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COVID-19: Impact on employment in Singapore

21 April 2020

Overview

The first confirmed case of the coronavirus (COVID-19) was reported in Singapore on 23 January 2020. The government agency responsible for employment matters in Singapore, the Ministry of Manpower (MOM), has from an early stage taken a proactive and realistic approach to employment matters in Singapore as a result of COVID-19. The MOM has recognized that the introduction of cost-cutting measures directly impacting employees' salaries will be necessary for many companies, notwithstanding that such measures typically require employee consent under Singapore law.

As the government measures in response to COVID-19 have become more severe over time, many employers have suffered a severe decline in revenue and are taking measures to survive the coming months. The latest government measure, announced on 3 April 2020 was the closure of all non-essential services from 7 April 2020 to 4 May 2020 with the potential for this end-date to be extended, as part of Prime Minister Lee Hsien Loong's "circuit breaker" measures. This precipitated the closure of all workplace premises and retail outlets except for those deemed essential to support the daily living needs of the population.

This article will briefly highlight the key employment issues as a result of COVID-19, namely:

1. The different types of government order that may be imposed on an employee.
2. The MOM's response to cost-cutting measures impacting employees.
3. Measures for employer and employee assistance.
4. Access to employer premises.
5. Data privacy concerns for employers.

Employee orders

With respect to COVID-19, there are three types of orders that a person may be issued in Singapore, in descending order of severity: (1) a quarantine order (issued to isolate individuals who are, or are suspected to be, carriers of an infectious disease), (2) a Stay-Home Notice (SHN) (issued to those who must remain in their place of residence at all times during a 14-day period),

and (3) a Leave of Absence Order (LOA) (issued as a precautionary measure, whereby the individual can leave to buy meals and household supplies).

If an employee is under an SHN or LOA order, but is not actually unwell, that person should work from home to the extent possible - the employee will receive their usual salary, and no sick leave will apply. The same applies to office closures or preventative self-isolation measures being taken.

If working from home is not possible, or the employee is actually unwell, an employee's statutory entitlement to 14 days' paid outpatient leave and 60 days' paid hospitalization leave can be quickly expended. To be clear, there is no option for them to work in their usual place of business during these periods. In this case, employers are encouraged to be flexible, for example by (a) providing additional paid leave on top of an employees' annual leave entitlements, or (b) treating the period as part of their paid outpatient sick leave, or paid hospitalization leave entitlements.

Normal sick leave policy, such as requiring medical certificates from a medical practitioner, may also be relaxed to assist social distancing measures.

MOM directive on cost-cutting measures

On 11 March 2020 the MOM issued a directive that companies must notify the MOM if any cost-cutting measure taken during the COVID-19 epidemic impacts employees' salaries, and indicate that any change has been introduced fairly. This mandatory notification made within one week of the measure coming into effect originally applied to employers with 10 or more workers, and was intended by the MOM to "encourage a sense of social responsibility and prevent downstream salary disputes."

From 7 April 2020 the notification regime was amended such that if any cost-cutting measures are introduced during the circuit-breaker period, employers must only notify the MOM if the measure will result in employees' salaries falling below 75 percent of gross monthly salary for local employees, or 75 percent of basic monthly salary for foreign employees. In addition, there is no need to seek approval from the controller of work passes for salary reduction of foreign employees during this period.

Amendment of retrenchment guidelines

On 12 March 2020 the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment (the Guidelines) were updated in light of COVID-19. The Guidelines set out various options for struggling employers to avoid retrenchments, effectively on a sliding scale of severity, as follows:

a) Adjustments to work arrangement without salary cuts.

   For example, redeployment of employees to different business units, suspending employee benefits, or making use of paid holiday leave. Typically, employers cannot suspend non-discretionary employee benefits or enforce annual holiday leave against an employee's wishes. However, the MOM recognizes that if a business is facing financial strain due to COVID-19, measures may be unilaterally enforced on a temporary basis to prevent redundancies.

b) Adjustments to work arrangements with salary cuts.

   For example, making full-time employees part-time, implementing shorter work weeks, or temporary layoffs. Typically, the consent of the employee should be obtained before such employee's hours are reduced. However, where such measures are necessary to protect jobs, such measures are likely to be acceptable. The Guidelines provides some "best practice" recommendations - for example, that a shorter work week should not last for more than three

months at any one instance, subject to review, and employees should be paid at least 50 percent of their wage when not working.

c) Adjustments to salaries.

For example, salary freezes or salary cuts. If an employee does not have a contractual right to a salary increase, there is no issue with an employer unilaterally imposing a salary freeze. However, if an employee has a contractual right to a salary increase, the employee's consent should ideally be obtained to suspend or cancel such salary increase. Likewise, if a company wishes to implement a pay-cut for all employees, each employee would ordinarily need to consent to the pay-cut. However, provided there are very good reasons for the pay-cut and implementing the pay-cut will help prevent layoffs, imposing a pay-cut may be justifiable in certain circumstances. This is particularly the case where the pay-cut is temporary, and a once-off payment would, hopefully, be made to make up for the pay-cut later in the year.

d) Implementation of unpaid leave.

Unpaid leave is the "last resort," prior to redundancies. Unpaid leave cannot typically be implemented against an employee's wishes, however in the current climate, unpaid leave is effectively treated as a temporary layoff under the Guidelines and various recommendations apply. Before implementing unpaid leave, an employer should have considered and implemented any other less drastic measures first, as well as consulted with employees where possible.

Any material change in employment terms typically requires an employee's consent. Whilst the Guidelines and the current MOM guidance suggest that a unilateral change in employment terms is permissible in certain circumstances due to COVID-19, it does not eliminate the risk of a contractual claim being brought by an employee for a breach of employment terms. With that said, if the measure was necessary to avoid retrenchments or continued operations in Singapore and such measure was fairly imposed, it is unlikely that such claims will succeed.

When introducing any cost-saving measure, an employer should; (a) put in place a communication plan to explain the measure to employees, and explain why the measure is necessary in the current exceptional climate, (b) consult with any applicable trade union with respect to the measures, (c) if possible, seek volunteers from the workforce first, before unilaterally imposing any measures on staff, and (d) give employees an opportunity to discuss such measures with management in an open way. In addition, the MOM will expect that management lead by example, with senior staff accepting similar (or more drastic) cost-saving measures.

Employment relief measures

The Singapore government has also introduced several measures to ease the impact of COVID-19 on employers as well as employees. For example, the introduction of the COVID-19 "Support Grant," to support individuals who have lost their jobs, as a result of the COVID-19 pandemic. The Support Grant provides financial assistance to individuals seeking new jobs or attending training. Successful applicants will receive a monthly grant of SG$800 a month for three months.

In addition, the government introduced a Jobs Support Scheme in the 2020 budget, which was then enhanced and extended by the Resilience Budget, bringing the total support to SG$15.1 billion for over 1.9 million employees. It was further enhanced in early April by the Solidarity Budget. The qualifying monthly wage ceiling on the scheme has been raised from SG$3,600 to SG$4,600 (the median wage in Singapore) and as part of the Solidarity Budget, the government

has committed to pay 75 percent of the first SG$4,600 of monthly salaries for every local employee for April 2020. From May 2020 the aviation and tourism sectors will continue to have 75 percent of wages supported. The food services sector will have 50 percent of wages supported and other sectors will have 25 percent of wages supported.

Additional support schemes have also been introduced to assist the self-employed, as well as lower-income workers and employers of work pass holders. Effectively, foreign worker payments due from employers to the government have been suspended. In addition, cash payouts (on a means-tested sliding scale) have been awarded to every Singaporean over the age of 21.

Access to premises

During the circuit breaker period, services deemed "essential" may continue to operate under strict guidelines, provided that a "general exemption" has been obtained. Nonessential services that are able to continue to operate their business (in limited or full capacity) with their employees working from home should continue to do so.

If any employer carrying out non-essential services wishes to access their premises, strict rules apply. For example, the entity may be able to obtain a "time-limited exemption" which allows small numbers of workers to enter the premises to carry out crucial tasks of less than one day. Alternatively, the owner of the business may enter the premises without any express exemption for the same purposes (with "owner" including senior management, such as the managing director).

All employers must abide by the measures implemented under the COVID-19 (Temporary Measures) (Control Order) Regulations 2020, and it is an employer's responsibility to ensure that no employees enter the premises, and that safe distancing measures are in place where essential access is granted under an exemption.

Data privacy considerations for employers

Employers must consider duties of confidentiality and data protection requirements under the Singapore Personal Data Protection Act 2012 (PDPA) in relation to COVID-19. Under the PDPA, an entity generally cannot disclose personal information about an individual without their consent. However, the usual position must be interpreted in light of the overriding health concerns of the population.

The Personal Data Protection Commission (PDPC) has issued guidance that organizations may collect personal data of visitors to premises for purposes of contact tracing and other response measures. In the event of a COVID-19 case, relevant personal data (including national registration identity card, foreign identification number, or passport numbers) can be collected, used and disclosed without consent during this period to carry out contact tracing and other response measures, as this is necessary to respond to an emergency that threatens the life, health, or safety of other individuals under the PDPA.

However, while employers will want to keep staff informed about members of staff who have tested positive for COVID-19, as a general rule there will be no need to name the member of staff concerned. Employers should not provide more information than is necessary. This would normally involve informing co-workers who have been in contact with an employee who has subsequently developed COVID-19, without actually telling them who that person is.

In addition, there is no obligation on an employer to notify staff that someone has been tested for COVID-19, but does not have the results. Market practice, given the number of people testing

simply out of precaution, is that the employer keeps an eye on such persons without notifying all employees.

Notwithstanding this, organizations that collect personal data must continue to comply with the data protection provisions of the PDPA, such as making reasonable security arrangements to protect the personal data in their possession from unauthorized access or disclosure, and ensuring that the personal data is not used for other purposes without consent.

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