

CIRCUIT BREAKER MEASURES FOR EMPLOYEES

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The Multi-Ministry Taskforce had on 3 April 2020, announced a series of heightened safe distancing measures, which will result in a suspension of activities at most work places from 7 April 2020 to 4 May 2020 (“**Circuit Breaker**”). Businesses that are not able to implement work-from-home arrangements must be suspended unless they fall within the prescribed list of essential services.

As at the date of this article, the Circuit Breaker has been extended to 1 June 2020. In addition, more workplaces will be closed such that only the most essential services will remain open. This article sets out some of the options that may be available to employers, whose businesses have been impacted during the COVID-19 pandemic.

A. Measures set out in advisories and guidelines

Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment

The Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment (the “**Advisory**”) was updated on 11 March 2020 to provide clearer guidance to employers on the appropriate measures to manage excess manpower. It is stated in the Advisory that when managing excess manpower, retrenchment should always be the last resort, after other options have been considered and are found to be unworkable. The options suggested in the Advisory, which will be explored further in this article below, include:

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- adjustments to work arrangements without wage cuts;
- adjustments to work arrangements with wage cuts;
- direct adjustments to wages; and
- no-pay leave.

As a general guide, adjustments to work arrangements (with or without wage cuts) are more applicable to employers who wish to scale down or suspend business operations in response to a short, temporary decline in business activities. On the other hand, direct adjustments to wages and no-pay leave may be more applicable to employers if they are suffering from extremely poor or uncertain business conditions that are likely to be long-term.

Employers should always exercise care and fairness in implementing cost-saving measures, and pay special attention to the impact of any measures on low-wage employees. In particular, the principle of leadership by example, close consultation (with unions (if applicable) and employees) and transparency should prevail in the implementation of cost-saving measures. Employers should also review and restore any adjustments made when their businesses recover.

Employers are to communicate the impact of the measures clearly, and as early as possible. The Advisory prescribes that with effect from 12 March 2020, any employer who is registered in Singapore, and has at least 10 employees, must notify the Ministry of Manpower in Singapore (“**MOM**”) if it implements cost-saving measures that will result in its employees’ salaries falling below 75% of their gross monthly salary (if they are local employees) or 75% of their basic monthly salary (if they are foreign employees).

Although the Advisory is not legislation, MOM can take action against employers for non-compliance with the Advisory. This will include suspending any Job Support Scheme (“**JSS**”) and Foreign Worker Levies (“**FWL**”) payouts that may be available to these employers pending completion of any investigations against them. Where there is evidence of irresponsible or unfair treatment, these employers may be denied future employment support (including but not limited to the JSS and FWL rebates) and have their work pass privileges curtailed.

National Wages Council 2020/2021 Guidelines

On 30 March 2020, the National Wages Council Guidelines for 2020/2021 (“**NWC Guidelines**”) were published. The NWC Guidelines set out wage guidelines for employers to sustain businesses and save jobs. The NWC Guidelines apply to all employees in the public and private sectors, including re-employed employees, for the period from 1 April 2020 to 30 June 2021.

Under the NWC Guidelines, employers are requested to consider the following measures to sustain businesses and save jobs (in order of priority):

- Reduce non-wage costs, and consider various measures to utilize and manage excess manpower;
- Tap on government support to offset business and wage costs, and press on with business and workforce transformation;
- Trim wage costs; and

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- Where necessary to retrench workers as a last resort and ensure that the retrenchment exercise is done in a responsible manner and as set out in the Advisory.

B. Government measures for local employees

Jobs Support Scheme

In order to help employers retain local employees (i.e. Singapore Citizens or Permanent Residents), the government introduced the JSS in February 2020. The JSS will co-fund wages of local employees for 9 months from October 2019 to July 2020 in the form of payouts that will be made in April 2020, May 2020, July 2020 and October 2020.

For wages in April 2020 and May 2020, the government will provide 75% wage support for the first SGD 4,600 of gross monthly wage of each local employee in all sectors (which will include employee central provident fund (“**CPF**”) contributions but will exclude employer CPF contributions).

For the rest of the wages, the Singapore government will provide three levels of co-funding or wage support for the first SGD 4,600 of gross monthly wages for the following sectors:

- 75% wage support for the aviation & tourism industries;
- 50% wage support for the food services industries; and
- 25% wage support for all other sectors.

Business owners or employers trading in their own personal capacity will not be eligible for the JSS payouts. Unregistered entities, representative offices and international organisations are also excluded from the JSS.

Enhanced Wage Credit Scheme

In February 2020, the government also announced that it would enhance the Wage Credit Scheme (i.e. a scheme which was introduced in 2013 to co-fund wage increases for Singaporean employees). The Wage Credit Scheme is available to employers who gave or will give wage increases between 2013 to 2020 to Singapore Citizen employees, subject to certain qualifying conditions.

The government co-funding ratios for wage increases in 2019 and 2020 will be raised to 20% (from the current 15%) and 15% (from the current 10%) respectively. The qualifying gross wage ceiling will also be raised from SGD 4,000 to SGD 5,000 for 2019 and 2020.

C. Government measures for foreign employees

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Foreign worker levies

On 24 March 2020, the government announced that it would *inter alia*, provide a three-month extension of the levy payment timeline for FWL incurred in the year 2020 to small-medium enterprises (“SMEs”). SMEs will have a total of up to 5 months to pay their FWL, commencing from the month they were incurred before the work passes are revoked. Prior to 24 March 2020, SMEs that fail to pay FWL for two consecutive months will have their work passes revoked in the following month. However, SMEs should note that the late payment penalty of 2% monthly would still apply to any deferred payment of FWL. Levy payments for FWL that are due in April 2020 and May 2020 will also be waived, and employers will be entitled to a rebate of \$750 for each work permit or S Pass holder employed as of 1 May 2020. Prior to 24 March 2020, MOM had provided an FWL waiver of up to 60 days for foreign workers who went on overseas home leave for at least 7 consecutive days. MOM will now extend the FWL waiver period up to 90 days for employers who have sent their foreign workers home on overseas leave between 24 March 2020 and the end of 2020.

Man-Year Entitlement refund

From 1 Apr 2020 to 30 September 2020, construction firms can apply for a refund of unused Man-Year Entitlement (“MYE”) if they have been affected by disruptions arising from COVID-19. Firms have the flexibility to use the refunded MYE within 1 year to hire new workers or renew existing ones. Affected firms can apply to the Building and Construction Authority for the MYE refund.

Leave of Absence Support Programme

In view of the levy waiver and rebate, employers of all foreign work permit and S Pass holders will no longer be eligible for the Leave of Absence Support Programme. Nevertheless, employers remain eligible for the Leave of Absence Support Programme in respect of Employment Pass holders.

D. Specific measures that may be taken by employers

Temporary layoffs

Employers may implement a temporary layoff, as a result of facility shutdowns where a work site is closed for a designated period while some administrative functions are still performed or applied broadly across the company.

It is provided in the Advisory that during a temporary layoff, employers may:

- Request that their employees take up to 50% of their earned annual leave;
- Implement the layoff period such that it does not exceed one month at any one instance, subject to review; and

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- Pay the affected employees not less than 50% of their wage during the layoff period.

Reduction in working hours

Employers may reduce the working hours of their employees in the following manner:

- Request that their employees take up to 50% of their earned annual leave;
- Implement a reduction in work week such that it does not exceed 3 days a week and does not last for more than 3 months at any one instance, subject to review. A reduction of 3 days a week should only be implemented if the company's performance is severely affected; and
- Pay the affected employees not less than 50% of their wage on the day(s) when the employees are not working, during the period when the shorter work week is implemented.

However, employers should consider/implement other measures, and consult their unions and employees before deciding to implement no-pay leave as a last resort.

Flexible Work Schedule

Employers may implement a Flexible Work Schedule ("FWS"), which would have the following benefits:

- The FWS would create a "timebank" of unused working hours (accumulated either as hours not worked by the employees or for wages already paid). The unused working hours are then used to offset the increase in working hours in subsequent periods.
- Under the FWS, employers can compute weekly working hours over a longer period for overtime pay. Employers can also be exempted or pay a different rate of pay from the prescribed rate for overtime, rest day or public holiday work under the Employment Act, provided that certain conditions, including the safety and health of employees, are met.

In order to implement the FWS, employers need to seek the support of the unions (if the company is unionised) and/or their employees (for non-unionised companies, more than 50% of affected employees). Employers are also required to apply to the Commissioner for Labour for approval at least 2 months before the start of the FWS. The FWS will be approved for up to a maximum of 2 years at a time.

Salary reductions

An employee's salary can be reduced if there is a specific clause in the employment contract or by consent of the employees and unions (where it is unionised). The Advisory provides that companies with a flexible wage system may consider adjusting their annual wage increment, introducing a wage freeze, reducing or not paying the variable bonus payment, reducing the annual wage supplement or adjusting the monthly

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variable component (“**MVC**”) downwards. Employers who have not implemented the MVC may consider treating any cut in basic wages of up to 10% as an MVC cut. Affected employers should also set clear guidelines to restore any MVC cut through future wage increases or adjustments when their business recovers.

Redundancies

It is emphasized in the Advisory that when managing excess manpower, retrenchment should always be the last resort, after other options (as set out above) have been considered and are found to be unworkable. Employers should implement retrenchment exercises in a responsible and sensitive manner. In particular:

- the selection of employees for retrenchment should be conducted fairly, based on objective criteria and in accordance with the guidelines set out in the Advisory; and
- employers should communicate the intentions of retrenchment to their employees early and before the notice of retrenchment is given. In this regard, responsible employers are encouraged to adopt a longer retrenchment notice period as compared to the normal termination of an employment contract, or to pay in lieu of such notice.

Employers running businesses registered in Singapore, which have at least 10 employees and have notified at least 5 employees of their retrenchment within any six-month period, must notify MOM of the retrenchments within 5 working days after notifying their employees. This requirement to notify applies to permanent employees and contract employees with full contract terms of at least 6 months.

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