchment benefits depending on the provisions of the employment contract or collective agreement. If there is no contractual provision, such retrenchment benefits should be negotiated between employer and employee. While retrenchment benefits are not mandated by law, the MOM

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strongly encourages employers to adhere to the advisories and provide retrenchment benefits to help affected employees while they search for employment. The prevailing norm is to pay a retrenchment benefit varying between two weeks to one month of salary per year of service, depending on the financial position of the company and taking into consideration the industry norm.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

Generally, there is no statutorily prescribed procedure if the employment is terminated by notice or salary *in lieu* of notice. It is common for employment agreements to prescribe a termination notice period, and how notice may be given to the employee. In this regard, the employer should ensure that the employee is terminated and given notice (or salary *in lieu* of notice) in accordance with the employment agreement.

Some additional considerations that an employer may take into account include:

- Collective agreements may require the trade union to be notified/consulted in the event of a dismissal.
- If an employee covered under the EA has committed an act of misconduct, the employer should conduct an inquiry before deciding whether to dismiss the employee.
- If the employee is a foreigner holding a work pass, the employer should cancel his or her work pass and seek tax clearance from the Inland Revenue Authority of Singapore.
- Employers who have a business registered in Singapore and at least 10 employees are required to notify the MOM of all retrenchments regardless of the number of employees affected within any six-month period. This notification requirement may also be triggered if an individual dismissal occurs during the same time as a retrenchment exercise mentioned in our response to question 6.9 below.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

An employee may challenge the termination by either submitting a mediation request to the TADM before filing a claim in the ECT for wrongful dismissal or bringing a civil action in the courts.

The normal measure of damages that the employee may recover against the employer for wrongful termination is the amount the employee would have earned during the notice period, less than the amount he could reasonably be expected to earn in other employment. Depending on the circumstances of the termination, there may also be reputational consequences for the employer.

In relation to claims brought to the ECT, the ECT may:

- require an employer to reinstate an employee who has been wrongfully dismissed and to pay the employee his or her loss of wages from the date of dismissal to the date of reinstatement;
- require an employer to pay compensation to any employee who has been wrongfully dismissed; or
- dismiss the claim.

6.8 Can employers settle claims before or after they are initiated?

Yes, they can settle claims either before or after they are initiated.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

An employer with at least 10 employees must notify the MOM within five working days of the employee receiving notification of his or her retrenchment if of all retrenchments regardless of the number of employees affected within any six-month period. A failure to notify within the required period is an offence and the employer may be liable on conviction to penalties, including a fine not exceeding S$5,000 and to other potential penalties. Guidance relating to this requirement is set out in the MOM's Tripartite Guidelines on Mandatory Retrenchment Notifications.

The Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment provides that employers should carry out the following before retrenching:

- research on government assistance schemes to support the restructuring;
- obtain employment facilitation for employees;
- consider available alternatives such as redeployment, temporary layoffs (subject to some mandatory conditions), and implementing a shorter work week;
- take a long-term view of manpower needs;
- consult with the relevant trade unions if employees are unionised;
- not discriminate against employees and instead make selections based on objective factors such as the ability to contribute to the company's future business needs;
- treat affected employees with dignity and respect; and
- consider having a longer retrenchment notice period (i.e. in excess of that provided for under the EA) for all affected employees.

If employers still wish to implement their retrenchment exercise, they are advised to communicate their intentions early to their employees and before public notice of the retrenchment is given.

Other additional considerations include whether employees should be given retrenchment benefits. Employees with two years of service or more are eligible for retrenchment benefits. In this regard, employers should refer to the provisions in any collective agreement or employment agreement and consider the prevailing norms on the quantum of retrenchment benefits.

Employees with less than two years of service could be granted an *ex gratia* payment.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

An employer with at least 10 employees must notify the MOM within five working days of the employee receiving notification of his or her retrenchment if all retrenchments regardless of the number of employees are affected within any six-month period. A failure to notify within the required period is an offence and the employer may be liable on conviction to penalties, including a fine not exceeding S$5,000 and to other potential penalties. Guidance relating to this requirement is set out in the MOM's Tripartite Guidelines on Mandatory Retrenchment Notifications.

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7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Generally, non-compete and non-solicitation clauses in respect of employees, businesses and suppliers have been recognised under Singapore law. Please see our response to question 7.2 for more details.

7.2 When are restrictive covenants enforceable and for what period?

Any restrictive covenant imposed by the employer that acts as a restraint of trade is *prima facie* unlawful and unenforceable unless the employer is able to show that:

- there is a legitimate interest to be protected by the restrictive covenant; and
- the restrictive covenant is reasonable in the interests of the parties and the public.

The restrictive covenant should not be wider than necessary to protect the legitimate interest of the employer.

In determining its enforceability, the courts would consider all the circumstances of the case, including but not limited to: the nature of the interests sought to be protected; the period of restraint; the geographical restriction; as well as the seniority of the employee in question. The burden of proof is on the employer who is seeking to rely on such restrictive covenants to establish that the restrictive covenants are reasonable.

7.3 Do employees have to be provided with financial compensation in return for covenants?

It is not strictly necessary to provide employees with financial compensation in return for restrictive covenants. However, employers do make such provisions to increase the reasonableness of such restrictive covenants and the likelihood of enforceability.

7.4 How are restrictive covenants enforced?

Employers may commence legal proceedings and seek an injunction or other appropriate remedies to enforce restrictive covenants.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

The Personal Data Protection Act 2012 ("**PDPA**") governs the collection, use and disclosure of personal data by organisations. Generally, employers must seek the employee's consent before collecting, using and disclosing an employee's personal data. That said, under the PDPA, the collection of personal data from employees that is reasonable for the purpose of managing or terminating the employment relationship, and the use or disclosure of such personal data for consistent purposes, would not require the consent of their employees.

Section 26 of the PDPA provides that organisations must not transfer personal data to other countries except if the transfer is carried out in accordance with the requirements prescribed under the PDPA to ensure that organisations provide a standard of protection to personal data transferred as such that is comparable to the protection under the PDPA.

According to the Advisory Guidelines on Key Concepts (revised 17 May 2022), employers may transfer personal data overseas if they have taken appropriate steps to ensure that the overseas recipient is bound by legally enforceable obligations to provide a comparable standard of protection.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

Section 21 of the PDPA generally permits an employee to request that the employer provide him or her with personal data about him or her that is in the possession or under the control of the employer unless certain exceptional circumstances apply. For example, an employee does not have a right to obtain such copies of personal data if the provision of such data could reasonably be expected to:

- threaten the safety or health of another individual;
- cause immediate or grave harm to the safety or health of the employee;
- reveal personal data about another individual;
- reveal the identity of the individual who has provided personal data about another individual; or
- be contrary to national interest.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

Employers may carry out pre-employment checks on prospective employees.

Where personal data of the employee is publicly available or is collected for an evaluative purpose including the purpose of determining the suitability and eligibility of an individual for

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employment, the employer may collect such information without the employee's consent.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

Employers may collect personal data from their employees if it is reasonable for the purpose of managing or terminating their employment relationships without consent. That said, employers are expected to keep their employees updated about the new purposes for which an employee's personal data is collected, used and disclosed without their consent. Such purposes may include monitoring how the employee uses company computer network resources.

Employers would generally need to seek consent for purposes that are not related to the management or termination of the employment relationship.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

There are no legal provisions prohibiting an employer from restricting an employee's use of social media in or outside the workplace. An employer may institute employment policies regarding social media use by its employees. Please see our response to question 8.4 for more details.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

The ECT, State Courts and Supreme Court have jurisdiction to hear employment-related complaints. Only claims not exceeding S$20,000 may be heard by the ECT. The claim limit is S$30,000 for employees who go through the Tripartite Mediation Framework or mediation assisted by their recognised unions. The ECT usually comprises District Judges from the State Courts of Singapore. According to the Employment Claims Act 2016, an ECT is presided over by a tribunal magistrate appointed by the President on the recommendation of the Chief Justice, or a tribunal magistrate designated by the Presiding Judge of the State Courts.

The State Courts and Supreme Court consist of judges, registrars and judicial commissioners from the Singapore judiciary, among others.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

Parties may either bring a claim before the Singapore courts or the ECT. The ECT is an expeditious and affordable avenue to resolve salary-related disputes and wrongful dismissal disputes.

Before bringing a claim to the ECT, an employee must first register their claims at the TADM. Only disputes that cannot be resolved after mediation at TADM may be referred to the ECT.

For a claim amount of S$10,000 or less, the employee must pay a S$10 registration fee for mediation at the TADM and S$30 for filing the claim at the ECT. For a claim amount of more than S$10,000, the employee must pay a S$20 registration fee for mediation at the TADM and S$60 for filing the claim at the ECT.

There is no mandatory conciliation process for claims brought before the Singapore courts.

9.3 How long do employment-related complaints typically take to be decided?

There are no stipulated timelines. The duration will depend on the complexity of the claim.

9.4 Is it possible to appeal against a first instance decision and if so, how long do such appeals usually take?

The party who wishes to make an appeal from an ECT order must apply to the District Court for leave (permission) to appeal within seven working days after the date of the order. Once leave is given, the party can file an appeal to the General Division of the High Court. A filing fee of S$100 is payable for the leave to appeal application, and a filing fee of S$600 is payable for filing a notice of appeal to the General Division of the High Court.

If the claim is brought before the State Courts or the General Division of the High Court, whether an appeal requires the leave of court is subject to the general rules of civil procedure.

Depending on the complexity of the case, an appeal may last between several months to over a year.

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