Singapore: Employment & labour law

This country-specific Q&A provides an overview of employment & labour law laws and regulations applicable in Singapore.

For a full list of jurisdictional Q&As visit [here](#).
1. Does an employer need a reason in order to lawfully terminate an employment relationship? If so, describe what reasons are lawful?

The employer generally does not need to provide a reason if it terminates the employment relationship with notice or salary in lieu of notice.

Any such termination should be conducted in accordance with the employment agreement and the Employment Act (Cap. 91) ("EA"), if it applies.

However, there is some authority that an employer may not terminate a fixed term contract by notice or salary in lieu of notice.

Introduction to Singapore Employment Law

By way of background, the EA is Singapore’s main employment legislation, and was recently amended as of 1 April 2019. It covers generally all employees, but does not cover the following:

1. Seafarers;
2. Domestic workers; and
3. Statutory board employees or civil servants.

Part IV of the EA, which sets out rest days, hours of work and other conditions of service, only applies to the following categories of employees:

1. Workmen (doing manual labour) with a basic monthly salary not exceeding S$4,500; and
2. Employees who are not workmen but are covered by the EA with a basic monthly salary not exceeding S$2,600.

Part IV of the EA does not cover all managers or executives, regardless of their salaries.

Other statutes and the common law may also apply in various situations. Finally, the Ministry of Manpower ("MOM"), together with its tripartite partners, the National Trades Union Congress ("NTUC") and the Singapore National Employers Federation ("SNEF"), has issued various employment guidelines and advisories. While these guidelines and advisories are not legally binding, MOM may take steps against employers who do not comply with certain guidelines or advisories.

2. What, if any, additional considerations apply if large numbers of dismissals (redundancies) are planned?

An employer with at least 10 employees must notify MOM within 5 working days of the employee receiving notification of his/her retrenchment if 5 or more employees are
retrenched within any 6-month period. A failure to notify within the required period is an offence and the employer may be liable on conviction to penalties, including a fine not exceeding S$5,000 and to other potential penalties. Guidance relating to this requirement is set out in MOM’s Tripartite Guidelines on Mandatory Retrenchment Notifications.

MOM and the Tripartite Alliance for Fair and Progressive Employment Practices (“TAFEP”) (see the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment (“Tripartite Retrenchment Advisory”)) have also advised employers to carry out the following before retrenching:

1. Research on government assistance schemes to support the restructuring;
2. Obtain employment facilitation for employees;
3. Consider available alternatives such as redeployment, temporary layoffs (subject to some mandatory conditions), and implementing a shorter work week;
4. Take a long term view of manpower needs;
5. Consult with the relevant trade unions if employees are unionised;
6. Not discriminate against employees and instead make selections based on objective factors such as the ability to contribute to the company’s future business needs;
7. Treat affected employees with dignity and respect; and
8. Consider having a longer retrenchment notice period (i.e. in excess of that provided for under the EA) for all affected employees.

If employers still wish to implement their retrenchment exercise, they are advised to communicate their intentions early to their employees and before public notice of the retrenchment is given.

Other additional considerations include whether employees should be given retrenchment benefits. In this regard, employers should refer to prevailing norms on the provision and quantum of retrenchment benefits.

3. What, if any, additional considerations apply if a worker’s employment is terminated in the context of a business sale?

In a business sale, there are generally three potential outcomes for an employee’s employment.

First, under the EA, subject to conditions, it may be possible for the seller (outgoing employer) to automatically transfer the employees employed by the business to the buyer (the incoming employer).

Second, the affected employees may be transferred to the buyer by the seller terminating the services of the affected employees and the buyer hiring the same employees.
Third, where the seller chooses not to transfer the affected employees, it would typically terminate their employment before the business sale. In this regard, please refer to our response to question 2 for more details on retrenchment exercises.

Should the employers wish to transfer foreign employees to the buyer, it would be important for the employers to consider if their work passes can be transferred to the buyer, or if the buyer can obtain fresh work passes for these employees.

4. **What, if any, is the minimum notice period to terminate employment?**

There are no minimum notice periods to terminate employment. Any termination by notice should be in accordance with the employment agreement.

For employees covered by the EA who enter into the employment agreement on or after 1 April 2016 and are employed for a continuous period of 14 days or more, a written record of the notice period must be given to the employees. In the absence of agreement between the employer and the EA employee, the following notice periods will apply:

<table>
<thead>
<tr>
<th>Length of employment</th>
<th>Notice period</th>
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<tbody>
<tr>
<td>Less than 26 weeks</td>
<td>1 day</td>
</tr>
<tr>
<td>26 weeks or more but less than 2 years</td>
<td>1 week</td>
</tr>
<tr>
<td>2 years or more but less than 5 years</td>
<td>2 weeks</td>
</tr>
<tr>
<td>5 years or more</td>
<td>4 weeks</td>
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</tbody>
</table>

Where the EA does not apply, and in the absence of an express termination notice clause, the common law generally requires that reasonable notice be given before terminating the employment relationship. What is reasonable is determined on the facts of the case.

5. **Is it possible to pay monies out to a worker to end the employment relationship instead of giving notice?**

It is generally possible to terminate a contract without waiting for the period of notice to end by paying the worker compensation in lieu of notice, which is money equivalent to the salary that the worker would have earned during the required notice period.

It would be advisable for an employer to clearly set out its right to pay salary in lieu of notice in the employment agreement.

6. **Can an employer require a worker to be on garden leave, that is, continue to employ**
and pay a worker during his notice period but require him to say at home and not participate in any work?

There is no prescribed right for the employer to require the worker to be put on garden leave. Employment agreements may specifically provide for this. If not provided for in the employment agreements, employers may generally put an employee on garden leave if the employee continues to be paid his/her entitlements and salary.

However, the period of garden leave should not be so long as to render the employee’s skills obsolete. For certainty, it would be advisable for the employer to clearly set out its right to put the employee on garden leave in the employment agreement.

7. Does an employer have to follow a prescribed procedure to achieve an effective termination of the employment relationship? If yes, describe the requirements of that procedure or procedures.

Generally, there is no statutorily-prescribed procedure if the employment is terminated by notice or salary in lieu of notice. It is common for employment agreements to prescribe a termination notice period, and how notice may be given to the employee. In this regard, the employer should ensure that the employee is terminated and given notice (or salary in lieu of notice) in accordance with the employment agreement. Please see our response to question 4 for more details on notice periods.

We also set out some additional considerations:

First, this is subject to any collective agreement, which might require the trade union to be notified/consulted.

Where the termination is a retrenchment, additional requirements may apply. See our response to question 2.

If an employee covered under the EA has committed an act of misconduct, the employer should conduct an inquiry before deciding whether to dismiss the employee.

If the employee is a foreigner holding a work pass, then the employer should cancel his/her work pass and seek tax clearance from the Inland Revenue Authority of Singapore.

8. If the employer does not follow any prescribed procedure as described in response to question 7, what are the consequences for the employer?

If the employer does not comply with the EA and the employment agreement, the employee may challenge the termination by submitting a mediation request to the Tripartite Alliance for Dispute Management before filing a claim in the Employment Claims Tribunals.
(“ECTs”) for wrongful dismissal, or bring a civil action in the courts.

The normal measure of damages that the employee may recover against the employer for wrongful termination is the amount the employee would have earned during the notice period, less the amount he could reasonably be expected to earn in other employment. Depending on the circumstances of the termination, there may also be reputational consequences for the employer.

In relation to claims brought to the ECT, the ECT may:

1. require an employer to reinstate an employee who has been wrongfully dismissed and to pay the employee his loss of wages from the date of dismissal to the date of reinstatement;
2. require an employer to pay compensation to any employee who has been wrongfully dismissed; or
3. dismiss the claim.

9. **How, if at all, are collective agreements relevant to the termination of employment?**

Collective agreements are governed by the Industrial Relations Act (Cap. 136.) (“IRA”). The IRA sets out processes for recognising a trade union, and for the employer and recognised trade union to negotiate and adopt a collective agreement.

If the collective agreement was adopted in accordance with the IRA, any termination of a unionised employee’s services must comply with the collective agreement. In particular, collective agreements typically provide for termination and retrenchment benefits and procedures, and may require the trade union to be notified and/or consulted in advance.

Should a trade dispute arise in relation to termination or retrenchment benefits and procedures under a collective agreement, this may be resolved by conciliation by MOM. If the dispute cannot be resolved after conciliation and a deadlock has occurred in negotiations, the trade dispute may be referred to the Industrial Arbitration Court for arbitration. Tripartite mediation of trade disputes involving managerial or executive employees may also be available.

10. **Does the employer have to obtain the permission of or inform a third party (eg local labour authorities or court) before being able to validly terminate the employment relationship? If yes, what are the sanctions for breach of this requirement?**

There is generally no requirement to obtain the permission of or to inform a third party before being able to validly terminate the employment relationship, unless the termination of the employment relationship is due to retrenchment, or a collective agreement requires the
employer to notify and/or consult the trade union in advance. For more details concerning the termination of employment in retrenchment situations, please see our response to question 2.

11. **What protection from discrimination or harassment are workers entitled to in respect of the termination of employment?**

The Tripartite Retrenchment Advisory states that when retrenching, employers should not discriminate against any particular group on the grounds of age, race, gender, religion, marital status and family responsibility, or disability. Although the Advisory is non-binding, MOM will investigate complaints of discriminatory employment practices, including retrenchments that unfairly target older, re-employed or pregnant employees. If the complaints are substantiated, the employers will have their work pass privileges curtailed.

The Tripartite Guidelines on Wrongful Dismissal (1 April 2019) (“**Wrongful Dismissal Guidelines**”) also provides that dismissing an employee because of discrimination e.g. against the employee’s age, race, gender, religion, marital status and family responsibilities, or disability is wrongful.

The following specific prohibitions against discrimination of certain classes of individuals also apply:

1. The Retirement and Re-Employment Act (Cap. 274A) prohibits employers from dismissing any employee below the age of 62 (or the prescribed minimum retirement age) on the ground of age. Employees who feel that they have been unfairly dismissed can write to the Minister of Manpower within 1 month of dismissal. Employers found to have breached this prohibition are guilty of an offence and will be liable on conviction to a fine not exceeding S$5,000 or to imprisonment for a term not exceeding 6 months or to both.

2. Employers cannot terminate the services of female employees who are absent due to their maternity leave benefits under the EA or the Child Development Co-Savings Act (Cap. 38A). Further, female employees who have served their employer for 3 months or more and who are dismissed without sufficient cause or on the ground of redundancy or restructuring would be statutorily entitled to all maternity leave payments that (but for the termination notice) they would have been entitled to receive as part of their maternity benefits on or before their confinement date. Breaches of these prohibitions would result in the employer being guilty of an offence and liable on conviction to a fine not exceeding S$5,000 or to imprisonment for a term not exceeding 6 months or to both.

In addition, the following general protections against discrimination and harassment may apply to the employment context:

1. The non-binding Fair Consideration Framework and Tripartite Guidelines on Fair
Employment Practices contain recommendations intended to prevent discrimination at the workplace.

2. The Singapore courts have recognised that the implied duty of mutual trust and confidence between employer and employee may require the employer to redress complaints of discrimination.

3. Employers are required under the Workplace Safety and Health Act (Cap. 354A) to take reasonably practicable measures to ensure workplace safety and health. Breaches of this duty may potentially attract criminal liability as well. In this regard, the Tripartite Advisory on Managing Workplace Harassment issued by TAFEP considers that “harassment and other psychosocial risks should be included in the overall workplace safety and health (WSH) risk management of the organisation”.

4. While not specific to the employment context, any employee suffering from harassment has recourse to the remedies provided under the Protection from Harassment Act (Cap. 256A).

12. **What are the possible consequences for the employer if a worker has suffered discrimination or harassment in the context of termination of employment?**

   In addition to the consequences stated above, an employer may be subject to a TAFEP investigation if a complaint is lodged against them. Depending on the outcome of the investigation and the employer’s responses, the matter may be referred to MOM for investigation and action.

   Employees may also bring civil claims in the courts against the employer for wrongful dismissal if it can be shown that such discrimination or harassment constitutes a breach of the implied term of mutual trust and confidence. Depending on the court’s findings, the employer may be liable to compensate the employee in damages or reinstate the employee. Reputational consequences may also arise.

   Please see our response to question 8 for the consequences of wrongful dismissal.

13. **Are any categories of worker (for example, fixed-term workers or workers on family leave) entitled to specific protection, other than protection from discrimination or harassment, on the termination of employment?**

   Please see our response to question 11.

14. **Are workers who have made disclosures in the public interest (whistleblowers) entitled to any special protection from termination of employment?**

   There are no special protections against termination of employment in respect of whistleblowers. However, such whistleblowers may bring civil claims in the courts against their employer for wrongful dismissal if it can be shown that their termination constitutes a breach of the implied term of mutual trust and confidence.
15. **What financial compensation is required under law or custom to terminate the employment relationship? How do employers usually decide how much compensation is to be paid?**

Save for salary in lieu of notice which is discussed above and any amounts that have vested in the employee prior to the termination of the employment relationship, there is no specific financial compensation required under law to terminate the employment relationship. The financial compensation payable would depend on the terms of the employment agreement and prevailing norms.

Where an employee’s service is terminated due to redundancy or reorganisation, the Tripartite Retrenchment Advisory states that:

“The prevailing norm is to pay a retrenchment benefit varying between 2 weeks to 1 month salary per year of service, depending on the financial position of the company and taking into consideration the industry norm. However, in unionised companies where the quantum of retrenchment benefit is stipulated in the collective agreement, the norm is one month’s salary for each year of service.”

16. **Can an employer reach agreement with a worker on the termination of employment in which the employee validly waives his rights in return for a payment? If yes, describe any limitations that apply.**

Yes, an employer may do so. Employers may in some cases pay an additional sum as an *ex gratia* payment in exchange for the employee entering into a termination agreement (usually incorporating waivers of rights and liabilities) with the employer.

As regards the limitations that apply, the agreement should not contain terms that breach any laws. This includes the following prohibitions:

1. the EA prohibits employers and female employees from contracting out of any right to maternity benefits to the extent that doing so deprives the female employee of that right or removes/reduces the liability of the employer to make the required payments pursuant to such benefits; and
2. the Retirement and Re-Employment Act prohibits employers and employees from (a) contracting to exclude or limit the operation of the Act or (b) contracting to preclude any person from making a representation, claim or application under the Act.

17. **Is it possible to restrict a worker from working for competitors after the termination of employment? If yes, describe any relevant requirements or limitations.**

Yes, it is possible. However, any restrictive covenant imposed by the employer that acts as a restraint of trade is unlawful and unenforceable unless the employer is able to show that:
1. there is a legitimate interest to be protected by the restrictive covenant; and
2. the restrictive covenant is reasonable in the interests of the parties and the public.

The restrictive covenant should not be wider than necessary to protect the legitimate interest of the employer.

In determining its enforceability, the courts would consider all the circumstances of the case, including but not limited to the nature of the interests sought to be protected, the period of restraint, the geographical restriction, as well as the seniority of the employee in question. The burden of proof is on the employer who is seeking to rely on such restrictive covenants to establish that the restrictive covenants are reasonable.

18. Can an employer require a worker to keep information relating to the employer confidential after the termination of employment?

Yes. The common law protects confidential information. Employers also frequently require their employees to expressly agree to protect employers’ confidential information under the employment agreement.

19. Are employers obliged to provide references to new employers if these are requested?

It is not a legal requirement that employers provide references to new employers if requested. However, it is customary to do so and courts have recognised that where employers prepare such references, they should do so in a fair and accurate manner.

20. What, in your opinion, are the most common difficulties faced by employers when terminating employment and how do you consider employers can mitigate these?

Employers often face difficulties in terminations where their termination clauses are absent or insufficiently specific. To mitigate these issues, employers should as a matter of priority review their employment agreements to confirm that these agreements contain termination clauses consistent with their commercial intentions. If amendments need to be made to the employment agreements of existing employees, these can be done via a supplemental agreement or the employment handbook. The risk of challenge by the employee challenging the termination on the basis that it amounts to wrongful dismissal is also higher where the employer chooses to terminate for cause. In this connection, the Wrongful Dismissal (“Guidelines”) which were recently issued on 1 April 2019 provide guidance on what amounts or does not amount to wrongful dismissal. In particular, they clarify that misconduct is the only legitimate reason for dismissal without notice, but this may only be done after due inquiry, and the employer would bear the burden of proving the employee’s misconduct.
21. Are any legal changes planned that are likely to impact on the way employers approach termination of employment? If so, please describe what impact you foresee from such changes and how employers can prepare for them?

Following the amendments as of 1 April 2019, coverage under the EA has been extended to generally all employees, with limited exceptions. Managers and executives earning more than S$4,500 per month who were previously not covered under the EA can now avail themselves of recourse for wrongful dismissal under the EA.

In addition, while ECTs heard salary-related disputes and MOM heard wrongful dismissal claims prior to the amendments, ECTs now hear wrongful dismissal claims as well, providing a more convenient one-stop service to employers and employees, who might otherwise have to approach two different parties to resolve their issues.

Further, in deciding wrongful dismissal claims, ECTs must now have regard to the recently published Wrongful Dismissal Guidelines (1 April 2019), as mentioned above.

The amended EA also clarifies that dismissal includes involuntary resignation by the employee due to any conduct or omission on the employer’s part.

In light of these changes, employers should carefully review their employment documents and termination processes, especially in relation to managers and executives, to ensure compliance with Singapore laws.