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Singapore: Law & Practice

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Drew & Napier LLC

SINGAPORE

Law and Practice

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Drew & Napier LLC

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1. Employment Terms

1.1 Employee Status

An employee is a person who has entered into or works under a contract of service with an employer. On the other hand, a person who has entered into a contract for service is not an employee. Whether a person is an employee is determined by a flexible and fact-sensitive approach that considers, holistically, the parties' working relationship with reference to factors such as the employer's control over the person's work and whether the person's work forms an integral part of the employer's business.

The Employment Act generally covers all employees (subject to very limited exceptions), but additional statutory protection of certain employment terms and benefits under Part IV of the Employment Act only applies to classes of employees who are considered more vulnerable in their ability to negotiate their terms of employment, as follows:

- workmen (ie, employees whose work mainly involves manual labour) earning a basic monthly salary of not more than SGD4,500; and
- employees (other than a workman or a person employed in a managerial or an executive position) earning a basic monthly salary of not more than SGD2,600.

Platform Workers

Due to the flexible nature of their work, platform workers are not classified as employees, but self-employed individuals. For more details on platform workers and the ongoing efforts to protect their interests, see **5.3 Other New Manifestations**.

1.2 Employment Contracts

An employment contract may be for a fixed or indefinite period.

Key Employment Terms

An employer is required to provide employees (other than transient employees) with written records of at least the key employment terms, which include:

- employer's full name;
- employee's full name;
- job title, main duties and responsibilities;
- start date of employment;
- duration of employment;
- working arrangements, such as daily working hours, number of working days per week and rest days;
- salary period;
- basic rate of pay;
- fixed allowances;
- fixed deductions;
- overtime payment period;
- overtime rate of pay;
- other salary-related components such as incentives and bonuses;
- leave entitlement;
- medical benefits;
- probation period; and
- notice period for dismissal or termination.

Any term of an employment contract which is less favourable than the conditions of service prescribed by the Employment Act for an employee covered under the Act is deemed to be illegal, null and void to the extent that it is less favourable.

Terms Implied in Law

In addition to the agreed employment terms, there is some indication that the Singapore courts are likely to recognise that an implied duty

of mutual trust and confidence exists between employer and employee.

1.3 Working Hours

Working Hours and Overtime Regulations

Employees whose terms of employment are protected by the Employment Act (see **1.1 Employee Status**) are not required to work more than:

- six consecutive hours without a period of leisure; or
- eight hours a day, or more than 44 hours a week.

If an employer requires a protected employee to work overtime, the employer has to pay the employee at least 1.5 times the employee's hourly basic rate of pay.

In addition, a protected employee is not allowed to work overtime for more than 72 hours in a month. Working on a rest day or public holiday does not count towards the 72-hour overtime limit except for work done beyond the usual daily working hours on those days.

Part-Time Employment

An employee who is required to work fewer than 35 hours a week is considered a part-time employee. Part-time employees covered under the Employment Act are entitled to the same rights and benefits as full-time employees, but their statutory entitlements (eg, to annual leave, sick leave and maternity leave) are prorated.

Flexible Working Arrangements

The Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP) – a body with representatives from the government, trade unions and employers – encourages employers to enable flexible working arrangements, which have become more accepted in the workplace.

1.4 Compensation

No Minimum Wage – Progressive Wage Model

There is no general minimum wage in Singapore.

However, employers in certain prescribed sectors which employ low-wage employees are required to implement a progressive wage model (PWM).

In respect of each sector, the PWM provides minimum basic wage requirements, minimum annual increases as well as the necessary certifications and qualifications that employees in these sectors would need to secure a higher minimum wage under the PWM.

The Singapore government is seeking to expand the PWM to cover more sectors over time.

National Wages Council

The National Wages Council is a tripartite body comprising representatives from employers, trade unions and the government. It formulates wage guidelines in line with Singapore's long-term economic growth, which are used by both unionised and non-unionised companies as a framework or reference point to determine wage increases for their employees. The guidelines are recommendations, not legal requirements.

Bonuses

Bonuses are payable depending on contractual terms and employers' discretion.

Annual Wage Supplement

The Ministry of Manpower (MOM) encourages employers to give employees an annual wage supplement (AWS) comprising a single annual payment on top of an employee's total annual wage, also known as a 13th-month bonus. The

AWS is not compulsory, unless it is provided for in the employment contract.

Central Provident Fund (CPF) Contributions

During the 2023 Budget, it was announced that the Central Provident Fund (CPF) monthly salary ceiling will be increased. The increment will take place in four stages to allow employers and employees to adjust to the changes. The increment is as follows:

- from 1 September to 31 December 2023 – SGD6,300;
- from 1 January to 31 December 2024 – SGD6,800;
- from 1 January to 31 December 2025 – SGD7,400; and
- from 1 January 2026 – SGD8,000.

There will be no change to the current CPF annual salary ceiling of SGD102,000. This will be reviewed periodically to ensure that it continues to cover about 80% of employees.

To keep pace with rising wages and to strengthen the retirement preparedness of senior employees, there will also be changes to the CPF ordinary wage ceiling and contribution rates. As of 1 January 2023, the current contribution rates are as follows:

- for employees aged 55 and below, the contribution rate is 37% of wages (17% from the employer and 20% from the employee);
- for employees aged 56–60, the contribution rate is 29.5% of wages (14.5% from the employer and 15% from the employee);
- for employees aged 61–65, the contribution rate is 20.5% of wages (11% from the employer and 9.5% from the employee);
- for employees aged 66–70, the contribution rate is 15.5% of wages (8.5% from the employer and 7% from the employee); and
- for employees aged 71 and above, the contribution rate is 12.5% of wages (7.5% from the employer and 5% from the employee).

1.5 Other Employment Terms

Public Holidays

Employees are entitled to paid holidays on public holidays. If the public holiday falls on a non-working day, employees will be entitled to another day off or one extra day's salary in lieu of the public holiday. If an employee is required to work on a public holiday, the employee is entitled to another day off, time off (only for employees not covered under Part IV of the Employment Act), or one extra day's salary.

Annual Leave

At the minimum, the Employment Act requires that employees who have worked for their employer for at least three months are entitled to seven days of paid annual leave within the first 12 months of continuous service with that same employer.

Thereafter, employees are entitled to one additional day of paid annual leave for every subsequent year of continuous service with the same employer, subject to a maximum of 14 days' paid annual leave.

Sick Leave

The Employment Act requires that employees who have worked for at least three months are entitled to paid outpatient sick leave and paid hospitalisation leave.

Employees who have worked for at least six months are entitled to 14 days of paid outpatient sick leave in each year and 60 days of paid

hospitalisation leave. The amount of paid outpatient sick leave and paid hospitalisation leave is capped at the amount of the employee's sick leave entitlement.

Where an employee has worked for an employer for less than six months but for at least three months, the employee's entitlement to paid outpatient sick leave and paid hospitalisation leave ranges from five to 11 days and 15 to 45 days respectively, depending on the length of service.

Maternity Leave

Under the Child Development Co-Savings Act, female employees are entitled to 16 weeks of paid maternity leave provided that:

- the employee has worked for her employer for a continuous period of at least three months before the birth of her child; and
- the child is a Singapore citizen at the time of birth.

If an employee is not entitled to maternity leave under the Child Development Co-Savings Act, she will be entitled to 12 weeks of maternity leave provided that:

- the employee is covered under the Employment Act; and
- the employee has worked for her employer for at least three months before the birth of her child.

Eight of those 12 weeks of maternity leave will generally be paid leave unless, at the time of delivery, the employee has two or more living children and those children were born during more than one previous confinement.

Paternity Leave

Under the Child Development Co-Savings Act, male employees are generally entitled to two weeks of paid paternity leave provided that:

- the employee is the natural father of the child;
- the child is a Singapore citizen at the time of birth or becomes one within 12 months from the date of birth;
- the employee has worked for his employer for at least three months preceding the birth of the child; and
- the child's mother is lawfully married to the child's natural father at the time the child is conceived, or becomes lawfully married to the child's natural father before the child's birth, or becomes lawfully married to the child's natural father within 12 months from the date of the child's birth.

Paid Childcare Leave

Under the Child Development Co-Savings Act, both male and female employees are entitled to up to six days of paid childcare leave within a period of 12 months depending on their length of service, provided that:

- the employee has worked for the employer for at least three months;
- the employee has a child that is below seven years old; and
- the child is a Singapore citizen.

The Child Development Co-Savings Act also provides that both male and female employees are entitled to two days of paid extended childcare leave within a period of 12 months, provided that:

- the employee has worked for the employer for at least three months;

- the employee has a child that is between seven and 12 years old (inclusive); and
- the child is a Singapore citizen.

However, an employee is not entitled to more than six days of childcare leave and extended childcare leave within a period of 12 months.

If an employee is not entitled to childcare leave under the Child Development Co-Savings Act, an employee covered by the Employment Act is entitled to two days of paid childcare leave within a period of 12 months provided that:

- the employee is covered under the Employment Act;
- the employee has worked for the employer for at least three months; and
- the employee has a child that is below seven years old.

Unpaid Infant Care Leave

Under the Child Development Co-Savings Act, employees are entitled to a maximum of six days of unpaid childcare leave within a period of 12 months, regardless of the number of children, provided that:

- the employee has worked for the employer for at least three months;
- the employee has a child that is below two years old; and
- the child is a Singapore citizen.

An employee's entitlement to unpaid infant care leave is in addition to the entitlement to paid childcare leave.

2. Restrictive Covenants

2.1 Non-competes

Post-termination restrictive covenants, such as non-compete and non-solicitation clauses, which impose restrictions on an employee after they have ceased working for their employer, are enforceable if they satisfy the following criteria:

- The clause protects a legitimate proprietary interest, such as a trade secret, trade connection or a stable workforce.
- The clause is reasonable between the parties concerned (ie, the employer and employee), including in terms of the scope of limitation, geographical area of limitation and the period of limitation. This may also include whether consideration was paid in return for the clause, or whether it was negotiated between the parties.
- The clause is reasonable with reference to the public interest.

The reasonableness of a restrictive covenant is assessed at the time the contract was made.

The reasonableness of a restrictive covenant will also be assessed with reference to other restrictive covenants in the employment contract. For example, if an employment contract contains a confidentiality clause and a non-solicitation clause, a court may take the view that the employer's legitimate proprietary interest regarding its trade secrets and trade connections is sufficiently protected, and that a non-compete obligation on the employee is an unreasonable prohibition on competition, unless it can be shown that there is some other reason that necessitates the non-compete clause. This may be the case if it can be shown that the particular circumstances are such that it is much more difficult to enforce the non-solicitation clause

or confidentiality clause compared to the non-compete clause.

If a restrictive covenant is found to be too wide, the court may apply a "blue pencil" test to sever parts of the clause that are unjustified. This can only be done if no words need to be altered or added and the remaining words of the clause continue to make grammatical sense.

However, it should be noted that a restrictive covenant containing cascading restrictions that are intended to accommodate the blue pencil test, or the insertion of a modification clause that provides that restrictions will be modified in order to make the covenant valid, may not save an otherwise unenforceable restrictive covenant.

The MOM and tripartite partners are currently developing a set of tripartite guidelines to shape norms and provide employers with further guidance on the inclusion of restrictive covenants in employment contracts.

Enforcement

If an employee breaches a restrictive covenant, an employer can apply to court for an injunction to restrain the employee from continuing the breach. The employer can also seek damages.

The employer may also have a claim against the new employer if the new employer has induced the employee to breach the restrictive covenant clauses.

However, a restrictive covenant cannot be enforced by employers who have themselves committed a repudiatory breach of the contract that is accepted by the employee. Therefore, an employer who has wrongfully dismissed an employee cannot enforce any non-compete or non-solicitation clause.

2.2 Non-solicits

The principles regarding restrictive covenants discussed in **2.1 Non-competes** apply to non-solicitation clauses.

Non-solicitation of Customers

Clauses prohibiting the solicitation of customers protect an employer's legitimate proprietary interest in its trade connections. For such clauses to be enforceable, there must be personal knowledge of and influence over the customers of the employer.

Non-solicitation of Employees

Clauses prohibiting the solicitation of employees protect an employer's legitimate proprietary interest in maintaining a stable and trained workforce. The reasonableness, and consequently the enforceability, of such clauses may turn on whether the former employee has influence over the categories of employees that they are restricted from soliciting.

3. Data Privacy

3.1 Data Privacy Law and Employment

Applicability of the PDPA

There is no employment-specific data privacy law. In general, employee personal data is governed by the general data protection legislation in Singapore – ie, the Personal Data Protection Act 2012 (PDPA).

The PDPA governs the processing of individuals' personal data by private sector organisations and is administered and enforced by the Personal Data Protection Commission (PDPC).

Under the PDPA, personal data is defined as data, whether true or not, about an individual who can be identified from that data, or from

that data in conjunction with other information to which the organisation has or is likely to have access. This would include the personal data of employees (full time and part time) and job applicants.

Need to Obtain Consent From Individuals

The PDPA requires organisations to obtain consent before collecting, using or disclosing an individual's personal data, unless otherwise required or authorised under written law, or an exception under the PDPA applies ("consent obligation").

Consent is validly given if the employer has provided the individual with information regarding the purposes for the collection, use or disclosure of the personal data (as the case may be) on or before collecting the personal data ("notification obligation").

Exceptions to Consent

Section 95 of the Employment Act requires all employers to maintain detailed employment records of employees covered under the Employment Act, which includes the employees' identity card number or foreign identification number, residential address, date of birth, gender, and other relevant information as specified under the Employment (Employment Records, Key Employment Terms and Pay Slips) Regulations 2016. Thus, to the extent that the collection of personal data is authorised or required under these laws, employers may collect such employee personal data without employees' consent.

For example, under Section 17 of the PDPA, read with Part 3 of the First Schedule of the PDPA, employers may collect, use and disclose employee personal data without consent where:

- the collection, use or disclosure of the employee's personal data is for the purpose of or in relation to (i) entering into an employment relationship with the individual or appointing the individual to any office, or (ii) managing or terminating an employment relationship; or
- the collection, use or disclosure of personal data is necessary for evaluative purposes (ie, for the purpose of determining the suitability, eligibility or qualifications of the individual for employment, appointment to office, promotion, removal, etc).

For job applicants, deemed consent may also apply when they voluntarily provide their personal data to the organisation during the application process, provided it was reasonable for them to have been asked to provide such data.

Need to Notify Employees of Collection

However, while consent may not be required in certain scenarios, the employer is still required to notify the individual of the purpose of such collection, use or disclosure, and, on request by the individual, the business contact information of a person who is able to answer the individual's questions relating to such processing.

For new and existing employees, organisations may choose to provide them with notice of such collection, use or disclosure in the employment contract, employee privacy policy, employee data protection handbook, or data protection notices on the company intranet. For job applicants, organisations may include a data protection notice in the job application form.

Other Obligations Under the PDPA

Employers must also comply with several other data protection obligations under the PDPA, as set out below.

Purpose limitation obligation
Employers must only collect, use or disclose employee personal data for purposes that a reasonable person would consider appropriate in the circumstances.

Access and correction obligation
While there is a general requirement for organisations to provide individuals with the right to access and correct their personal data, there are some exceptions to this requirement. For example, employers do not need to provide job applicants with the opinions formed in the course of determining the applicant's suitability and eligibility as this would be considered opinion data kept solely for evaluative purposes.

Retention limitation obligation
While employers can retain the personal data of former employees and job applicants for future job opportunities, they should not retain such personal data if it no longer serves the purpose for which it was collected and if it is no longer necessary for legal or business purposes. This includes the minimum statutory retention period under the Employment Act.

Accuracy obligation
Employers must make reasonable efforts to ensure the accuracy and completeness of employee personal data.

Protection obligation
Employers must protect the employee personal data that they possess or control by making reasonable security arrangements to prevent unauthorised access, collection, use, disclosure, copying, modification, disposal or similar risks, as well as the loss of storage mediums or devices on which personal data is stored.

Transfer limitation obligation
Employers must not transfer employee personal data to a jurisdiction outside Singapore except in accordance with the requirements set out in the PDPA and the Personal Data Protection Regulations 2021, to ensure that transferred personal data is accorded a standard of protection comparable to the PDPA.

Data breach notification obligation
In the event of a data breach involving employee personal data, employers must assess whether a data breach is notifiable and notify the PDPC and/or affected individuals where it is assessed to be notifiable.

Accountability obligation
Employers must appoint a person responsible for ensuring compliance with the PDPA (typically called a data protection officer). Employers must also implement the policies and practices necessary to meet their PDPA obligations, including a process to receive complaints. In addition, employers must communicate information about such policies and practices to their employees and make such information available upon their request.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Foreigners must generally have a valid work pass before they start work in Singapore.

Employing a foreigner without a valid work pass is an offence. Where a foreigner without a work pass is found at any premises, the occupier of the premises is presumed to have employed the foreigner, until the contrary is proved.

Types of Work Passes

There are three main types of work passes.

Employment Pass

The Employment Pass (EP) is for foreign professionals, managers and executives who earn at least SGD4,500 a month in the non-financial services sectors and SGD5,000 a month in the financial services sector and have acceptable qualifications. Older, more experienced candidates will require higher salaries to qualify (the qualifying salaries increase progressively with age, up to SGD8,400 for a candidate in their mid-40s). The minimum qualifying salary has been revised to SGD5,000 in the non-financial services sector and SGD5,500 in the financial services sector for new applications and renewals from 1 September 2023.

A new points-based Complementarity Assessment Framework (COMPASS) will also apply to new applications from 1 September 2023 and renewal applications from 1 September 2024. COMPASS will be an additional step in the EP application process; that is, candidates must pass a two-stage eligibility framework – stage 1 being the above-mentioned EP qualifying salary, and stage 2 being COMPASS.

COMPASS evaluates EP applications based on a holistic set of individual and firm-related attributes, and applicants are scored on four foundational criteria (ie, salary, diversity, qualifications and support for local employment). There are also two bonus criteria: a skills bonus (for candidates in jobs where skills shortages exist) and a strategic economic priorities bonus (for partnerships with the Singapore government on ambitious innovation or internationalisation activities).

There are certain exemptions to COMPASS; that is, a candidate will be exempted from COMPASS if they fulfil any of the following conditions:

- they earn at least SGD20,000 a month (similar to the prevailing Fair Consideration Framework job advertising exemption);
- they apply as an overseas intra-corporate transferee under the World Trade Organisation's General Agreement on Trade in Services or an applicable free trade agreement to which Singapore is a party; or
- they fill a role on a short-term basis (ie, for one month or less).

MOM has released a self-assessment tool for employers to use in order to get an indicative outcome for each EP application, including performance on the EP qualifying salary and COMPASS (with breakdown of scores by criterion).

Generally, employers submitting Employment Pass applications must first advertise the job vacancy on the national jobs bank, MyCareersFuture, for at least 28 calendar days and consider all candidates fairly.

S Pass

The S Pass is for foreign mid-level skilled staff who earn at least SGD3,000 a month in the non-financial services sector and SGD3,500 a month in the financial services sector, and they meet the assessment criteria in terms of qualifications and work experience. Older, more experienced candidates will require higher salaries to qualify (the qualifying salaries increase progressively with age, up to SGD4,500 for a candidate in their mid-40s). The minimum qualifying salary has been revised to at least SGD3,150 in the non-financial services sectors and at least SGD3,650 a month in the financial services sector for new applications from 1 September 2023, and for

application renewals from 1 September 2024. The minimum qualifying salary will be revised yet again to at least SGD3,300 (in the non-financial services sectors) or at least SGD3,800 a month (in the financial services sector) for new applications from 1 September 2025, and for application renewals from 1 September 2026. The qualifying salaries mentioned in this paragraph are not yet the finalised figures, which will be announced closer to the implementation date.

Employers are limited by a quota and subject to a levy for each S Pass-holder employee.

Generally, employers submitting S Pass applications must first advertise the job vacancy on the national jobs bank, MyCareersFuture, for at least 28 calendar days and consider all candidates fairly.

Work Permit

The Work Permit is generally for foreign semi-skilled workers in the construction, manufacturing, marine shipyard, process or services sector. There is no minimum salary for employees on a Work Permit, but employers are limited by a quota and subject to a levy. Depending on the sector, there may also be restrictions based on source country or region, minimum age, maximum period of employment and other restrictions.

4.2 Registration Requirements for Foreign Workers

Applications for work passes are made to the MOM. When making work pass applications, the prospective employer needs to get the worker's written consent.

When making an EP application, the prospective employer needs to provide particulars of the foreign worker's passport, the foreign worker's educational certificates and the employer's latest business profile information. Employers are required to verify educational qualifications submitted to the MOM in support of an EP application. The verification can be done through selected background screening companies, which are listed on the MOM's website. Alternatively, the MOM will also accept verification proof obtained from online portals of countries' governments or educational institutions, which are also listed on the MOM's website. The MOM is currently studying the feasibility of other avenues of verification, such as digital certificates.

For Work Permit applications and S Pass applications, the employer is required to buy and maintain medical insurance providing coverage of at least SGD15,000 per year.

When making a Work Permit application, the employer is required to post a SGD5,000 security bond for each worker (with the exception of Malaysians).

5. New Work

5.1 Mobile Work

Under the Workplace Safety and Health Act 2006 (WSHA), the "workplace" is defined in Section 5(1) as any premises where a person is at work or is to work, where a person works for the time being, or customarily works, and includes a factory.

With increased recognition of Flexible Work Arrangements (FWAs), organisations are more open to allowing their employees to do their work away from conventional offices. In a case study published by TAFEP, it was found that FWAs are key to hiring and retaining talent.

As such, workplaces may possibly extend to locations outside the office. This would include mobile working where employees are often required to be on the move to carry out their job.

Work Injury

An employer is liable to pay compensation under the Work Injury Compensation Act 2019 (WICA) where the employee suffers from a work injury arising out of and in the course of his or her employment. Hence, based on the wording of the WICA, the place where the work injury was suffered does not appear to matter and employees engaged in mobile working would likely be covered under the WICA.

In fact, Section 9 of the WICA provides that employers are even held liable for accidents happening to employees outside of Singapore if the employee is an ordinary resident in Singapore and is employed by an employer in Singapore but is required to work outside Singapore.

Data Privacy

As mentioned in **3.1 Data Privacy Law and Employment**, the PDPA contains a transfer obligation. Hence, where employees are posted to an overseas office such as for an overseas assignment and personal data of that employee is transferred to the overseas office, the local office transferring that data must ensure that the overseas office provides a standard of protection to the personal data that is comparable to its protection under the PDPA.

Social Security

CPF contributions are payable if the employee is employed in Singapore but is required to go overseas for an assignment, such as an overseas business trip or training.

5.2 Sabbaticals

A sabbatical leave is an extended period of leave taken for personal reasons such as for further studies, travelling or to rest.

There is no statutory requirement for sabbatical leave in Singapore, and the offering of sabbatical leave is a matter of contractual agreement.

Employers may allow for a sabbatical in the form of non-statutory leave, which is an additional provision to cater to an employee's welfare. Employers may decide to offer fully paid, part-paid or unpaid sabbatical leave. Typically, sabbatical leave would be provided to employees who have had a long period of service. The duration of the leave would depend on the employer. Typically, an employee would be entitled to a period of two months to a year, continuing their employment upon their return from the sabbatical.

An example is the National Council of Social Services' (NCSS) Sabbatical Leave Scheme that allows application for up to ten weeks of paid leave for a sabbatical. The NCSS Sabbatical Leave Scheme is available to social workers, therapists (occupational therapists, physiotherapists and speech therapists), psychologists, counsellors and EIPIC (Early Intervention Programme for Infants and Children) teachers.

5.3 Other New Manifestations

FWAs

FWAs include working arrangements that differ from traditional arrangements of fixed daily work hours at the workplace. FWAs are usually offered by employers to enable their employees to better manage work as well as family and personal responsibilities.

FWAs may come in the form of flexi-load, flexi-time or flexi-place. A few examples for each category are as follows:

Flexi-load
- job sharing; and
- part-time work.

Flexi-time
- creative scheduling;
- staggered time;
- compressed work schedule; and
- flexi-hours.

Flexi-place
- teleworking; and
- home-working.

Platform Workers

With the advent of online platforms such as food delivery and ride-hailing apps, there has also been a rise in the number of platform workers using these platforms to provide their services.

However, the government has recognised that platform workers are in a precarious position due to their generally modest incomes and exposure to significant risk due to the amount of time spent on the road. Hence, the Advisory Committee on Platform Workers was established to look into how platform workers could be better protected.

In November 2022, the Advisory Committee on Platform Workers published 12 recommendations that sought to address the lack of protection for platform workers. The following 12 recommendations were accepted by the government:

1. Platform workers should not be classified as employees.

2. Platform companies that exert a significant level of management control over platform workers should be required to provide them with certain basic protections.

3. Platform companies should be required to provide the same scope and level of work injury compensation as employees are entitled to under the Work Injury Compensation Act (WICA).

4. The platform company for which the platform worker was working at the time of injury should be required to provide compensation, based on the platform worker's total earnings from the platform sector in which the injury was sustained.

5. Sector-specific definitions of when a platform worker is considered to be "at work" should be determined.

6. The strengths of the current WICA regime should be retained, including the provision of work injury compensation insurance through the existing open and competitive insurance market.

7. The CPF contribution rates of platform companies and platform workers should be aligned with those of employers and employees respectively (required for platform workers who are aged below 30 in the first year of implementation).

8. Older platform workers who are aged 30 and above in the first year of implementation of the aligned CPF rates should be allowed to opt in to the full CPF contribution regime.

9. Platform companies should be required to collect platform workers' CPF contributions to help workers make timely contributions.

10. The increased CPF contributions should be phased in over five years, unless major economic disruption warrants a longer timeline. To ease the impact, the government may wish to consider providing support for platform workers (and the form this should take).

11. Platform workers should be given the right to seek formal representation through a new representation framework designed for platform workers.

12. A Tripartite Workgroup on Representation for Platform Workers should be set up to co-create the new representation framework (for more details on representation of platform workers, see **6.2 Employee Representative Bodies**).

6. Collective Relations

6.1 Unions

Trade unions are associations of workers or employers with the regulation of employer-employee relations as their main aim, for the purposes of:

- promoting good industrial relations between workers and employers;
- improving the working conditions, as well as the economic and social status, of workers; and/or
- increasing productivity for the benefit of workers, employers and Singapore's economy.

Trade unions are required to apply to the Registrar of Trade Unions to be registered. They are regulated under:

- the Trade Unions Act (Chapter 33) and Trade Unions Regulations;
- the Trade Disputes Act (Chapter 331);
- Part III of the Criminal Law (Temporary Provisions) Act (Chapter 67);
- the Singapore Labour Foundation Act (Chapter 302); and
- the COVID-19 (Temporary Measures) (Alternative Arrangement for Meetings for Trade Unions) (Amendment) Order 2020.

Trade unions play a key role in representing their members in collective bargaining and negotiating with employers for collective agreements (see discussion in **6.3 Collective Bargaining Agreements**).

Although uncommon in Singapore, trade unions may take industrial action. They may do so only if they have obtained the consent of the majority of members who would be affected, through a secret ballot.

6.2 Employee Representative Bodies

Trade unions are the representative bodies for employees in Singapore.

Under current legislation, platform workers cannot form unions as they are self-employed. They are currently represented by three industry associations (the National Private Hire Vehicles Association, National Delivery Champions Association, and National Taxi Association), although these associations have limited powers compared to trade unions.

On 12 July 2023, the government accepted eight recommendations by the Tripartite Workgroup on Representation for Platform Workers for the establishment of a representative body for platform workers. The eight recommendations are as follows:

1. A platform worker representative body can obtain mandate through direct recognition or secret ballot.

2. All platform workers can vote in a secret ballot, except those who are very new or who are inactive.

3. Voting will be done electronically and conducted by the MOM.

4. A platform worker representative body obtains a mandate when it has majority support from the platform workers who voted, subject to a 20% quorum of eligible platform workers.

5. Platform worker representative bodies and platform operators should be given the flexibility to determine areas for negotiation.

6. Negotiations will be guided by a set of principles agreed by the Tripartite Workgroup.

7. A collective agreement must be certified at the Industrial Arbitration Court.

8. Unresolved collective disputes can be referred to the MOM for conciliation, and if conciliation fails, to the Industrial Arbitration Court for arbitration.

The government will work closely with tripartite partners, platform workers and platform operators to implement the recommendations from the second half of 2024.

6.3 Collective Bargaining Agreements

Collective agreements are agreements between an employer and the trade union on the employees' employment terms. They are valid for a minimum of two years and a maximum of three years.

Certain matters are statutorily excluded from the scope of collective bargaining, such as:

- the promotion of an employee;
- an internal transfer, which does not entail a detrimental change to the transferred employee's employment terms;
- the employer's hiring decisions;
- the termination of an employee's contract by reason of redundancy or the employer's reorganisation;
- the dismissal and reinstatement of an employee who considers that they have been wrongfully dismissed; and
- the assignment or allocation of duties to an employee that are consistent or compatible with the employee's employment terms.

A trade union must be accorded recognition by the employer under the Industrial Relations (Recognition of a Trade Union of Employees) Regulations before it may engage in collective bargaining.

Either the employer or the trade union may initiate the collective bargaining process through serving notice.

If a collective agreement cannot be reached within the prescribed timeframes, any party to the negotiations may make a request to the MOM for conciliation assistance. If no agreement can be reached between the parties through conciliation, the trade dispute can be referred to the Industrial Arbitration Court as a last resort.

7. Termination

7.1 Grounds for Termination

An employment contract may be terminated by agreement, including by way of notice (see **7.2**

Notice Periods), or by a fundamental breach on the part of the other party, including dismissal for cause (see 7.3 Dismissal For (Serious) Cause).

Advisory on Managing Excess Manpower and Responsible Retrenchment

The TAFEP's Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment strongly encourages employers to take a long-term view of their manpower needs, including the need to maintain a strong Singaporean core, and preserve jobs as far as possible.

Retrenchment should be the last resort and, if all other feasible options have been exhausted, should be conducted in a responsible and sensitive manner. This includes providing a longer notice period beyond the contractual or statutory requirements, where possible.

Employers who have businesses registered in Singapore and have at least ten employees must notify the MOM if any employee is notified of their retrenchment, within five working days after such notification.

7.2 Notice Periods

Notice Period

The Employment Act provides that either party to an employment contract may, at any time, give the other party notice of their intention to terminate the employment. The length of the notice must be the same for both the employer and employee and is determined by the employment contract or, if there is no such provision, the statutory notice period will follow Section 10(3) of the Employment Act and is up to four weeks, depending on the length of service.

The employment may also be terminated by either party without notice by paying a sum to the other party equal to the salary which would have accrued to the employee in lieu of notice.

The Tripartite Guidelines on Wrongful Dismissal provide that where the employment contract provides for termination with notice, the employer is entitled to terminate the employment with notice without providing a reason.

Formalities

The Employment Act requires that notice of termination must be in writing. Even where the Employment Act does not apply, it is usually prudent to give notice in writing.

The notice should generally contain the date of termination, or make it ascertainable by computation. In addition, where an employer is giving notice, it is generally useful to state the employer's expectations of the employee's work and conduct up to the last day of work.

Severance Payments

Generally, there is no statutory requirement for an employer to pay retrenchment benefits/severance payments. However, an entitlement to retrenchment payments/severance payments may be provided in the terms of employment contracts.

Employees who fall under Part 4 of the Employment Act will not be entitled to any retrenchment benefit if they have not been in continuous service with their employer for two years or more. Non-Part 4 employees are not statutorily entitled to any retrenchment benefit.

The quantum of severance benefits will often depend on the terms of the employment contract or, where the employee is unionised, the collective agreement.

Where there is no contractual provision for the quantum of severance benefits, the TAFEP's Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment recommends that employers pay severance benefits of between two weeks' to one month's salary per year of service, depending on the financial position of the company and taking into consideration the industry norm. The TAFEP's recommendation represents the prevailing norm for the quantum of severance benefits.

7.3 Dismissal for (Serious) Cause

An employee may be summarily dismissed for cause, without notice or salary in lieu of notice, if the employee commits a fundamental breach of the employment contract, such as where there is disobedience, negligence, incompetence or disloyalty.

An employee may also be summarily dismissed if the employment contract provides for the immediate termination of the contract on the occurrence of certain events and such an event occurs. For example, an employment contract may provide that an employer may immediately terminate the contract if the employee is convicted of a criminal offence involving fraud or dishonesty.

Procedure Under the Employment Act

Where an employee is covered by the Employment Act, an employee can only be summarily dismissed for misconduct after a due inquiry. The requirement for there to be a due inquiry only applies if the employee is summarily dismissed for misconduct, and not for wilful breach of the employment contract or some other reason (eg, gross incompetence).

A due inquiry requires that the employee concerned be properly informed about the allegation(s) and the evidence against them so that they have an opportunity to defend themselves by presenting their position and any other evidence.

A failure to carry out a due inquiry may constitute wrongful dismissal. See **8.1 Wrongful Dismissal**.

Procedure Under Common Law

There is no general common law prescription of procedural due process or requirement for the application of natural justice.

However, where there is an employment contract, or other terms are incorporated into the employment contract that set out the procedure for inquiry into misconduct, the employer will have to comply with such procedure for dismissal on the grounds of misconduct.

7.4 Termination Agreements

It is common for employers and departing employees to enter into termination agreements, which may contain obligations in the remaining period of employment, as well as post-employment obligations. Some of the provisions in such agreements include severance payments, arrangements for employee stock option plans (ESOPs) and other benefits payments, mutual waivers and releases, non-disparagement clauses, and post-termination restrictive covenants. These agreements provide clarity and closure at the end of the employment relationship and minimise the risk of disputes.

Employers need to handle the presentation of termination agreements with care. For example, employers will want to avoid their employees apprehending discussion of such agreements as constructive dismissal from employment or perceiving that they are under duress or other undue pressure to enter into the agreements.

7.5 Protected Categories of Employee

The dismissal of an employee because of discrimination on the basis of that employee's age, race, gender, religion, marital status and family responsibilities, or disability is regarded as wrongful dismissal. It is also wrongful dismissal to dismiss an employee in order to deprive them of benefits/entitlements that they would otherwise have earned (eg, maternity benefits), or to punish the employee for exercising an employment right (eg, filing a mediation request, or declining a request to work overtime), according to the Tripartite Guidelines on Wrongful Dismissal.

It is also an offence under the Industrial Relations Act for employers to discriminate against members of trade unions.

8. Disputes

8.1 Wrongful Dismissal

Wrongful dismissal is the dismissal of an employee without just or sufficient cause. The termination of employment with notice but without giving any reason is presumed not to be wrongful. However, if an employer chooses to give a reason, the dismissal can be wrongful if the reason given is proven to be false (Tripartite Guidelines on Wrongful Dismissal).

Damages for Wrongful Dismissal

The normal measure of damages in a case of wrongful dismissal is for the amount which the employee would have received under the employment contract had the employer lawfully terminated the contract by giving the required notice or paying salary in lieu of notice.

Reinstatement of Employment

For employees covered under the Employment Act, an employee who considers that they have been dismissed without just cause or excuse may lodge a claim with the Employment Claims Tribunal for the reinstatement of their former employment, or compensation.

However, under common law, the reinstatement of former employment is generally not granted and the former employee will typically be compensated by damages.

8.2 Anti-discrimination

Tripartite Guidelines on Fair Employment Practices

The Tripartite Guidelines on Fair Employment Practices (TGFEP) are issued by the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP), consisting of the MOM, the Singapore National Employers Federation and the National Trades Union Congress.

The TGFEP is mainly guided by the following five principles of fair employment practices:

- 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 an 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 Tripartite Guidelines on Fair Employment Practices.

Newly Proposed Workplace Fairness Legislation

On 13 February 2023, the Tripartite Committee on Workplace Fairness released an interim report (the "2023 Tripartite Interim Report") which sets out 20 recommendations to tackle workplace discrimination. Based on the National Day Rally 2021 speech by the prime minister, there are plans to enshrine these recommendations into law once they are finalised. The recommendations are categorised as follows:

- strengthen protections against workplace discrimination;
- provisions to support business/organisational needs and national objectives;
- processes for resolving grievances and disputes while preserving workplace harmony; and
- ensuring fair outcomes through redress for victims of workplace discrimination and more appropriate penalties for breaches.

While the existing TGFEP does not have the force of law, it is being retained and enhanced to work in concert with legislation. Thus, employers should continue to comply with the TGFEP.

Discrimination in Dismissal and Retrenchment

The dismissal or retrenchment of an employee because of discrimination on the basis of that employee's age, race, gender, religion, marital status and family responsibilities, or disability is wrongful (Tripartite Guidelines on Wrongful Dismissal; Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment).

Employers who have wrongfully dismissed employees on discriminatory grounds may be made to compensate the employees beyond their salaries payable in lieu of notice. Furthermore, the MOM may also take action against employers found to follow discriminatory practices by curtailing work pass privileges for such employers.

8.3 Digitalisation

Court Proceedings

Most court proceedings in respect of civil disputes (including employment disputes) are now conducted via video-conferencing. Certain hearings, such as those involving the examination of witnesses, however, continue to be conducted in person. In some cases, parties may seek permission for witnesses who are situated abroad to give evidence via video conference.

Mediation

Mediation conducted by the Tripartite Alliance for Dispute Management (TADM), which is a prerequisite for a party to bring a claim to the Employment Claims Tribunal (see **9.1 Litigation**), is mainly conducted online via the TADM online dispute resolution (ODR) system, or by email or phone. The process involves each party exchanging correspondence or responses via email or the ODR system, with the mediator facilitating the exchange and, where necessary, with the mediator having private discussions with the parties separately.

Mediation before a private mediation provider such as the Singapore Mediation Centre may also be conducted virtually, in-person, or in a hybrid manner, depending on the parties' agreement. Flexibility in the conduct of the mediation can make it easier for parties with representatives that are located in different countries to participate in the mediation.

9. Dispute Resolution

9.1 Litigation

Employment Claims Tribunal

The Employment Claims Tribunal provides an alternative, low-cost forum for employees and employers to resolve salary-related claims or wrongful dismissal disputes. For a claim to be heard in the Employment Claims Tribunal, the following preconditions must be satisfied:

- if the claimant is an employee, the claim must either be a specified statutory or contractual salary-related dispute or a wrongful dismissal dispute;
- the claim cannot exceed the prescribed claim limit of SGD20,000 unless it involves a union (recognised under the Industrial Relations Act 1960), in which case, the limit is SGD30,000;
- a mediation request must first be lodged with the TADM, the claim must have failed to be resolved through mediation, and a claim referral must have been issued by the mediator;
- if the claimant is an employer, the claim must relate to a salary in lieu of notice of termination dispute; and
- the claimant is claiming against a party who is residing, or has a registered office or place of business, in Singapore.

All proceedings before the Employment Claims Tribunal are conducted in private. The parties must act in person and cannot be represented by lawyers.

Litigation

Parties may choose to bring their employment disputes before the Singapore courts. Claims not exceeding SGD60,000 are filed in the magistrate's court, while claims not exceeding SGD250,000 are filed in the district court. Claims exceeding SGD250,000 are filed in the High Court.

There are no specific processes under Singapore law for bringing class action claims.

9.2 Alternative Dispute Resolution

Arbitration

Parties can agree to have disputes arising between them determined through arbitration. If an action is brought before a court where the parties have entered into an arbitration agreement, the court will generally stay the court proceedings.

Mediation

The TADM provides mediation services for salary-related claims, wrongful dismissal claims and appeals under the Retirement and Re-employment Act. Only disputes that cannot be resolved via mediation may then be referred to the Employment Claims Tribunal.

Parties can also agree to refer employment disputes to private mediation service providers, such as the Singapore Mediation Centre.

9.3 Costs

Costs are generally awarded to the successful party at the discretion of the court, taking into account the conduct of all the parties (including before and during the proceedings) and the parties' conduct in relation to any attempt to resolve the dispute through mediation or any other means of dispute resolution.

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