



FROM HIRING TO FIRING

A BASIC GUIDE TO THE SINGAPORE EMPLOYMENT LAW LIFE CYCLE



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This “From Hiring to Firing” guide was prepared in conjunction with TSMP Law Corporation.

HIRING

In Singapore, there are few legislative requirements and limits surrounding the recruitment, selection and hiring of employees.

Recruitment

There are numerous channels from which an organisation may source labour. Apart from the usual media advertisements, organisations may also proactively source staff from tertiary educational institutions or through introduction by government agencies. Whilst Singapore does not have specific legislation on employment discrimination, the Ministry of Manpower has issued the Tripartite Guidelines on Fair Employment Practices, including objective and fair selection criteria during the recruitment process.

From 1 August 2014, companies seeking to make employment pass applications were required to advertise job vacancies on a

new national Jobs Bank administered by Singapore’s Workforce Development Agency for at least 14 days. This requirement is part of the Singapore Government’s Fair Consideration Framework, aimed at ensuring that companies consider Singaporeans fairly for job vacancies before hiring foreigners, particularly at the managerial and executive level, and to put in place fair employment, hiring and staff development practices that are open, merit-based and non-discriminatory. In particular, companies are required to attract and consider Singaporeans for job positions on merit, and to train and develop potential and careers of Singaporean employees.

There are however exemptions available from the requirement to advertise job vacancies, such as jobs in small firms with 25 or fewer employees or jobs which pay a fixed monthly salary of \$12,000 and above.

Reference checking

Reference checking is a common practice among multi-national corporations in Singapore, but less so in the small-medium enterprise sector. When reference checking does take place, it is normally done prior to the offer of employment or during the probationary period of employment. This typically takes place with a potential employer requesting for a testimonial from the previous employer(s) or sending a standard form document to the employee’s previous employer(s) to complete and return prior to any confirmation of the probationary period.

Immigration

Foreign nationals who wish to live and work in Singapore must obtain valid work passes. There are several types of work passes, which are administered and issued by the Ministry of Manpower. The type of work pass required for an individual is dependent upon the qualification and skill-level of the applicant, or on the nature of the employment sought. Generally speaking, the laws that regulate the employment relationship in Singapore apply equally to foreign nationals. Special regulations may apply to the employment of foreign manpower with regard to, *inter alia*, work pass application and termination.

Employment contract

There is presently no statutory requirement for an employment contract to be in writing and there are no formalities that need to be complied with. Despite this, it is prudent for an employment contract to be recorded in writing for certainty and completeness, particularly in circumstances where specific terms of employment are desired or agreed to. Employers in Singapore typically include items such as the probationary period, job grade, salary, hours of work, leave and benefits, confidential information and termination provisions within an employment contract. Certain terms can be implied into an employment contract by operation of law, or by custom and practice. The Tripartite Guidelines on the Issuance

of Key Employment Terms in Writing was however issued in December 2014 (“Guidelines”). The Guidelines will only be made mandatory in 2016 pursuant to which Employers will be required to provide employees with written key employment terms by no later than 14 days after the commencement of employment which shall include terms such as name of employer and employee, commencement date and term, working hours, salary including allowances, deductions and overtime payments, duties and responsibilities, leave entitlements, probation period and termination and medical benefits.

Collective agreements

Collective agreements are common in Singapore within specific industries, such as transport and manufacturing. Industrial relations legislation regulates employer and employee relations, as well as the prevention and settlement of trade disputes that arise during the course of collective bargaining.

MANAGING

The Employment Act (Chapter 91) (**EA**) generally covers all employees in Singapore (**EA Employees**) with the exception of seamen, domestic servants, certain government employees and most persons employed in a professional, managerial or executive position (**Non-EA Employees**).

Workmen (defined as manual labourers and non-clerical staff in general terms) whose basic salary exceeds S\$4,500 per month and employees (other than workmen) whose basic salary exceeds S\$2,500 per month would also be excluded from the protection of certain provisions of the EA (relating to rest days, working hours and other conditions of service) (**Excluded Employees**).

For these Excluded Employees, matters such as hours of work and leave entitlements are to be agreed between the parties. Unless otherwise specified, the minimum entitlements set out below are for employees covered by the EA only.

Hours of work and rest days

The EA specifies that an employee cannot be required to work for more than:

- six consecutive hours without a rest period; or
- eight hours in one day or 44 hours in one week.

There are certain exceptions to these rules, for example, in circumstances where an employee is engaged in work that must be carried on continuously, or where an employee has reached an agreement with his or her employer under the employment contract that the maximum number of hours can be exceeded. There are, however, limits as to how long an employee can work continuously in a day under the different scenarios. There are also limited exceptions in certain emergency situations, for example, where the work is essential for defence or security, or in the case of actual or threatened accidents.

An employee is entitled to one unpaid rest day in each week worked. An employee cannot be compelled to work on a rest day unless the nature of the work is such that it is carried out continuously by a succession of shifts.

Payment for work done on a rest day should be calculated in accordance with the following criteria:

- work done at employer's request:
 - (i) one day's salary when the employee works up to half the normal daily working hours; or (ii) two days' salary when the employee works more than half the normal daily working hours;
- work done at employee's request:
 - (i) half day's salary when the employee works up to half the normal daily working hours; or (ii) one day's salary when the employee works more than half the normal daily working hours; and
- if an employee works beyond the normal, daily working hours on a rest day; he/she should be paid at least 1.5 times the hourly basic rate of pay for each hour exceeding his/her normal working hours.

The rules relating to working hours and rest days do not apply to Non-EA Employees, Excluded Employees or to any one working in a management or executive position.

Overtime

With some exceptions, all work done in excess of normal working hours is considered overtime under the EA, for which an employee must be paid at least one and a half times his or her basic hourly rate of pay. The maximum permitted overtime is 72 hours per month outside the standard hours of work.

The rules relating to overtime do not apply to Non-EA Employees, Excluded Employees or to anyone working in a management or executive position.

Benefits and entitlements

Annual leave-An EA Employee earning less than S\$4,500 per month (for workmen) and S\$2,500 per month (for employees other than workmen), who has worked for his or her employer for at least three months, is entitled to seven days' paid annual leave for the first year of service. An additional one day of leave for every subsequent 12 months of service will be provided, up to a maximum of 14 days. Any accumulated leave that is not taken within the 12 month period after each year of service may be forfeited.

Sick leave-An EA Employee earning less than S\$4,500 per month (for workmen) and S\$2,500 per month (for employees other than workmen), who has worked for his or her employer for at least three months, is entitled to paid sick leave. The number of days of sick leave to which an employee is entitled is subject to his/her service period and is subject to a cap of:

- where hospitalisation is not necessary, 14 days per year;
- where hospitalisation is necessary, either
 - 60 days in a year; or
 - 14 days plus the number of days on which the employee is hospitalized, whichever is the lower.

A pro rata entitlement exists for employees with less than six months continuous service.

Sick leave is paid at the employee's gross rate of pay, excluding any shift allowance, where hospitalisation is not necessary. In circumstances where hospitalisation is necessary however, sick leave is paid at the employee's gross rate of pay.

Maternity, paternity and adoption leave- All female employees in Singapore (including Non-EA Employees) are entitled to paid maternity leave "Government-paid Maternity Leave" if:

- the child is a Singapore citizen;
- the child's parents are lawfully married before the child's birth;
- the employee has worked for the employer for at least 90 days immediately before the day of birth.

However, if the female employee is single (unmarried), she will only be entitled to maternity leave if she is an EA Employee.

An eligible employee is entitled to a total of 16 weeks' paid maternity leave, which consists of four weeks of leave immediately preceding the birth and 12 weeks of leave following the birth. Where there is a mutual agreement with her employer, an employee can take the last eight weeks (9th to 16th week) of maternity leave flexibly over a 12-month period from the child's birth. The number of days of maternity leave that can be taken flexibly is equivalent to eight weeks' worth of working days, up to a maximum of 48 days.

If the employee qualifies for Government-paid Maternity Leave and provided the employee has given the employer at least one week's notice before going on maternity leave

and informed her employer as soon as practicable of her delivery, she will be paid by the employer during the entire 16 weeks of maternity leave, regardless of the birth order of the child. The employer may later claim reimbursement from the Government for the last eight weeks for the first and second confinements (capped at \$20,000 including CPF contributions) and all 16 weeks for the third or subsequent confinements (capped at \$40,000 including CPF contributions). Failure to provide such notice without sufficient cause will entitle an employer to pay the employee only half her salary during the leave;

Further, working fathers, including those who are self-employed, are entitled to share 1 week out of the 16 weeks' maternity leave, subject to the agreement of the mother.

All male employees in Singapore (including Non-EA Employees) are entitled to government paid paternity leave if:

- the child is a Singapore citizen;
- the child's parents are lawfully married before the child's birth; and
- the employee has worked for the employer for at least 90 days immediately before the day of birth.

Paternity leave is to be taken within 16 weeks after the birth of the child. It can also be taken flexibly within 12 months after the birth of the child, if there is mutual agreement between the employer and employee. The 1 week of paternity leave will be funded by the Government (capped at \$2,500 including CPF contributions).

Whilst there is no statutory entitlement to adoption leave, adoptive fathers are also eligible for Government-paid paternity leave if they meet the following eligibility criteria:

1. The adopted child is below 12 months of age;
2. The adopted child is a Singapore Citizen, or in cases where the adopted child is not a Singapore Citizen, at least one of the adoptive parents must be a Singapore Citizen;
3. The child's parents are lawfully married at the point of the 'formal intent to adopt'; the point of filing of the adoption petition to the Family Court for adoption (Singapore Citizen child) or the point of issuance of a document stating that the application for the Dependant's Pass for the adopted child has been approved (non-Singapore Citizen child).
4. The adoptive father must have served his employer – or, if self-employed, have been engaged in a particular business, trade or profession – for a continuous period of at least 3 months immediately preceding the point of the 'formal intent to adopt';
5. The Adoption Order is granted within 1 year from the point of the 'formal intent to adopt', and the adopted child obtains Singapore Citizenship within 6 months after the Adoption Order is passed; and
6. The father is an applicant to the adoption.

Similarly, a female employee can seek government reimbursement for up to four weeks of adoption leave (which must be consumed before the child's first birthday) if the following criteria are met.

1. The adopted child is below the age of 12 months at the point of the 'formal intent to adopt';
2. The adopted child is a Singapore Citizen;
3. If the child is a foreigner, one of the adoptive parents must be a Singapore Citizen;
4. For a foreign child, the child must become a Singapore Citizen within 6 months of the child's adoption.
5. The adoptive mother is lawfully married at the point of the 'formal intent to adopt';
6. The mother has served the employer for at least 3 calendar months, or was engaged in the trade, business, profession or vocation preceding the point of 'formal intent to adopt';
7. The Adoption Order is passed within 1 year from the point of 'formal intent to adopt'.

Adoptive mothers who meet the eligibility criteria can start to consume their adoption leave from the date of Court Application (for local child) or issuance of in-principle approval for the Dependant's Pass (for foreign child).

Childcare leave-All employees in Singapore, including Non-EA Employees, will be entitled to up to six days of childcare leave where the employee's child is a Singapore citizen, provided that the child is below the age of seven and the employee has been employed

for at least three months. For EA Employees whose child is not a Singapore citizen, this entitlement will be reduced to two days.

Public holidays-There are 11 public holidays each year in Singapore. Every EA Employee is entitled to be paid for each public holiday at his or her gross rate of pay. An employer and employee can agree for the paid holiday to be taken on a substituted day. For such employee who is required to work on a public holiday, an employer must pay an extra day's salary to the employee, at his or her basic rate of pay for one day's work, in addition to the gross rate of pay for that holiday. The rate of payment should be at least 1.5 times the hourly basic rate of pay of the employee.

Wages

Singapore law does not have a minimum wage stipulation. However, in the case of children and young persons under the age of 16 working in particular industries, the Minister for Manpower is empowered to prescribe minimum wages.

Taxation

Subject to some exceptions, generally, only income sourced in Singapore or remitted to Singapore is taxed in Singapore. This applies to Singapore source income earned by nationals. Employment income is currently taxed at the marginal tax rates of up to 20% for resident individuals and either 15%, or resident rates (whichever is higher) for non-resident individuals. Payment of income tax is the responsibility of the employee.

Pensions

Employers and employees (Singapore citizens and Singapore permanent residents) are required to make monthly contributions to the Central Provident Fund (CPF) which is a social security savings scheme. CPF contributions are based generally on an employee's monthly wage and age. The total CPF contribution is shared between the employee and his or her employer.

Workplace safety and health

An employer in Singapore has both statutory and common law obligations to ensure the safety and health of its employees at work. This includes maintaining a safe work environment with adequate facilities, ensuring appropriate safety measures are taken when using plant and equipment and ensuring that employees have adequate instruction, information, training and the supervision that is necessary for them to perform their work. The general penalty imposed upon a corporation for failing to comply with the Workplace Safety and Health Act (for which no specific penalty is expressly provided) may be up to S\$500,000, which may be doubled in the case of repeated offences or fatalities.

Data privacy

The Personal Data Protection Act 2012 ("PDPA") came into force on 2 January 2013 and establishes a regime in Singapore for the protection of personal data. The "personal data" that will be protected under the PDPA is presently broadly defined as data concerning an individual "who can be defined from that data, or from that data and

other information to which the organisation is likely to have access. The PDPA applies to all private sector organisations that are engaged in data collection, processing or disclosure within Singapore, even if the organization is physically located overseas. The PDPA prohibits the collection, use or disclosure by organisations of personal data without the express consent of the relevant individuals and also requires organisations to inform individuals of the purpose behind the collection, use or disclosure of the personal data. Further, the individual's consent may be withdrawn at any time upon an individual giving "reasonable notice" to the relevant organisation. An employer will therefore need to build in the appropriate consent clause into the employment agreement relating to the employer's collection, processing, storage and disclosure of the employee's personal information. The PDPA does not however require employers to obtain the consent of prospective employees before collecting their personal data, nor is consent required for business contact information. An employer may collect, use and disclose personal data without consent where this is necessary for evaluative purposes. Under the PDPA, "evaluative purpose" includes, inter alia, the purpose of determining the suitability, eligibility or qualifications of an individual for employment, protection in employment or continuance in employment. Further, the collection by an employer of personal data from their employees that is reasonable for the purpose of managing or terminating their employment relationships and the use or disclosure of such personal data for consistent purposes would not require consent of their employees. We note however that whilst

consent is not required, employers are required to notify their employees of the purposes of such collection, use or disclosure.

Failure to comply with the PDPA may result in financial penalty of up to SGD 10,000 and imprisonment of up to 3 years.

An employee's data protection is further based on the employer's contractual obligations towards the employee, the common law of confidence and limited statutory restrictions with regard to the use of certain materials (for example, computer materials).

FIRING

Generally, a contract of employment may be terminated by either the employer or the employee by giving to the other the contractually prescribed notice of termination. In addition, an employer has a right to summarily dismiss an employee in exceptional circumstances. Some contracts of employment contain a retirement age which, when reached, will result in the employee having to retire from employment.

Notice of termination

Employment contracts typically specify a required notice period for termination. If it does not, and the employee is an EA employee, the required notice of termination is dependent upon the employee's length of employment. For periods of less than 26 weeks of continuous service, an employee is entitled to one day's notice. This period is increased on a sliding scale, with four weeks' notice provided to employees with five years or more continuous service. It is possible for the employer to make payment in lieu of notice.

A Non-EA Employee, who is not subject to the statutory minimum notice period, is entitled to reasonable notice (usually not less than the statutory minimum notice period) if his or her employment contract does not set out a notice period.

Summary dismissal

An employer may, after due enquiry, terminate the employment of an employee without notice and without payment in lieu of notice on the grounds of misconduct. An employer is generally justified in summarily dismissing an employee who regularly fails to comply with his or her employer's reasonable instructions, or in cases of misconduct, fraud, bankruptcy, gross neglect, wilful default or conduct incompatible with the employee's duties or prejudicial to the employer's business.

Retirement

Subject to certain exceptions, retirement age legislation operates in Singapore and applies to all employees, including Non-EA Employees. Such legislation prohibits employees from dismissing employees on the ground of age (any employee who is below 62 years of age). Dismissal on the ground of age is unlawful; however employers are entitled to reduce the wages of their older employees beyond 60. The prescribed retirement age in Singapore is presently 62 years of age but employers are now required to offer re-employment to eligible employees who turn 62, up to the age of 65.

Redundancy

With effect from 1 April 2015, EA Employees who have provided at least two years of service would be entitled to request for a redundancy

payment in the event that their employment is terminated. The amount of such payment is not stipulated by law and are subject to the terms of the employee's employment contract, employee manuals, collective bargaining or union agreements.

The following employees are not however statutorily entitled to any redundancy payments:

- Non-EA Employees;
- EA Employees with less than two years of service; and
- Excluded Employees.

Employers may however make such payments if provided in the terms of the employees' employment contracts, employee manuals, collective bargaining or union agreements.

Transfer of undertakings

Under the EA, where there is a transfer of any business or an undertaking as a going concern, there is an automatic transfer of the concerned employees who are EA Employees. The transfer does not break the continuity of the period of employment and the terms and conditions of the employee's contract of employment will be the same as they were before the transfer.

Post-termination restrictive covenants

Covenants in restraint of trade are prima facie void in Singapore. They will only be considered to be enforceable if they are reasonable and in the interests of the parties

and of the public. To be valid, a covenant must protect a legitimate interest of the employer. The courts have recognised that a legitimate interest exists in an employer's trade secrets, workforce stability and in the protection of special trade connections. The covenant cannot be wider than is necessary to protect these legitimate interests.

Confidentiality

In Singapore, the courts will generally uphold employment contracts which clearly impose confidentiality obligations on the parties. If there is no contract, confidentiality can be protected by implication of law if such information meets the necessary requirements of confidentiality. The confidential information must have the necessary quality of confidence about it, must have been imparted in circumstances importing an obligation of confidence and there must have been an unauthorised use of the information to the detriment of the party communicating it. The scope and the duration of confidentiality obligations are also subject to the requirement of reasonableness.

Withholding of tax

When the employment of a foreign employee ceases in Singapore, employers must inform the Inland Revenue Authority of Singapore at least one month before termination of employment and are expected to withhold any payments due to the employee until tax clearance is given.

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