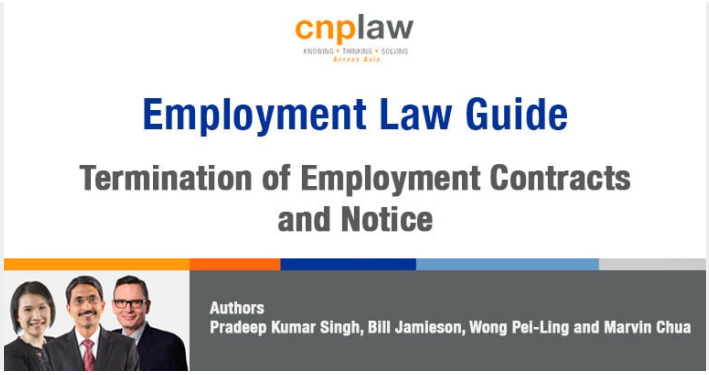
TERMINATION OF EMPLOYMENT CONTRACTS AND NOTICE

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Category: Employment Law Guide

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Authors: Pradeep Kumar Singh, Bill Jamieson, Wong Pei-Ling and Marvin Chua.

The provisions relating to termination are set out in Part II of the EA.
The manner in which an employment contract may be validly terminated will depend on the form of employment contract (which may be written or partly oral and partly written) and its terms, which may be implied (by custom or by statute) or express (which may be incorporated by reference, e.g. in the case of an employee handbook and the terms of a collective agreement, if any). An employment contract may come to an end by expiry (where the specified term has elapsed or the specified task or project is completed) or by termination. Finally, termination agreements setting out agreed terms of the termination are common, particularly with executive staff. Provisions typically set out termination payments (entitlements and negotiated payout amounts), confidentiality/non-disclosure agreement and (where applicable) restrictive covenants.

(a) Termination without notice

Under the EA:

- An employer is entitled (after due inquiry) to dismiss an employee without notice on the grounds of misconduct. Misconduct includes but is not limited to theft, dishonest or disorderly conduct at work, insubordination, and bringing the organisation into disrepute. Misconduct inconsistent with the fulfilment of express or implied conditions of his service may be another ground for dismissing an employee without notice (after due enquiry).
- Either party may terminate an employment contract without notice or, if notice has already been given, without waiting for the expiry of that notice, by paying to the other party a sum equal to the gross rate of pay which would have accrued during the notice period, in lieu of the notice period.
- Either party may terminate an employment contract without notice, if the other party wilfully breaches a condition of the contract.

(b) Termination with notice (otherwise than for misconduct)

The notice period shall be determined by any notice provision in the employment contract, or in the absence of such provision in the employment contract, shall be in accordance with the EA, which provides for the following statutory minimum period of notice required:-

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Period of service	Minimum notice period
<26 weeks	1 day
≥26 weeks, <2 years	1 week
≥2 years, <5 years	2 weeks
≥5 years	4 weeks

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The length of such notice shall be the same for both employer and employee and the notice must be in writing and include the day on which it is given in the notice period.

A party may waive his right to notice under the EA.

Generally, there is no obligation on the employer to provide work to the employee during the notice period save for certain rare exceptions, such as where an employee's position might be deemed specific and unique, where his skills require frequent exercise to preserve and enhance them, and where barring the employee from working would be inconsistent with the express term of the contract. Where the general rule applies or if specifically provided for in the employment contract, it is open to the employer to put the employee on "gardening leave" during that time, effectively preventing the employee from having contact with clients.

(c) Payment of accrued but unpaid salary up to termination date, accrued and unused annual leave and salary in lieu of notice and timing of payment on termination

Amounts for each of these (if applicable) should be paid on termination and specified in the termination agreement if there is one.

Payment of all outstanding salary and any sum due to an employee is to be made in accordance with the following timelines:

- If the employment contract is terminated by the employer, on the termination date or, if not possible, then within 3 days of it;
- If the employment contract is terminated by the employee and the full notice period is served by the employee, on the last day of employment; or
- If the employment contract is terminated by the employee and the full notice period is not served, within 7 days of the last day of employment.

If the employment contract provides for the payment of commission, how and when the commission is paid depends on the terms of the employment contract, existing company policies and employment practices.

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(d) Benefits

Depending on the terms of the employment contract, an employee may have an entitlement to payment on termination in relation to a variety of benefits, including an incentive scheme or annual cash bonus plan or executive share option scheme ("**ESOS**"). The terms of such ESOS schemes may determine an employee's entitlement following termination, depending on whether the employee is a good or bad leaver.
The terms of the contract may include payment of health insurance, school fees and housing costs. The exact terms need to be checked and payments or negotiated arrangements in relation to relevant items dealt with in the termination agreement.

(e) When contract deemed to be broken by the employer and employee

Under the EA, an employer is deemed to have broken the employment contract if he fails to pay salary in accordance with Part III of the EA, whereas an employee is deemed to have broken the employment contract if the employee is absent from work for more than 2 days continuously without prior leave from the employer and (i) the employee has no reasonable excuse for the absence; or (ii) the employee does not inform and does not attempt to inform the employer of the excuse for the absence.
Subject to anything in the employment contract to the contrary, the party who breaks the contract of service shall be liable to pay a sum equal to the amount he would have been liable to pay under the EA had he terminated the employment contract without notice or with insufficient notice.

(f) Wrongful dismissal by employer

The term "dismiss" is defined broadly under the EA and means:

> *"to terminate the contract of service between an employer and an employee at the initiative of the employer, with or without notice and for cause or otherwise, and includes the resignation of an employee if the employee can show, on a balance of probabilities, that the employee did not resign voluntarily but was forced to do so because of any conduct or omission, or course of conduct or omissions, engaged in by the employer".*

Such involuntary resignations because of any conduct or omission by the employer may be found to be "wrongful". MOM has published a set of Tripartite Guidelines on Wrongful Dismissal on 1 April 2019 (the "**Guidelines**") to illustrate what would be considered wrongful dismissals. The Guidelines provide that in the case of a dismissal with notice (or salary in lieu of notice), an employer has no obligation to provide reasons for the dismissal. Employees may not be dismissed without notice for poor performance (unless the

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performance was so poor as to amount to misconduct justifying summary dismissal) and the employer would need to substantiate the poor performance if that is cited as the reason for dismissal with notice. In order to substantiate findings of poor performance, the employee's shortcomings should be documented in their performance reviews. Misconduct justifying summary dismissal is the only legitimate reason for dismissal without notice, after a proper inquiry. The Guidelines suggest that the employer bears the burden of proving the employee was given a chance to be heard, and could not offer any legitimate explanation for falling short of the conduct justifiably expected of him

A point to note is the "conduct" of an employer may be examined in a dispute. This may be raised by an employee seeking to discharge his/her burden in proving that the dismissal was indeed wrongful. For example, under the Guidelines, a dismissal is wrongful even with adequate notice, if an employer's conduct showed that it had adopted a discriminatory attitude towards the employee. The definition of "dismiss" in the Employment Act now includes the resignation of an employee if the employee can show, on a balance of probabilities, that the employee did not resign voluntarily but was forced to do so because of any conduct or omission, or course of conduct or omissions, engaged in by the employer.

Although the illustrations in the Guidelines help to further delineate the concept of wrongful dismissal, it is important to bear in mind that the Guidelines are not meant to be exhaustive.

Dismissals will continue to require careful management and it will be prudent for companies to maintain contemporaneous employment records and, in particular, records regarding any communication with employees in the event of termination of their employment.

If an employee considers he has been dismissed without just cause or sufficient cause, he may under section 14 of the EA, after undergoing mediation with the employer, lodge a claim with the ECT. At the conclusion of the claim, the ECT may order one of the following remedies:

- reinstate the employee and pay back wages referable to the time between termination and reinstatement; or
- pay, as compensation, an amount of wages determined by the ECT instead of ordering reinstatement.

Please refer to the section titled: "Employment Claims Tribunal ("**ECT**")" below for more information.

It would be prudent for an employer to anticipate this by ensuring that reasons for a dismissal are well documented and evidenced in line with modern HR practices for continuing employee appraisal.

(g) Special considerations for terminating a director

Under section 152 of the Companies Act (Cap. 50) ("**CA**"), a public company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in the constitution of the company or any agreement between the company and the director.

However, in the case of a director appointed to represent the interests of any particular class of shareholders or debenture holders, the resolution to remove him is ineffective until a successor has been appointed.

Special notice must be given of a resolution to remove a director or to appoint a replacement director at the

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meeting at which he is removed. At the meeting to remove him, the director is entitled to be heard on the resolution. A listed public company must give the SGX-ST (i.e. the relevant listing authority) notice of receipt of a resolution to remove a director.

In the case of private companies, subject to any provision to the contrary in the constitution, the company may by ordinary resolution remove a director before the expiration of his period of office notwithstanding anything in any agreement between the private company and the director.

The resignation or removal of a director (whether pursuant to the termination of his employment in the case of an executive director or otherwise) will be deemed to be invalid under section 145(5) of the CA unless at least one director ordinarily resident in Singapore (who may be the sole director) will remain on the board.

The removal of a director must be notified to ACRA through Bizfile within 14 days from the date of his ceasing to hold the office.

In relation to payments to directors for loss of office or retirement, section 168 of the CA requires such payments to be approved by shareholders in a general meeting. Companies are exempted from the requirement to obtain shareholders' approval for payments made to a director holding a salaried employment or office in the company by way of compensation for termination of employment under an existing legal obligation arising from an agreement between the company and the director if the amount of payment does not exceed the director's total emoluments paid for the year immediately preceding his termination of employment and the particulars of the proposed payment (including the amount) have been disclosed to the shareholders upon or prior to the payment.

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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