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Singapore employment and labour guide

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Introduction

As a global business hub, Singapore is the preferred choice for many multinational corporations which operate in the Asia-Pacific region. An important issue that these corporations must deal with is employment and labour laws and regulations.

This guide provides a high-level overview of the Singapore employment legal regime, including the key sources of employment law; key regulators and enforcement agencies; the primary statutory rights of employees; the Central Provident Fund (a statutory savings and pension scheme); employee incentive plans; trade unions and collective agreements; transfer of employment; restrictive covenants; data privacy and confidentiality; whistleblowing and employee grievance-handling; termination of employment; and enforcement trends and latest developments all from an employment and labour point of view.

Key employment-related legislation, regulations and guidelines

Main legislation

The Employment Act 1968 (**Employment Act**) is Singapore's primary employment legislation that prescribes the basic terms and working conditions for all types of employees (including part-time, contract and temporary employees). The Employment Act applies to both Singaporeans and foreign nationals who work in Singapore.

Certain sections of the Employment Act, for example, those relating to work hours and rest days, do not apply to employees in a managerial or an executive position, and only apply to workmen (e.g. employees who perform manual labour) earning less than S$4,500 a month as well as all other employees earning less than S$2,600 a month.

The Employment of Foreign Manpower Act 1990 (**EFMA**) regulates the employment of foreign employees and specifies the conditions for the grant of Employment Passes and S Passes (e.g. work visas) to foreign employees. The EFMA empowers the Singapore Ministry of Manpower (**MOM**) to require all employers to make reasonable efforts to provide fair employment opportunities to Singapore citizens.

The Child Development Co-Savings Act 2001 (**CDCA**) prescribes the maternity and paternity benefits that employees in Singapore are entitled to, for example, paid maternity leave, paid adoption leave and paid paternity leave.

The Retirement and Re-Employment Act 1993 (**RRA**) provides for both the minimum retirement age for employees, as well as the re-employment of eligible employees past the retirement age.

The Workplace Safety and Health Act 2006 (**WSHA**) sets out various statutory obligations relating to the safety, health and welfare of persons (including, but not limited to, employees) at work in a workplace. The Work Injury Compensation Act 2019 (**WICA**) allows injured employees (or their dependants) to seek compensation from the employers for work-related injuries or diseases without having to commence a civil suit under common law, providing for a low-cost and quicker alternative to settling compensation claims.

The Personal Data Protection Act 2012 (**PDPA**) is Singapore's primary personal data protection legislation. It prescribes, among other things, how employers should manage their employees' personal data.

The Industrial Relations Act 1960 (**IRA**) regulates the trade unions in Singapore and their functions in the relationship between employers and employees, and provides for the prevention and settlement of trade disputes by collective bargaining, conciliation, arbitration and tripartite mediation of individual disputes. Generally, employees in managerial and executive positions would not be members of trade unions.

Employment policies and guidance

The Tripartite Guidelines on Fair Employment Practices (**Fair Employment Guidelines**) are a set of employment practices issued by the Tripartite Alliance for Fair & Progressive Employment Practices (**TAFEP**) that employers are strongly encouraged to adopt in relation to recruitment, grievance handling, performance management, retrenchment and dismissal.

The Fair Employment Guidelines include the Fair Consideration Framework (**FCF**), which requires employers to consider Singapore citizens fairly in recruitment, and to avoid discriminatory recruitment practices (e.g. discrimination based on age, race, marital status or nationality).

Whilst the Fair Employment Guidelines and FCF are not presently legally binding on employers, the MOM has indicated that it will take administrative actions against employers who breach the Fair Employment Guidelines and FCF. Such actions include revoking or imposing restrictions on that employer's ability to employ foreign employees and/or rejecting the renewal of its employees' Employment Passes and S Passes.

In recent years, the MOM and TAFEP have taken increasingly stringent enforcement actions against employers found to be discriminating against Singapore Citizens in recruitment. An average of 41 employers each year are found to have breached the requirements in the FCF.

In August 2021, the Singapore government announced plans to enshrine the Fair Employment Guidelines into law.[1]

Key regulators and enforcement agencies

The key employment regulator in Singapore is the Ministry of Manpower (**MOM**). The MOM enforces the Employment Act, which is the primary employment legislation in Singapore.

Other regulators in Singapore which deal with employment issues include the Central Provident Fund (**CPF**) Board, which oversees an employer's responsibilities to pay its employees' CPF contributions, and the Personal Data Protection Commission (**PDPC**), which regulates how personal data may be collected, used and disclosed, including in an employment context.

MOM also works with non-government agencies to provide guidance to employers and employees about their rights and obligations. For instance, MOM is part of TAFEP, which comprises MOM and two non-government organisations, namely, the National Trades Union Congress (**NTUC**) and the Singapore National Employers Federation (**SNEF**). TAFEP provides guidance to employers and employees on fair, responsible and progressive employment practices, and provides assistance and advice to employees who face workplace discrimination or harassment. TAFEP is one of three agencies under Tripartite Alliance Limited, along with the Tripartite Alliance for Dispute Management (**TADM**) and the Workplace Safety and Health Council (**WSH Council**).

There are several avenues available for employees who wish to claim against their employer for unfair employment practices or breaches of employment legislation. For salary-based disputes and claims relating to wrongful dismissal, employees may consider filing a claim at the Employment Claims Tribunal, a division of the State Courts, should the dispute remain unresolved after mediation at the TADM. Disputes pertaining to transfers of employment and other non-salary related issues may be heard in the MOM's Labour Court.

Statutory rights of employees under Singapore law

All full-time employees in Singapore are generally entitled to the following statutory rights, although employers may grant contractual benefits that exceed these entitlements:

Paid public holidays	11 days per calendar year (the next working day will be a paid holiday if the public holiday falls on an employee's rest day)
Paid annual leave	7 days per calendar year (increasing by 1 day for each year of employment, up to a maximum of 14 days)
Paid sick leave	14 days per calendar year
Paid hospitalisation leave	60 days per calendar year (inclusive of the 14 days of Paid Sick Leave)
Paid maternity leave	16 weeks (if the child is a Singapore Citizen) 12 weeks (if the child is not a Singapore Citizen)
Paid paternity leave	2 weeks (if the child is a Singapore Citizen)
Paid childcare leave (for children below 7 years of age)	6 days per calendar year (if the child is a Singapore citizen) 2 days per calendar year (if the child is not a Singapore citizen)

Part time employees are also entitled to the above-mentioned benefits on a pro-rata basis.
Workmen (e.g. employees who perform manual labour) earning less than S$4,500 a month and other employees earning less than S$2,600 a month are entitled to the following benefits:

Overtime pay	At least 1.5x the hourly basic rate of pay
Maximum hours of overtime	72 hours per month
Break times	At least 45 minutes in a period of 8 hours
Maximum hours of work	12 hours a day
Unpaid Rest day	1 day per week

Part time employees who fulfil the above criteria are also entitled to the above-mentioned benefits (where applicable) on a pro-rata basis.

1 This has yet to occur as of June 2022

Retrenchment benefits

There is no statutory definition of retrenchment in Singapore. The MOM considers that a retrenchment has occurred when:

- An employee is terminated due to redundancy or reorganisation of the employer's business. This includes situations where companies are in liquidation, receivership or judicial management; and/or
- An employer terminates an employment contract with no plan to fill the vacancy in the immediate future.

There is no statutory requirement for employers to pay retrenchment benefits in Singapore. Under the Employment Act, employees who have been in continuous service with an employer for less than two years are not entitled to retrenchment benefits. The law is silent on retrenchment benefits for employees who have been employed continuously for more than two years.

Notwithstanding the above, the TAFEP strongly encourages employers to pay between two weeks' to one month's salary per year of service as retrenchment benefits. Employers may also take into account other considerations such as the prevailing industry norms and their financial positions in deciding the amount of retrenchment benefits to pay to their employees.

If the affected employee is a member of a trade union, the collective agreement between the trade union and the employer may require the employer to pay retrenchment benefits. The prevailing norm for such a benefit is one month's salary per year of service.

Responsible retrenchment

The payment of a retrenchment benefit is not the only consideration in a retrenchment exercise. The MOM and TAFEP provide guidelines that employees should adhere to before and during a retrenchment exercise.

Before conducting a retrenchment exercise, employers are required to:

- Take a long term view of their manpower needs, including the need to maintain a strong Singaporean core;
- Explore alternatives to retrenchment (for example, redeployment, implementing a shorter work week, salary adjustments or unpaid leave);
- Inform the MOM before carrying out any retrenchment exercise (this is mandatory for employers with at least 10 employees);
- Consult with the unions if the affected employee is unionised;
- Avoid discriminating against particular employees/ groups of employees;
- Make a selection based on factors such as the employees' ability to contribute to the employers' future business needs;
- Treat the affected employees with dignity and respect; and
- Consider providing for a longer retrenchment notice period for the affected employees.

During the retrenchment exercise, employers are required to:

- Pay all sums due to the employee, including salary, salary in lieu of unused annual leave etc., to the affected employees on their last day of work;
- Consider paying the affected employees a retrenchment benefit (as described above); and
- Assist the affected employees to look for alternative employment in affiliated companies, other companies or through outplacement assistance programmes, for example, career fairs and career advice.

Central provident fund

The CPF is a statutory savings and pension scheme which aims to enable Singaporeans to have a secure retirement through lifelong income, healthcare financing and home financing. It is governed by the CPF Act and administered by the CPF Board, which operates under the MOM.

The CPF scheme applies to all employees who are Singapore citizens or Singapore permanent residents. Under the CPF scheme, contributions to the CPF must be made by both employers and employees:

- Employers are required to withhold a portion of the wages of all eligible employees, which will be paid to the CPF as the employees' contribution.
- In addition, employees are required to make further contributions to the CPF out of their own funds for all eligible employees. This is known as the employer's contribution.

The CPF contribution rates are prescribed by statute and vary depending on factors such as the employees' age and salary. For the majority of Singapore citizens and Singapore permanent residents below the age of 55, the prevailing CPF contribution rates are 20 per cent for the employee's contribution, and 17 per cent for the employer's contribution. The prevailing CPF contribution rates for older workers are lower, although the government has announced plans to gradually raise these contribution rates over the next 10 years. There are caps to the amount of CPF contributions that can be made to an employee's CPF account each month, which is known as the CPF Wage Ceiling.

Compulsory CPF contributions made by employers to their employees' CPF accounts under the CPF Act are generally not taxable.

The CPF Board has multiple channels to identify employers who fail to pay CPF contributions. Failure to pay CPF is an offence, and offenders will be required to pay the outstanding contributions and late payment interest. The CPF Board may also impose a composition amount for each offence. An employer that does not pay its outstanding CPF contributions, late payment interest and composition amount on time is liable to be prosecuted in court.

Other than the CPF, there is no mandatory pension scheme in Singapore. Employers may implement their own corporate pension scheme for employees (in addition to making compulsory CPF contributions as required under the CPF Act).

Employee incentive plans/share option schemes

The offering of shares and/or securities under employee share option plans or employee share option schemes will involve certain legal considerations under the Securities and Futures Act 2001 of Singapore (**SFA**). Typically the offering of securities (to investors in general) will require the publication of a prospectus pursuant to the requirements of the SFA. There are certain exemptions under the SFA, typically referred to as safe harbour provisions, which allow companies to offer securities to their employees without needing to publish a prospectus.

Companies will need to consider other implications in connection with any allotment and issuance of shares. These include the transfer of shares in connection with any employees departing from the company, under both good leaver and bad leaver scenarios. The pre-emption transfer rights stipulated within the shareholders' agreement, if any, (or constitution) of the company may also have an impact on the transfer of shares following any such employee departures.

Companies should take into account the voting rights attached to such employee shares. These employee shares may have a dilutive impact on the voting power of the controlling shareholder(s) of the company and may make it more challenging to obtain shareholder approval for any corporate actions that the company intends to undertake. For example, obtaining shareholder approval may become cumbersome time consuming if there are numerous shareholders based across multiple jurisdictions/ time zones.

The Companies Act stipulates a limit of no more than fifty shareholders for a private companies limited by shares. This limit will need to be factored into the design and implementation of any employee share option plan or employee share option scheme for such private companies.

Employment of foreign employees

Foreign nationals intending to seek employment in Singapore are required to obtain the necessary work passes before being able to commence employment with companies based in Singapore. Examples of such work passes include the S Pass, Employment Pass, Long Term Visit Pass and Letter of Consent. Each type of work pass has different eligibility criteria and a unique application process. We will discuss the application process relating to the Employment Pass in further detail in the following paragraphs.

Employment pass application process

Foreign professionals, managers and executives earning a fixed monthly salary of at least S$4,500 per month (this will be adjusted upwards to S$5,000 in September 2022) and with acceptable qualifications will generally be eligible to apply for the Employment Pass. The minimum qualifying salary for an Employment Pass in the financial services sector is slightly higher at S$5,000 (this will also be adjusted upwards to S$5,500 in September 2022). Typically, a good university degree, professional qualifications or specialised skills are required before the MOM will consider granting an Employment Pass to an applicant. Employment Passes are granted at the discretion of the MOM.

The MOM is poised to introduce an evaluative framework – the Complementarity Assessment Framework (**COMPASS**) – to decide if Employment Passes should be granted. COMPASS is a points-based system under which Employment Pass applicants will score a certain number of points depending on their salary, qualifications, whether they improve their employer's diversity, whether their employer has shown support for local employment, whether there is a skills shortage in the job, and whether the employer contributes to Singapore's strategic economic priorities. COMPASS will apply to all Employment Pass applications from September 1, 2023. Certain foreign employees are exempted from the COMPASS requirements, for example, employees earning at least S$20,000 a month, employees that are overseas intra-corporate transferees, and employees who are filling a role for one month or less.

Before applying for an Employment Pass, employers are required to advertise the job opening on the MyCareersFuture web portal for at least 28 consecutive days to allow potential job seekers to view and apply for the vacancy. There are certain exemptions from this advertising requirement, for example, where the company has fewer than 10 employees, the fixed monthly salary of the job opening exceeds S$20,000 or where the candidate is an overseas intra-corporate transferee.

The application may be made by the employer directly or through an appointed employment agent. The fees involved in the Employment Pass application are S$105 for the submission of the application and S$225 for the issuance of the pass. An online application is typically processed within three weeks whereas an application by an overseas company without a Singapore-registered office has a longer processing time of up to 8 weeks.

Successful applicants will receive an in-principle approval letter from the MOM. Once granted, the pass will be valid for two years for first-time candidates, and renewals will be valid for a period of three years thereafter. Renewal applications can be submitted up to six months before the expiry of the pass and the issuance of the renewed pass will require the payment of S$225 in fees. Renewals are typically processed within three weeks.

If the Employment Pass application is rejected, the candidate will have an option to submit an appeal within three months of the rejection, failing which a new application will have to be submitted. Appeals are typically processed within six weeks.

Employment Pass holders earning at least S$6,000 may bring their spouse and children into Singapore under a dependant's pass (or a long term visit pass depending on the status of the spouse and children). Employment Pass holders earning at least S$12,000 may bring their parents into Singapore under a long term visit pass. Separate applications will have to be made for each family member seeking the aforementioned passes.

From February 1, 2022, candidates must be fully vaccinated against COVID-19 as a condition of their work pass approval and renewal.

Trade unions and collective agreements

A trade union is an association of workers or employers set up for the purpose of regulating relations between employers and workmen. Trade unions seek to promote good industrial relations between workmen and employers, improve the working conditions and socio-economic status of workmen, and increase productivity for the benefit of workmen, employers and the Singapore economy.

A collective agreement is an agreement between an employer and a trade union on the employees' terms and conditions of employment. It may include terms such as the provision of benefits owed to employees upon their retirement or their termination or grievance procedures.

A collective agreement must be filed with the Industrial Arbitration Court for certification within one week upon signing and is subsequently valid for a minimum of two years and a maximum of three years.

Trade disputes relating to collective agreements that cannot be settled amicably may be referred to the Industrial Arbitration Court.

Where employees are transferred from one entity to another because of restructuring, the collective agreement continues to bind the transferee as if it were the original employer.

Workplace health and safety

A trade union is an association of workers or employers the safety, health and welfare of persons at work in workplaces is governed by the WSHA. The WSHA imposes duties on persons at workplaces depending on their capacities, including employers, contractors, sub-contractors, principals and occupiers.

Duties of employer

The WSHA requires every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of: (i) its employees at work; and (ii) other persons who may be affected by any undertaking carried on by the employer in the workplace.

These necessary measures include:

- Conducting risk assessments to identify hazards and implement effective risk control measures;
- Making sure that the work environment is safe;
- Making sure adequate safety measures are taken for any machinery, equipment, plant, article or process used at the workplace;
- Developing and implementing systems for dealing with emergencies; and
- Ensuring that workers are provided with sufficient instruction, training and supervision so that they can work safely.

Duties of principal

The WSHA requires a principal, who is directing the manner in which work is carried out, to take reasonably practicable measures to ensure the safety and health of its contractors, subcontractors and their employees. A "principal" refers to any person or organisation who engages another person to supply labour or perform work under a contract for service.

In addition, a principal must take reasonably practicable measures to ensure that any contractor it engages has the necessary expertise to carry out the work that it is tasked to do, and has taken adequate safety and health measures in respect of any machinery, equipment, plant, article or process that it uses.

According to the MOM's Workplace Health and Safety Guidelines: Design for Safety, the obligation to take reasonably practicable measures requires a principal to balance the degree of risk in a particular situation against the time, trouble, cost and physical difficulty of taking measures to avoid the risk. Whether a set of measures is reasonable usually requires consideration of (i) the severity of any injury or harm to the health that may occur, (ii) the degree of risk (or likelihood) of that injury or harm occurring, (iii) how much is known about the hazard and how to eliminate, reduce or control it, and (iv) the availability, suitability and cost of the safeguards.

Additionally, the Workplace Safety and Health Council (**WSH Council**) regularly issues updated codes of practice, guidelines and circulars to protect the safety and health of workers. The WSHC helps inform the stakeholders in the relevant industries about their duties and responsibilities. These are especially important given the rapidly-evolving labour landscape that has seen severe disruptions from COVID-19. Further information on the WSH Council can be found at www.tal.sg/wshc.

Transfer of employment

An employer has the right to transfer an employee if the organization is being restructured, for example, if a merger is being undertaken, if a subsidiary is being set up or if parts of the company are being sold. Section 18A of the Employment Act governs the transfer of employees from one entity to another.

Where an employee is transferred to a new employer under Section 18A, the employee's terms and conditions of employment will remain the same unless the employee agrees to a variation of such terms and conditions. The Employment Act stipulates that a transfer does not constitute a break in the continuous employment for the transferred employee. This is significant because it affects the employee's rights. These include the number of leave days which the employee is statutorily entitled to, the notice period an employee and/or employer must give the other should they wish to terminate the employment contract, and retrenchment benefits which employers are encouraged to provide their employees.

Employees who are to be transferred have the right to be notified of the transfer and matters which relate to the transfer, to consult their employer, and to preserve their terms of employment under the new employer unless they agree otherwise. Employees are also to be informed of any key employment issues which arise during the transfer which may affect them.

Disputes which arise during a transfer may be referred to the Commissioner of Labour who has the power to delay or prohibit the transfer of the employee, and to set terms which dictate how the transfer should be carried out.

Restrictive covenants

A restrictive covenant is a contractual provision which prohibits an employee from carrying out certain activities after his/her employment with the employer has terminated. A restrictive covenant may take several forms, including:

- Non-compete: this prohibits the employee from working for a competitor of the former employer, or participating in the same field of business.
- Non-solicitation: this prohibits the employee from contacting the former employer's customers or clients.
- Non-poaching: this prohibits the employee from soliciting or hiring his/her former colleagues to work in another business.

Under Singapore law, a restrictive covenant is unenforceable on its face unless the employer can show that the restrictive covenant protects its legitimate interests. The legitimate interests of an employer may include (i) client and trade connections; (ii) the goodwill in its business; (iii) employee connections; and (iv) trade secrets and confidential information.

An employer who seeks to enforce a restrictive covenant must also show that the restrictive covenant is reasonable in the interests of the parties concerned and of the public. The broader the scope of a restrictive covenant, the harder it will be for the employer to prove that it is reasonable. Restrictive covenants that (i) persist for a long duration; (ii) cover numerous jurisdictions or are worldwide in nature; or (iii) cover business activities which the employee was not involved with have been struck down by the Singapore courts as unreasonable restraints of trade. Restrictive covenants should therefore be drafted carefully to ensure that they are reasonable and enforceable.

If an employer discovers that an ex-employee has breached a restrictive covenant, the employer may apply to the Singapore courts for an injunction and/or claim damages against the ex-employee in respect of the breach. It is also common for an employer to notify its ex-employee's new firm of the existence of the restrictive covenant, with the intent that the new firm will prevent the ex-employee from further breaching the restrictive covenant.

Data privacy and confidentiality

The PDPA is the primary data protection statute in Singapore. It governs the collection, use and disclosure of individuals' personal data by organisations. "Personal data" refers to data about an individual (whether true or not), who can be identified (a) from that data; or (b) from that data and other information to which the organization has or is likely to have access.

In the employment context, an employer may collect, use or disclose an employee's personal data with the employee's consent, or (where consent has not been obtained) in accordance with certain statutory exceptions under the PDPA. These include responding to an emergency that threatens the life, health or safety of the employee, debt recovery, preventing illegal activities and corporate due diligence. Notably, consent is not needed when an employer collects, uses or discloses an employee's personal data for the purpose of entering into, managing or terminating the employment relationship. Activities covered by this exception would include conducting pre-employment health screening and background checks, issuing salaries and conducting audit checks.

While employers may rely on the exceptions under the PDPA to process their employees' personal data without consent in many employment-related situations, it is recommended that employers develop and implement personal information collection statements and/or data privacy policies to inform employees of the firm's policies and practices surrounding personal data.

In the post COVID-19 working environment, working remotely and flexible arrangements are and will continue to be relevant. In light of this, we foresee that employees will spend more time engaging in electronic communications. Should an employer wish to monitor, access or review its employees' electronic communications, it has to obtain consent or show that such collection and use falls within one of the exceptions listed under the PDPA.

Post-employment, an employer should cease to retain an employee's personal data as soon as the purpose for which that personal data was collected is no longer being served by the retention of the personal data, and retention is no longer necessary for legal or business purposes. As the limitation period for contractual claims brought by an employee is six years, many employers choose to retain their ex-employees' personal data for at least six years after their last day of employment.

Workplace discrimination, whistleblowing, employee grievance-handling and workplace harassment

Workplace discrimination

Singapore presently does not have any formal legislation that directly regulates matters relating to workplace discrimination and related unfair employment practices. However, the TAFEP has published the Fair Employment Guidelines to help organisations adopt fair and merit-based employment practices.

The Fair Employment Guidelines encourage employers to:

- 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.
- Treat employees fairly and with respect and implement progressive human resource management systems.
- Provide employees with equal opportunity to be considered for training and development based on their strengths and needs to help them achieve their full potential.
- Reward employees fairly based on their ability, performance, contribution and experience.
- Abide by labour laws and adopt the Fair Employment Guidelines.

Whilst the TAFEP Guidelines are presently not legally binding, there are some avenues for recourse against non-compliant employers:

- An aggrieved employee may file a complaint of employment discrimination with TAFEP. TAFEP will first counsel the employer to improve its employment practices. Recalcitrant or unresponsive employers may be cautioned, and in serious cases may have their work pass privileges suspended by MOM for a period of time, typically 12 to 24 months.
- MOM also proactively identifies employers with indications of discriminatory hiring practices, e.g. based on their workforce profiles. These firms will be placed on the Fair Consideration Framework Watchlist (**FCF Watchlist**). Employers placed on the FCF Watchlist will have their work pass applications more closely scrutinised for any discriminatory hiring practices and will be counselled by TAFEP to improve their HR practices. Although the complete list of firms on the FCF Watchlist is not publicly available, MOM may from time to time publish official statements that identify the names of individual firms. Errant or uncooperative employers may have their work pass privileges suspended (see above).
- Employers and/or key personnel who are found to have falsely declared in their work pass applications that they have considered all candidates fairly may be prosecuted under the EFMA and fined and/or imprisoned.
- Additionally, employees may file wrongful dismissal claims with the Tripartite Alliance for Dispute Management (**TADM**) if they have been dismissed on discriminatory grounds.

The Singapore government announced in August 2021 that it will enact new laws to formally enshrine the Fair Employment Guidelines into law[2].

Whistleblowing

Under Singapore law, there is currently no specific statute that pertains to whistleblowing. However, whistle-blowers who feel victimized or discriminated against by their employers can seek help from TAFEP. Employers who also retaliate against whistleblowers may also be liable for unfair dismissal.

In October 2021, the Minister of State for Manpower announced that a committee is currently looking into the scope of possible legislation for workplace fairness, including protection for whistle-blowers.

Employee grievance handling

With regards to employee grievance handling, TAFEP has published a handbook that employers should adhere to. The handbook counsels that employers should have a grievance procedure put in place. The grievance procedure ought to have the following features:

- Levels of appeal;
- The first level of appeal for an employee with a grievance should be the immediate superior, unless the grievance is against the immediate superior;
- The existence of a time lag (i.e. a fixed period of time) before action can be taken, such that management is less likely to make capricious decisions; and
- The employee ought to have the right to move to the next level of appeal if no decision satisfactory to both parties is reached within the time lag.

Workplace harassment

Incidents of workplace harassment may constitute an offence under the Protection from Harassment Act 2014 (**POHA**). The POHA prohibits behaviour which intentionally causes harassment, alarm or distress. Such behaviour includes using or making any threatening, abusive or insulting behaviour or communication, or engaging in conduct which causes fear, provocation or facilitation of violence, including vulgar tirades, cyber bullying and sexual harassment. If found liable under the POHA, an offender may be fined and/or imprisoned.

TAFEP has issued a Tripartite Advisory on Managing Workplace Harassment to assist employers and employees to prevent and manage workplace harassment. The advisory recommends that employers address workplace harassment by implementing a harassment prevention policy that provides recourse to victims of harassment, providing training on workplace harassment, as well as reporting and response procedures that are communicated to all the employees within the organization.

2 This has yet to occur as of June 2022

Termination by employers

Employers may terminate employees either: (i) with notice (or payment in lieu of notice); or (ii) for cause and without notice (or without payment in lieu of notice).

Termination with notice (or payment in lieu of notice)

Employers are not required to provide the affected employee with the reason(s) for his/her termination in the event the affected employee is terminated with notice (or payment in lieu of notice).

Many Singapore law governed employment contracts specify a notice period. Typically, this ranges from one month for junior employees to six months for senior/C-suite employees. In the absence of such provisions, the length of notice is specified in the Employment Act, which is as follows:

Employee's length of service	Length of notice under the employment act
Less than 26 weeks	1 day
More than 26 weeks but less than 2 years	1 week
2 years but less than 5 years	2 weeks
5 years or more	4 weeks

Employers may terminate the employment contract without waiting for the expiry of the notice period by paying the affected employee's salary for the duration of the notice period, or part thereof, in lieu of the notice period.

Termination for cause and without notice (or without payment in lieu of notice)

Many Singapore law governed employment contracts specify certain circumstances that entitle employers to terminate an employee's employment for cause and without notice (or without payment in lieu of notice). This includes circumstances where an employee: (i) commits a serious or persistent breach of the employment contract; (ii) is grossly incompetent in his/her duties; (iii) commits acts of dishonesty in the course of his/her employment; and (iv) is convicted of a criminal offence which affects his/her suitability for employment.

In the absence of such provisions, the Employment Act entitles employers to terminate employees for cause and without notice in the event the employee commits a wilful breach of a condition of the employment contract and/or on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of the employee's service.

Employers should exercise their contractual/statutory rights to terminate employees for cause and without notice judiciously. Employers who are found to have terminated an employee without due cause may be liable to pay damages for wrongful termination of the employment contract. In certain scenarios, an employee who has been wrongfully dismissed may also be entitled to pursue the statutory remedy of reinstatement in the employee's former employment.

The Employment Act requires employers to conduct a due inquiry before terminating an employee for cause and without notice. The Tripartite Guidelines on Wrongful Dismissal provide employers with guidelines on how to treat employees fairly in such circumstances. In summary, employers are required to conduct a reasonably fair inquiry to allow the affected employee present his/her case before the employer decides on whether to terminate the affected employee's employment.

Constructive dismissal

Constructive dismissal occurs when the employer has committed a repudiatory breach of a fundamental term of the employment contract which entitles the affected employee to treat himself/herself as relieved from any further obligations under the employment contract.

Constructive dismissal typically occurs when an employer has breached an implied term of trust and confidence in the employment contract. This implied term prohibits the employer, without reasonable and proper cause, from conducting itself in a manner calculated and likely to destroy or seriously damage the relationship of mutual trust and confidence between employer and employee.

Actions that could constitute a breach of the relationship of mutual trust and confidence include:

- Substantially changing the employee's job responsibilities and job scope; or
- Excluding the employee from his/her duties for no legitimate reason.

An employee who is constructively dismissed is entitled to the amounts the employee would have received if he/she was terminated without waiting for the expiry of the notice period and paid in lieu of the notice period.

There is a possibility that employees who are constructively dismissed may be entitled to additional damages in addition to those above, such as those relating to emotional distress or impairment of future employment prospects. However, the burden is on the employee to prove that he/she is entitled to such damages.

Termination by employees

Employees are entitled to terminate their employment with their employer (i.e. by resigning). Employees can do so: (i) with notice (or payment in lieu of notice); or (ii) without notice (or without payment in lieu of notice) in the event of the employer's repudiatory breach of the employment contract (for example, if the employee is constructively dismissed).

Many Singapore law governed employment contracts specify a notice period. In the absence of such provisions, the notice periods set out in the Employment Act as stated above apply equally to employees who terminate their employment. It should be noted that the Employment Act requires the length of the notice to be the same for both employer and employee.

It is possible for an employee to resign with immediate effect by paying the employer salary *in lieu* of notice.

Retirement

Under the RRA, the minimum retirement age in Singapore is presently 62 years. Employers are prohibited from asking an employee to retire before he/she is 62 years old.

Employers must offer re-employment to eligible employees who turn 62, up to the age of 67. Employees are eligible for re-employment if they are (i) Singaporeans or Singapore Permanent Residents; (ii) have been employed by the current employer for at least 3 years before turning 62; (iii) have satisfactory work performance; (iv) are medically fit to continue working; and (v) are born on or after July 1, 1952.

Employees who are offered re-employment will enter into a new employment contract whose term should be at least one year, renewable every year up to age 67. The employee's salary may be adjusted based on reasonable factors such as new duties or responsibilities.

If the employer is unable to offer an employee re-employment, the employer must either: (i) transfer the re-employment obligation to another employer, with the employee's agreement; or (ii) as a last resort, terminate the employee's employment and make a one-off payment to the employee (known as the Employment Assistance Payment) equivalent to 3.5 months' salary, subject to a minimum of S$5,500 and maximum of S$13,000.

There are plans to gradually raise the Retirement and Re-Employment Ages to 65 and 70 respectively by 2030. The first step of this process will occur on July 1, 2022, when the Retirement Age and Re-Employment Age will rise to 63 and 68 respectively.

Enforcement trends and latest developments

Workplace discrimination

In recent years, the MOM and TAFEP have taken increasingly stringent enforcement actions against employers found to be discriminating against Singapore Citizens in recruitment. An average of 41 employers each year are found to have breached the requirements in the FCF.

In August 2021, the Singapore government announced plans to enshrine the current Fair Employment Guidelines into law. This was following repeated requests by ministers of parliament and the labour movement to give Fair Employment Guidelines more teeth. It was also announced that cases of workplace discrimination will be referred to a new tribunal similar to the existing Employment Claims Tribunal (which deals with disputes over salaries and wrongful dismissal). In March 2022, it was announced that as part of the initiative to enshrine the Fair Employment Guidelines into law, "a wider range of penalties can also imposed on errant employers, commensurate with their wrongdoing".

Further information on this development can be found at our blogpost: Singapore to enshrine workplace anti-discrimination laws (Global Workplace Insider).

The Singapore government has also stated that the Tripartite Committee on Workplace Fairness is presently deliberating and consulting widely on such matters, and will present a report on its recommendations to the government in due course.

Business and Human Rights and Forced Labour

Between 2016 and 2020, MOM took enforcement action against an average of 102 employers each year for collecting kickbacks from migrant workers. Kickbacks are illegal payments extorted from migrant workers as a condition or guarantee of employment, with the effect that workers are compelled to pay their employers in order to keep their jobs.

Breaching employers were prohibited from repatriating affected workers once investigations against them were commenced. Employers found to have received kickbacks were also required to return the kickbacks collected to affected workers.

Collecting kickbacks from employees constitutes forced labour from the perspective of the International Labour Organisation. Forced labour is any work or service that has been extracted from a worker under the threat of penalty, and for which that worker has not offered himself or herself voluntarily. Threats do not need to be overt. They can take on subtle forms, such as withholding part of a worker's salary in order to compel a worker to stay in the hopes of eventually being paid.

Even if businesses do not employ forced labour themselves, they may be tainted by their associations or business links with contractors and suppliers that employ forced labour. Accordingly, businesses should be aware of the various forms of forced labour, as well as how this might be present along their supply chains.

Workplace safety

With regards to workplace safety, MOM has been increasing the frequency of inspections on work sites following an alarming spate of work-related deaths and injuries in late 2020. As such, employers in the relevant industries should proactively ensure that workplace safety regulations are met in order to avoid penalties.

Changes to S Pass and employment pass regimes

In March 2022, the MOM announced several upcoming changes to the S Pass and Employment Pass regimes, including raising the minimum qualifying salary for S Passes and Employment Passes. Some of the key changes are as follows:

- The minimum qualifying salary for S Pass applicants will be raised from S$2,500 to S$3,000 in September 2022. In the financial services sector, where salaries are higher, the minimum qualifying salary will be raised from S$3,000 to 3,500. This will be further raised in September 2023 and September 2025 depending on prevailing local wages.
- The minimum qualifying salary for EP applicants will be raised from S$4,500 to S$5,000 in September 2022. In the financial services sector, the minimum qualifying salary will be raised from S$5,000 to 5,500. This seeks to ensure that the EP qualifying salary matches the 65th percentile of wages made by local PMETs.

MOM is also poised to introduce an evaluative framework for Employment Pass applications. The framework, COMPASS, is a points-based system which requires EP applicants to obtain a certain number of points, in addition to meeting the qualifying salary. COMPASS will apply to all new Employment Pass applications from September 1, 2023 and all Employment Pass renewals from September 1, 2024.

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