LEXOLOGY
Getting The Deal Through

LABOUR & EMPLOYMENT 2023

Contributing editors
Matthew Howse, K Lesli Ligorner, Walter Ahrens, Michael D Schlemmer and Sabine Smith-Vidal

LEXOLOGY
Getting The Deal Through

START READING

Singapore

Wendy Tan and Kelley Wong*
Morgan Lewis Stamford LLC

RETURN TO CONTENTS

Summary

LEGISLATION AND AGENCIES

Primary and secondary legislation

1 What are the main statutes and regulations relating to employment?

The Employment Act is Singapore's main labour law statute. It sets out the basic terms and working conditions for all employees who are under a contract of service with an employer. It was amended in April 2019 to also cover professionals, managers and executives earning more than S$4,500 in basic monthly salary. This category of people was previously not covered under the Employment Act, which meant that their employment terms were largely

governed by their employment contracts. The amendment, therefore, brings the minimum statutory protections afforded under the Employment Act to all employees in Singapore save for those who are specifically excluded (see section 2 of the Employment Act).

The Employment Act provides for a minimum standard of protection in respect of termination notice, payment of salary and deductions, maternity protection and benefits, and annual leave. If a term of an employment contract provides a condition of service that is less favourable to an employee than any of the conditions of service prescribed by the Employment Act, it shall be illegal, null and void to the extent that it is so less favourable.

Only Part IV of the Employment Act, which sets out rights in respect of rest days, hours of work and other conditions of service, has limited applicability, as it only applies to 'workmen' (generally, people whose work involves mainly manual labour) who earn a salary not exceeding S$4,500 a month and employees (other than a 'workman' or person in a managerial or executive position) who earn a salary not exceeding S$2,600 a month.

Foreign employees holding a work pass are also covered by the Employment of Foreign Manpower Act, which sets out an employer's responsibilities and obligations for employing foreigners.

Other statutes that relate to employment are:

- the Retirement and Re-Employment Act, which sets out the minimum retirement age and provides for the re-employment of eligible employees;
- the Child Development Co-Savings Act, which provides for maternity protection and benefits;
- the Workplace Safety and Health Act, and the Work Injury Compensation Act, which relate to the safety, health and welfare of persons at work in a workplace and injury compensation; and
- the Industrial Relations Act, which regulates a trade union's functions in the relationship between employers and employees.

The main regulation relating to fair employment practices is the Tripartite Guidelines on Fair Employment Practices (TGFEP), which sets out guidelines that employers must abide by in recruiting and selecting employees under the Fair Consideration Framework (FCF). The guidelines are formulated by the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP). TAFEP also publishes guidelines on key employment practices such as grievance handling, performance management, dismissals, retrenchment and workplace harassment.

Protected employee categories

2 Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

Although there is no specific legislation relating to harassment in employment, the Protection from Harassment Act is Singapore's main statute on harassment and stalking, and covers both employment and non-employment scenarios. It prohibits individuals and entities from causing harassment, alarm or distress to a person by using threatening, abusive or insulting

words or behaviour, or publishing any identifying information of the victim. It also prohibits conduct that causes the victim to believe that unlawful violence will be used against the victim or to provoke the use of unlawful violence. The Act also prohibits unlawful stalking, which refers to stalking that causes harassment, alarm or distress to the victim.

Such offences carry imprisonment and financial penalties. The victim can also bring civil proceedings in court against the harasser, which may lead to an award of damages. In addition, the victim can apply for a protection order against the harasser.

The TGFEP prohibits discriminatory practices, and all Singapore-based organisations are expected to abide by the TGFEP. According to the TGFEP, employers must 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. In addition, the FCF sets out requirements for all employers in Singapore to consider the workforce in Singapore fairly for job opportunities. The Ministry of Manpower (MOM) proactively identifies employers with indications of discriminatory hiring practices and places them on the FCF Watchlist for closer scrutiny.

Additionally, the TGFEP sets out broad guidance on how to address workplace grievances. Employers are expected to have grievance handling procedures to handle complaints of discrimination, conduct proper investigations, respond to affected employees, record and file grievances confidentially, and treat complainants and respondents fairly.

Enforcement agencies

3 What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The MOM is the primary government agency responsible for the enforcement of the Employment Act and employment statutes and regulations. Offences under the Employment Act are prosecuted by the MOM.

The Employment Claims Tribunals (ECT) hear disputes between employers and employees. These include statutory salary-related claims, contractual salary-related claims, claims for wrongful dismissal and claims for salary in lieu of notice of termination by all employers. The ECT has jurisdiction to hear claims of up to S$20,000, or up to S$30,000 if the dispute has undergone mediation through the Tripartite Mediation Framework or mediations assisted by unions recognised under the Industrial Relations Act. Parties whose claims exceed the applicable limit may abandon the amount in excess of the limit for the ECT to hear their claims. To bring a claim before the ECT, parties must first register their claims at the Tripartite Alliance for Dispute Management for mediation.

TAFEP handles reports relating to discrimination or workplace harassment. This includes discrimination at the workplace relating to age, gender, race, religion, language, marital status and family responsibility or disability, unreasonable employment terms, and workplace harassment. Failure by companies to abide by TAFEP's guidelines can lead to the MOM curtailing the work pass privileges of employers.

WORKER REPRESENTATION

Legal basis

4 Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

The main legislation relating to employees' representatives in the workplace is the Trade Unions Act, which regulates the registration and rights and liabilities of trade unions. Trade unions must be registered. After registration, trade unions can claim recognition from employers pursuant to the Industrial Relations (Recognition of a Trade Union of Employees) Regulations. While an employer may dispute the claim for recognition, the Commissioner for Labour of the Ministry of Manpower may call for a secret ballot among employees to vote on whether to grant recognition.

Powers of representatives

5 What are their powers?

Trade unions that are recognised by an employer can represent their members in collective bargaining and negotiate for a collective agreement. The agreement entered into is legally binding between the employer and the trade union on the employees' terms and conditions, and is valid for between two and three years.

Trade unions can also try to negotiate and resolve employment or industrial disputes. In retrenchments, trade unions can carry out discussions relating to retrenchment benefits.

The Trade Disputes Act permits industrial action to a limited extent. Essential service workers employed in water, gas or electricity service are prohibited from going on strike. Other essential service workers who do not fall under the three specified categories are required to provide at least two weeks' notice to the employers of their intentions.

BACKGROUND INFORMATION ON APPLICANTS

Background checks

6 Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

There are no express restrictions on prohibitions against background checks, but the Personal Data Protection Act (PDPA) provides for limited restrictions. It may limit the amount of personal information available to perform the background check. Further, the PDPA only allows an employer to collect, use and disclose personal data without the consent of the employee if the collection, use or disclosure of the personal data is reasonable for the purpose of, or in relation to, the employer entering into an employment relationship with the employee. An employer should not collect personal data for background checks if it is not in relation to the employment relationship.

Read this article on Lexology

This also applies if an employer hires a third party to conduct the checks. The employer should ensure that the third party only collects information that is in relation to the employment relationship.

Medical examinations

7 Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

There are no restrictions or prohibitions against requiring a medical examination as a condition of employment. An employer can collect such data if it is in relation to entering into an employment relationship.

However, if the employer is discriminatory in its hiring practices, such as not hiring an employee due to a disability that is discovered in a medical examination, this could potentially breach the Tripartite Guidelines on Fair Employment Practices (TGFEP) and expose the employer to sanctions.

Drug and alcohol testing

8 Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There are no restrictions or prohibitions against drug and alcohol testing of applicants. An employer can collect such data if it is in relation to entering into an employment relationship.

However, if the employer is discriminatory in its hiring practices, this could potentially be in breach of the TGFEP and expose the employer to sanctions.

HIRING OF EMPLOYEES

Preference and discrimination

9 Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

The Tripartite Guidelines on Fair Employment Practices (TGFEP) prohibits discriminatory practices in all Singapore-based organisations. The TGFEP is published by the tripartite partners, which are the Ministry of Manpower (MOM), the National Trades Union Congress and the Singapore National Employers Federation.

All employers are expected to abide by the TGFEP, according to which employers must recruit and select employees on the basis of merit (eg, skills, experience or ability to perform the job), regardless of age, race, gender, religion, marital status and family responsibilities or disability.

The Fair Consideration Framework (FCF) published by the MOM sets out requirements for all employers in Singapore to consider the workforce in Singapore fairly for job opportunities.

Employers submitting Employment Pass and S Pass applications must first advertise on MyCareersFuture and fairly consider all candidates. There are certain exceptions to advertising, such as where the company has fewer than 10 employees, the fixed monthly salary for the vacancy is S$20,000 or above and the role is for not more than one month, or if the candidate is being transferred as an intra-corporate transferee as defined in the World Trade Organization's General Agreement on Trade in Services and applicable free trade agreement.

All employers must practise fair hiring even if their job vacancies can be exempted from advertising.

Employers should be careful not to have an exceptionally high share of foreign professionals, managers, executives and technicians or a very high concentration of a single nationality, as these are indicators of possible discriminatory hiring practices. Additionally, employers should be aware that the MOM's current policy is to focus on building a 'Singapore Core' of Singapore employers. Accordingly, the MOM is increasingly examining the hiring and employment ratios of foreign professionals and Singapore citizens and residents.

Employers who do not abide by the TGFEP and the FCF will face scrutiny from the MOM and have their work pass privileges curtailed. For example, they could be debarred from making and renewing work pass applications.

Written contracts

10 | Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

An employer must give each employee a written record of the employee's key employment terms (KETs) not later than 14 days after the day on which the employee starts employment. Employees are not required to sign off on KETs, but employers should ensure that employees acknowledge the KETs issued to them.

There is a stipulated list of KETs, which includes the job title, main duties and responsibilities of the employee; salary period and components; type of leave; medical benefits; probation period; and notice period.

There is no fixed format for KETs. They can be included in the employment contract, contained in an electronic record or published on a website that is readily accessible to the employee.

Fixed-term contracts

11 | To what extent are fixed-term employment contracts permissible?

Fixed-term employment contracts are permissible. There is no maximum duration for such contracts. The Tripartite Alliance for Fair and Progressive Employment Practices has published guidelines that require employers to provide leave benefits to fixed-term employees who are covered by the Employment Act and have provided continuous service for three months or more. The guidelines also stipulate that the notice period should be proportional to the total length of service. As such, employers should ensure that fixed-term

contracts contain termination notice provisions. If there are no such provisions, the minimum notice provisions under the Employment Act would apply.

Probationary period

12 What is the maximum probationary period permitted by law?

There is no maximum probationary period permitted by law. However, employers are still required to comply with minimum notice periods under the Employment Act during the probationary period.

Classification as contractor or employee

13 What are the primary factors that distinguish an independent contractor from an employee?

The MOM considers a contract for service (ie, independent contractor) as one with a client–contractor type of relationship where the contractor carries out business on its own account. Contracts for service are not covered by the Employment Act and statutory benefits. In addition, benefits that may need to be paid under the Central Provident Fund Act (a form of enforced statutory pension scheme for Singapore citizens and residents) do not apply.

There is no single conclusive test to distinguish a contract of employment from a contract for services. The wording in a contract itself is not conclusive of the nature of the relationship. There are certain factors that will be considered. First, the extent of control (ie, which party decides on the recruitment and dismissal of employees, pays for wages and in what ways, determines the production process, timing and method of production, and is responsible for the provision of work). Second, the ownership of factors of production (ie, which party provides the tools and equipment and the working place and materials). Third, economic considerations (ie, whether the business is carried out on the person's own account or is for the employer, whether the person can share in profit or be liable to any risk of loss, and how earnings are calculated and profits derived).

Temporary agency staffing

14 Is there any legislation governing temporary staffing through recruitment agencies?

Organisations and individuals who place jobseekers with employers are governed by the Employment Agencies Act, under which certain licences must be obtained before organisations and individuals may place jobseekers with employers. Among other things, this requires all the relevant officers of the recruitment or placement agencies to obtain a certificate of employment intermediaries to ensure that the relevant officers understand their legal obligations, and are capable of advising their clients on their rights and responsibilities.

FOREIGN WORKERS

Visas

15 Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

All foreigners who intend to work in Singapore must have a valid work pass before they start work. The main types of work pass in Singapore are the Employment Pass and the S Pass.

For certain short-term assignments, such as those for speakers at a seminar, those performing religious work or journalists, a miscellaneous work pass that is valid for up to 60 days can be applied for. The foreign worker must be sponsored by a Singapore-based organisation or society.

Certain activities are exempt from work passes, such as participation in an exhibition as an exhibitor, providing expertise relating to the transfer of knowledge on the process of new operations in Singapore and carrying out activities directly related to organising or conducting a seminar. The employee must notify the Ministry of Manpower (MOM) of the work pass-exempt activity after arriving in Singapore and obtaining a short-term visit pass (ie, tourist visa) at immigration. Work pass-exempt activities can be performed for up to a total of 90 days in a calendar year.

An individual does not need to notify the MOM for the duration of the short-term visit pass in Singapore to attend:

- company meetings, corporate retreats or meetings with business partners;
- study tours or visits, training courses, workshops, seminars and conferences as a participant; or
- exhibitions as a trade visitor.

There are no quotas on employers with regard to the short-term options set out above.

There is no specific work pass for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction. Such employees will also need to apply for an Employment Pass, S Pass or relevant work pass. However, employers that are seeking to hire an overseas intra-corporate transferee under the World Trade Organization's General Agreement on Trade in Services or an applicable free trade agreement to which Singapore is a party will be exempt from advertising the job vacancy on MyCareersFuture.

Spouses

16 Are spouses of authorised workers entitled to work?

Previously, spouses who had a dependant's pass or long-term visit pass could work if they had a pre-approved letter of consent or successfully apply for a letter of consent. However, as of 1 May 2021, spouses of authorised workers will only be entitled to work if they qualify for and apply for the requisite work passes.

Read this article on Lexology

Employers should note that, as of November 2020, employees brought into Singapore under the intra-corporate transferee scheme may no longer bring their family members with them into Singapore unless there exists a free trade agreement between Singapore and the country of nationality of the employee that exempts them.

General rules

17 What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker who does not have a right to work in the jurisdiction?

All employers must obtain a work pass for their foreign employees, save for work pass-exempt activities and certain activities that do not require MOM notification. The work pass is valid only for the employer, type of employment and period expressly specified. The issuance of a work pass comes with mandatory conditions that both the employer and the foreign employee must comply with. All employers are required by the Employment Act and the Employment of Foreign Manpower Act to keep a register of foreign employees to whom work passes have been issued.

It is an offence to employ an unauthorised foreign worker. Offenders are liable for a fine between S$5,000 and S$30,000 or imprisonment for up to one year, or both. For subsequent convictions, offenders face mandatory imprisonment and a fine of between S$10,000 and S$30,000.

Resident labour market test

18 Is a labour market test required as a precursor to a short or long-term visa?

Before applying for an Employment Pass or S Pass, employers must advertise the job on MyCareersFuture and consider all candidates fairly. The advertisement should clearly explain the job requirements and salary offered to attract the right candidates. It should not contain discriminatory words or phrases and must be open for at least 28 days.

An employer is exempt from advertising on MyCareersFuture if it meets any of the following requirements:

- the company has fewer than 10 employees;
- the fixed monthly salary for the vacancy is S$20,000 or above;
- the role is short term (ie, not more than one month);
- the role is to be filled by a local transferee (ie, an existing employee of a company in Singapore transferring to another related branch, subsidiary or affiliate in Singapore); or
- the role is to be filled by a candidate choosing to apply as an overseas intra-corporate transferee under the World Trade Organization's General Agreement on Trade in Services or an applicable free trade agreement to which Singapore is a party.

However, all employers must practise fair hiring even if their job vacancies can be exempted from advertising. In the Employment Pass or S Pass application, the employer must provide details of the job advertisement, the number of candidates considered and the reasons local candidates were not hired.

Read this article on Lexology

TERMS OF EMPLOYMENT

Working hours

19 Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

Part IV of the Employment Act sets out mandatory rest days, hours of work and other conditions of service. It only applies to 'workmen' (generally, people whose work involves mainly manual labour) who earn a salary not exceeding S$4,500 a month and employees (other than a 'workman' or person in a managerial or executive position) who earn a salary not exceeding S$2,600 a month.

Generally, employees covered under Part IV cannot be required to work for more than eight hours per day or 44 hours per week. However, if an employee is agreeable and the number of hours of work on one or more days of the week is less than eight or the number of days on which the employee is required to work in a week is not more than five, the limit of eight hours in one day may be exceeded on the remaining days of the week, but cannot exceed nine hours in one day or 44 hours in one week.

Part IV employees are allowed one rest day per week without pay of one whole day or, for shift work employees, any continuous period of 30 hours. The employer can determine which day of the week the rest day shall fall on. No employee shall be compelled to work on a rest day unless he or she is engaged in work that, by its nature, requires that it be carried on continuously by a succession of shifts. However, an employee can request to work for an employer on a rest day and shall be entitled to payment or overtime payment.

An employer can require an employee to exceed the limit of hours prescribed and to work on a rest day in certain situations such as to deal with an accident, to perform work essential for defence or security, or to carry out urgent work on machinery or a plant.

Overtime pay – entitlement and calculation

20 What categories of workers are entitled to overtime pay and how is it calculated?

A Part IV employee must be paid for overtime at the rate of not less than one-and-a-half times the employee's basic hourly rate of pay (or two times, where the employee is requested to work on a rest day).

In addition, a Part IV employee who is required by the employer to work on any public holiday is also entitled to an extra day's salary or a full day off in substitution for that holiday. If the employee is not covered by Part IV of the Employment Act, the employee may additionally be given part of a day off depending on the number of hours spent working on that public holiday as an alternative mode of compensation.

Overtime pay – contractual waiver

21 | Can employees contractually waive the right to overtime pay?

Part IV employees cannot contractually waive the right to overtime pay as stipulated under the Employment Act. With respect to employees not covered under Part IV of the Employment Act, the right to overtime pay would be governed by the terms of the employment contract.

Vacation and holidays

22 | Is there any legislation establishing the right to annual vacation and holidays?

The Employment Act provides that an employee who has worked for an employer for a period of not less than three months will be entitled to statutory annual leave of seven days for the first 12 months of service and an additional day's annual leave for every subsequent 12 months of continuous service with the same employer, up to a maximum of 14 days. An employer can provide for more days of annual leave in the employment contract.

The Employment Act also provides that every employee is entitled to a paid holiday at his or her gross rate of pay on a public holiday that falls during the time that he or she is employed. By agreement, any other day may be substituted for any public holiday.

Sick leave and sick pay

23 | Is there any legislation establishing the right to sick leave or sick pay?

The Employment Act stipulates that employees who have worked for at least three months are entitled to paid sick leave after examination by a medical practitioner. An employee who has worked for at least three months but less than four months is entitled to five days' paid sick leave and 15 days' paid hospitalisation leave. The number of days of sick leave and hospitalisation leave is increased depending on the length of service. The maximum statutory entitlement is 14 days of paid sick leave and 60 days of paid hospitalisation leave, and applies to employees who have worked for more than six months.

The Ministry of Manpower (MOM) has issued advisories to employers to exercise flexibility and compassion as of September 2021 in approving and recognising sick leave when the employee may be ill with covid-19, or working at home, in self-isolation or under a quarantine order.

Leave of absence

24 | In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

There is no legislation or guideline relating to leaves of absence, except for parental leave. However, this can be agreed upon between the employer and employee separately.

Mandatory employee benefits

25 | What employee benefits are prescribed by law?

The Employment Act and Child Development Co-Savings Act (CDCA) provide for maternity protection and benefits and childcare leave for parents. Employment Act rights apply to employees who have worked for the employer for at least three months. The CDCA applies to employees whose children are Singapore citizens.

Under the CDCA, female employees are entitled to 16 weeks of paid maternity leave and 12 weeks of paid adoption leave. Under the Employment Act, female employees are entitled to 12 weeks of maternity leave, eight of which are paid. Male employees under the CDCA are entitled to two weeks of paid paternity leave and are entitled to share up to four of the 16 weeks of the working mother's maternity leave.

An employer is prohibited from giving a female employee a notice of dismissal while she is on maternity leave that carries a notice period that would end while she is on maternity leave. An employer that gives a notice of dismissal without sufficient cause during the employee's pregnancy is liable for payment that the employee would have been entitled to on or before the date of childbirth.

Singapore citizens and permanent residents are entitled to Central Provident Fund (which is a mutually funded mandatory social security scheme) contributions from employers at the monthly rates stated in the Central Provident Fund Act.

Part-time and fixed-term employees

26 | Are there any special rules relating to part-time or fixed-term employees?

There are no special laws relating to part-time or fixed-term employees.

Under the Employment Act, a part-time employee is an employee who is required to work for less than 35 hours a week. Part-time employees are covered by the Employment (Part-Time Employees) Regulations. Every part-time employment contract must specify the employee's hourly basic rate of pay as well as the number of working hours in a day, week and month.

For fixed-term employees, the Tripartite Guidelines on Fair Employment Practices has published a Tripartite Advisory on the Employment of Fixed-Term Contract Employees. It encourages employers to treat contracts renewed within one month of the previous contract as continuous and grant or accrue leave benefits based on the cumulative term of the contracts. Employers are also encouraged to notify fixed-term employees in advance as to whether they wish to renew the contracts to allow sufficient time for the employees to make alternative arrangements.

Public disclosures

27 Must employers publish information on pay or other details about employees or the general workforce?

There is no general requirement to publish information on pay or other details save when a position is being advertised in the requisite job portal for the purposes of hiring. However, the MOM conducts surveys such as the Labour Market Survey, the Labour Cost Survey and the Conditions of Employment Survey. Employers that are asked to participate have to provide their responses, as refusal to answer or knowingly providing false information are offences.

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

28 To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Restraints of trade clauses are only enforceable if they protect a legitimate proprietary interest of the employer and the scope of the clause is reasonable. Legitimate proprietary interests include trade secrets, trade or business connections and the maintenance of a stable, trained workforce. An employer seeking to illegally restrain competition will not be considered a legitimate proprietary interest.

The reasonableness of the clause is considered between the parties and with respect to the interests of the public. Factors that are taken into account in determining the reasonableness of the clause include the scope of employees being restrained, the scope of activity being restrained, the duration of the restraint and the geographical scope of the restraint. A clause that covers all employees regardless of seniority is more likely to be unenforceable. The clause should cover only the geographical areas that are necessary to protect the employer's actual and existing business, rather than future potential business.

A clause that is negotiated by the employee is more likely to be considered reasonable. However, an employee merely acknowledging and agreeing to the clause in the employment contract in itself is unlikely to affect the enforceability of the clause. The clause will still need to be considered in terms of the legitimate proprietary interest it protects and its reasonableness.

Where a restraint of trade clause is too wide, the court may apply a blue pencil test to strike out the unenforceable parts of the clause. This will only be done if the section can be struck out without adding to or modifying the rest of the clause. Otherwise, the court may strike out the entire clause.

Post-employment payments

29 Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

There is no requirement to pay the former employee while the employee is subject to post-employment restrictive covenants unless this is contractually agreed between the parties. However, a payment to the employee during the post-employment restrictive covenant period may go to the reasonableness of the restraint, or may create a waiver or election argument in favour of the employer.

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

30 In which circumstances may an employer be held liable for the acts or conduct of its employees?

An employer is vicariously liable for the actions of its employees if the acts are committed in the course of employment. This is determined by a two-stage test. First, whether there is a relationship of employment or one sufficiently akin to employment between the employer and employee. Second, whether the employee's conduct is sufficiently connected with the relationship between the employer and employee.

In respect of the first stage, companies would not be held vicariously liable for the acts of their independent contractors. However, the issue of whether a party is an independent contractor or employee would depend on the circumstances of the relationship with the employer rather than the label of the party. The following factors would be taken into account in determining whether it is just, fair and reasonable to impose vicarious liability:

- the employer would be more likely than the employee to have the means to compensate the victim and could be expected to have insured itself against that liability;
- the tort would have been committed as a result of activity undertaken by the employee on behalf of the employer;
- the employee's activity would likely be part of the business activity of the employer;
- the employer, by employing the employee to carry out the activity, would have created the risk of the tort being committed by the latter; and
- the employee would, to a greater or lesser degree, have been under the control of the employer at the time the tort was committed.

In respect of the second stage, the question is whether there is a sufficient connection between the relationship between the employee and employer on the one hand and the commission of the tort on the other. The court will determine whether the relationship has created or significantly enhanced the risk of the tort being committed.

TAXATION OF EMPLOYEES

Applicable taxes

31 What employment-related taxes are prescribed by law?

Employees are liable to pay taxes on income earned in or derived from Singapore. This includes salaries, bonuses, director's fees, commission, allowances and benefits-in-kind or salaries paid in lieu of notice. Employment income that is not taxable includes payments for restrictive covenants, compensation for loss of office and sponsored outpatient treatment.

EMPLOYEE-CREATED IP AND CONFIDENTIAL BUSINESS INFORMATION

Ownership rights

32 Is there any legislation addressing the parties' rights with respect to employee inventions?

There is no legislation specifically addressing parties' rights with respect to employee inventions. The general laws on intellectual property will apply. In general, the intellectual property rights in respect of an employee's inventions created in the course of employment is owned by the employer. However, this is ultimately dependent on the terms of the employment contract.

Trade secrets and confidential information

33 Is there any legislation protecting trade secrets and other confidential business information?

There is no legislation protecting trade secrets and other confidential business information. This is governed by contract, common law and equitable principles.

However, theft of trade secrets and other confidential business information from electronic devices may be a criminal act in breach of the Computer Misuse Act if the access was unauthorised.

DATA PROTECTION

Rules and employer obligations

34 Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The Personal Data Protection Act (PDPA) governs the collection, use and disclosure of personal data. Personal data includes information about an employee's health, educational and employment background.

The PDPA allows an employer to collect, use and disclose personal data with the employee's consent. In addition, employers may collect personal data that is reasonable for the purpose of managing or terminating the employment relationship. Even though no consent is required in such a situation, the employer must inform the employee of that purpose. Situations that could fall within the purpose of managing or terminating an employment relationship include using the employee's bank account details to issue salaries, monitoring how the employee uses company computer network resources and managing staff benefit schemes. Employers may also collect, use and disclose personal data without consent if it is in the legitimate interests of the employer and the legitimate interests outweigh any adverse effect on the employee. However, this exception will require the employer to conduct an assessment.

The employer has an obligation to provide the employee with access to their personal data, to correct personal data, and to make a reasonable effort to ensure that personal data is accurate and complete. The employer must make reasonable security arrangements to protect the personal data in its possession or under its control. If personal data is to be transferred overseas, the employer must take appropriate steps to ensure that the overseas recipient is bound by legally enforceable obligations or specified certifications to provide the transferred personal data with a standard of protection that is comparable to that under the PDPA.

An employer must notify affected employees of a data breach if the breach is likely to result in significant harm to the affected employees.

Once the data is no longer necessary for legal or business purposes, the employer must cease to retain the personal data. Employers may, however, retain personal data about former employees for as long as there is a valid business or legal purpose, such as considering the employee for future job opportunities.

Privacy notices

35 Do employers need to provide privacy notices or similar information notices to employees and candidates?

Where consent of the employee is sought, the employer should set out the relevant privacy terms in a notice to the employee. Where the employer is relying on the legitimate interests exception, or the management or termination of the employment relationship exception, the employer will still be required to notify the employee.

Employee data privacy rights

36 What data privacy rights can employees exercise against employers?

Employees have the right to request personal data about them that is in the possession, or under the control, of the organisation and information about the ways in which that personal data has been, or may have been, used or disclosed by the employer within a year before the date of the request. Employees also have the right to submit a request for the employer to correct an error or omission in their personal data. However, there are certain exceptions to these rights. The rights do not apply to opinion data kept solely for an evaluative purpose; personal data collected, used or disclosed without consent for the purposes of

an investigation if the investigation and associated proceedings and appeals have not been completed; and requests that are frivolous or vexatious.

Employees may at any time withdraw any consent given under the PDPA. The employer may inform the employee of the legal consequences arising out of such withdrawal; for instance, if the employer is not able to carry out the obligations under the employment relationship as a result.

If there is a breach of the PDPA by the employer, the employee can submit a personal data protection complaint to the Personal Data Protection Commission, which may commence an investigation and impose sanctions on the employer. The employee may also commence civil proceedings in the courts against the employer to seek an injunction, declaration or damages, or other relief as the court sees fit.

BUSINESS TRANSFERS

Employee protections

37 Is there any legislation to protect employees in the event of a business transfer?

Under the Employment Act, an undertaking (defined as including any trade or business) being transferred from one person to another does not terminate the employment contracts of the transferor's employees. The employment contracts shall have effect after the transfer as if they had been originally made between the employee and the transferee. Transfers include the disposition of a business as a going concern and transfers effected by sale, amalgamation, merger, reconstruction or operation of law. However, it does not cover situations of transfers of assets only, transfers of shares, transfers of operations outside Singapore, outsourcing of supporting functions or where an incoming service provider takes over an outgoing service provider in the context of competitive tendering.

On the completion of a transfer, the terms and conditions of service of the employee shall remain the same as those enjoyed by the employee immediately prior to the transfer. However, the transferee and the employee or a trade union representing such an employee may still negotiate and agree to terms of service that are different from the original employment contract.

The transferor has an obligation to notify the affected employees and the trade unions of affected employees of details of the transfer, as soon as it is reasonable and before the transfer, to enable consultations to take place between the transferor and the affected employees.

TERMINATION OF EMPLOYMENT

Grounds for termination

38 May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

Under the Employment Act, employees can only be dismissed with notice, or with just cause or excuse. Based on the Tripartite Guidelines on Fair Employment Practices, dismissals with just cause of excuse include misconduct (such as theft, dishonesty or disorderly conduct at work), poor performance or redundancy.

In seeking to dismiss for poor performance, employers should be prepared to produce records of the poor performance, including the implementation of performance improvement plans that were not successful in improving the performance of the employee.

A dismissal would be wrongful if it is due to discriminatory reasons, for the purpose of depriving the employee of benefits or entitlements for which the employee would otherwise have been eligible, or for retaliatory reasons.

Notice requirements

39 Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Employers can provide either notice of termination or payment in lieu of notice. The period of notice would depend on the employment contract or, in the absence of such a stipulation, the minimum notice periods stated in the Employment Act.

Dismissal without notice

40 In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Under the Employment Act, termination can be carried out without notice in the event of any wilful breach by the employee of a condition of the employment contract. However, the employer should conduct a due inquiry before dismissing the employee, in light of the Tripartite Guidelines on Wrongful Dismissal.

An employer may also dismiss an employee after due inquiry without notice on the grounds of misconduct inconsistent with the employee's obligations and conditions of service. Due inquiry involves informing the relevant employee of the allegations and evidence against the employee.

Severance pay

41 | Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

There is no legislation establishing a general right to severance pay upon termination.

However, the Ministry of Manpower (MOM) has provided guidelines as part of Responsible Retrenchment Practices for retrenchment benefits given to employees to compensate them for the loss of employment in the event of retrenchment. Employees who have served the employer for at least two years are eligible. Those with less than two years' service may be granted an ex gratia payment out of goodwill. The MOM has stated that the prevailing norm is to pay a retrenchment benefit of between two weeks' to one month's salary per year of service, depending on the company's financial position and the industry.

Procedure

42 | Are there any procedural requirements for dismissing an employee?

For dismissals without notice on the grounds of misconduct, employers are statutorily required to conduct a due inquiry. For dismissals without notice on the grounds of wilful breach, employers should also conduct a due inquiry.

If the employer will be going through a retrenchment exercise, the MOM has strongly encouraged employers to submit a notice of retrenchment. For employers with at least 10 employees who have retrenched five or more employees within any six-month period, notification to the MOM is mandatory.

The total sum due to the employee must be paid on the day of dismissal or, if this is not possible, within three working days thereafter. As for foreign employees, employers must file a tax clearance form with the tax authorities at least one month before the employee ceases to work for the employer in Singapore, the employee starts an overseas posting or the employee leaves Singapore for any period exceeding three months. No payment of salary or any other sum shall be made to the employee by the employer without the permission of the Comptroller of Income Tax.

Employee protections

43 | In what circumstances are employees protected from dismissal?

Employees cannot be dismissed for discriminatory reasons, for depriving the employee of an employment benefit, or owing to an employee exercising his or her statutory rights.

An employer is prohibited from giving a female employee a notice of dismissal while she is on maternity leave or such that the notice period will end while she is on maternity leave. An employer that gives notice of dismissal without sufficient cause during a female employee's pregnancy is liable for payment that the employee would have been entitled to on or before the date of her confinement.

Read this article on Lexology

The Retirement and Re-Employment Act prohibits employers from dismissing or terminating the contracts of employees below the statutory retirement age of 62 on the sole grounds of age.

Mass terminations and collective dismissals

44 Are there special rules for mass terminations or collective dismissals?

The Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment sets out guidelines on retrenchments, including retrenchment benefits and other assistance.

Before retrenchment, employers should consider and implement cost-saving measures. In the event that retrenchment is inevitable, employers should follow the published checklist on responsible retrenchment practices. Employers should ensure objectivity in the selection of employees for retrenchment, take a long-term view of their workforce needs including the need to maintain a strong Singaporean core, and communicate early and clearly to the employees.

Employers are statutorily required to notify the MOM of retrenchments within five working days of when they notify their employees if the employer has at least 10 employees and notifies at least five employees of their retrenchment within any six-month period.

Class and collective actions

45 Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Employees have to assert labour and employment claims on an individual basis. However, they may bring a representative action where one or more of them represent a group in the proceedings and where the members of the group have the same interests in the proceedings.

Collective claims commenced by a union representing a group of employees may only be asserted before the Industrial Arbitration Court and potentially the Employment Claims Tribunal.

Mandatory retirement age

46 Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

In accordance with the Retirement and Re-Employment Act, the minimum retirement age is 62. Employers cannot ask an employee to retire before that age.

Employees who turn 62 can continue to be employed in the organisation if they meet the eligibility criteria for re-employment. Employers must offer re-employment to eligible employees who turn 62 (up to 67 years of age) to continue their employment in the organisation. If the employer is unable to offer the employee re-employment, the employer must

transfer the re-employment obligation to another employer with the employee's agreement or offer the employee a one-off employment assistance payment.

DISPUTE RESOLUTION

Arbitration

47 | May the parties agree to private arbitration of employment disputes?

Yes.

Employee waiver of rights

48 | May an employee agree to waive statutory and contractual rights to potential employment claims?

Yes, save for the rights set out under the Employment Act (such as in respect of overtime, paid holidays and maternity leave). This is in light of the fact that if a term of an employment contract provides a condition of service that is less favourable to an employee than any of the conditions of service prescribed by the Employment Act, it shall be illegal, null and void to the extent that it is so less favourable.

Waivers can be carried out by way of contract and consideration should be provided, although economic consideration is not required.

Limitation period

49 | What are the limitation periods for bringing employment claims?

Claims through the Employment Claims Tribunal or mediation before the Tripartite Alliance for Dispute Management must generally be filed within one year of the date of the dispute if the employee is still employed or within six months of the last day of employment if the employment relationship has ended. Wrongful dismissal claims should first be submitted for mediation at the Tripartite Alliance for Dispute Management not later than one month after the date of dismissal. For the wrongful dismissal of a female employee during pregnancy, the claim should be filed not later than two months after the date of childbirth.

For civil actions in the Singapore courts, the Limitation Act prescribes the limitation period. In general, the employee has six years from the date on which the cause of action accrues to commence the action.

UPDATE AND TRENDS

Key developments and emerging trends

50 Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

In light of the covid-19 pandemic, the Tripartite Alliance for Fair and Progressive Employment Practices has updated retrenchment guidelines in the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment, with a focus on preserving jobs as a priority. The Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment contains cost-saving measures intended to help employers keep their businesses viable. These include adjustments to work arrangements with and without wage cuts, direct adjustments to wages and no-pay leave. Employers have been encouraged to consult unions and employees early in implementing these measures, and communicate the impact of the measures clearly so that a mutually agreeable arrangement can be worked out.

If retrenchment has to be carried out, employers have been encouraged to provide a longer notice period where possible, provide reasonable retrenchment benefits and help affected employees look for alternative jobs in associate companies, other companies or through outplacement assistance programmes.

* *The content of this chapter was accurate as at 7 April 2021.*

Morgan Lewis Stamford

Wendy Tan wendy.tan@morganlewis.com
Kelley Wong kelley.wong@morganlewis.com

10 Collyer Quay, 27-00 Ocean Financial Centre, Singapore 049315
Tel: +65 6389 3000
www.morganlewis.com