COUNTRY COMPARATIVE GUIDES 2023

The Legal 500 Country Comparative Guides

Singapore

EMPLOYMENT AND LABOUR LAW

Contributor

Drew & Napier LLC

Benjamin Gaw

Director and Co-head, Employment Practice Group | benjamin.gaw@drewnapier.com

This country-specific Q&A provides an overview of employment and labour laws and regulations applicable in Singapore.

For a full list of jurisdictional Q&As visit **legal500.com/guides**

SINGAPORE
EMPLOYMENT AND LABOUR LAW

1. Does an employer need a reason to lawfully terminate an employment relationship? If so, state what reasons are lawful in your jurisdiction?

The employer generally does not need to provide a reason if it terminates the employment relationship with notice or salary in lieu of notice.

Any such termination should be conducted in accordance with the employment agreement and the Employment Act 1968 ("**EA**") if it applies.

The Ministry of Manpower ("**MOM**") has provided guidance that a fixed-term contract may also be terminated by giving notice of termination or salary in lieu of notice.

Introduction to Singapore Employment Law

By way of background, the EA is Singapore's main employment legislation and was substantially amended on 1 April 2019. It covers most employees, but does not cover:

a. Seafarers;
b. Domestic workers; and
c. Statutory board employees or civil servants.

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

a. Workmen (doing manual labour) with a basic monthly salary not exceeding S$4,500; and
b. 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.

Other statutes and the common law may also apply in various situations. Finally, MOM, together with its tripartite partners, the National Trades Union Congress ("**NTUC**") and the Singapore National Employers Federation ("**SNEF**"), has issued various employment guidelines and advisories. While these guidelines and advisories are not legally binding, MOM may take steps against employers who do not comply.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned? How many employees need to be affected for the additional considerations to apply?

With effect from 1 November 2021, employers with at least 10 employees must notify MOM within 5 working days of any employee receiving notification of his/her retrenchment. 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 MOM's Tripartite Guidelines on Mandatory Retrenchment Notifications.

In October 2020, MOM and the Tripartite Alliance for Fair and Progressive Employment Practices ("**TAFEP**") updated the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment ("**Tripartite Retrenchment Advisory**") to guide businesses through cost-saving measures and retrenchment practices. Recommended measures include:

i. making adjustments to work arrangements without wage cuts (e.g. redeploying workers to other areas of work or implementing flexible work schedules);
ii. making adjustments to work arrangements with wage cuts (e.g. implementing shorter work weeks and temporary layoffs);
iii. making direct adjustments to wages (e.g. reducing bonuses and other variable wage components); and
iv. putting employees on no-pay leave.

If employers still wish to implement their retrenchment exercises, 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. In this regard, employers should refer to prevailing norms on the provision and quantum of retrenchment benefits.

3. What, if any, additional considerations apply if a worker's employment is terminated in the context of a business sale?

Under section 18A of the EA, if a trade or business is transferred in a business sale, all existing contracts of service are automatically transferred to the buyer, along with all rights, powers, duties and liabilities under the contract. The terms of employment should not be less favourable after the transfer. Additionally, the transfer of the employment does not break the continuity of the period of employment – the contract of employment continues as if it was originally made between the employee and the buyer.

If the buyer and seller intend to transfer employees other than pursuant to section 18A of the EA, the seller may terminate their services before the business sale and the buyer may subsequently hire them. Where the seller chooses not to transfer the affected employees, it would typically terminate their employment before the business sale. In this regard, please refer to our response to question 2 for more details on retrenchment exercises.

Should the sellers wish to transfer foreign employees to the buyer, it would be important for the sellers to consider if their work passes can be transferred to the buyer, or if the buyer can obtain fresh work passes for these employees.

Prior to the transfer, the sellers should also allow for consultations between the affected employees and the seller. The seller must notify the affected employees of the transfer of business, the implications of the transfer and any measures that the seller and buyer may be taking with regards to the transfer.

4. What, if any, is the minimum notice period to terminate employment? Are there any categories of employee who typically have a contractual notice entitlement in excess of the minimum period?

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.

Any termination by notice should be in accordance with the employment agreement. Where the EA applies, the notice period should at least be of the following length:

Length of employment	Notice period
Less than 26 weeks	1 day
26 weeks or more but less than 2 years	1 week
2 years or more but less than 5 years	2 weeks
5 years or more	4 weeks

In the absence of agreement between the employer and the EA employee, the notice period will be in accordance with the table above.

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

In general, employment contracts with employees in senior management or executive positions typically contain notice periods longer than the above statutory prescriptions.

Notice periods can be waived by mutual consent of both the employer and employee.

5. Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?

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

It would be advisable for an employer to clearly set out its right to pay salary in lieu of notice in the employment agreement.

6. Can an employer require a worker to be on garden leave, that is, continue to employ and pay a worker during his notice period but require him to stay at home and

not participate in any work?

There is no prescribed right under the EA for the employer to require the worker to be put on garden leave. Employment agreements may specifically provide for this. 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. 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/her entitlements and salary.

However, the garden leave clause in the employment agreement should not be unreasonable. For example, the period of garden leave should not be so long as to render the employee's skills obsolete.

7. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

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. Additionally, MOM has instructed that a termination letter (in writing) has to be given to the employee. Please see our response to question 4 for more details on notice periods.

We also set out some additional considerations:

Where applicable, a collective agreement might require the trade union to be notified/consulted.

In the event that any is retrenched, employers with at least 10 employees must notify MOM of the retrenchment. Please see our response to question 2 for more details on the retrenchment notification requirement. MOM instructs that employers should not discriminate against employees or groups of employees. Further, employers should treat all affected employees with dignity and respect and consider longer retrenchment notice periods. Employers should also pay all salaries on their employees' last days of work and help them look for alternative jobs.

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 an employee is suspended during an inquiry, such suspension must not be longer than 1 week unless the approval of MOM is obtained and the employee must be paid at least half the employee's salary during the suspension. Furthermore, if the employer decides to terminate the employment, it should first disclose the outcome of the inquiry. In the recent case of Dong Wei v Shell Eastern Trading [2022] SGHC(A) 8, the Appellate Division of the High Court admonished the employer for failing to make such disclosures. Nevertheless, the court noted that the failure to do so did not give rise to a legally remediable claim.

If the employee is a foreigner holding a work pass, then the employer should cancel his/her work pass and seek tax clearance from the Inland Revenue Authority of Singapore.

8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?

Such employees may challenge the termination by submitting a mediation request to the Tripartite Alliance for Dispute Management before filing a claim in the Employment Claims Tribunals ("**ECTs**") for wrongful dismissal, or bring 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 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:

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

9. How, if at all, are collective agreements

relevant to the termination of employment?

Collective agreements are governed by the Industrial Relations Act 1960 ("IRA"). The IRA sets out processes for recognising a trade union, and for the employer and recognised trade union to negotiate and adopt a collective agreement.

If the collective agreement was adopted in accordance with the IRA, any termination of a unionised employee's services must comply with the collective agreement. In particular, collective agreements typically provide for termination and retrenchment benefits and procedures, and may require the trade union to be notified and/or consulted in advance.

Should a trade dispute arise in relation to termination or retrenchment benefits and procedures under a collective agreement, this may be resolved by conciliation by MOM. If the dispute cannot be resolved after conciliation and a deadlock has occurred in negotiations, the trade dispute may be referred to the Industrial Arbitration Court for arbitration. Tripartite mediation of trade disputes involving managerial or executive employees may also be available.

10. Does the employer have to obtain the permission of or inform a third party (e.g local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?

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. For more details concerning the termination of employment in retrenchment situations, please see our response to question 2.

11. What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?

The Tripartite Retrenchment Advisory states that when retrenching, employers should not discriminate against any particular group on the grounds of age, race, gender, religion, marital status and family responsibility, or disability. Although the Advisory is non-binding, MOM will investigate complaints of discriminatory employment practices, including retrenchments that unfairly target older, re-employed or pregnant employees. If the complaints are substantiated, the employers will have their work pass privileges curtailed.

The Tripartite Guidelines on Wrongful Dismissal (1 April 2019) ("**Wrongful Dismissal Guidelines**") also provides that dismissing an employee because of discrimination e.g. against the employee's age, race, gender, religion, marital status and family responsibilities, or disability is wrongful.

The following specific prohibitions against discrimination of certain classes of individuals also apply:

i. The Retirement and Re-Employment Act 1993 read with the Retirement and Re-employment (Prescribed Minimum Retirement Age) Notification 2022 prohibits employers from dismissing any employee below the age of 63 on the ground of age. Employees who feel that they have been unfairly dismissed can write to the Minister of Manpower within 1 month of dismissal. Employers found to have breached this prohibition are guilty of an offence and will be liable on conviction to a fine not exceeding S$5,000 or to imprisonment for a term not exceeding 6 months or to both.
ii. Employers cannot terminate the services of female employees who are absent due to their maternity leave benefits under the EA or the Child Development Co-Savings Act 2001. Further, female employees who have served their employer for 3 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 that (but for the termination notice) they would have been entitled to receive as part of their maternity benefits on or before their confinement date.

Breaches of these prohibitions would result in the employer being guilty of an offence and liable on conviction to a fine not exceeding S$5,000 or to imprisonment for a term not exceeding 6 months or to both.

In addition, the following general protections against discrimination and harassment may apply to the employment context:

i. The non-binding Fair Consideration Framework ("**FCF**") and Tripartite Guidelines

on Fair Employment Practices contain recommendations intended to prevent discrimination at the workplace. While non-legally binding, a breach of these guidelines can result in employers being placed on the FCF watchlist and receiving closer scrutiny on their applications for Employment Passes (for foreign professionals, managers and executives earning at least S$4,500 a month) and for S Passes (for foreign mid-level staff earning at least S$2,500 a month).

ii. There is some indication that the Singapore courts is likely to recognise that an implied duty of mutual trust and confidence exists between employer and employee, which may require the employer to redress complaints of discrimination.

iii. Employers are required under the Workplace Safety and Health Act 2006 to take reasonably practicable measures to ensure workplace safety and health. Breaches of this duty may potentially attract criminal liability as well. In this regard, the Tripartite Advisory on Managing Workplace Harassment issued by TAFEP considers that "harassment and other psychosocial risks should be included in the overall workplace safety and health (WSH) risk management of the organisation".

iv. While not specific to the employment context, any employee suffering from harassment has recourse to the remedies provided under the Protection from Harassment Act 2014.

Notably, on 13 February 2023, the Tripartite Committee on Workplace Fairness released an interim report ("**2023 Tripartite Interim Report**") which sets out 20 recommendations to tackle workplace discrimination. Based on the National Day Rally 2021 speech by the Prime Minister, there are plans to enshrine these recommendations into law once they are finalised. We highlight some of the pertinent recommendations as follows:

Strengthen protections against workplace discrimination

- Prohibit workplace discrimination in respect of the following characteristics: (i) age, (ii) nationality, (iii) sex, marital status, pregnancy status, caregiving responsibilities, (iv) race, religion, language, (v) disability and mental health conditions.
- Prohibit the use of words or phrases in job advertisements that indicate a preference based on any protected characteristic.
- Legislate the job advertisement requirement for submission of Employment Pass and S Pass applications under the existing Fair Consideration Framework.

Provisions to support business/organisational needs and national objectives

- Allow employers to consider a protected characteristic in employment decisions if it is a genuine and reasonable job requirement.
- Exempt small firms with fewer than 25 employees from the legislation for a start, with a view to tighten this exemption in five years.

Processes for resolving grievances and disputes while preserving workplace harmony

- Require compulsory mediation for workplace discrimination claims at the Tripartite Alliance for Dispute Management (TADM) first, with adjudication at the Employment Claims Tribunals (ECT) as a last resort.

Ensuring fair outcomes through redress for victims of workplace discrimination and more appropriate penalties for breaches

- Encourage parties to explore non-monetary remedies, such as reinstatement of an employment offer or providing an apology letter, where practicable.
- Allow monetary compensation of up to $5,000 for pre-employment claims; and, up to $20,000 for non-union members and $30,000 for union-assisted claims, for in-employment and end-employment claims as with other employment claims today.
- Allow the State to concurrently conduct investigations on claims that involve suspected serious breaches of the workplace fairness legislation, with a view to taking enforcement action.
- Provide a range of penalties including corrective work orders, financial penalties, and work pass curtailment that can be imposed against firms and/or culpable persons, depending on the severity of breach.

12. What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?

In addition to the consequences stated above, an employer may be subject to a TAFEP investigation if a complaint is lodged against them. Depending on the

outcome of the investigation and the employer's responses, the matter may be referred to MOM for investigation and action.

Employees may also bring civil claims in the courts against the employer for wrongful dismissal if it can be shown that such discrimination or harassment constitutes a breach of the implied term of mutual trust and confidence. Depending on the court's findings, the employer may be liable to compensate the employee in damages or reinstate the employee. Reputational consequences may also arise.

Please see our response to question 8 for the consequences of wrongful dismissal.

Please also see our response to question 11 for the proposed consequences of workplace discrimination in the 2023 Tripartite Interim Report.

13. Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?

Please see our response to question 11.

14. Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?

There are no special protections against termination of employment in respect of whistleblowers. However, such whistleblowers may bring civil claims in the courts against their employer for wrongful dismissal if it can be shown that their termination constitutes a breach of the implied term of mutual trust and confidence.

Notably, certain legislations provide for the confidentiality of identity of informers of the respective offences. For example, the Prevention of Corruption Act states that where evidence liable to be inspected in court contains an entry that might disclose the identity of the informer, the entry must be concealed or obliterated. However, these legislations do not go so far as to protect whistleblowing employees from termination of their employment.

Additionally, in the 2023 Tripartite Interim Report, one of the proposed recommendations is to require employers to put in place grievance handling processes and for employers to protect the confidentiality of the identity of persons who report workplace discrimination and harassment, where possible.

15. In the event of financial difficulties, can an employer lawfully terminate an employee's contract of employment and offer re-engagement on new less favourable terms?

An employer may terminate a contract of employment as long as notice or salary in lieu of notice is given. Please see the response to question 4 and 5.

If the employer is considering making a direct adjustment to wages, it should be noted that the Tripartite Retrenchment Advisory stipulates that unions and employees should first be consulted. The employer should reach an agreement with the unions and employees before implementing these measures.

However, to avoid such a drastic measure, companies may consider implementing variable wage components at the time of hiring the employees. These variable wage components are linked to the company's performance and will be reduced in the event that the company is facing financial difficulties.

Please also see our response to question 2 for the other measures that an employer can take in the event of financial difficulties.

16. What, if any, risks are associated with the use of artificial intelligence in an employer's recruitment or termination decisions?

The use of artificial intelligence ("**AI**") in an employer's recruitment and termination process is not directly regulated. Companies may adopt it as a tool to streamline its decision-making process.

However, it is cautioned that employers should ensure that their use of AI do not incidentally infringe on employment guidelines. Both the recruitment and termination of employment process cannot be discriminatory and should be based on objective criteria. For example, any discrimination based on age, race, gender, religion, marital status and family responsibility, or disability is not allowed. MOM will investigate complaints of discriminatory employment practices. If an employer is found to be discriminatory, enforcement action will be taken against them. Furthermore,

termination based on discriminatory grounds will constitute wrongful dismissal.

Please also see our response to question 11.

17. What financial compensation is required under law or custom to terminate the employment relationship? How is such compensation calculated?

Save for salary in lieu of notice which is discussed above and any amounts that have vested in the employee prior to the termination of the employment relationship, there is no specific financial compensation required under law to terminate the employment relationship. The financial compensation payable would depend on the terms of the employment agreement and prevailing norms.

Where an employee's service is terminated due to redundancy or reorganisation, the Tripartite Retrenchment Advisory recommends that employers pay a reasonable sum to affected employees. While no retrenchment benefits are statutorily prescribed, the prevailing norm is to pay employees who have worked at least 2 years between 2 weeks to one month salary per year of service, depending on the financial position of the company and industry norms. According to MOM, employers who choose not to provide retrenchment benefits despite being in sound financial positions may be denied future government support or may have their work pass privileges suspended.

18. Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply, including in respect of non-disclosure or confidentiality clauses.

Yes, in general, employers may agree with employees on a waiver of their rights in exchange for payment.

Non-disclosure agreements and agreements containing confidentiality clauses are enforceable as ordinary contracts even if they are entered into on termination. However, if the employee purports to agree to waive his rights to disclose information but receives nothing beyond his existing entitlements, such agreements may be unenforceable for lack of consideration. Further, a non-disclosure agreement may not be enforceable if disclosure is required by operation of law or an order of a court of competent jurisdiction.

The following limitations apply in respect of certain agreements:

i. the EA renders any contract of service void in so far as it purports to deprive female employees from maternity benefits or removes/reduces the liability of the employer to make the required payments pursuant to such benefits; and
ii. the Retirement and Re-Employment Act renders void any term of a contract of service which purports (a) to exclude or limit the operation of the Act or (b) to preclude any person from making a representation, claim or application under the same act.

19. Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.

Yes, it is possible. However, any restrictive covenant imposed by the employer that acts as a restraint of trade is unlawful and unenforceable unless the employer is able to show that:

i. there is a legitimate interest to be protected by the restrictive covenant; and
ii. 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.

20. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Yes. The common law protects confidential information. Employers also frequently require their employees to expressly agree to protect employers' confidential information under the employment agreement.

21. Are employers obliged to provide references to new employers if these are requested? If so, what information must the reference include?

With the exception of certain industries, such as the financial advisory and insurance industry, there is no legal requirement for employers to provide references to new employers if requested. However, it is customary to do so and courts have recognised that where employers prepare such references, they should do so in a fair and accurate manner. Hence reasonable care must be exercised to ensure that:

i. the facts stated in the reference are true;
ii. any opinions expressed are based on, and supported by, facts which are true;
iii. it does not give an unfair or misleading overall impression of the employee; and
iv. it contains all information that if withheld would render the information disclosed incomplete, inaccurate or unfair.

However, subject to the above, an employer is not required to give a full and comprehensive reference or to include every material fact about the employee.

22. What, in your opinion, are the most common difficulties faced by employers in your jurisdiction when terminating employment and how do you consider employers can mitigate these?

Employers often face difficulties in terminations where their termination clauses are absent or insufficiently specific. To mitigate these issues, employers should as a matter of priority review their employment agreements to confirm that these agreements contain termination clauses consistent with their commercial intentions. If amendments need to be made to the employment agreements of existing employees, these can be done via a supplemental agreement or the employment handbook.

The risk of the employee challenging the termination on the basis that it amounts to wrongful dismissal is also higher where the employer chooses to terminate for cause. In this connection, the Wrongful Dismissal Guidelines issued on 1 April 2019 provide guidance on what amounts or does not amount to wrongful dismissal. In particular, they clarify that termination due to misconduct may only be done after due inquiry, and the employer would bear the burden of proving the employee's misconduct.

23. Are any legal changes planned that are likely to impact the way employers in your jurisdiction approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

Following the amendments as of 1 April 2019, coverage under the EA has been extended to generally all employees, with limited exceptions. Managers and executives earning more than S$4,500 per month who were previously not covered under the EA can now avail themselves of recourse for wrongful dismissal under the EA.

In addition, while ECTs heard salary-related disputes and MOM heard wrongful dismissal claims prior to the amendments, ECTs now hear wrongful dismissal claims as well, providing a more convenient one-stop service to employers and employees who might otherwise have to approach two different parties to resolve their issues.

Further, in deciding wrongful dismissal claims, ECTs must now have regard to the Wrongful Dismissal Guidelines, as mentioned above.

Contributors

Benjamin Gaw
Director and Co-head, Employment Practice Group benjamin.gaw@drewnapier.com