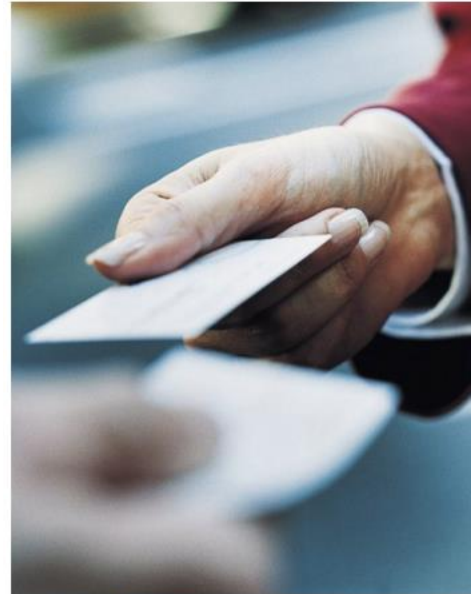
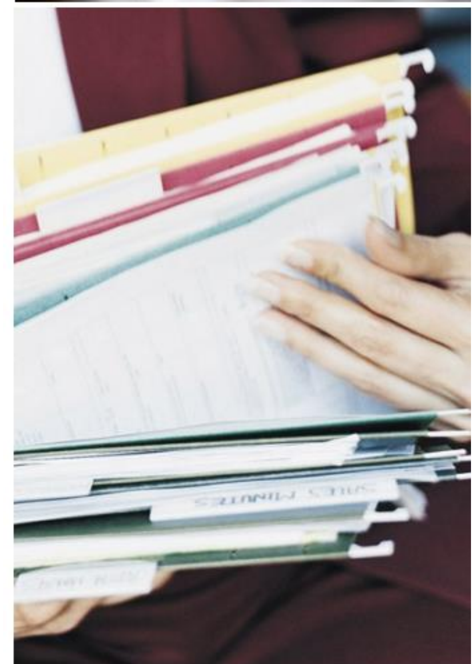
Employment Law Guide 2020





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Across Asia

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1. An Overview

The relationship between employer and employee is regulated largely by the contract of employment between them. Generally, under Singapore law, parties are free to contract as they choose and any matters arising between them would have to be resolved by looking at either the express and/or implied terms of the contract in question. However, the law imposes certain limits on this freedom to contract.

The sources of these limits include common law and statutes such as the Employment Act (Cap. 91) ("**EA**"), first passed in 1968, with the latest amendments coming into effect on 1 April 2019. The EA sets a minimum standard for the key / basic terms and conditions of a given employment contract. Therefore, the terms of an employee's contract of service must be at least equal to, or more favourable than the provisions in the EA. Any term that is less favourable is rendered illegal, null and void to the extent that it is less favourable.

Other pertinent statutes shaping employment law include the Workplace Safety and Health Act (Cap. 354A) ("**WSHA**"); the Child Development Co-Savings Act (Cap. 38A) ("**CDCSA**"); the Retirement and Re-employment Act (Cap. 274A) ("**RRA**"); the Trade Unions Act (Cap. 333); the Industrial Relations Act (Cap. 136) ("**IRA**"); and the Income Tax Act (Cap. 134). Additionally, employers should be aware of the Central Provident Fund Act (Cap. 36) and their monthly obligations to the Central Provident Fund ("**CPF**"), as well as the Employment of Foreign Manpower Act (Cap. 91A) ("**EFMA**"), which regulates the terms and conditions for the employment of foreign workers and is particularly relevant in relation to foreign workers who are not protected under the EA (e.g. foreign domestic workers).

The latest round of amendments to the employment law framework was passed by parliament on 20 November 2018 with changes to the EA and the Employment Claims Act ((No. 21 of 2016))("**ECA**"). The amendments to these Acts came into effect on 1 April 2019, and cover four key areas: (i) extension of core provisions of the EA to protect all employees; (ii)extension of Part IV of the EA to protect more employees; (iii) enhancement of the employment dispute resolution framework; and (iv) enhanced flexibility for employers.

Please note that the following 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.

March 2020

2. Scope and Ambit of the Employment Act

As of 1 April 2019, the EA covers every employee (regardless of nationality) who is under a contract of service with an employer, except:-

- any seaman;
- any domestic worker; and
- any person employed by a Statutory Board or the Government.

These groups of employees are protected under industry-specific legislation.

Besides the core provisions, Part IV of the EA provides 'additional' protection for rest days, hours of work and other conditions of service applies to certain workers (**"Part IV Employees"**). It applies only to:

- workmen earning not more than a basic monthly salary of S$4,500; and
- non-workmen covered under the EA earning not more than a basic monthly salary of S$2,600.

In general, "workmen" refers to employees engaged in manual labour, or employed partly for manual labour and partly for the purpose of supervising in person any workman in and throughout the performance of his work; but excluding any seafarer or domestic worker. Examples of workmen include: drivers, cleaners, construction workers, Labourers, machine operators and assemblers etc.

It should be noted that Part IV of the EA does not apply to any person employed in a managerial or executive position.

Employees working less than 35 hours a week are covered by the Employment (Part-Time Employees) Regulations (**"Part-Time Regulations"**), which provide certain flexibility for both the employer and employee, including the pro-rating of employment benefits, encashment of annual leave and provision of rest days. Please refer to section 18 below regarding part-time employees.

The EA also empowers and gives the Minister flexibility to make regulations that "*regulate the conduct of an employer towards an employee, for the purposes of protecting the employee from any employment practice that may adversely affect the wellbeing of the employee.*" In the second reading in parliament, the Minister cited an example involving errant practices of some employers who ask their employees to sign salary vouchers before receiving their salaries, or to sign on blank salary vouchers, either out of convenience or to cover up for late or non-payment of salaries.

3. Entering Into a Contract of Employment

All employers are required to issue key employment terms ("**KETs**")[1] in writing to all employees who:

- are covered by the EA; and
- are employed for a continuous period of 14 days or more.

The KETs were introduced to allow employees to better understand how their salary is calculated, their employment terms and benefits. The KETs also help employers prevent misunderstandings and minimise disputes at the workplace.

KETs[2] must include the items below, unless the item is not applicable:

S/N	Item
1.	Full name of employer.
2.	Full name of employee.
3.	Job title, main duties and responsibilities.
4.	Start date of employment.
5.	Duration of employment (if employee is on fixed-term contract).
6.	Working arrangements, such as: • Daily working hours (e.g. 8.30am - 6pm) • Number of working days per week (e.g. 6) • Rest day (e.g. Saturday)
7.	Salary period.
8.	Basic salary. For hourly, daily or piece-rated workers, employers should also indicate the basic rate of pay (e.g. S$X per hour, day or piece).
9.	Fixed allowances.
10.	Fixed deductions.
11.	Overtime payment period (if different from the "salary period" in item 7 above).
12.	Overtime rate of pay.
13.	Other salary-related components, such as: • Bonuses • Incentives
14.	Types of leave, such as: • Annual leave • Outpatient sick leave • Hospitalisation leave • Maternity leave • Childcare leave
15.	Other medical benefits, such as: • Insurance • Medical benefits • Dental benefits
16.	Probation period.
17.	Notice period.

Failure to comply with the EA requirements for KETs would be a civil contravention, attracting administrative penalties[3] of a fine of S$100 to S$200 for the first occurrence, and S$200 to S$400 for subsequent occurrences, depending on the breach, and/or directions from MOM to rectify the civil contravention. A failure to comply with such directions will constitute a criminal offence, which attracts more severe penalties of fines up to S$5,000 and/or imprisonment of up to 6 months.

4. Salary

(a) Payment

Under the EA, an employee must be paid at least once a month. In general, an employer is required to pay his employees within seven days after the end of the salary period.

Salary must be paid on a working day and during working hours at the place of work, or at any other place agreed to between the employer and the employee. It may also be paid into an employee's personal/joint bank account.

(b) Payslips

All employers are required to issue itemised payslips to employees covered under the EA at least once a month. A record of all payslips issued must be kept by the employers for at least 2 years.

Itemised payslips can be in soft or hardcopy, and have no prescribed format, but must contain the following items[4] (unless not applicable):

S/N	Item
1.	Full name of employer.
2.	Employer's trade name if different from that in item 1.
3.	Full name of employee (as specified on the identity card, work pass or passport).
4.	Amount of basic salary paid to employee during each salary period or salary periods, calculated by reference to the basic rate of pay.
5.	First and last days of each salary period.
6.	Amount of allowances and other additional payments during each salary period, with itemisation of every allowance or payment (if applicable).
7.	First and last days of each overtime payment period (called in this Schedule the overtime period) if different from each salary period.
8.	Overtime hours worked during each overtime period (if applicable).
9.	Overtime pay paid for each overtime period (if applicable) and date of payment.
10.	Amount of deductions from salary during each salary period, with itemisation of every deduction (if applicable).
11.	Net amount paid to employee for each salary period and date of payment.

(c) Deductions

Previously, employers may deduct salary only for reasons authorised under the EA or if ordered by the court. Since 1 April 2019, deductions are also allowed if made with the employee's consent in writing to the deduction, and such consent may be withdrawn by the employee at any time without penalty.

Authorised deductions under the EA include deductions for absence from work, income tax payment and CPF contributions. The new amendments seek to provide more flexibility while safeguarding employees' interests. An example where such deductions may occur includes a situation where employers may negotiate affordable group insurance plans as part of company employee benefits for voluntary purchase by their employees. Employees who choose to purchase such insurance plans may authorise their employer to deduct premiums from their salaries.

The maximum deductible amount in any one salary period is 50% of the employee's total salary. This excludes deductions for absence from work, payment of income tax, recovery of loans and payments made with the consent of the employee. Within the 50% cap, deductions for accommodation, amenities and services may not exceed 25% of the employee's total salary. The Commissioner's approval is also required for any deductions for amenities and services supplied by the employer.

(d) Non-compliance

A first-time offence by any employer in failing to pay salary will result in a fine of between S$3,000 and S$15,000 and/or 6 months' imprisonment. A subsequent offence will result in a fine of between S$6,000 and S$30,000 and/or 12 months' imprisonment.

Failure to comply with the EA requirements for itemised payslips would be a civil contravention, attracting administrative penalties[5] of a fine of S$100 to S$200 for the first occurrence, and S$200 to S$400 for subsequent occurrences depending on the breach, and/or directions from MOM to rectify the civil contravention. A failure to comply with such directions will constitute a criminal offence, which attracts more severe penalties of fines up to S$5,000 and/or imprisonment of up to 6 months.

Under the EA, individual officers and directors are accountable for the offences committed by the company. In particular, officers who are primarily responsible for the non-compliance will be presumed to be negligent and held accountable unless proven otherwise.

Employment inspectors have the power to arrest, without warrant, any person whom they reasonably believe is guilty of the failure to pay salary, and to enter any workplace to conduct checks. The MOM has clarified that the powers of inspecting officers are to better facilitate the enforcement of the EA provisions, with the arrest powers only to be exercised in relation to the minority of employers who are persistently uncooperative or who wilfully refuse to comply with orders to attend investigation sessions.

5. Leave Entitlements and Holidays

Annual leave

(a) Eligibility
All employees are entitled to a minimum amount of annual leave if they meet the requirements under section 88A of the EA.

An employer must pay an employee the employee's gross rate of pay for every day of paid annual leave.

(b) Entitlement/duration
Under section 88A of the EA, an employee who has served his employer for at least 3 months shall be entitled to paid annual leave of 7 days in respect of the first year of continuous service with the same employer, and one additional day for every subsequent year with the same employer, up to a maximum of 14 days' annual leave. An employee who has served an employer for a period of at least 3 months, but has not completed a year of continuous service, is entitled to annual leave in proportion to the number of completed months of service in that year.

Annual leave is in addition to rest days, public holidays, sick leave and child care leave.

If an employee is dismissed on any ground other than misconduct before the employee has taken all of the employee's paid annual leave, the employer must pay the employee the employee's gross rate of pay in respect of every day of that leave not taken by the employee.

An employee forfeits his/her entitlement to annual leave if the employee is absent from work without the employer's permission, or without reasonable excuse, for more than 20% of the working days in the months or year (as the case may be) in which the employee's entitlement to annual leave accrues.

In the case of workmen (whose monthly salary does not exceed S$4,500) and non-workmen (whose monthly salary does not exceed S$2,600), annual leave has to be taken not later than 12 months after the end of every year of continuous service and any employee who fails to take that leave by the end of such period shall cease to be entitled to the leave. If the employee chooses not to take leave he will not be able to claim any compensation in lieu of such leave not taken.

(c) Non-compliance
Breach of section 88A results in the commission of an offence. A first-time conviction under this section will result in a fine not exceeding S$5,000, and a second or subsequent offence will result in a fine not exceeding S$10,000 or imprisonment for a term not exceeding 12 months or to both.

Sick leave

(a) Entitlement
An employee is entitled to paid sick leave under the EA if:
- the employee has served the employer for at least three months;
- the employee has informed or attempted to inform the employer of his/her absence within 48 hours; and
- the sick leave is certified after examination of the employee by a medical practitioner registered under the Medical Registration Act. The definition also includes a dentist registered under the Dental Registration Act.

This does not apply to any medical treatment which is for cosmetic purposes.

If the employee fails to duly notify or attempt to notify the employer within 48 hours after its commencement, or if the sick leave is not duly certified, the employee will be deemed to be absent from work without permission or reasonable excuse.

The number of days of paid sick leave a new employee is entitled to depends on his service period:

No of months of service completed of a new employee	Paid Outpatient Sick Leave Entitlement per year where hospitalisation is not required (days)	Aggregate Paid Sick Leave Entitlement per year where hospitalisation is required* (days)
3 months	**5**	**15**
4 months	5 + 3 = **8**	15 + 15 = **30**
5 months	8 + 3 = **11**	30 + 15 = **45**
6 months	11 + 3 = **14**	45 + 15 = **60**
Thereafter	**14**	**60**

*An employee is hospitalised[6] if the employee is under quarantine or warded in a hospital —

(a) for any surgical treatment where the employee is admitted to, and discharged from, the hospital on the same day (called in this regulation day surgical treatment);
(b) for a period of 8 hours or longer (other than for day surgical treatment); or
(c) for a period of less than 8 hours before dying in the hospital.

*An employee is deemed to be hospitalised (and entitled to paid hospitalisation leave) if he/she is certified by a doctor to be in need of hospitalisation. He does not necessarily have to be warded in a hospital. This covers the period of recuperation after being discharged.

(b) Limit

The amount of paid outpatient and hospitalisation sick leave that an employee can take is capped at his sick leave entitlement (as indicated in the right-most column of the table above).

(c) Reimbursement of medical expenses

If an employee has served the employer for at least three months, the employer is legally obliged to bear, or to reimburse the employee for, the medical consultation fee if the medical practitioner is appointed by the employer or is a medical officer; and after the examination, the employee is certified by the medical practitioner to be entitled to paid sick leave. No such liability will be incurred where the medical consultation is for cosmetic purposes. For other medical costs, such as medication, treatment or ward charges, the employer is obliged to bear such costs only to the extent that medical benefits are provided for in the employee's employment contract, or in the collective agreement signed between the employer and the union.

(d) Salary of employees on sick leave

If an employee is on paid hospitalisation leave, his employer has to pay him at his gross rate of pay. If an employee is on paid outpatient sick leave, his employer has to pay him at his gross rate of pay, excluding any allowance payable in respect of shift work.

(e) Sick leave on rest days, public holidays etc.

An employee is not entitled to paid sick leave on the following occasions, even if he is given medical leave by the doctor:

- rest days;
- public holidays;
- non-working days;
- during annual leave; or
- during no-pay leave.

However, he is entitled to claim for the medical examination fee. His entitlement to claim for other medical expenses would depend on the medical benefits provided in his employment contract or the collective agreement signed between the employer and the employee's union.

Maternity leave

(a) Eligibility

Part IX of the EA and Part III of the CDCSA provide Government-paid maternity leave, benefits and protection for eligible employees.

The CDCSA covers all parents of Singapore citizens, including managerial, executive or confidential staff. Under the CDCSA, a female employee is generally entitled to maternity leave benefits if:-

- the child is a Singapore citizen;
- the employee has worked for the employer for at least three months immediately before the child's birth; and
- the employee gave her employer at least 1 week's notice before going on maternity leave, and informed them as soon as possible of her delivery. Otherwise, she is only entitled to half the payment during maternity leave, unless she had a good reason for not giving the notice.

(Note that a self-employed female may be entitled to Government-paid maternity leave if she has been carrying on her trade, business, profession or vocation for at least 3 continuous months and has lost income during the maternity leave period).

Maternity leave benefits are applicable to both married and unwed mothers.

For female employees not covered under CDCSA, they may be entitled to maternity leave benefits if they fall within the scope of the EA.

(b) Entitlement/duration

A CDCSA eligible employee is entitled to absent herself from work for a total of 16 weeks of maternity leave that may be taken in one of the following manner:

- a continuous period of 4 weeks immediately before and a subsequent continuous period of 12 weeks immediately after her child's birth; or
- by agreement with her employer, a continuous period of 16 weeks, beginning any time within 28 days prior to her child's birth till the date of her child's birth; or
- by agreement with her employer, a continuous period of 8 weeks, beginning any time within 28 days immediately prior to her child's birth till the date of her child's birth, and such subsequent period(s) of an aggregate duration no shorter than the prescribed period under the CDCSA (equivalent to 8 weeks' worth of working days) or 48 days (whichever is the lower) to be taken flexibly anytime, over the 12 month period following the child's birth.

Under Part IX of the EA, employees covered by the EA, but not under the CDCSA, are entitled to a total of 12 weeks of maternity leave that may be taken in one of the following manners:

- a continuous period of 4 weeks immediately before and a subsequent continuous period of 8 weeks immediately after the child's birth; or
- by agreement with her employer, a continuous period of 12 weeks, commencing no earlier than 28 days prior to the child's birth till the date of the child's birth; or
- by agreement with her employer, a continuous period of 8 weeks, beginning any time within 28 days immediately prior to the child's birth till the date of the child's birth and such further period(s) of an aggregate duration no shorter than the prescribed period under the EA (equivalent to 4 weeks' worth of working days) or 24 days (whichever is the lower) to be taken flexibly anytime over the 12 month period following the child's birth.

(c) Salary

If the employee qualifies for Government-paid maternity leave under the CDCSA, she will be paid by the employer during the entire 16 weeks of maternity leave, regardless of the birth order of the child. The employer is entitled to reimbursement from the Government for the last eight weeks for the first and second births and all 16 weeks for the third or subsequent births (as well as any CPF contribution made by the employer in respect of such payment which is not recoverable from the employee's wages). However, all reimbursements shall not exceed a total of S$20,000 for the first and second births, and S$40,000 for the third and subsequent births.

If the employee does not qualify for maternity leave under the CDCSA but qualifies for maternity leave under the EA, the employer is required to continue paying an employee her usual salary (i.e. monthly gross rate of pay, including allowances) for the first eight weeks of maternity leave if:

- the employee has been employed for at least 3 months before the date of delivery;
- the employee has less than two children of her own at the time of delivery. In the case of multiple births (e.g. twins, triplets etc.) during the first pregnancy, the employer is still required to pay the eight weeks of maternity leave; and
- the employee has given her employer at least one week's notice before going on maternity leave, and informed her employer as soon as practicable of her delivery. Otherwise, the employee is only entitled to half the payment during the maternity leave, unless she can show sufficient cause that prevented her from giving such notice to the employer.

For maternity leave under the EA, payment by the employer beyond the first eight weeks is voluntary and subject to contractual agreement.

(d) Employer's obligations

Employers are prohibited from dismissing an employee who is on maternity leave. An employer who does so is liable to a fine and/or imprisonment.

If a notice of dismissal is given without sufficient cause at any time of the employee's pregnancy (as certified by a medical practitioner before the notice of dismissal is given), the employer must pay her the maternity benefits she is otherwise eligible for.

If the employee is retrenched within three months of her child's birth, the employer must pay her the maternity benefits she is otherwise eligible for. This payment is in addition to any retrenchment benefit which the employee is entitled to.

An employer cannot employ an employee at any time during the four weeks immediately following her child's birth.

An employer cannot contract out of their obligation to provide the maternity benefits.

Paternity leave

(a) Eligibility

Under the CDCSA, a male employee is entitled to Government-paid paternity leave benefits if:-

- the child is a Singapore citizen;
- the child's parents are or had been lawfully married at the time the child is conceived or become married as such before the child's birth or within the period of 12 months commencing on the date of the birth of the child; and
- the employee has worked for the employer for at least three months before the child's birth.

Adoptive fathers who meet the following requirements are also entitled to Government-paid paternity leave for all births where:

- if the child is not a Singapore citizen, then one of the adoptive parents must be a Singapore citizen on the date the dependant's pass is issued in respect of the child;
- the employee has worked for the employer for at least three months before the child's birth; and
- he is not the natural father of the child.

(Note that a self-employed man may be entitled to Government-paid paternity leave if he has been carrying on his trade, business, profession or vocation for a continuous period of at least 3 months preceding the date of the birth of the child, and has lost income during the paternity leave period).

(b) Entitlement/duration

A CDCSA-eligible employee is currently entitled to 2 weeks of paid paternity leave as follows:

- 2 continuous weeks within 16 weeks after the birth of the child; or
- If there is mutual agreement between the employer and the employee, flexibly within 12 months after the birth of the child.

(c) Salary
The paternity leave entitlement is funded by the Government and capped at S$2,500 per week (inclusive of CPF contributions – see section 16 of this guide).

Childcare leave

(a) Eligibility
Under the CDCSA, male and female employees are entitled to childcare leave benefits if:-
- the child is a Singapore citizen; and
- the employee has worked for the employer for at least 3 months.

(Note that those self-employed may be entitled to childcare leave if: (i) he/she has been carrying on his trade, business, profession or vocation for a continuous period of at least 3 months, (ii) ceases to be actively engaged in his trade, business, profession or vocation for childcare purposes for not less than 4 days; and (iii) has lost income during the childcare leave period).

For employees not covered under the CDCSA, they may be entitled to childcare leave benefits if they fall within the scope of the EA.

(b) Entitlement/duration
Regardless of the number of children he/she may have, a CDCSA eligible employee is entitled to:
- ***'childcare leave'*** - If he/she has a child below 7 years of age at any time during the relevant period: up to 6 days of paid childcare leave per year; and/or
- ***'extended childcare leave'*** - If he/she has a child between the ages of 7 and 12 at any time during the relevant period: 2 days of paid childcare leave per year.

'Childcare leave' is capped at 42 days for each parent in respect of any qualifying child, and all yearly childcare leave entitlement must be expended by the end of that year.

An employee with children in both age groups (i.e. below 7 years as well as between 7 and 12 years) will have an entitlement of 6 days per year in total for both 'childcare leave' and 'extended childcare leave'.

For employees not covered under the CDCSA but covered under the EA, they may be entitled to 2 days of childcare leave if they have a child below 7 years of age during the relevant period and have worked for the employer for at least 3 months.

(c) Salary
If the employee qualifies for childcare leave under the CDCSA, the employee will be paid by the employer during the leave period and the employer is entitled to reimbursement from the Government for 3 days of childcare leave if the employee is granted 6 days of childcare leave. Payments are capped at S$500 per day (inclusive of CPF contributions – see section 16 of this guide).

If the employee qualifies for extended childcare leave only, the employee will be paid by the employer during the leave period and the employer is entitled to reimbursement from the government for the 2 days of extended childcare leave. Payments are capped at S$500 per day (inclusive of CPF contributions – see section 16 of this guide).

If the employee does not qualify for childcare leave under the CDCSA but qualifies for childcare leave under the EA, the employee will be paid by the employer for the 2 days of childcare leave.

Shared parental leave

(a) Eligibility

Under the CDCSA, male employees are entitled to shared parental leave benefits if:-

- the child is a Singapore citizen;
- the child's mother qualifies for Government-paid maternity leave;
- the child's mother agrees to the arrangement; and
- the child's parents are lawfully married.

(Note that a self-employed man may be entitled to shared parental leave if: within 12 months commencing on the date of the child's birth, he ceases to be actively engaged in his trade, business, profession or vocation during one or more than one period; and has lost income during the shared parental leave period).

In addition, employees or self-employed men who are adoptive fathers may be entitled to share their wife's adoption leave benefits if:-

- the adoptive father has made a joint application with the child's adoptive mother to adopt the child;
- the joint application was made on or after 1 July 2017;
- the child's adoptive mother agrees to the arrangement and is lawfully married to the employee on or before the date of election; and
- If the adopted child is not a Singapore citizen, then one of the adoptive parents must be a Singapore citizen on the date a dependant's pass is issued in respect of the adopted child.

(b) Entitlement/duration

An eligible employee whose child is born on or after 1 July 2017 is entitled to absent himself from work for a total of 4 weeks of shared parental leave that may be taken in one of the following manner:

- 4 continuous weeks within 12 months after the birth of the child; or
- If there is mutual agreement between the employer and the employee, flexibly within 12 months after the birth of the child.

(c) Salary

The shared parental leave entitlement is funded by the Government and capped at S$2,500 per week (inclusive of CPF contributions – see section 16 of this guide).

Adoption leave

(a) Eligibility

Under the CDCSA, employees who are adoptive mothers are entitled to adoption leave benefits if:-

- the female employee or self-employed woman is not the natural mother of the child;
- the adopted child is below the age of 12 months at the point of the formal intent to adopt (i.e. for a local child: when the court application to adopt is filed; and for a foreign child: when in-principle approval is granted for a Dependant's Pass);
- the adopted child is a Singapore citizen;
- If the adopted child is a foreigner, then one of the adoptive parents must be a Singapore citizen on the date a dependant's pass is issued in respect of the adopted child; and
- the employee has worked for the employer continuously for at least three months before the formal intent to adopt.

(Note that a self-employed woman may be entitled to adoption leave if: within 12 months commencing on the date of the child's birth, she ceases to be actively engaged in her trade, business, profession or vocation during one or more than one period; and has lost income during these period(s)).

(b) Entitlement/duration

An eligible employee whose formal intent to adopt a child is on or after 1 July 2017 is entitled to absent herself from work for a total of 12 weeks of adoption leave that may be taken in one of the following manner:

- 12 continuous weeks from the date of formal intent to adopt the child;
- by agreement with her employer, a continuous period of 12 weeks, commencing no earlier than the date of formal intent to adopt the child and no later than the date when the adoption order is granted; or
- by agreement with her employer, a continuous period of the first 8 weeks, beginning any time between the date of formal intent to adopt and the date when the adoption order is granted (both dates inclusive), and such subsequent period(s) for the last 4 weeks to be taken flexibly anytime over the 12 month period following the child's birth.

(c) Salary

The adoption leave entitlement is funded by the Government and capped at S$10,000 per every 4-week of leave taken (inclusive of CPF contributions – see section 16 of this guide).

If the employee qualifies for adoption leave under the CDCSA, she will be paid by the employer during the leave period and the employer is entitled to reimbursement from the Government for the last eight weeks for the first and second children and all 12 weeks for the third or subsequent children. However, all reimbursements shall not exceed a total of S$20,000 for the first and second children, and S$30,000 for the third and subsequent children (inclusive of CPF contributions – see section 16 of this guide).

National Service leave

All male Singaporean citizens and second-generation permanent residents who have reached the age of 18 are required to render National Service. The employer is obliged to allow the male employees to perform National Service. No employer shall dismiss an employee solely or mainly by reason of any duty or liability which that person is, or may become, liable to perform or discharged by reason of his being liable to be, called up for National Service.

When a person performs such a service, in so far as his civilian remuneration is reduced, that person may claim a reimbursement in respect of that reduction from the designated authority, less any service remuneration which he may get in respect of that service. If, instead of reducing the civilian remuneration, the employer continues to pay the employee during the period of service, the employer can in turn claim reimbursement from the designated authority provided certain conditions are satisfied.

Public holidays

All employees are entitled to a paid holiday at his gross rate of pay on a public holiday, subject to the following:

- by agreement between the employer and the employee any other day or days may be substituted for any one or more public holidays; and
- if any public holiday falls on a rest day, the working day next following that rest day shall be a paid holiday; and
- if any public holiday falls on a day when the employee is not required to work under his contract of service, the employer may either pay the employee for that holiday at his gross rate of pay or give the employee a day off in substitution for that holiday.

Employees to whom Part IV of the EA does not apply (i.e. all Managers and Executives, workmen earning more than S$4,500/month, and non-workmen earning more than S$2,600/month) who work on a public holiday shall be paid the gross rate of pay for that day and may be given the following: a day off in substitution for that holiday or an extra day's salary at the basic rate of pay, or time-off for a number of hours (as parties agree or if there is no such agreement, either 4 hours off if the employee worked 4 hours or less on the Public Holiday or the entire day if he worked more than 4 hours).

6. Rights of Employees Covered Under Part IV of the EA

Working hours and overtime

(a) Working hours

Under the EA, a Part IV Employee shall generally not work: (a) more than 6 consecutive hours without a period of leisure; and (b) more than 8 hours in 1 day or more than 44 hours in 1 week, unless:

(i) the employee is engaged in work which must be carried on continuously. The employee may work for 8 consecutive hours if he/she has a period or periods of at least 45 minutes' break in the aggregate for meals;

(ii) Parties agree under the contract of service for an employee to work for more than 8 hours, provided that the number of hours of work on 1 or more days of the week is less than 8, and the employee shall, in any event, not be required to work for more than 9 hours in 1 day or 44 hours in 1 week;

(iii) Parties agree under the contract of service for an employee to work for more than 8 hours, provided that the employee is not required to work for more than 5 days a week, and the employee shall, in any event, not be required to work for more than 9 hours in 1 day or 44 hours in 1 week; and

(iv) Parties agree under the contract of service for an employee to work for more than 44 hours in one week, provided that the number of hours of work in every alternate week is less than 44, and the employee shall, in any event, not be required to work for more than 48 hours in one week or for more than 88 hours in any continuous period of 2 weeks.

A Part IV Employee may also be required to exceed the number of hours and to work on a rest day in the case of: (a) an actual or threatened accident, (b) performing work which is essential to the life of the community; (c) performing work essential for defence or security; (d) performing urgent work to machinery or plant; (e) an interruption of work which it was impossible to foresee; or (f) performing work in any industrial undertaking essential to the economy of Singapore or any of the essential services.

No Part IV Employee shall under any circumstances work for more than 12 hours in any 1 day, unless they are working under (a) to (e) in the paragraph above.

(b) Entitlement

Part IV Employees are entitled to payments for working "overtime" (i.e. the number of hours worked in any one day or in any one week in excess of the limits mentioned above).

An employee is permitted to work up to a limit of 72 hours of overtime in a month, excluding work done within his normal daily working hours on his rest day or public holiday.

(c) Computation of overtime pay

An employee covered by the EA must be paid at least 1.5 times his hourly basic rate of pay for all work in excess of the normal hours of work, if at the request of the employer he/she works:

- except where the situations in paragraphs (ii) and (iii) in section (a) above apply; or
- except where paragraph (iv) in section (a) above applies.

The overtime rate payable for non-workmen is capped at the salary level of S$2,600.

(d) Payment of overtime entitlements

Payment for overtime work (including payments to non-Part IV Employees) must be made within 14 days after the last day of the salary period.

Rest Days

(a) Entitlement

Every Part IV Employee shall be allowed one whole rest day each week without pay which shall be Sunday or such other day as determined by the employer, who may substitute any continuous period of 30 hours as a rest day for an employee engaged in shift work.

(b) Work on rest day

Generally, no Part IV Employee shall be compelled to work on a rest day unless he is engaged in shift work or certain activities prescribed in the EA (such as responding to an accident, work essential for defence or security, or urgent work to be done to machinery or plant etc.).

An employee who works on a rest day at his own request shall be paid for that day —

- his basic rate of pay for half a day's work, if the period of work does not exceed half his normal hours of work;
- his basic rate of pay for one day's work if the period of work is more than half but does not exceed his normal hours of work; or
- if the period of work exceeds his normal hours of work for one day —
  - his basic rate of pay for one day's work; and
  - at the rate of one and a half times his hourly basic rate of pay for each hour or part thereof that the period of work exceeds his normal hours of work for one day.

An employee who works on a rest day at his employer's request shall be paid for that day —

- his basic rate of pay for one day's work, if the period of work does not exceed half his normal hours of work;
- his basic rate of pay for two days' work if the period of work is more than half but does not exceed his normal hours of work; or
- if the period of work exceeds his normal hours of work for one day —
  - his basic rate of pay for two days' work; and
  - at the rate of one and a half times his hourly basic rate of pay for each hour or part thereof that the period of work exceeds his normal hours of work for one day.

7. Termination of Employment Contracts and Notice

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:-

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**

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.

(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[7] on 1 April 2019 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 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 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.

8. Restructuring and Retrenchment

(a) Effect on employment in event of mergers, amalgamations and sale of business

In Singapore, redundancies, business transfers and reorganisations are generally subject to contract.

Under the EA, employees are statutorily protected in the event of a business transfer, including a disposition of a business as a going concern or a transfer effected by sale, amalgamation, merger, reconstruction or operation of law. Under section 18A of the EA, amongst other things, if an undertaking or part thereof is transferring from one person to another, the transfer shall not operate to terminate the contract of service of any person employed by the transferor in the undertaking or part transferred. Instead, there will be an automatic transfer the contract of service, with no break in the continuity of employment, and terms and conditions of service of the transferred employees will be the same as those enjoyed by them immediately prior to the transfer. The transferor also has an obligation to inform and consult employees and/or trade union of employees affected by the business transfer as soon as it is reasonable and before the business transfer takes place, such as through a notice to the affected employees.

(b) Retrenchment benefits

Legislation does not provide an employee with any right to retrenchment benefits on termination for redundancy or reorganisation of the employer's business. In fact, while the quantum of retrenchment benefits (if any) may be agreed upon in the employment contract or collective agreement, the EA disentitles Part IV Employees (i.e. a workman on a salary not more than S$4,500 per month or a non-workman employee other than Managers and Executives whose salary is not more than S$2,600 per month) who have worked for 2 years continuously or less from being entitled to retrenchment benefits (if any). Even where an employee has been continuously employed for 2 years or more, under Singapore case law, that employee still does not enjoy an automatic right to retrenchment benefits as an employer in Singapore has no legal obligation to provide retrenchment benefits in such cases. Irrespective of whether the EA applies, an employee has no right to retrenchment benefits unless his or her employment contract or an applicable collective agreement so provides. If the employment contract or applicable collective agreement does not so provide, the quantum is to be negotiated between the employees (or via their union) and the relevant employer. Under the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment (see below), the prevailing norm is to pay a retrenchment benefit varying between 2 weeks to 1 month salary per year of service, taking into consideration the industry norm.

(c) Ex-gratia payments

In cases of termination for redundancy, an employer may make an ex-gratia payment to an employee. However, under Singapore common law an employer is not bound to make such a payment on the basis of its past practice of doing so.

(d) Length of notice of termination

Under the EA, there are no special requirements in relation to the length of notice to be provided in cases of termination for redundancy or reorganisation. The relevant notice period will apply (as discussed in 6(c)above). However, in cases of retrenchment, the MOM encourages employers as far as possible to inform affected employees of the impending retrenchment before notice of retrenchment is given.

(e) Union intervention

In cases where an employee is a trade union member, while trade unions may consult with the employer prior to the business transfer, section 18(2)(d) of the IRA prohibits trade union intervention/collective bargaining in relation to termination for redundancy or reorganisation or in relation to the criteria for such termination. Once the business transfer is completed, the new employer will also have to take over the previous employer's rights, powers, duties and liabilities which are part of any contract or agreement with the employees' trade union before the transfer.

(f) Tripartite Guidelines for Fair Employment Practices

The Tripartite Guidelines for Fair Employment Practices require (i) the selection of employees for retrenchment to be based on objective criteria, (ii) for the retrenchment exercise to be carried out responsibly in consultation with the trade union (if the employer is unionised), or with the employees affected (if the employer is not unionised), and (iii) reference to the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment for alternatives to avoid or minimise the need for retrenchments.

(g) Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment (the "MEMRR Advisory")

The Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment was updated in March 2020 in light of the negative impact on the global economy the COVID-19 pandemic has had. A copy of the revised advisory may be accessed here[8].

The tripartite partners - the MOM, National Trades Union Congress ("**NTUC**") and Singapore National Employers Federation ("**SNEF**") have formulated the MEMRR Guidelines aAdvisory for implementation. The MEMRR Guidelines aAdvisory suggests that as businesses adjust, they should consider alternative ways –to manage their excess manpower - such as upskilling and redesigning jobs

The MEMRR Advisory provides various alternatives an employer may consider before resorting to retrenching its employees. Alternatives include:

(i) adjustments to work arrangements without wage cuts;
(ii) adjustments to work arrangements with wage cuts;
(iii) direct adjustments to wages; and
(iv) no-pay leave.

These measures have been broadly categorised based on the severity of their impact to employees. The measures involving adjusting work arrangements with or without wage cuts are generally more applicable to employers who wish to scale down or suspend business operations in response to a short, temporary decline in business activities. This is particularly pertinent at the time of print, given that on 21 April 2020, the Multi-Ministry Taskforce announced that fewer businesses will be permitted to operate during Singapore's circuit breaker, to further minimise movement to curb the spread of COVID-19. Measures under the categories of directly adjusting wages and no-pay leave may be more applicable to employers suffering from extremely poor or uncertain business conditions that are likely to be long term. Consultation and consent should be sought from various stakeholders such as unions and employees before any of these measures are implemented. Employers are also advised to review and restore any adjustments made when their businesses recover.

(i) Adjustments to work arrangements without wage cuts

Employers are encouraged to train and upgrade the skills of their existing employees. Employers can receive absentee payroll subsidies for such employees undergoing training. In turn, this could help support employers as it could lead to an increase in productivity as employees are better equipped with relevant skills and knowledge.

Employers can also consider rotating or redeploying employees to alternative areas of work within the company or its related corporations ("group") in order to meet any structural changes in the groupgroup.

Employers may implement flexible work schedules and arrangements, which will allow companies to optimise the use of manpower resources when they go through cyclical troughs and peaks in manpower demands and this assure employees of a stable monthly income during this period. Employers considering a flexible work schedule will require the support of unions and employees and thereafter shall apply to the Commissioner for Labour. Other than overtime exemption, the employer may apply to be exempted from the EA provisions on pay for work on rest days and public holidays, provided that certain conditions including the safety and health of employees, are met.

(ii) Adjustments to work arrangements with wage cuts

Employers may consider other work arrangements such as part-time work and sharing of jobs. These measures can help to re-distribute the workload amongst employees and employees can be remunerated accordingly. Employers can also consider a shorter work week, which directly translates into the reduction of work hours. Examples include requesting employees to take up to 50% of their earned annual leave, implementing 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,(which may besubject to review), and to pay affected employees not less than 50% of their wage during the period when the shorter work week is implemented.

Employers may also consider a temporary layoff, where a work site is closed for a designated period while some administrative functions are still performed or applied broadly across the whole company. Employers may request employees to 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 to pay the affected employees not less than 50% of their wage during the layoff period.

(iii) Direct adjustments to wages

Companies with a flexible wage system in place may consider adjusting various applicable wage components to further reduce manpower costs, including annual wage increment, variable bonus payment, annual wage supplement, monthly variable component and other allowances.

It is recognised that these are more severe cost-saving measures that may have to be implemented by companies suffering from extremely poor or uncertain business conditions that are likely to be long term. These measures are likely to be in place over an extended period of time and severely impact the livelihood of employees. It is imperative that employers engage and seek the consultation and consent of unions and employees before implementing the above measures.

(iv) No-pay leave

Companies may consider, as a last resort, putting employees on no-pay leave. This is a drastic measure and should only be implemented if it will help the company survive, save jobs and retain employees for the long haul, when the economy improves. However, in implementing no-pay leave, companies should have considered or implemented other measures and consulted their unions and employees, and recognised the impact on rank-and-file employees in determining the extent and duration of the measure. Senior management should also lead by example, by accepting earlier and/or deeper cuts as a cost-saving measure, and if business conditions warrant it, companies could apply no-pay leave in conjunction with other cost-saving measures.

The MEMRR Advisory highlights that in the event any of these measures have to be implemented, employers should always exercise care and fairness when doing so, and pay special attention to the impact of any measures on low-wage employees.

However, if the above measures do not suffice and retrenchment is inevitable, companies should do so in a responsible and sensitive manner. To achieve responsible retrenchment, key areas that the MEMRR Advisory has identified include using objective criteria when evaluating employees for retrenchment, giving early notice to affected employees, provision of retrenchment benefits and re-employment facilitation. The MEMRR Advisory states that companies should notify the MOM of impending retrenchments as soon as possible if a decision to this effect has been made and that as far as possible employing companies should inform affected workers of their impending retrenchment before notices of retrenchment are given.

Note that the MEMRR Advisory is not mandatory but amounts to strong recommendations to employers. Employers are encouraged to follow the MEMRR Advisory set out in the relevant paragraphs to the extent it is practical to do so taking account of the requirements of their business. In order to maintain a strong Singaporean core, the MOM has indicated that it may cut the work pass privileges of employers who unfairly retrench Singaporeans.

(h) Mandatory retrenchment notifications

Since 1 April 2019, employers with 10 or more employees (at the time when a notice of retrenchment is given) are required to notify MOM if 5 or more employees are retrenched within any 6 month period. The notification must be submitted online and be in the form provided at the MOM website within 5 working days after the employee is notified of his/her retrenchment.[9]

In this context, retrenchment means to terminate the employee's contract of service at the initiative of the employer because of redundancy or any reorganisation of the employer's profession, business, trade or work. This applies to permanent employees, as well as contract workers with full contract terms of at least 6 months. Failure to notify within the required timeline is considered a civil contravention under the EA[10] and errant employers may be issued a contravention notice to pay an administrative penalty.

9. Retirement

(a) Age

The Retirement and Re-employment Act (Cap. 274A) (**"RRA"**) covers all employees who are Singapore citizens and permanent residents, and makes it an offence for an employer to dismiss an employee below the prescribed age on the grounds of age, notwithstanding anything in any other written law, contract of service or collective agreement.

The current minimum age of retirement is 62 years. An employee can be retired the day before his/her 62nd birthday. However, if the retirement age is not specified in the employment contract, the employer should give the employee advance notice as stipulated in the contract. Employers are required to offer re-employment contracts of at least one year starting from the day the employee turns 62 unless the parties agree to a shorter period, which suggests it is still possible under the RRA to provide for the contract to be terminable by notice before the expiry of a one year term, and renewable up to age 67. By 2030, the minimum age of retirement will be increased to 65 and employers will be required to offer re-employment contracts up to age 70. In the *Tripartite Guidelines On The Re-Employment Of Older Employees*[11], the Tripartite Committee on the Employability of Older Workers has also recommended employers to offer a five year re-employment contract to employees from 62 until age 67 at one stretch and at least a fixed term of one year. The job scope and the terms and conditions may vary from those in the previous contract of service, based on reasonable factors set out in the RRA.

Employees who are recruited at the age of 55 or above are are not afforded the statutory protection under section 4 of the RRA, which prevents dismissal of any employee below 62 years of age on the ground of age. However, employees who have at least 3 years of service upon reaching the age of 62 are eligible for re-employment. Other groups of employees who are not afforded the statutory protection under section 4 of the RRA include (but are not limited to) a person below 55 years of age who has less than 2 years of service with his employer reckoned from the initial contract date for his employment with that employer, as well as any person working by virtue of a work pass issued by the Controller of Work Passes under the EFMA.

Employers of these employees are also exempted from the statutory re-employment obligations under sections 7 to 8 of the RRA.

Employers who are unable to re-employ eligible employees have the following options:

- Transfer the re-employment obligations to another employer with agreement from both the employee and the new employer (the employee is not obliged to accept a re-employment offer by the new employer and is entitled to Employment Assistance Payment (**"EAP"**) from his present employer if the employee turns down the re-employment offer by the new employer); or
- Offer a one-off EAP. In addition, employers are encouraged to provide outplacement assistance to help eligible employees whom they cannot re-employ find alternative employment.

EAP is offered only after a thorough review, as a last resort and is a one-off payment equivalent to 3.5 months' salary, subject to a minimum of S$5,500 and maximum of S$13,000. With effect from July 2022, this will be increased to a minimum of S$6,250 and a maximum of S$14,750. For employees who have been re-employed for at least 30 months since age 62, a lower EAP amount of 2 months' salary could be considered, subject to a minimum of S$3,500 and maximum of S$7,500. With effect from July 2022, this will be increased to a minimum of S$4,000 and a maximum of S$8,500.

(b) Benefits

Irrespective of whether the EA applies, an employee has no right to retrenchment benefits unless his or her employment contract or an applicable collective agreement so provides.

(c) Dismissal

The RRA stipulates that employees who are below the prescribed retirement age cannot be dismissed by their employers because of their age. An employee will be deemed to be dismissed by the employer if:

- the contract under which he/she is employed is terminated by the employer, regardless of whether or not notice is given;
- the employer retires the employee; or
- the employer requires or causes the employee to retire or resign because of his/her age.

10. Maintaining Detailed Employment Records

All employers are required to maintain detailed employment records of employees covered under the EA. For current employees, the records for the latest 2 years have to be kept and for ex-employees, the records for the last two years of employment have to be kept for 1 year after the employee leaves employment. The employment records must be in soft or hard copy, and includes the employee records and salary records.

The employee records must contain the following employee details:

S/N	Item
1.	Employee's personal particulars consisting of — (a) latest name as specified on the employee's identity card, work pass or passport; (b) current address of place of residence (c) date of birth; (d) gender; and (e) identity card number or foreign identification number.
2.	First day and last day (if applicable) of period of continuous employment.
3.	Hours worked each day and duration of any meal break or other break.
4.	Dates of public holidays and other holidays taken by employee.
5.	Date when leave is taken (such as but not limited to any annual leave, sick leave, maternity leave, paternity leave and childcare leave) taken by employee.
6.	First and last days of each salary period.
7.	Amount of basic salary paid to employee during each salary period, calculated by reference to the basic rate of pay.
8.	Amount of allowances and other additional payments during each salary period, with itemisation of every allowance or payment (if applicable).
9.	First and last days of each overtime payment period (called "overtime period") if different from each salary period.
10.	Overtime hours worked during each overtime period (if applicable).
11.	Overtime pay for each overtime period (if applicable) and date of payment.
12.	Amount of deductions from salary during each salary period, with itemisation of every deduction (if applicable).
13.	Net amount paid to employee for each salary period and date of payment.

Failure to maintain detailed employment records in accordance with the EA will attract administrative penalties of a fine[12] of S$100 to S$200 for the first occurrence, and S$200 to S$400 for subsequent occurrences depending on the breach, and/or issue such directions to rectify the civil contravention. A failure to comply with such directions from MOM will constitute a criminal offence, which attracts more severe penalties of fines up to S$5,000 and/or imprisonment of up to 6 months, and a further fine not exceeding S$500 for every day during which the offence continues.

11. Restrictive Covenants: Non-Competition and Non-Solicitation

Employers are increasingly inserting non-competition and non-solicitation (referred to broadly as "restrictive covenants" or "restraint of trade clauses") into employment contracts and/or termination agreements in an attempt to further exercise control over an employee's actions or obligations following the termination of his employment, to protect itself from unfair competition and to maintain a stable workforce. Where such restrictive covenants are sought to be introduced only upon or after the termination of an employee's employment, it should be noted that the employee is not obliged to agree to such non-compete, non-solicitation covenants and/or a confidentiality undertaking. If he does so, it is likely to be after negotiation on the basis that a payment amount, over and above what he is otherwise contractually entitled to, will be paid at a level compensating him for detriment he incurs in doing so.

(a) Validity of a restrictive covenant

In Singapore, restrictive covenants are generally prima facie unenforceable unless the employer is able to show: (1) that it has a legitimate proprietary interest to be protected by the restricted covenant and (2) such covenants are reasonable and not wider than is reasonably necessary to protect the interest.

First, the Court will determine/identify what the employer's legitimate interests are (if any). In this regard, Singapore courts have accepted the following as 'protectable legitimate interests' that merit protection in appropriate circumstances:

- trade secrets;
- trade connections; and/or
- workforce stability.

Usually, these legitimate interests are either expressly provided for in the employment agreement or inferred by the Court based on the surrounding circumstances (if unstated). The Court will also consider the position and seniority of the particular employee in question which will affect the weight given to the employer's interests to be protected.

Second, the Court will then determine whether the covenant does not go further than is necessary to protect such interests. In this regard, the scope, area and duration of restraint should be co-extensive with the protection of the legitimate interests of the employer, and the clause must be "reasonable".

Reasonableness of a restrictive covenant is assessed on 2 grounds:

- its reasonableness between the contracting parties (private interests); and
- its reasonableness in so far as the public interest is concerned (public interests).

The Court places the burden of proof on the employer to show that the covenant is reasonable between the parties, whereas the burden lies on the employee to show that the covenant is against the interests of the public. Specifically, when considering the above test, the Court looks to reconcile the following core interests:

- the expectation of the employer that the knowledge and skills which have been imparted to or acquired by its employee during the course of its employment are not subsequently used by that employee to the employer's detriment following termination;
- the right of a former employee to use and exploit the skill, experience and knowledge acquired by him during the term of employment to make a living and to advance his chosen trade or profession; and
- the public interest in securing an environment in which freedom of trade and competition can flourish.

A specific and contested clause must pass both hurdles. Thus, while the Court may find that a given restraint of trade provision is reasonable as between the parties, they may nevertheless invalidate it on the ground that it is against public policy and hold the clause in question to be unenforceable.

Between the parties

There are two main points that the employers must keep in mind in determining whether the agreement is reasonable vis-à-vis the contracting parties.

First, there must always be a legitimate proprietary interest to protect that would warrant the court's protection. One of the more important interests in the court's eyes is the need for employers to maintain a stable workforce. Another interest relates to the confidential information and trade secrets of the employer.

Second, the agreement must not be wider than is necessary to protect the interest concerned. To ascertain whether the clause as drafted is no wider that is reasonably necessary to protect the legitimate interest of the employer, following factors are important:

(a) Period of restraint:

- To be reasonable, the period of the restraint should not exceed the period that is necessary for the protection of the legitimate interests of the employer. For instance, the duration must not be longer than necessary for the employer to start a new employee at the task and for the new employee to have a reasonable opportunity to demonstrate his effectiveness to customers.
- The employee's seniority, degree of influence on the clients and access to confidential information are relevant considerations in judging whether the period of restraint is reasonable.

(b) Geographical area:

- The rule with regard to the geographical area / territory of a restrictive clause is that the area should be co-extensive with the protection of the legitimate interests of the employer.
- Thus, a restriction without geographical limit is generally not valid; an area must be clearly defined, although this may not be relevant in a situation where the employee operates in a global market.
- There must also be a connection between customers and the defined area.
- The restrictions must be to countries or areas in which the employee had actual significant customer contact.

(c) Scope of activities prohibited:

- A restraint in trade clause is not considered reasonable unless it is confined to protecting the legitimate interest of the employer.

It is worth noting that express acceptance by the employee that the clause is reasonable does not prevent the court from holding that the clause is unreasonable and thus unenforceable. Moreover, restrictive covenants will not be upheld in the event of a repudiation of the contract by the employer. For example, where an employee is wrongfully dismissed, the employee may treat the contract at an end and not be bound by the obligations in the restrictive covenants. Thus, a term in the contract of employment stating that the restrictive covenant will be enforceable even if the employee is wrongfully dismissed will be invalid.

Public policy

There is one broad question: is it in the interests of the community that this restraint should, as between the parties, be held reasonable and enforceable? This standard has hitherto primarily referred to anti-competitiveness. In one seminal case, for instance, the court held that a given clause would be detrimental to the community at large since it created a virtual monopoly of a certain type of work in Singapore on the part of the employer.

It should be noted that while the courts have increasingly upheld restrictive covenants in various commercial contexts, the same trend does not extend to restrictive covenants in employee contracts. In CLAAS Medical Centre Pte. Ltd. v. Ng Boon Ching, the court contrasted the liberal approach adopted in respect of restrictive covenants in the context of a sale of business with that adopted in the context of an employee contract, and asserted that the disparity in bargaining power demands a stricter approach in the context of restrictive covenants in contracts of employment.

(b) Severance

Where the clause is considered too wide to be enforceable, it may be possible to sever the clause if the part so enforceable is clearly severable, and even so, only in cases where the excess is of trivial importance or merely technical and not part of the main substance of the clause. Furthermore, in such a case, the two clauses must be intended to be two separate and independent obligations so that the part severed does not change the meaning of the part remaining.

(c) Remedies for breach

The two primary remedies available to an employer who has suffered loss by reason of a former employee's breach are:

- injunction against said employee; and/or
- damages to compensate for the injury or loss suffered. Note that as an alternative to damages, the remedy of an account of profits may in some instance be available.

12. Confidentiality and Non-Disclosure: Protection of Employer's Proprietary Interests after Termination of Employment

(a) Confidential information

An employee has a duty of good faith during the course of employment. This includes an implied duty not to disclose confidential information to persons who are not entitled to receive it and not to make unauthorised use of trade secrets or confidential information for his own benefit.

This obligation of non-disclosure or confidentiality continues after the employee has left the employment of the employer. However, the obligation is limited in scope after termination of employment. Only in so far as the information is a trade secret or is highly confidential in nature so as to amount to a trade secret can the employee who has left the employment be restrained from disclosing or using it.

An employee's employment contract and/or a termination agreement may provide that the duty of non-disclosure or confidentiality in relation to the employer's confidential information survives the term of the employment. A clear definition of confidential information should be included.

For contractual restrictions on disclosure of an employer's confidential information to be enforceable:

- the information must be of such a nature that the employer believes would be injurious to him if it were released;
- the employer must believe that the information is confidential or secret and is not already in the public domain;
- the employer's belief above must be reasonable;
- the information must be judged in the light of the usage and the practices of the particular industry; and
- the employer must limit the dissemination of the information and not encourage its widespread publication.

(b) Duration of a non-disclosure or confidentiality obligation

There is no specified legal limit to the duration of a confidentiality obligation binding on an employee after termination of employment. On an application for an injunction restraining the breach of a non-disclosure or confidentiality obligation, if the court's view was that the protected information had lost its quality of confidence with the passing of time or it was already in the public domain, then it would not grant an injunction restraining disclosure.

If the court took the view that the information ought to continue to be protected but for a limited time, then it could grant an injunction to prohibit disclosure for a specified further period, based on what it considered reasonable in the particular circumstances. A confidentiality or non-disclosure clause would not be void if it was for an indefinite period or for a period the court considered excessive, but it would be enforced only for the period the court held was reasonable. In certain circumstances restraint for an indefinite period may be reasonable.

13. Dispute Resolution

(a) Mediation and conciliation

Aside from the usual dispute resolution avenues (e.g. through litigation or arbitration), there are also mediation services offered by the Tripartite Alliance for Dispute Management ("**TADM**") or conciliation services offered by MOM for employment disputes.

The IRA offers eligible executives the Tripartite Mediation Framework (for mediation assisted by their union recognised under the Industrial Relations Act to collectively represent rank-and-file employees). An employer who fails to take part in the mediation without reasonable excuse could be fined up to S$5,000, although employers may have the right to object to the eligibility of an executive employee to tripartite mediation, but only on the limited grounds prescribed under the IRA.

(b) Employment Claims Tribunal ("ECT")

The ECT is established under the Employment Claims Act (No. 21 of 2016) ("**ECA**") and adjudicates salary-related and wrongful dismissal claims for *all* employees under the EA.

The ECT is a tribunal under the State Courts, similar to the Small Claims Tribunal. The key features of the ECT are as follows:

- **Who the ECT covers:** any employee protected under the EA who has an employment contract with their employer, regardless of their salary level. Public servants, domestic workers and seafarers will be excluded.
- **Types of claims covered:** the ECT handles specified wrongful dismissal claims[13], contractual disputes[14] and statutory dispute matters[15] as provided under the ECA.
- **Compulsory mediation, pre-ECT:** compulsory mediation conducted by the TADM before claims are heard by the ECT.
- **Fees for mediation pre-ECT**:
  Wrongful dismissal disputes, and other specified contractual disputes and statutory disputes:
  - S$10 where the total amount alleged to be payable in respect of the dispute is S$10,000 or below; and
  - S$20 where the total amount alleged to be payable in respect of the dispute exceeds S$10,000.
- **Filing fees for a claim at the ECT**:
  Wrongful dismissal disputes, and other specified contractual disputes and statutory disputes:
  - S$30 where the total amount alleged to be payable in respect of the dispute is S$10,000 or below; and
  - S$60 where the total amount alleged to be payable in respect of the dispute exceeds S$10,000.
- **Limit on claims amount:** S$20,000 per claim ordinarily, but S$30,000 per claim for claimants who go through the Tripartite Mediation Framework prescribed under the IRA.
- **Time limit to file claim:**
  Mediation –
  - (for wrongful dismissal dispute in relating to a claim in section 14(2) of the EA) - within 1 month of the dismissal of the employee;
  - (for other claims not involving re-employment under the RRA, claims relating to liability of principals, contractors and subcontractors for workman salary and wrongful dismissal claims) - within 1 year from date on which claim arises; or if employment has ceased, within 6 months of end of employment for claims.

  Filing claim with ECT – within 4 weeks after the issue of the Claim Referral Certificate from the TADM mediator.
- **Restriction on contracting out:** Any provision in any agreement (whether made before, on or after the date of commencement of the ECA) is void to the extent that it purports (a) to exclude or limit the jurisdiction of a tribunal; or (b) to prevent a person from submitting a mediation request; or making a claim, an application or an appeal under section 28 of the ECA.
- **No legal representation before the ECT:** Lawyers are not allowed to represent any party in proceedings before the ECT.
- **No concurrent representation under the IRA is allowed:** a dismissed employee is prohibited from concurrently lodging a claim with the ECT and making representations to the Minister under section 35(3) of the IRA.

Under the ECA, parties with a salary-related or wrongful dismissal dispute must first submit a mediation request and go through mediation at the TADM before they may proceed to bring a claim to the ECT. A claim referral certificate must be obtained from an approved mediator at the TADM before a claim may be lodged at the ECT. The claim referral certificate will be issued if:

- the respondent is given reasonable notice of, but does not attend, the mediation for that dispute;
- no settlement is reached at the end of the mediation in relation to one or more of the specified employment disputes listed in the mediation request; or
- the approved mediator is satisfied that there is no reasonable prospect of settling through mediation the specified employment dispute.

Where a specified employment dispute is settled at a mediation, the parties must enter into a signed settlement agreement and the total amount payable to a party under the settlement agreement must not exceed the prescribed claim limit under the ECT (please refer to the relevant claim limits above). This settlement agreement may be registered with the District Court which will have the same force and effect as if the settlement agreement had been a judgment given in the District Court.

From 7 January 2019, the Community Justice and Tribunals System ("**CJTS**") - an e-filling and case management system has been launched to allow parties to employment disputes to register settlement agreements, file dispute claims, submit and view documents, monitor case developments, select a preferred court date and pay filing fees, without having to travel to the State Courts. They may also be notified of case developments and hearing dates by SMS and e-mail. Individuals can access the CJTS with their SingPass, and corporate entities with their CorpPass. Those with no SingPass or CorpPass may apply for a CJTS Pass to access the CJTS.

Salient features of the CJTS include: (i) e-negotiation service - parties may try to reach an amicable settlement without going to court. For example, when a settlement offer is made, the claimant will be notified to log on and consider the offer or make – counter offer. (ii) e-mediation service - If parties agree to e-mediation, the ECT will schedule an online chat session with a court mediator. If a settlement is reached via either e-negotiation or e-mediation, parties may register the settlement agreement recorded and apply online for a consent order. If mediation at TADM is unsuccessful, parties can file their claim together with the claim referral certificate online immediately.

Since 1 April 2017, 94% of the total number (1,696) of employment claims filed at the ECT have been concluded as at 30 November 2018; of which 71% were resolved before proceeding to a court hearing.

(c) Hearings before the Commissioner for Labour (MOM)

After the creation of the ECT, which takes over from the Commissioner for Labour (Ministry of Manpower) (also known colloquially as the "Labour Court", the Labour Court's function of resolving salary disputes,the Labour Court will continue to hear claims relating to the transfer of employment under section 18A of the EA, claims for workmen compensation, claims for non-salary related disputes and claims related to the recovery of salary not paid in legal tender, among other things.

14. Industrial Relations

(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[16] 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.

(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”[17] (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[18].

(f) Representation for executives

Employees hired as executives have 3 different options for industrial representation: (a) join and be 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[19]; or (c) join a 'Rank and file' trade union and seek recognition for collective representation[20] 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 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.

15. Workplace Safety and Health

Three fundamental principles supporting the Occupational Safety and Health ("**OSH**") framework are:

- reducing risks at their source by requiring stakeholders to eliminate or minimise the risks said sources create;
- instilling greater ownership (i.e. sense of responsibility) of safety and health outcomes by industry; and
- preventing accidents through the imposition of higher penalties for poor safety management.

(a) Workplace Safety and Health Act

WSHA is the key legislation affecting the philosophy of this OSH framework. The WSHA covers all workplaces. The WSHA stipulates that every person must take measures "so far as is reasonably practicable" to ensure the safety and health of every workplace and every person within those premises. The 4 key features of the WSHA are:

- It places responsibilities on stakeholders who have it within their control to ensure safety at the workplace;
- It focuses on workplace safety and health systems and outcomes, rather than merely on compliance;
- It facilitates effective enforcement through the issuance of remedial orders; and
- It imposes higher penalties for non-compliance and risky behaviour.

(b) Work Injury Compensation Act ("WICA")

Under the WICA, compensation is payable to or for the benefit of the 'employee' or, where death results from the injury, to the deceased employee's estate or for the benefit of his dependents. The term 'employee' under the WICA means any person who has entered into or works under a contract of service or apprenticeship with the employer. The injury must be an injury by accident arising out of and in the course of employment.

Persons who are liable to pay compensation include the employer and the principal. While the employee cannot claim compensation under the Act against third party wrong doers, third parties such as insurers may be called upon to indemnify the employer/principal who has paid compensation to the employee. It is not possible for the employer to contract out of his obligations to pay work injury compensation.

It should be noted that an employer is required to buy work injury compensation insurance for all local and foreign employees doing manual work (regardless of salary level), and those doing non-manual work who earn less than S$1,600 a month. For other employees, the employer has the option to decide whether to purchase such insurance but if a valid claim is made by these employees, the employer will have to compensate them regardless whether they are insured. Failure to provide adequate insurance is an offence carrying a fine of up to S$10,000 or jail of up to 12 months, or both.

(c) Infectious Diseases (Workplace Measures to Prevent Spread of COVID-19) Regulations 2020 ("Workplace Measures Regulations")

The Workplace Measures Regulations came into force on 1 April 2020 as part of the measures taken to combat the spread of the COVID-19 disease. The Workplace Measures Regulations give teeth to safe distancing measures in workplaces previously announced by the MOM in March 2020. Consequently, employers or principalsare now obliged under the Workplace Measures Regulations to implement the safe distancing measures prescribed in the regulations. Occupiers and workers are also expected to abide by the safe distancing measures prescribed under the regulations. Breaches of any provisions under the Workplace Measures Regulations will generally amount to an offence punishable by a fine not exceeding S$10,000 or to imprisonment for a term not exceeding 6 months or both.

The Workplace Measures Regulations will be effective for a "control period" defined as the period between 2 April 2020 and 30 April 2020, with both dates inclusive. With the extension of the circuit breaker period to 1 June 2020, the "control period" may be extended beyond 30 April 2020.

(i) Implementation of telecommuting

Regulation 4 imposes on every employer or principal the obligation to implement telecommuting for its employees during the control period unless it is not reasonably practicable to do so. They must also provide the facilities necessary for every worker to work in the worker's place of residence in Singapore during the control period. The regulations do not go on to stipulate the facilities necessary for telecommuting. Nevertheless, depending on the nature of the job, this may include equipment that are necessary for the worker to work from home, such as laptops and telecommunication devices. .

Employers who fail to do so must be ready to justify their decision or be criminally liable of an offence.

(ii) Implementation of safe distancing measures

Regulation 5 requires every employer or principal to take reasonably practicable efforts to minimise the physical interaction between workers at work in a workplace. Insofar that workers are required to work in the workplace, they are to be placed in 2 or more groups for the purposes of avoiding or minimising physical interaction between workers in different groups, and stagger their arrival and departure timings. Any worker exhibiting any "specified symptoms", defined as coughing, sneezing, breathlessness or runny nose, or is otherwise physically unwell, is required to report immediately upon the onset of the symptom or feeling physically unwell, to the employer or principal. All individuals in the workplace must be placed at least one metre apart from each other. All non-critical organised activity that requires physical interaction shall be cancelled save for certain types of training.

This is likely to require a change in the working environment of workplaces. The one metre distancing requirement will have to be adhered to not only at workspaces of workers and in meeting rooms, but all common areas such as the pantry and washrooms. Areas where queues are likely to form, markings should be made on the floor to ensure that those in the queue will be at least one metre apart.

With respect to the staggering of working hours, the MOM Advisory on safe distancing measures at the workplace provides that the staggering hours must be implemented over at least three 1-hourly blocks, with not more than half of the employees reporting to work within each 1-hour block. Thus far, MOM has already taken measures to ensure compliance, such as dispatching enforcement officers to conduct inspections at workplaces.

(iii) Communication of safe distancing measures

The Workplace Measures Regulations also impose an obligation on every employer or principal to, as far as reasonably possible, communicate to all its workers the arrangements taken by the employer to abide by the safe distancing measures.

Where the company is a trade union member, effort should be taken to inform the union on these arrangements. Employers should also keep employees informed of any changes to their safe distancing measures made in order to stay relevant with any new guidelines or advisories.

(iv) Obligations of occupiers

An occupier of a workplace must take extra measures during the control period, such as: (a) allowing natural ventilation of the workplace as far as reasonably practicable; (b) measuring the body temperature of every individual entering the workplace and to visually ascertain if the individual displays any specified symptom; (c) obtaining and recording the contact particulars of every individual who is not a worker who ordinarily works in the workplace, before allowing the individual to enter the workplace; (d) refusing entry to any individual who has a fever or who exhibits any specified system, or who refuses to comply with (b) and (c); (e) implementing measures and take reasonable steps to distance any two individual by one metre; and (f) requiring any individual who has a fever or displays any specified symptom to wear a mask and to immediately leave the workplace and if the individual is unable to immediately leave the workplace, isolate the individual.

Occupiers should demarcate an area of the workplace where isolation is carried out, and to also have masks at hand to meet the abovementioned requirements.

(v) Compliance with movement control measures

Every employer or principal must not, during the control period, permit a worker or an individual subjected to a movement control measures, such as a quarantine order, a stay-home notice, or a medical certificate certifying that they have an acute respiratory symptom, to enter the workplace. Likewise, an occupier must not, during the control period, allow entry into the workplace of an individual whom the occupier is aware or has reason to believe is subject to a movement control measure.

Employers should have in place a system where employees shall inform them if they are subject to such movement control measures. Employers should also provide travel and health declarations to employees and individuals seeking to enter the workplace.

(vi) Obligations of employees and other individuals

A worker or other individual who has a fever or exhibits a specified symptom must not enter any workplace.

All workers or individuals must also comply as far as reasonably practicable with all safe distancing measures implemented under the Workplace Measures Regulations by the employer.

16. Employer's Tax Considerations

(a) Taxable income

All gains and profits derived by an employee in respect to his employment are taxable, unless they are specifically exempt from income tax or are covered by an existing administrative concession. The gains or profits include all benefits, whether in money or otherwise, paid or granted to an employee in respect of employment. Where employers also extend the benefits to the employee's family members, relatives and friends, the benefits would be taxable in the hands of the employee as a benefit from employment. As for retrenchment benefits given to an employee, these are generally not taxable if made to compensate for the loss of employment. However, other payments typically included for other purposes (e.g. gratuity for past services) would be taxable to the extent that they are payment for services and constitute gains or profits from employment. Whether payments are compensation for loss or employment or not is largely a question of fact and depends on all facts and circumstances giving rise to the payments.

(b) Required filings

Pursuant to section 68(2) of the Income Tax Act, the employers are required to file with the Inland Revenue Authority of Singapore ("**IRAS**") the following returns:-

- Form IR8A (Return of Employee's Remuneration);
- Form IR8S (Details of Employer's/Employee's Contributions to CPF);
- Appendix 8A (Value of Benefits in Kind); and/or
- Appendix 8B (Value of Gains and Profits from Stock Options).

for all employees (who are employed in Singapore) by the 1st of March of each year.

IRAS encourages all employers to join the Auto-Inclusion Scheme ("**AIS**") for employment income, where employers submit their employees' income information to IRAS electronically. The employment income information will then be shown on the employees' electronic tax return and automatically included in their income tax assessments.

AIS is compulsory for all employers which have 7 or more employees for the entire year ending the relevant preceding year or have received the "Notice to File Employment Income of Employees Electronically".

(c) Flexible benefits

Under the flexible benefits scheme, employees are given a flexible benefits budget and can choose their own benefits from a range of benefits.

Offering benefits under the flexible benefits scheme does not change the tax treatment of the benefits. That is, if an employee seeks reimbursement for an item that has been granted concession or exempt from tax, the reimbursement is not taxable. However, reimbursement for an item that has not been granted concession or exempt from tax is taxable. For example, reimbursement to an employee for expenses incurred for medical treatment sought by the employee remains not taxable even if the reimbursement is claimed under the flexible benefits scheme. On the other hand, holiday reimbursement remains taxable even if it is one of the items which an employee can claim under the scheme.

Hence, an employer offering the flexible benefits scheme would have to make a distinction between taxable and non-taxable benefits. The employer has to keep track of the taxable items so that the taxable benefits are reported in the Form IR8A.

(d) Withholding tax

A non-resident is liable to pay income tax on Singapore-sourced income. Under the law, when a person makes payment of a specified nature to a non-resident, he has to withhold a percentage of the payment and pay the amount withheld to IRAS.

(e) Tax clearance

Tax clearance is a process of ensuring that your non-citizen foreign employee pays all his taxes when he ceases employment with you in Singapore or plans to leave Singapore for more than three months. It is the responsibility of the employer to notify IRAS via Form IR21 and seek tax clearance for the affected foreign employees. An employer must seek tax clearance at least one month before the non-citizen employee:-

- ceases to work for the employer in Singapore; or
- is on overseas posting; or
- leaves Singapore for any period exceeding three months.

An employer unable to give 1 month's notice must state its reasons when seeking tax clearance.

Depending on the length of notice required under the employment contract, the timeframe required for notifying IRAS may require the employer to discuss the termination with the employee before notice is given to him. In any discussion, the employer should make it clear to the employee that the employer will be required to obtain tax clearance and to withhold amounts owing to him pending tax clearance.

IRAS generally takes around 7 days to process an electronically filed Form IR21 (21 days for a paper form). IRAS will then send a Clearance Directive to the employer once the employee's tax liability is determined and a tax bill to the employee.

Tax clearance is not required for Singapore permanent residents who are not leaving Singapore permanently after ceasing employment with the employer, if the employer obtains a letter of undertaking at the point of cessation if the employee has no intention to leave Singapore permanently. If there is to be a termination agreement, then as a practical matter it would be useful to have the undertaking and the termination agreement signed at the same time.

(f) Penalties

Contravention of any of the provisions of the Income Tax Act is an offence and in the case of a breach of the provisions referred to above (for which no penalty is expressly specified) a fine not exceeding S$1,000 is payable and in default of payment the offence is punishable by imprisonment for a term not exceeding six months.

17. Central Provident Fund

(a) Current contribution rates

If the employee is a Singapore citizen or a Singapore permanent resident, contributions by both the employer and the employee will need to be made to the CPF. The present rates are 20% of the ordinary wages (up to a maximum of S$6,000 per month) from the employee and 17% of the ordinary wages (up to a maximum of S$6,000 per month) from the employer for employees who are up to 55 years of age and who are Singapore citizens or Singapore permanent residents who have been Singapore permanent residents for at least 3 years.

The contributions for Singapore permanent residents during the first two years of being Singapore permanent residents are at graduated rates to help them adjust to the lower take-home pay. The contribution rates reduce on a graduated scale for employees who exceed 55 years of age. Ordinary wages are generally the wages paid monthly, the wages due or granted wholly and exclusively in respect of an employee's employment in that month. Contributions at the above rates also need to be made in relation to additional wages, for example, annual bonus which is not granted wholly and exclusively for the month but at intervals of more than one month and may, for example, be paid yearly. However, the maximum amount of wages including ordinary and additional wages on which contributions need to be made to CPF is S$102,000 which is equivalent to 17 months multiplied by the monthly CPF salary ceiling of S$6,000 which applies to all age groups. The current CPF Annual Limit (which is the maximum amount of mandatory and voluntary contributions to all three CPF Accounts that a CPF member can receive in a calendar year) is S$37,740.

(b) CPF contribution rates from January 2021

The CPF contribution rates for Singapore citizens and Singapore permanent residents aged 55 to 70 will be raised gradually with effect from 1 January 2021. By 2030, those aged 60 and below will enjoy full CPF rates (i.e. 20% of the ordinary wages (up to a maximum of S$6,000 per month) from the employee and 17% of the ordinary wages (up to a maximum of S$6,000 per month) from the employer).

The prevailing and new CPF contribution rates from 1 January 2021 (for employees with monthly wages exceeding S$750) is demonstrated below:

Employee age (Years)	Prevailing CPF contribution rates (% of wage)		
	Employer contribution	Employee contribution	Total
55 and below	17	20	37
Above 55 to 60	13	13	26
Above 60 to 65	9	7.5	16.5
Above 65	7.5	5	12.5

Employee age (Years)	CPF contribution rates (% of wage) with effect from 1 January 2021			CPF contribution rates (% of wage) by 2030		
	Employer contribution	Employee contribution	Total	Employer contribution	Employee contribution	Total
55 and below	17	20	37	17	20	37
Above 55 to 60	14	14	28	17	20	37
Above 60 to 65	10	8.5	18.5	13	13	26
Above 65 to 70	8	6	14	9	7	16.5
Above 70	7.5	5	12.5	7.5	5	12.5

It is unclear how the CPF contribution rates of the employer's and employee's share of CPF contribution would each increase between 1 January 2021 and 2030. However, each subsequent increase should not exceed 1% and the total increase in the employer's share will generally be lower than the employee's share.

All CPF contributions payable by an employer for the month shall be paid no later than 14 days after the end of the month in respect of which contributions are payable.

(c) Related assistance measures for employers

The Special Employment Credit ("**SEC**") was introduced in the 2011 budget and is extended up to 31 December 2020, to support employers, and to raise the employability of older low-wage Singaporeans. To promote voluntary re-employment of older workers, employers who hire Singaporean workers aged above 67 earning up to S$4,000 a month will receive an additional offset of up to 3% of wages. Taken together with the existing SEC incentives, employers who employ such older workers would get up to 11% in wage offset.

To support employment of Persons with Disabilities (PWDs), the SEC was extended to employers that hire Persons with Disabilities of all ages. The SEC for 'WDs aged between 13 and 65 is set at 16% of the employee's monthly income, up to S$240 per month. The SEC for PWDs aged 65 and above is set at 22% of monthly income, up to S$330 per month.

(d) Penalties for non-payment/late payment of CPF

The fine for first time offenders is up to S$5,000, and a mandatory minimum fine of S$1,000 will be imposed for each charge and/or up to 6 months jail.

A fine of up to S$10,000 and no less than S$2,000 for each charge and/or 12 months jail may be imposed for repeat offenders.

18. Employment of Foreign Manpower

(a) Work pass requirements

Non-Singapore resident individuals are required to hold a valid work pass before they can work in Singapore. Foreigners performing certain activities in Singapore for short durations may engage in these activities without a work pass provided they submit an e-notification to inform MOM.

There are various work passes an individual can apply for depending on the nature of their work.

Professionals – managerial, executive or specialised jobs

- Employment Pass: Fixed monthly salary of at least S$3,600 (Nevertheless, do note that more experienced candidates will require higher salaries) and acceptable qualifications. Must be cancelled on termination of employment. From 1 May 2020, the minimum qualifying salary will be raised from **$3,600** to $3,900 for new applications. The salary criteria for older, more experienced candidates will also be raised in tandem. The new salary criteria will apply to renewal applications from 1 May 2021.
- Personalised Employment Pass: granted on applicant's merit and not tied to employer. Last drawn fixed monthly salary overseas of at least S$18,000 and within 6 months of application; or employment pass holder with fixed monthly salary of at least S$12,000.
- EntrePass: For foreign entrepreneurs intending to start a business in Singapore.

Mid-level – e.g. technicians

- S Pass: Applicable to mid-level skilled workers who earn a fixed monthly salary of at least S$2,400. Applicants are assessed based on salary, education, skills, job type and work experience.

Skilled & Semi Skilled workers – workers from an approved source country/territory

- Work Permit: Issued to foreign unskilled workers generally for up to 2 years depending on worker's passport validity, Banker's/Insurance Guarantee, worker's employment period.

Others

- Dependant's pass: Issued to legally married spouse or unmarried children under 21 years of EP or S Pass holders if the EP or SP holder is earning a fixed monthly salary of at least S$6,000.
- Long Term Visit ("**LTV**") pass: EP and S Pass holders earning a fixed monthly salary at least S$6,000 can apply for a LTV pass for their spouse, unmarried step children under 21 years or unmarried handicapped children above 21 years. EP and S Pass holders earning a fixed monthly salary at least S$12,000 may also apply for a LTV pass for their parents.

The Employment of Foreign Manpower (Work Passes) Regulations 2012 provide that work passes (whether work permit (including a training work permit), S pass, employment pass (including a training employment pass), any of which may be relevant to an employer) may be cancelled on application to the Controller of Work Passes ("**Controller**") made (a) by the employer of the foreign employee or on behalf of the employer by an authorised representative, and (b) in such form and manner as the Controller may determine.

The MOM guidelines indicate that:

- a work pass must be cancelled within 7 days of the date of termination of employment by either the employer or an authorised representative of the employer. The cancellation may be completed electronically through WP Online, in the case of a work permit (including a training work permit), or through EP Online, in the case of an S pass or an employment pass (including a training employment pass), both accessible through the website of the MOM;
- the MOM will issue a 30-day short term visit pass upon cancellation of an S pass or an employment pass (including a training employment pass) to enable the pass holder to prepare for his/her departure from Singapore;
- when the main employment pass or S pass is cancelled, all other related passes (i.e. dependant's pass and/or LTV pass) are deemed cancelled. The dependant's pass and/or LTV pass may be cancelled along with the main employment pass or S pass electronically through EP Online.

(b) Fair employment practices/Fair Consideration Framework

Article 12 of the Singapore Constitution guarantees equal protection against discrimination towards Singapore citizens on the ground of religion, race, descent or place of birth, but does not invalidate employment restrictions connected with the religious affairs or of religious institutions. Further protections against age-related discrimination can be found in the RRA, while pregnant mothers cannot be dismissed without sufficient cause during their pregnancy under the EA or the CDCSA.

Under the 'Fair Consideration Framework' (the "**FCF**") implemented by MOM, firms submitting employment pass applications are required to advertise the job vacancies on a jobs bank administered by Workforce Singapore for at least 2 weeks before opening the position up to foreigners. The advertisements have to comply with the Tripartite Guidelines on Fair Employment Practices and should avoid stating a preference for nationality, age, race, language, gender, marital status, family responsibilities and religion.

However, the following situations are exempted from the advertising requirement: (i) small firms with fewer than 10 employees, (ii) jobs which pay a fixed monthly salary of S$15,000 and above; and (iii) The job is necessary for short-term contingencies (i.e., period of employment in Singapore for not more than one month) - will be exempted from the advertising requirements (assuming that these companies do not practice nationality-based or other discriminatory HR practices and have not had their work pass privileges curtailed).

MOM and other government agencies will also identify businesses which, in their view, have scope to improve their hiring practices (e.g. firms with disproportionately low concentration of Singaporeans at the professional, managerial and executive level compared to others in the same industry or have repeated complaints of nationality-based or other discriminatory hiring practices).

In February 2020, MOM announced that the penalties for non-compliance with the FCF have been toughened and released details on its website regarding the nature of those penalties. The penalties include a minimum 12 month ban on all forms of work passes being issued, with a ban of up to 24 months in egregious cases; and scope for the ban to cover not only the issuing of new work passes, but also the renewal of existing work passes. In addition, MOM has made it clear that it will prosecute employers (including key personnel within companies) who falsely declare that they have considered candidates fairly. The requirements of the FCF should be complied with and accurate records kept of why a foreign employee was ultimately preferred over a Singaporean candidate.

19. Employment of Part-Time Workers

(a) Key employment terms

Employers are required to issue KETs in writing to all part-time employees who:

- are covered by the EA;
- are employed for 14 days or more; and
- employed under a contract of service for a continuous period of 2 weeks or longer. This refers to the length of contract, not the number of days of work.

S/N	Item
1.	Full name of employer.
2.	Employer's trade name if different from that in item 1.
3.	Full name of employee (as specified on the identity card, work pass or passport).
4.	Job title, description of main duties and responsibilities.
5.	Start date of employment.
6.	Duration of employment (if employee is on fixed-term contract).
7.	Working arrangements, such as: • Daily working hours (e.g. 8.30am - 6pm) • Number of working days per week / month (e.g. six days) • Rest day (e.g. Saturday)
8.	Salary period.
9.	Hourly basic rate of pay and gross rate of pay.
10.	Any fixed allowance during each salary period (if applicable).
11.	Any fixed deduction during each salary period (if applicable).
12.	Overtime payment period (if different from item 8 above).
13.	Overtime rate of pay.
14.	Other salary-related components (if applicable), such as: • Bonuses • Incentives
15.	Leave entitlement, such as: • Annual leave • Outpatient sick leave • Hospitalisation leave • Maternity leave • Childcare leave
16.	Medical benefits, such as: • Insurance • Medical benefits • Dental benefits
17.	Probation period (if applicable).
18.	Notice period for dismissal by employer or termination of employment contract by employee (as the case may be).

Where a contract of service does not specify any of the items 7 and 9, that item is to be determined according to the formulas set out in paragraph 1, 2 or 3 of the Schedule to the Part-Time Regulations, as the case may be.

(b) Payment for work on rest day

A part-time employee who is required to work on 5 or more day and works on a rest day, whether at his/her own request or the employer's request is entitled to be paid at a commensurate rate of pay, based on the employee's hourly basic rate of pay and duration of work performed on that day.

Where the part-time employee works on a rest day at his/her own request	
Period of work on rest day	**Pay entitlement for that rest day**
Does not exceed half the part-time employee's normal hours of work for one day	to be paid a sum at the part-time employee's basic rate of pay for **half a day's work**
Exceeds half but does not exceed the part-time employee's normal hours of work for one day	to be paid a sum at the part-time employee's basic rate of pay for **one day's work**
Exceeds the part-time employee's normal hours of work for one day but does not exceed the normal hours of work for one day of a similar full-time employee	to be paid a sum: (i) at the part-time employee's basic rate of pay for **one day's work; and** (ii) at the part-time employee's **hourly basic rate of pay for each hour or part thereof** which exceeds the part-time employee's normal hours of work for one day
Exceeds the normal hours of work for one day of a similar full-time employee	to be paid a sum: (i) at the part-time employee's basic rate of pay for **one day's work**. (ii) at the part-time employee's **hourly basic rate of pay for each hour or part thereof** which exceeds the part-time employee's normal hours of work for one day but does not exceed the normal hours of work for one day of a similar full-time employee; and (iii) at **one and a half times the part-time employee's hourly basic rate of pay for each hour or part thereof** which exceeds the normal hours of work for one day of a similar full-time employee.

Where the part-time employee works on a rest day at employer's request	
Period of work on rest day	**Pay entitlement for that rest day**
Does not exceed half the part-time employee's normal hours of work for one day	to be paid a sum at the part-time employee's basic rate of pay for **one day's work**
Exceeds half but does not exceed the part-time employee's normal hours of work for one day	to be paid a sum at the part-time employee's basic rate of pay for **two days' work**
Exceeds the part-time employee's normal hours of work for one day but does not exceed the normal hours of work for one day of a similar full-time employee	to be paid a sum: (i) at the part-time employee's basic rate of pay for **two days' work; and** (ii) at the part-time employee's **hourly basic rate of pay for each hour or part thereof** which exceeds the part-time employee's normal hours of work for one day
Exceeds the normal hours of work for one day of a similar full-time employee	to be paid a sum: (i) at the part-time employee's basic rate of pay for **two days' work**; (ii) at the part-time employee's **hourly basic rate of pay for each hour or part thereof** which exceeds the part-time employee's normal hours of work for one day but does not exceed the normal hours of work for one day of a similar full-time employee; and (iii) at **one and a half times the part-time employee's hourly basic rate of pay for each hour or part thereof** which exceeds the normal hours of work for one day of a similar full-time employee.

(c) Overtime pay

A part-time employee who is required to work at the employer's request beyond the part-time employee's normal hours of work is entitled to be paid at a commensurate rate of pay, based on the employee's hourly basic rate of pay and duration of work performed on that day.

Overtime Pay	
Period of work on rest day	**Pay entitlement for that rest day**
Exceeds the part-time employee's normal hours of work for one day	to be paid a sum: (i) at the part-time employee's **hourly basic rate of pay for each hour or part thereof** that exceeds the part-time employee's normal hours of work for one day but does not exceed the normal hours of work for one day of a similar full-time employee; **and** (ii) at **one and a half times the part-time employee's hourly basic rate of pay for each hour or part thereo**f that exceeds the normal hours of work for one day of a similar full-time employee.
Exceeds the part-time employee's normal hours of work for one week	to be paid a sum: (i) at the part-time employee's **hourly basic rate of pay for each hour or part thereof** that exceeds the part-time employee's normal hours of work for one week but does not exceed the normal hours of work for one week of a similar full-time employee; **and** (ii) at **one and a half times the part-time employee's hourly basic rate of pay for each hour or part thereof** that exceeds the normal hours of work for one week of a similar full-time employee.

(d) Holidays

Part-employees also enjoy entitlement to paid holidays on such (full working) days as are provided to full-time employees under the EA, but they are to be paid according to a formula set out in the Part-Time Regulations.

Notwithstanding the above, a part-time employee may be required by the employer to work on any public holiday and, in such event, he/she shall be paid a sum at his/her basic rate of pay for one day's work in addition to the sum referred to in the formula above and to a travelling allowance for one day, if payable to him/her under the terms of his agreement with the employer.

Notwithstanding the above, a part-time employee (other than a Part IV Employee) who is required by the employer to work on any public holiday, is to be paid in accordance with the preceding paragraph (i.e. relating to rank and file part-time employees) for that day and may be given the following, in lieu of a day off in substitution for that holiday or a sum at the part-time employee's basic rate of pay for one day's work: (i) any part of a day off on a working day comprising such number of hours as may be agreed between the part-time employee and employer, or (ii) if there is no such agreement, either half of the part-time employee's normal hours of work for one day off if the part-time employee worked for less than half of the part-time employee's normal hours of work for one day; or the entire day off if the part-time employee worked for more than half of the part-time employee's normal hours of work for one day.

(e) Sick leave

Part-time employees are also entitled to paid sick leave (please refer to section titled: "Sick Leave" at page 6 above) in proportion to the entitlement of a similar full-time employee provided by the EA, as calculated in accordance with the formula provided in the Part-Time Regulations.

(f) Childcare leave and maternity benefits

Part-time employees are also entitled to statutory childcare leave (please refer to section titled: "Childcare Leave" at page 8 above) in proportion to the entitlement of a similar full-time employee provided by the EA and CDCSA, where any employee has served an employer for a period of not less than 3 months; and has any child below the age of 7 years. The number of days childcare leave and the rate at which the employee shall be paid will be in accordance with the formulas in the Part-Time Regulations and the Child Development Co-Savings (Part-Time Employees) Regulations 2008.

Similarly, female part-time employees are entitled to statutory maternity benefits (please refer to section titled: "Maternity Leave" at page 6 above) in proportion to the entitlement of a similar female full-time employee provided by the EA and CDCSA. The length of maternity benefit entitlement shall be in accordance with the formulas in the Part-Time Regulations and the Child Development Co-Savings (Part-Time Employees) Regulations 2008.

(g) Non-compliance

A first conviction by any employer in failing to pay an allowance to a part-time employee who agrees to relinquish his entitlement to paid holidays or paid annual leave will result in a fine of S$5,000. A subsequent conviction for a contravention of the same provision within one year after the preceding conviction will result in a fine of S$10,000.

20. Other Matters

(a) Privacy and data protection at the workplace

Singapore has no constitutional right of privacy, but the Personal Data Protection Act 2012 (**"PDPA"**) provides some measure of data privacy for employee communications.

Under the PDPA, employees' consent is normally required before an employer collects, uses, processes or discloses their personal data unless the collection, monitoring or disclosure of information falls within one of the exemptions in the PDPA.

The first exemption is when the collection of personal data of employees is reasonable for the purpose of "managing or terminating an employment relationship" between the employer and employee. These can include:

- Using the employee's bank account details to issue salaries;
- Monitoring how the employee uses company computer network resources;
- Posting employees' photographs on the staff directory page on the company intranet; or
- Managing staff benefit schemes like training or educational subsidies.

While consent is not required, employers are still required to notify employees of the purposes of such collection, use or disclosure. There is no prescribed way of notification and it may be through the employment contract, an employee handbook, or notice in the company intranet.

A second common exemption is if the data collection is necessary for evaluative purposes for determining the suitability of an individual for employment or promotion etc. These may include collection, use or disclosure of data such as references from previous employers or other performance records, although note the obligation under section 20(2) PDPA to provide the other organisation with sufficient information regarding the purpose of the collection to allow that other organisation to determine whether the disclosure would be in accordance with the Act. Section 20(4) PDPA requires an organisation, on or before collecting, using or disclosing the personal data about an individual for the purpose of managing or terminating an employment relationship between the organisation and that individual, to inform the individual of:-

(a) that purpose; and
(b) on request by the individual, the business contact information of a person who is able to answer the individual's questions about that collection, use or disclosure on behalf of the organisation.

In terms of privacy, the PDPA also applies to monitoring of employees' communications such as emails, messages, social media and phone calls. This is because the contents of these communications are likely to constitute personal data if an individual can reasonably be identified by the information contained therein. As such, employee consent must be obtained unless an applicable exemption under the PDPA may be invoked. Consent can also be dispensed with if the collection is necessary for any investigation or proceedings, if it is expected that seeking the consent of the employee would compromise the availability or accuracy of the personal data.

Organisations should cease to retain documents containing personal data, or remove the means by which personal data can be associated once an employee leaves the company, as soon as the retention is no longer necessary for any valid legal or business purposes.

Organisations are also responsible for safeguarding the personal data of employees, and must adopt reasonable security arrangements to prevent unauthorised access, collection, use, disclosure or similar risks to the personal data.

(b) Harassment at the workplace

Workplace harassment can occur when someone at a workplace demonstrates behaviour that causes or is likely to cause harassment, alarm or distress to another party.[21] Such behaviour can violate a person's dignity or create an unfavourable work environment for him/her, which poses a risk to the person's safety and health. Examples of behaviour that may be harassment include: (1) Threatening, abusive, or insulting language, comments or other non-verbal gestures, (2) Cyber bullying, (3) Sexual harassment; and (4) Stalking.

The Protection from Harassment Act 2014 (Cap. 256A) protects individuals against harassment and unlawful stalking through a range of civil remedies and criminal sanctions. However, the act places no specific obligations on employers to prevent harassment in the workplace. A Tripartite Advisory on Managing Workplace Harassment has also been published that encourages employers to: (1) Develop a harassment prevention policy, (2) Provide information and training on workplace harassment; and (3) Implement reporting and response procedures.

21. References

[1] Section 95A of the Employment Act (Cap. 91).

[2] Second Schedule to the Employment (Employment Records, Key Employment Terms and Pay Slips) Regulations 2016 (No. S 148/2016).

[3] Paragraphs 3 and 4 of the Schedule to the Employment (Administrative Penalties) Regulations 2016 (No. S 149/2016).

[4] Third Schedule to the Employment (Employment Records, Key Employment Terms and Pay Slips) Regulations 2016 (No. S 148/2016).

[5] Paragraphs 5 and 6 of the Schedule to the Employment (Administrative Penalties) Regulations 2016 (No. S 149/2016).

[6] Employment (Sick Leave — Hospitalisation) Regulations 2019 (No. S 199) reg 2.

[7] Tripartite Guidelines on Wrongful Dismissal, published on 1 April 2019. Available at: <https://www.mom.gov.sg/~/media/mom/documents/employment-practices/guidelines/tripartite-guidelines-on-wrongful-dismissal.pdf?la=en>.

[8] A copy of the revised advisory may be accessed at: https://www.mom.gov.sg/-/media/mom/documents/employment-practices/guidelines/tripartite-advisory-on-managing-excess-manpower-and-responsible-retrenchment.pdf?la=en&hash=FED5FC78385A29DE079C113C4DBB0871

[9] Employment (Retrenchment Reporting) Notification 2019 (No. S 200).

[10] Section 126A of the Employment Act (Cap. 91).

[11] Tripartite guidelines on the re-employment of older employees, last updated on March 2017. Available at: <https://www.mom.gov.sg/-/media/mom/documents/employment-practices/guidelines/tripartite-guidelines-on-re-employment-of-older-employees-1-july-2017.pdf?la=en&hash=AB0F8825651D7B29F7D24E82FE1ACD94>.

[12] Paragraphs 1 and 2 of the Schedule to the Employment (Administrative Penalties) Regulations 2016 (No. S 149/2016).

[13] Third Schedule to the Employment Claims Act 2016 (No. 21 of 2016).

[14] First Schedule to the Employment Claims Act 2016 (No. 21 of 2016).

[15] Second Schedule to the Employment Claims Act 2016 (No. 21 of 2016).

[16] Section 18(2) of the Industrial Relations Act (Cap. 136).

[17] Section 35(1) of the Industrial Relations Act (Cap. 136).

[18] Section 34(1)(a) of the Industrial Relations Act (Cap. 136).

[19] Section 30A of the Industrial Relations Act (Cap. 136).

[20] Section 17(1) of the Industrial Relations Act (Cap. 136).

[21] Ministry of Manpower, Tripartite Advisory on Managing Workplace Harassment. Available at: <https://www.mom.gov.sg/~/media/mom/documents/employment-practices/guidelines/tripartite-advisory-on-managing-workplace-harassment.pdf?la=en>.