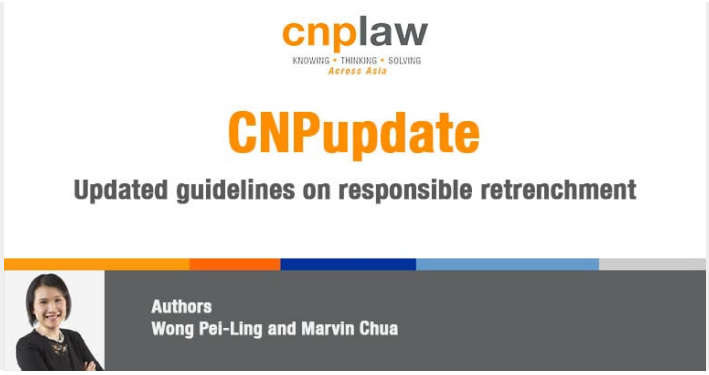
UPDATED GUIDELINES ON RESPONSIBLE RETRENCHMENT

Posted on November 27, 2020



Category: CNPupdates

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The Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment ("**Advisory**") was updated by tripartite partners (comprising the Ministry of Manpower ("**MOM**"), the National Trade Union Congress and the Singapore National Employers Federation) partners on 17 October 2020. The Advisory, which provided further guidance on the conduct of retrenchment exercises in Singapore was last updated in March 2020, and introduced a list of cost-saving measures that employers should consider and adopt as an alternative to retrenchment. A summary of those measures are set out in our earlier article published on 5 May 2020.

Maintaining a strong Singaporean core

The Advisory was updated to emphasize the need for employers to maintain a strong Singaporean core in their businesses. The need to maintain a strong Singaporean core was previously mentioned in the Advisory but no specific guidelines were mentioned on how this could be achieved. The Advisory now broadly sets out three ways in which employers can help build up a Singaporean core in their businesses:

1. Ensuring that retrenchments do not result in a reduced proportion of local employees;
2. Putting in effort to transfer niche or business-critical skills from foreign employees to local employees; and
3. If retrenchment exercises have been carried out, hiring locals when able to do so after business activities have picked up.

The above guidelines are complemented by the tightening of work pass requirements, and collectively, they seek to support employment opportunities for locals.

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Conducting retrenchments responsibly and sensitively

A key message in the Advisory is the need for employers to implement retrenchment exercises in a responsible and sensitive manner. Prior to the October 2020 update, the following guidelines were included in the Advisory:

1. The selection of employees for retrenchment should be conducted fairly based on objective criteria;
2. Employers must comply with the Mandatory Retrenchment notifications requirement unless exempted and should consult the relevant unions as early as possible;
3. Employers should inform employees of the intention to retrench (the "**Communication**") early and before the public notice of retrenchment is given; and
4. A longer notice period (as compared to a normal termination of employment) should be provided, if practicable.

With effect from 17 October 2020, the Advisory states that it is mandatory for the contents of the Communication to include the following:

1. Explanation on the employer's efforts to manage business challenges and the business situation faced by the employer resulting in the need for a retrenchment exercise;
2. Outline on how the retrenchment exercise will be carried out;
3. Elaboration on the factors that will be considered by the employer; and
4. Details on the assistance being offered by the employer to affected employees.

In addition to the above, the updated Advisory sets out a list of good practices that employers should consider when carrying out the retrenchment exercise. These good practices include:

1. Providing a longer notice period (as compared with contractual or statutory requirements) where possible;
2. Preparing managers responsible for notifying affected employees to ensure that they deliver the notice in a sensitive manner. In addition, the notification of retrenchment should be done in person unless it is impractical to do so;
3. Ensuring that Human Resource personnel and union representatives (for unionised companies) are on site to take feedback and answer queries from affected employees. In addition, employers should maintain an open channel for affected employees to raise further questions;
4. Providing affected employees with time and space to adjust to the news before requesting them to vacate their workplaces. For instance, affected employees should not be asked to leave their workplaces immediately or to be escorted out of the premises by security officers unless there are legitimate reasons to do so; and
5. Being sensitive to the emotional needs of affected employees and offering counselling support if necessary.

Providing support to affected employees

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The Advisory also states that employers should assist affected employees in moving on to new employment opportunities. In particular:

1. Employees with at least 2 years of service are eligible for a retrenchment benefit whereas those with less than 2 years of service could be granted an ex-gratia payment. The quantum of the retrenchment benefit, if not stated in the collective agreement or employment contract, is to be negotiated, and the prevailing norm is to pay a sum between 2 weeks to 1 month of salary per year of service, subject to the financial position of the company and industry norm. If the employee's salary was reduced shortly before the retrenchment exercise, the salary prior to the reduction should be used to compute the retrenchment benefit; and
2. Employers should help affected employees look for alternative jobs and provide supporting documentation where relevant to facilitate the job search of the affected employees.

The updated Advisory further provides that employers should help local affected employees maintain or build up relevant skills by providing them with a post-retrenchment training package. As at the date of this article, the Advisory does not provide any recommendations on the quantum of such post-retrenchment training package and we will update this article as and when such information is available.

Closing remarks

The recommendations and suggestions set out in the Advisory are summarised and consolidated into a checklist set out in Annex B of the Advisory, which employers may refer to when conducting retrenchment exercises. Whilst non-compliance with the Advisory may not constitute an offence or attract civil penalties, employers should note that MOM can take action against non-compliance with the Advisory, such as curtailing the work pass privileges of the relevant employer. In view of the foregoing, it is advisable that employers comply with the various recommendations set out in the Advisory when conducting retrenchment exercises.

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