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NAVIGATING EMPLOYMENT LAW IN SINGAPORE: KEY POINTS FOR FOREIGN COMPANIES AND EMPLOYERS

As a foreign company or employer seeking to establish or expand its presence in Singapore, navigating employment law in Singapore is crucial to ensure compliance with the country's legal framework and to foster a positive and productive work environment. From hiring practices to statutory benefits, termination procedures, and workplace safety, this guide highlights key employment regulations in Singapore and resolves some common queries to help you navigate the intricacies of Singapore's employment law.

OVERVIEW

1. Employment Law in Singapore Statutes and Governing Bodies

Employment practices in Singapore are largely governed by the Employment Act 1968 ("Act") and its subsidiary legislation. The Act covers an entire range of employment related issues including termination and dismissal, salary issues, leave entitlements and maternity protection.

Other important pieces of legislation include the Employment of Foreign Manpower Act 1990 ("EFMA"), the Retirement and Re-employment Act 1993, Child Development Co-Savings Act 2001, Workplace Safety and Health Act 2006 ("WSHA") and Work Injury Compensation Act 2019 ("WICA").

The Ministry of Manpower ("MOM") is the governmental body responsible for employment related issues in Singapore. Other statutory boards include the Central Provident Fund Board, the Singapore Labour Foundation and Workforce Singapore.

The Tripartite Alliance for Fair and Progressive Employment Practices is an agency that promotes the adoption of fair and progressive employment practices. The Tripartite Alliance for Dispute Management ("TADM") was also set up to provide advisory and mediation services for employment disputes.

2. Scope of the Act in Singapore

The Act applies to all employees working under a contract of service with an employer and covers local and foreign employees, part-time employees and full-time employees. The Act does not cover seafarers, domestic workers, statutory board employees and civil servants.

Part IV of the Act (provisions relating to rest days, hours of work and other conditions of services) only applies to workmen receiving a monthly salary of not more than S$4,500 (excluding overtime pay, bonus, etc.) and every other employee who receives a monthly salary of up to S$2,600 (excluding overtime pay, bonus, etc.).

Part IV of the Act does not apply to managers and executives (employees with executive and supervisory functions).

TEN FREQUENTLY ASKED QUESTIONS BY FOREIGN EMPLOYERS

1. What are the different types of work passes and requirements if a company wishes to employ foreign employees in Singapore?

The employment of foreign employees in Singapore is governed by the EFMA.

Under the EFMA, employing a foreign employee who is not in possession of a valid work pass is prohibited. Failure to comply with this requirement is an offence, and employers in contravention will be liable on conviction to a fine of between S$5,000 and S$30,000 and/or imprisonment for a term not exceeding 12 months.

Types of work passes and work permits

Singapore offers a wide range of work passes for foreign employees. Determining which work pass is suitable will depend on a variety of factors, such as the type of employment the employee will be engaging in, the employee's skill level, the industry / sector the employee will be working in, etc.

Some commonly issued work passes include:

- *Employment Pass*: for foreign professionals, managers and executives who earn at least S$5,000 a month
- *Work Permit*: for several classes of employees, including migrant domestic workers and foreign performers
- *Work Holiday Pass*: for students and graduates aged 18 to 25 who wish to work and holiday in Singapore for 6 months.

From 1 September 2023, Employment Pass applicants must pass a two-stage process. Apart from having to meet the qualifying salary, applicants must also pass the new Complementarity Assessment Framework (COMPASS) whereby Employment Pass applicants must obtain a certain number of points which will be awarded based 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.

2. What are the basic terms which should be included in an employment contract?

Pursuant to Section 95A of the Act, every employee who enters into a contract of service after 1 April 2016 and is employed under the contract for at least 14 days must be given a written record of the key employment terms ("KET") within 14 days of commencement of employment. The KETs as stated in the subsidiary legislation of the Act are as follows:

- Employer's and employee's names
- Job title and description of main duties and responsibilities
- Commencement date and duration of employment
- Daily working hours, number of working days and rest days
- Salary period and basic rate of pay, including all fixed allowances and fixed deductions, payment period for overtime pay, rate of overtime pay and any other salary related component
- Leave entitlement
- Medical benefits
- Probation period
- Notice period

Apart from the provision of KETs which are mandatory, other clauses which are in practice essential in employment contracts include:

- Termination clauses
- Handover clauses

- Confidentiality clauses
- Intellectual property right clauses (if applicable)
- Law and Jurisdiction clauses
- Personal Data clauses (refer to Question 9 below)
- Clauses pertaining to expenses and reimbursement
- Clauses pertaining to each organisation's employee handbook, etc.

Section 8 of the Act states that every term of a contract of service which provides a condition of service less favourable to an employee than any of the conditions of services prescribed by the Act is illegal and void to the extent that it is so less favourable. Any employment contract must thus be drafted in strict adherence to the conditions of service mandated by the Act.

3. Who is covered by the mandatory social security savings scheme in Singapore and how much is an employer expected to contribute to these employees?

The Central Provident Fund ("CPF") is a mandatory social security savings scheme governed by the Central Provident Fund Act 1953 ("CPF Act"). Under the CPF scheme, employees who are Singapore citizens or Singapore permanent residents and their employers are mandated by law to make monthly contributions to the eligible employee's CPF fund. Foreign employees working in Singapore are not entitled to CPF contributions.

A certain percentage of an eligible employee's monthly salary will be set aside and the employer is required to transfer this amount to that employee's CPF fund – this constitutes the individual *employee's* CPF contribution.

The *employer's* CPF contribution comprises a further sum (on top of the employee's monthly salary) which an employer is required to contribute to an eligible employee's CPF fund.

The monthly contribution rates for both employees and employers are set out in the CPF Act, and vary depending on an employee's age, salary and permanent residency status. For Singapore citizens and most Singapore permanent residents who are 55 years old and below, the prevailing employer contribution rate is 17% of an employee's monthly salary.

The monthly salary which requires CPF contributions is currently capped at S$6,000 with an annual salary ceiling of S$102,000. This means that if an employee's monthly salary is more than S$6,000, his/her contribution would be computed based on S$6,000. The monthly salary ceiling is expected to increase in four stages over the next few years, until it is eventually raised to S$8,000 in 2026.

4. What are the tax liabilities for foreign employers in Singapore or employees of a foreign company?

Non-Singapore incorporated companies and Singapore branches of foreign companies

Generally, companies incorporated outside of Singapore and Singapore branches of foreign companies are not considered tax residents of Singapore. Foreign employers should note that non-resident companies are still liable to pay tax in Singapore on income accrued in or derived from Singapore or received in Singapore from outside Singapore.

Employees of non-resident employers

An employee of a non-resident employer will typically be taxed on income earned for the period the employee has rendered services in Singapore, even if their income is not received in Singapore. Employees should seek advice as to whether they are eligible for Double Taxation

Agreement exemptions to avoid being taxed twice on the same income in Singapore and a foreign jurisdiction.

How income is assessed

If an employee has exercised employment in Singapore for 60 days or less in a calendar year, they will be exempted from tax on earnings in Singapore.

For the exercise of employment for 61 days or more, income will be taxed as follows:

Period	Taxation Rate
61 to 182 days in a calendar year	15% or resident rates for individuals, whichever gives the higher tax
183 days or more in a calendar year	Resident rates for individuals
Stay or work in Singapore for three consecutive years	Resident rates for individuals

5. Are post-termination restrictive covenants enforceable in Singapore?

Post-termination restrictive covenants refer to clauses within an employment agreement which restrict the employee's rights after termination of an employment agreement. Types of restrictive covenants include the following:

- *Non-Competition clauses*: Clauses preventing an employee from joining a competing business / company after termination of employment.
- *Non-Solicitation of Employees / Non-Poaching clauses*: Clauses preventing an employee from soliciting the employees of the business / company he or she had worked for.
- *Non-Solicitation of Clients, Customers, Suppliers / Non-Dealing clauses*: Clauses preventing an employee from soliciting existing clients, customers and suppliers of the business / company he or she had worked for.

Restrictive covenants are generally void and unenforceable in Singapore, unless an employer is able to evidence and prove two elements: Firstly, that there is a legitimate proprietary interest to be protected by the restrictive covenant ("Legitimate Proprietary Interest") and secondly, that such covenants are reasonable and not wider than is necessary to protect the said interest ("Reasonableness").

Legitimate Proprietary Interest

What constitutes a Legitimate Proprietary Interest depends largely on the nature of the employer's business and can include trade secrets, the importance of maintaining a stable work force, trade connections and even general goodwill.

Reasonableness

Reasonableness of a covenant is measured from two perspectives – privately (vis-à-vis the contracting parties) and publicly (vis-à-vis public interest).

For a restrictive covenant to be considered reasonable, the scope of the covenant must be carefully drafted so as to ensure that it does not go further than necessary to protect an employer's interest. Some areas which an employer can consider narrowing to ensure reasonableness include: (1) Territory (e.g. only applicable to businesses in Singapore), (2) Geography (e.g. not allowed to work for a rival business within a 2 kilometre radius from the former employer), (3) Time (e.g. covenant is only effective for 6 months from the date of termination); or (4) Activity (e.g. only restricts a specific field of work).

Other factors that will impact the Court's consideration on reasonableness include:

- The extent of knowledge and influence the employee had over fellow employees, suppliers, clients;
- The designation of the employee and the trade secrets and confidential information he or she is privy to;
- The salary of the employee;
- The number of years the employee has worked with the company.

Whether a restrictive covenant is considered enforceable often boils down to the factual matrix of the matter and the exact terms of the clause.

6. What rights do the employer and employee have if either party wishes to terminate an employment contract?

Typically, if either the employer or the employee wishes to terminate an employment contract, they are free to do so at any time, bearing in mind that notice of their intention to terminate the contract must be given to the other party.

How far in advance notice must be given is usually determined by the terms of the employment contract. If an employment contract does not provide for a specific notice period, notice must be given in accordance with Section 10(3) of the Act, which sets out the requisite notice periods based on duration of employment. The length of the notice period must be the same for both the employer and the employee.

An employment contract may be terminated without notice or terminated before the expiry of the required notice period if:

- the party terminating pays to the other a sum equal to the amount of salary at the gross rate of pay which would have accrued to the employee during the period of the notice; or
- there is a wilful breach of the employment contract.

Wrongful dismissal

It is critical to be aware of scenarios in which the termination of an employee's contract and the employee's subsequent dismissal could be wrongful. Some examples of wrongful reasons for dismissal include discrimination against the employee (e.g. on the basis of race, gender, marital status, etc.) or to deprive an employee of benefits to which he or she is entitled. The Tripartite Guidelines on Wrongful Dismissal is an essential reference for adjudicators at the TADM and the Employment Claims Tribunal ("ECT") presiding over cases where wrongful dismissal is alleged.

Additionally, it is important to note that several employees may possess certain protected characteristics and dismissing such employees without following the proper procedures could have serious consequences. For instance, an employer who dismisses an employee while she is on maternity leave would be guilty of an offence and liable on conviction to a fine of up to S$5,000 or to imprisonment for a term not exceeding 6 months or both. Similar consequences would arise for an employer who dismisses an employee on the grounds of age before the employee attains the minimum retirement age in Singapore (currently 63 years).

7. What are the mandatory legal requirements if a company is considering retrenchment / mass layoffs of employees?

Retrenchment is the dismissal of an employee on the ground of redundancy or by reason of reorganisation of the employer's profession or business. MOM requires employers who have businesses registered in Singapore with at least 10 employees to notify MOM of retrenchments within 5 working days after affected employees are notified of their retrenchment.

Employees who have been in continuous service with an employer for 2 years or more are entitled

to retrenchment benefits, though it is not mandatory to provide retrenchment benefits to affected employees.

A full checklist on responsible retrenchment practices is available for employers considering retrenchment in the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment.

8. What are an employer's duties in terms of workplace safety and health in Singapore?

Workplace Safety

Foreign companies in Singapore must comply with the WSHA, which sets out certain obligations and responsibilities to safeguard the well-being of a company's employees or anyone who may be affected by any undertaking carried on by the employer in the workplace.

Such responsibilities include conducting risk assessments, ensuring adequate safety measures are in place for use of company equipment / machinery, accident reporting, and providing necessary training to employees. Employees who sustain injuries in the course of their employment can claim compensation under the WICA.

Complying with both the Employment Act and workplace safety regulations is crucial for foreign companies to maintain a positive working environment in Singapore, avoid legal issues, and to safeguard the health, safety and welfare of their employees.

Anti-Discriminatory Employment Practices

Although anti-discrimination in the workplace is not currently legislated in Singapore, the Tripartite Guidelines on Fair Employment Practices ("TGFEP") and the Fair Consideration Framework ("FCF") offers certain guidelines for employers in Singapore to enforce workplace fairness and anti-discrimination policies. This applies to all employees, including foreign employees.

Under the TGFEP and FCF, employers should recruit employees based on merit regardless of their age, race, religion, disability and/or marital status. Employers are also advised to provide all employees with an equal opportunity in terms of training and progression, and should be fair when issuing rewards to deserving employees.

While the guidelines are not legally binding, it is common practice for employers in Singapore to comply with them. Furthermore, MOM has stated that employers who are found to have breached the guidelines will have their work pass privileges restricted or revoked. This encourages more employers to observe anti-discriminatory employment practices strictly.

In 2021, Singapore's Prime Minister Lee Hsien Loong announced the government's intention for the TGFEP to be enshrined in law. Just recently in February 2023, the Tripartite Committee on Workplace Fairness (which was convened in 2021) released an interim report on their recommendations for the proposed Workplace Fairness Legislation. These guidelines and advisories are expected to be legislated sometime in 2024.

Protection of Employees from Workplace Harassment

Legislation prohibiting workplace harassment in Singapore is covered under the Protection from Harassment Act 2014 ("POHA"), which prohibits any individual from causing harassment, alarm or distress to another individual. Some examples of behaviour considered to be an offence under the POHA includes any threatening, abusive or insulting words or behaviour. Individuals found to have contravened this statute may face imprisonment or fines.

Foreign companies should also refer to the Tripartite Advisory on Managing Workplace

Harassment which provides certain recommendations for employers to implement in the workplace to prevent any harassment of employees.

9. What are the employer's obligations in terms of data privacy in Singapore?

Singapore's data protection laws are primarily governed by the Personal Data Protection Act 2012 ("PDPA"), which regulates the collection, use and disclosure of an individual's personal data by an organisation. Personal data is defined in the PDPA to cover data, whether true or not, about an individual who can be identified (a) from that data or (b) from that data and other information to which the organisation has or is likely to have access.

Under the PDPA, an employer is generally allowed to collect, use and disclose personal data with the employee's consent. If consent has not been obtained, an employer is allowed to collect, use and disclose an employee's personal data for the purposes of entering into, managing or terminating the employment relationship – for example, issuing salaries and audit checks. Other exceptional cases specified in the PDPA include emergency situations that threaten the life, health or safety of an individual, preventing illegal activities and national security.

Employers are recommended to ensure their employees are kept informed when an employer intends to collect, use or disclose their employees' personal data, and that adequate consent is obtained by implementing data privacy policies and collecting personal data collection statements from employees where necessary. Appropriate security measures should also be enforced to safeguard the private information of employees.

After an employee has ceased employment, an employer should cease to retain their personal data if 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.

10. What are the available channels to resolve employment disputes in Singapore?

Generally, parties can commence their claims through the TADM, which makes it compulsory for parties to attempt mediation. It is only if the dispute is unable to be resolved via mediation that parties' disputes may be referred to the ECT. The maximum claim amount at the ECT is S$20,000, or S$30,000 if the claim was filed via the Tripartite Mediation Framework. The ECT hears disputes concerning statutory salary-related claims, contractual salary-related claims, wrongful dismissal claims and claims for salary in lieu of notice of termination by all employers.

Alternative dispute resolution clauses can be inserted into employment contracts to encourage parties to use alternative dispute resolution methods ("ADR") such as mediation and arbitration when an employment dispute arises.

Other more complicated disputes which do not fall within the jurisdiction of the ECT or for disputes of a value exceeding the jurisdiction of the ECT can be commenced in MOM's Labour Court or the Singapore Courts.

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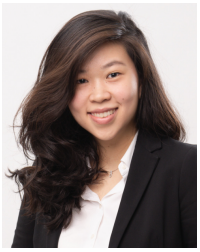

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