

EMPLOYMENT LAW GUIDE: INDUSTRIAL RELATIONS

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(a) Industrial relations legislation

Industrial relations are relatively stable in Singapore. A key feature of Singapore industrial relations is the concept of 'tripartism', which refers to workers (through unions), employers (through employer organisations) and the government, through the MOM, working together as collaborative partners. Freedom of association and representation is guaranteed to all employees in the private sector by law. The main statutes are the Trade Unions Act, which provides the formalities for the establishment of a trade union, and the IRA, which sets out specific procedures for the negotiation of collective agreements and the conciliation and arbitration of trade disputes.

(b) Role of trade unions

The major function of trade unions in Singapore is to carry out collective bargaining, negotiate terms for collective agreements and to represent members in resolving industrial disputes. Under the Trade Unions Act, trade unions must register with the Registrar of Trade Unions. Any person above the age of 16 years may be a member of a registered trade union (with the exception of certain groups of government employees).

(c) Collective bargaining

The starting point of the collective bargaining process is the recognition of the trade union by the employer. Once a trade union is recognised, the trade union or the employer may then serve a notice setting out proposals for a collective agreement and inviting the other party to negotiate. The following matters are excluded from the negotiations: promotion or transfer of employees, employment of any person to fill any vacancy in the company, termination due to redundancy or reorganisation, assignment or allocation of duties which are not inconsistent with his terms of employment; and any requests to dismiss or reinstate any employee where he is eligible to make an appeal to the Minister under the IRA. Successful negotiations typically result in a collective agreement, or parties may enter a non-binding memorandum or understanding instead depending on their needs.

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(d) Collective agreements

Under the IRA, collective agreements have to be certified by the Industrial Arbitration Court (“IAC”). In this case, they are binding on the employer (or its successor) and the relevant trade union and its members. The term of the collective agreement cannot be less than two years and not more than three years. In the event of a company restructuring, the collective agreement will remain valid for 18 months after the date of transfer or until the expiry of the collective agreement, whichever is later. If a collective agreement is unable to be concluded, the matter is referred to the IAC which makes a determination on the dispute. Prior to referring to the IAC, parties may refer the matter for conciliation at the MOM to explore possible mediated outcomes.

Once a collective agreement has been certified, any party may apply to the IAC to get an interpretation of any terms of the collective agreement. The IAC is also empowered to vary or set aside the collective agreement insofar as there is an ambiguity or uncertainty or under exceptional circumstances.

(e) Industrial action and disputes

The Trade Unions Act allows any registered trade union to commence, promote, organise or finance industrial action (including strikes), upon receipt of a majority consent of its members, obtained through a secret ballot. In general, industrial actions are lawful in Singapore; however, once a trade union dispute has been submitted to the IAC, any industrial action in connection with such a dispute becomes prohibited.

The IAC is empowered to resolve “trade disputes” of which the IAC has “cognizance to make an award” (i.e. ‘jurisdiction’ to hear the dispute) through settlement and mediation proceedings.

“Trade disputes” are defined as a dispute (including a threatened, impending or probable dispute) on matters pertaining to the relations of employers and employees which are connected with the employment or non-employment or the terms of employment, the transfer of employment or the conditions of work of any person. Legal representation is generally not allowed in the IAC proceedings.

If the parties don’t reach an agreement, the IAC can issue orders (known as ‘awards’) which are final and binding and cannot be challenged or appealed against (save for judicial review in very limited circumstances). The awards may cover many aspects of industrial relations, including such matters as wages, bonuses, medical benefits, retirement or retrenchment benefits, hours of work and overtime.

In making its determination in a trade dispute, the IAC may have regard not only to the interests of the parties but to the interests of the community as a whole and in particular the condition of the economy of Singapore.

(f) Representation for executives

Employees hired as executives have 3 different options for industrial representation: (a) join and be

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represented by a union consisting of only executive employees, (b) join a 'Rank and file' trade union (i.e. the majority of whose membership consists of employees in non-executive positions) and enjoy individual limited representation; or (c) join a 'Rank and file' trade union and seek recognition for collective representation of executive employees.

Under option (b), 'Rank and file' trade unions may represent its executive members on an individual basis, and not as a class, for any of the following 5 areas of disputes, namely:

- Retrenchment benefits – negotiate with employer to resolve any dispute relating to the amount of retrenchment benefits payable;
 - Any dispute on payment of retrenchment benefit that remains unresolved at the organisational level may be referred to MOM for conciliation. If no agreement could be reached through conciliation, either union or employer may request for arbitration.
- Dismissal - make representations to the Minister for Manpower under section 35(3) of the IRA for dismissal without just cause or excuse;
 - The representation must be in writing and made within one month of the dismissal.
- Breach of individual employment contract - negotiate with employer to resolve any dispute relating to a breach of employment contract by the executive employee or the employer;
 - Any dispute relating to a breach of an individual employment contract that remains unresolved at the organisational level may be referred to MOM for conciliation. If no agreement could be reached through conciliation, either union or employer may request for arbitration.
- Victimisation or serious disciplinary action with a view to dismissal - represent the executive employee in proceedings before a Court in respect of dismissal or reinstatement of the executive employee in cases of serious disciplinary action and victimisation (i.e. if the executive employee is victimised by the employer for participating in union related activities); and
 - Where the dispute relating to alleged victimisation or serious disciplinary action cannot be resolved, and the affected executive employee is subsequently dismissed, the dispute may be referred for arbitration.
- Re-employment dispute - negotiate with the employer to resolve re-employment dispute in the RRA and to represent the executive employee in proceedings before the Commissioner for Labour. This includes matters relating to the denial of re-employment on the grounds that the employee does not satisfy the re-employment eligibility criteria or that the employer is unable to find a vacancy in this establishment which is suitable for the employee; and the reasonableness of the terms and conditions of any re-employment offer made by the employers and of any employment assistance payment offered to an employee.
 - Where a dispute relating to re-employment of an executive employee cannot be resolved amicably at the organisational level, either union or employer can refer the dispute to MOM for conciliation. If no agreement could be reached through conciliation, the employee may lodge an appeal/claim with MOM under the RRA.

However, an employer may object to collective and/or limited representation on the ground that the

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executive employee:

- is in a senior management position or performs or exercises any function, duty or power of a person employed in a senior management position, including:
 - has control and supervision of major business operations;
 - is accountable for operational performance;
 - does the planning of business policies, plans and strategies; and
 - provides leadership to other employees;
- performs or exercises any function, duty or power which includes decision-making, or the power to substantially influence decision-making, on any industrial matter including the employment, termination of employment, promotion, transfer, reward or discipline of other employees;
- performs any function or duty which includes representing the employer in negotiations with the union on any industrial matter;
- has access to confidential information relating to the budget and finances of the employer, any industrial relations matter or the salaries and personal records of other employees; or
- performs or exercises any other function, duty or power which may give rise to a conflict of interest if he is represented by a trade union.

Depending on the union's constitution, executive employees may stand for election and hold office. As office bearers, they may represent the unions and engage employers. Employers and unions may draw up Memoranda of Understandings ("**MOUs**") on matters relating to the representation of executive employees by rank-and-file unions and any dispute resolution mechanisms.

Please note that this section of the Employment Law Guide is a summary provided for general information purposes, aimed at aiding understanding of Singapore's employment law as at the date of writing. It is not exhaustive or comprehensive and reading this memorandum is not a substitute for reading the text of the various statutes to fully understand the extent of the obligations owed. This guide should also not be relied upon as legal advice.

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