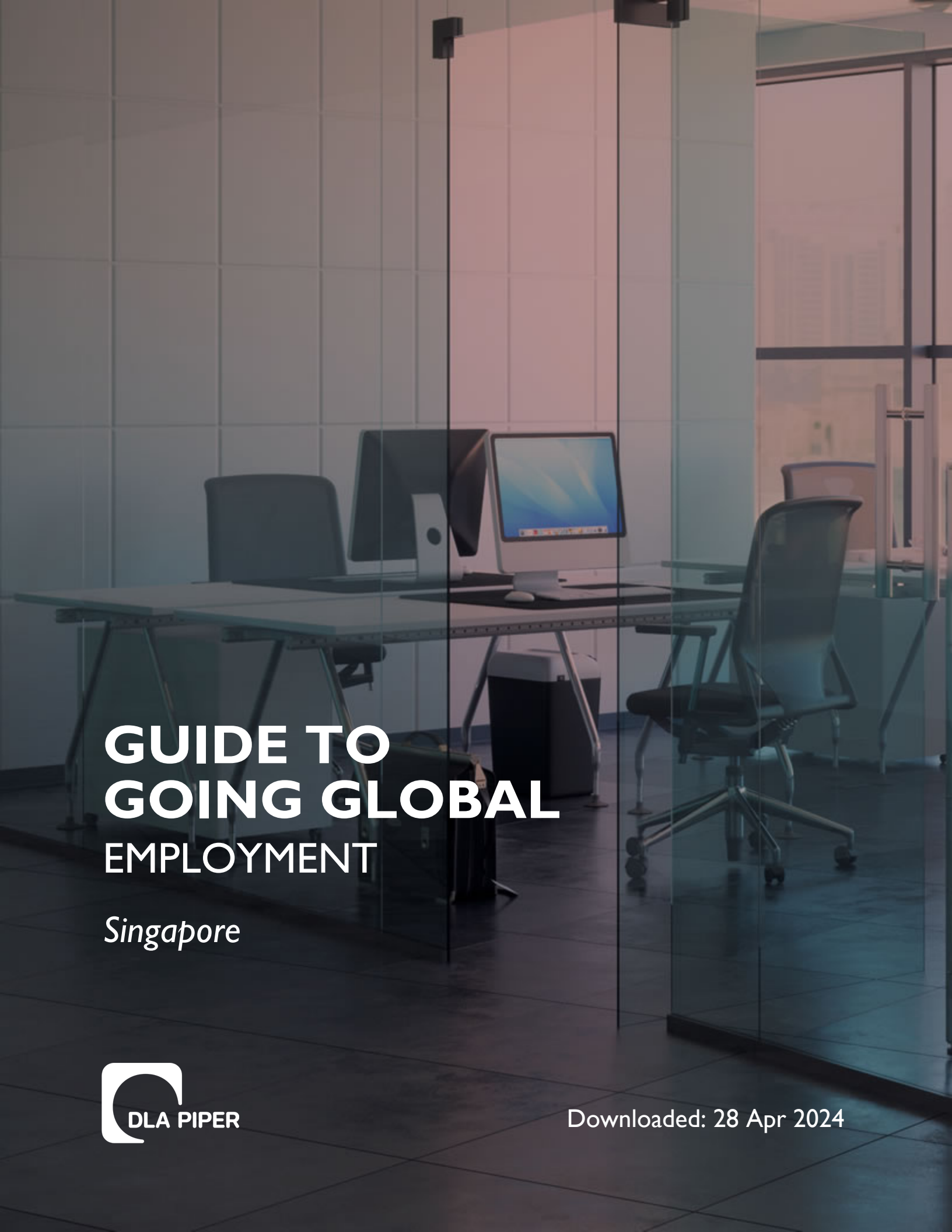

GUIDE TO GOING GLOBAL

EMPLOYMENT

Singapore

DLA PIPER

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INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that employment law is dynamic, and the legal regime in the countries surveyed could change.

SINGAPORE

Last modified 10 May 2023

LEGAL SYSTEM, CURRENCY, LANGUAGE

Common law. The official currency is the Singapore dollar (SGD). The official languages are English, Chinese, Malay and Tamil. English is the main language of law and business.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign company generally cannot carry on business in Singapore without registering a subsidiary, branch or representative office. "Carrying on business," as defined under the Companies Act 1967 includes the administration, management or otherwise dealing with property situated in Singapore as an agent, legal personal representative or a trustee, whether by employees or agents or otherwise, and does not exclude activities carried on without a view to any profit. There are some exceptions to this. For example, purely holding directors' or shareholders' meetings, effecting sales through an independent contractor, investing in funds or holding property, or if the foreign company carries on such other activity as the Minister may prescribe do not amount to "carrying on business."

Payroll should be set up to comply with the Employment Act 1968 (EA); Central Provident Fund (CPF) requirements pursuant to the Central Provident Fund Act 1953 (CPF Act); and tax obligations and required payroll. Further, the EA additionally requires itemized payslips to be provided to all employees covered under the EA and requires maintenance of certain employee records – including salary records which have the same requirements as the itemized payslips. Employers also have income tax withholding obligations with respect to foreign employees upon their termination.

PRE-HIRE CHECKS

Required

Immigration checks, to ensure that the relevant work pass required is obtained for the prospective candidate.

Permissible

Offers of employment are often made subject to:

- The prospective candidate having obtained the relevant work pass and the employer satisfying the advertising requirements under the Fair Consideration Framework (FCF) and independently determining that the candidate is the best candidate out of all the applicants;
- Where necessary, the obtaining of satisfactory references; and
- When appropriate, background and criminal record checks.

Employers may also require the prospective candidate to undergo a medical examination and produce evidence of qualifications.

Pre-hiring checks must comply with Singapore's Personal Data Protection Act 2012 (PDPA). Generally, employers are required to at least notify applicants of the purposes for which their personal data is being used in connection with the management and termination of employment, and obtain their consent where collecting, using or disclosing their personal data. However, relevant exceptions to the PDPA notification and consent requirements include where the information is publicly available and where the information collected is for evaluative purposes (eg, for the purposes of evaluating employee suitability for the role) or for investigative purposes. In particular, there is no requirement under the law to ask for personal identification (NRIC) numbers for the purpose of job applications, although the employer would be required to know if an employee is holding an NRIC in order to determine if a work pass is required.

IMMIGRATION

Foreign nationals (ie, non-Singapore citizens or permanent residents) who wish to live and work in Singapore must obtain a valid work pass. There are several types of work pass which are administered and issued by the Ministry of Manpower (Employment Pass, S Pass and various Work Permits). The type of work pass required depends on the applicant's qualifications and skill-level, and on the nature of employment sought.

All Employment Pass applicants will be required to pass a new points-based Complementarity Assessment Framework (or 'COMPASS') with effect from September 1, 2023 (for new applications) and September 1, 2024 (for renewals). Applicants will (unless they qualify for a relevant exemption) need to earn a minimum number of points which are based on a range of individual and company criteria.

HIRING OPTIONS

Employee

The EA is the primary statute regulating the relationship of employees and employers in Singapore. Coverage by the EA is dependent on whether the individual in question falls under the definition of "employee" in the EA. The definition covers every employee who is under a contract of service with an employer, with the exception of seafarers, domestic servants and certain government employees (EA Employees). The second category of employees comprises EA Employees who are: (i) not workmen earning basic monthly salaries of up to SGD2,600 per month; and (ii) workmen earning basic monthly salaries of up to SGD4,500 a month, but in each case this does not include any persons who are employed in a managerial or an executive position, regardless of their basic monthly salary (Part IV EA Employees). Part IV EA Employees are granted further benefits under Part IV of the EA including with respect to working hours, rest days and overtime.

Employees can be hired on a full-time, part-time or fixed-term basis.

Independent contractor

Independent contractors may be engaged, but the Singapore Courts and the Ministry of Manpower will look at the substance of the relationship to determine if the individual is, in fact, an employee and merely labeling or classifying an individual as an independent contractor is insufficient.

Agency worker

Agency workers may be engaged if they are Singapore citizens or permanent residents.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

All employers are required to issue key employment terms (KETs) in writing, as well as itemized payslips, to EA Employees who are hired after April 1, 2016 and who will be employed for a continuous period of 14 days or more. The KETs must include:

- Full name of employer (and employer's trade name if different from full name of the employer)
- Full name of employee
- Job title, description of main duties and responsibilities
- Start date of employment
- Duration of employment (if the employee is on fixed-term contract)
- Working arrangements, such as:
    - Daily working hours (eg, 8:30am to 6:00pm)
    - Number of working days per week (eg, 6 hours) and
    - Rest days (eg, Saturday)
- Salary period
- Basic salary – for hourly, daily or piece-rated workers, employers should also indicate the basic rate of pay (eg, SGD-X per hour, day or piece)
- Fixed allowances

- Fixed deductions
- Overtime payment period (if different from salary period) and overtime rate of pay
- Any other salary-related component such as any bonus or other monetary incentive (if applicable)
- Types of leave such as annual leave, outpatient sick leave, hospitalization leave, maternity leave, paternity leave and childcare leave
- Other medical benefits such as insurance, medical benefits and dental benefits
- Probation period (if applicable) and
- Notice period for dismissal by the employer or termination of employment contract by the employee, as the case may be.

KETs should be provided to EA Employees within 14 days from the start of employment and may be in soft or hard copy. Common KETs which are not specific to individual employees, such as leave policy and medical benefits, may be provided within an employee handbook or on the company intranet, so long as the information is easily accessible to workers and are also provided within 14 days from the start of employment. If all required KETs are stated in the written employment contract, the employer need not issue additional documents. While employees are not required to sign off on KETs, it is in the interest of the employer to obtain acknowledgement from the employees that the KETs have been issued.

Other than as set out above, there are no legal requirements for employers to have employment contracts in writing with employees, and there are no formalities that need to be complied with, although written contracts are recommended. The employment contracts of part-time employees (ie, employees who are contracted to work for less than 35 hours a week) must specify their hourly basic rate of pay, hourly gross rate of pay (ie, the hourly basic rate plus allowances), number of working hours per day or per week and number of working days per week or per month (among other things). KETs should also be issued to part-time employees, so long as they are covered under the EA, employed on or after April 1, 2016, and employed under a contract of service for a continuous period of 2 weeks or longer.

A failure to comply with the requirement to provide KETs will be penalized as a civil contravention of the EA, which will attract administrative penalties and could impact the employer's ability to apply for work passes in the future.

Employee records, with the information as prescribed by the Employment (Employment Records, Key Employment Terms and Pay Slips) Regulations 2016 must be maintained for all EA Employees.

Probationary periods

The EA does not have any clauses specifically pertaining to the appropriate probation period for employees. As a common practice, employees may be asked to serve a probation period of 3 to 6 months.

Policies

EA Employees cannot have terms and conditions worse than those prescribed under the EA. Certain terms may be implied into an employment contract by operation of law or by custom and practice.

Third-party approval

Generally, there is no requirement to lodge employment contracts or policies with, or get approval from, any third party before an employment contract is valid, subject to work pass advertising requirements and approvals.

LANGUAGE REQUIREMENTS

No specific requirements to be complied with, though contracts are generally in English.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

Employees' rights under law depend on whether they are EA Employees or Part IV EA Employees.

Generally, the minimum entitlements under the EA apply to EA Employees. However, matters such as hours of work, overtime and rest days are statutorily prescribed for Part IV EA Employees only. Employers are free to provide better contractual terms – above and beyond these minimum obligations – to their employees. However, terms which are worse than the minimum obligations stipulated under the EA for the EA Employees will be invalid and unenforceable.

Working hours

Rules relating to working hours only apply to Part IV EA Employees, regardless of whether the employees are shift or non-shift workers.

For shift workers, the hours of work must not exceed an average of 44 hours per week over any continuous period of 3 weeks, subject to a maximum of 12 hours per day.

For non-shift workers working more than 5 days per week, the hours of work should generally not exceed more than 8 hours per day or 44 hours per week. Where a non-shift worker works 5 days or less per week, the agreed hours of work must not exceed 9 hours per day or 44 hours per week. A non-shift worker may work up to 12 hours a days (and not exceeding an average of 44 hours over any 3 continuous weeks) if they agree to do so in writing, have the relevant provisions of the EA explained and are informed of their daily working hours, number of working days in each week and weekly rest day.

For other working arrangements – for example, if a Part IV EA Employee works less than 44 hours every alternate week – the hours of work are up to 48 hours a week, but capped at 88 hours in any continuous 2-week period.

A Part IV EA Employee is not allowed to work for more than 12 hours in a day, inclusive of overtime work, except in prescribed circumstances.

Overtime

With some exceptions, all work done in excess of the normal hours of work, excluding breaks (ie, 8 hours in 1 day or 44 hours per week), is considered overtime, for which a Part IV EA Employee must be paid at least 1.5 times their basic hourly rate. Unless employers successfully apply for and obtain an exemption for more than 72 hours of overtime work by employees in a month, the maximum permitted overtime is 72 hours per month. Rules relating to overtime only apply to Part IV EA Employees.

In terms of overtime pay, where a Part IV EA Employee is required to work on a rest day, the calculation of the overtime pay varies depending on the exact period of work on that rest day and whether the work is done at the employer's or employee's request. For example, where the work is done at the employer's request and the period of work exceeds the employee's normal working hours, they must be paid:

- The basic rate of pay for 2 days' work; and
- Not less than 1.5 times the hourly basic rate of pay for each hour or part thereof that exceeds their normal working hours.

In the event an EA Employee is required to work on any public holiday, they must be paid an extra day's salary at the basic rate of pay in addition to the gross rate of pay for that day, or alternatively, by mutual agreement, an EA Employee may be granted a public holiday in lieu or, for non-Part IV EA Employees, time off in lieu.

Wages

Singapore law does not generally have a minimum wage stipulation. Wages are a matter to be agreed between the parties. However, the Singaporean government has introduced a mandatory Progressive Wage Model (PWM) to help uplift low-wage workers in certain sectors. The PWM covers Singaporeans and Singapore permanent residents in the cleaning, security and landscape sectors, though the government has said it plans to extend the PWM to other sectors including retail, food services and waste management. Employers in these sectors are also encouraged to use these principles of progressive wage for their foreign employees.

In 2022, the Singapore Government accepted all 18 recommendations by the Tripartite Workgroup on Lower-Wage Workers of 30 August 2021. These include expanding the Progressive Wage approach and coverage to uplift more local lower-wage workers, including: expanding the PWM to the food services and waste management sectors from March 1, 2023 and July 1, 2023 respectively; introducing an occupational progressive wage for administrators and drivers (regardless of sector) from March 1, 2023; and introducing a new requirement where firms employing foreign workers have to pay at least the relevant sectoral or occupational progressive wages to local workers in applicable job roles and at least the Local Qualifying Salary to all other local workers.

The wages of EA Employees may only be deducted for specific reasons as set out under the EA. In particular, deductions may be made with an EA Employee's consent, although consent may be withdrawn at any time.

Vacation

An EA Employee who has worked for their employer for at least 3 months is entitled to 7 days' paid annual leave for the first year of service. An additional day of leave for every subsequent 12 months of service will be provided, up to a maximum of 14 days. If the EA Employee has worked for their employer for at least 3 months but has not completed 12 months of continuous service in any year, the annual leave entitlement for that year is pro-rated

based on the number of full months the EA Employee has worked in that year. This entitlement applies even if the EA Employee is still on probation, so long as they have worked for their employer for more than 3 months. Further, every employee in Singapore is entitled to be paid for each public holiday. There are presently 11 public holidays in Singapore each year, although additional public holidays may be gazetted.

Sick leave & pay

An EA Employee who has worked for their employer for at least 3 months is entitled to paid sick leave if the EA Employee has informed or tried to inform their employer within 48 hours of their absence, and if the sick leave is certified by a medical practitioner or a medical officer as required under the EA. The number of days of sick leave is subject to the employee's service period.

Maternity/parental leave & pay

Under the Child Development Co-Savings Act (Cap. 38A) of Singapore (CDCSA), any female employee in Singapore is entitled to government-paid maternity leave benefits if:

- The child is a Singapore citizen at the time of delivery and
- The employee has worked for the employer for at least 3 months immediately before the day of birth.

If the child is not a Singapore citizen at the time of delivery, a female employee may still qualify for government-paid maternity leave if she meets the eligibility criteria within 12 months of the child's birth and she will (among other things) be eligible for the remaining maternity leave from the date she meets all criteria.

Eligible female employees are entitled to 16 weeks' government-paid maternity leave. The 16 weeks of government-paid maternity leave may be consumed as a single continuous block, and mothers may start taking maternity leave up to 4 weeks before the date of delivery. Further, while the first 8 weeks must be taken as a continuous block, the last 8 weeks (9th to 16th week) of government-paid maternity leave may also be taken flexibly over a period of 12 months from the date of confinement, subject to mutual agreement between the employer and employee.

For the first and second confinements, employers must pay for the first 8 weeks and may be reimbursed by the government for the remaining 8 weeks. The full 16 weeks' entitlement will be government-paid from the third confinement onwards. Government-paid maternity leave paid by the Singapore government is capped at SGD10, 000 per 4 weeks, including employer's central provident fund (CPF) contributions.

Female EA Employees who do not qualify for maternity leave under the CDCSA may be entitled to maternity benefits under the EA instead, provided the eligibility criteria is met. An eligible female EA Employee is entitled to up to a total of 12 weeks' maternity leave. Of the 12 weeks, generally, the female EA employee is only entitled to 8 weeks' paid maternity leave if she has fewer than 2 children of her own and if she has served her employer for at least 3 months before the estimated delivery date. The remaining 4 weeks of maternity leave is unpaid. If the female EA employee has 2 or more living children at the time of birth, she is entitled to 12 weeks of unpaid maternity leave.

For both government-paid maternity leave under the CDCSA and maternity leave under the EA, the female employee must also comply with the requisite notice requirements. Failure to provide such notice without sufficient cause will entitle an employer to pay the employee only half her salary during the leave.

Working fathers (including adoptive fathers and those who are self-employed) are entitled to 2 weeks of government-paid paternity leave for all births. The leave must be used within 16 weeks commencing on the date of the child's birth, provided the employee meets certain criteria. If needed, they may also work out an agreement with their employer to take the leave flexibly within 12 months from the birth of the child for 1 or more than 1 period, all of which in aggregate are equal in duration to twice the employee's weekly index (as prescribed within the CDCSA) or 12 days, whichever is lower. Subject to certain eligibility criteria, a working father, including one who is self-employed, is entitled to share up to 4 weeks of his wife's 16 weeks of government-paid maternity leave, subject to his wife's agreement.

Under the CDCSA, all employees, including fathers, employed for at least 3 months (including non-EA Employees) are generally entitled to up to 6 days of paid childcare leave per year where the child is a Singaporean citizen and below the age of 7. The first 3 days are paid by the employer, and the remaining 3 days of leave are paid by the Singapore government. Payments are capped at SGD500 per day, including CPF contributions. An EA Employee whose child is not a Singaporean citizen is entitled to 2 days of childcare leave under the EA.

The CDCSA also provides for adoption leave, extended childcare leave and unpaid infant care leave, if certain eligibility criteria are met.

Other leave/time off work

Singapore law does not provide employees with additional leave entitlements for the purposes of caring for dependent relatives other than children. However, members of the Singapore civil service enjoy two days of eldercare leave, entitling them to take time off to care for their parents or parents-in-law. Employees may also be entitled to leave for other purposes (eg, sickness, military service).

DISCRIMINATION & HARASSMENT

Singapore does not currently have any legislation which expressly prohibits workplace discrimination. While the Constitution provides that all persons are entitled to the equal protection of the law and that there shall be no discrimination based on religion, race, descent or place of birth, successful challenges on constitutional grounds are rare.

In 2021, the Singapore government announced that it plans to introduce workplace discrimination legislation by enshrining into law some or all of the principles currently contained in the TGFEP. In 2023, a government committee issued an interim report containing a series of recommendations for what the new legislation should cover. However, a draft bill has not yet been published.

The Protection from Harassment Act 2014 (POHA) also protects individuals from acts of harassment both in and outside the workplace (including stalking and cyber-bullying). Certain sections of the Penal Code also provide for criminal offences that would cover behaviour amounting to harassment.

The main type of employment legislation that deals with the issue of discrimination concerns age discrimination. The Retirement and Re-employment Act (RRA) applies to all employees and prohibits the dismissal of any employee who is below the current retirement age of 63 on the grounds of age, notwithstanding any agreement to the contrary. Employees have a statutory right to be offered re-employment between the age of 63 (or the age stipulated in the employment contract, if higher) and 68 provided they have satisfactory work performance and are medically fit to continue working. If the employee meets the criteria, the employer must offer the employee

re-employment unless it is unable to find a suitable vacancy through redeployment to another part of the business – and in which case the employee has a right to receive an employment assistance payment (see further comments under the Severance section below).

In addition, pregnant employees under the EA may not be dismissed solely for being absent from work in accordance with the maternity leave provisions set out in the EA or in the CDCSA, although this is not characterized as discrimination per se.

The Enlistment Act 1970 (Enlistment Act) generally prohibits employers from dismissing employees solely or mainly by reason of being called up for national service.

The Tripartite Guidelines on Fair Employment Practices (TGFEP), issued by the Tripartite Alliance for Fair Employment Practices (TAFEP), are a set of best practice guidelines that encourage fair treatment of employees. If an individual encounters workplace discrimination in breach of the TGFEP, they may contact TAFEP, which may first engage informally with the employer to assess if the complaint is meritorious. The TAFEP may refer cases to the Ministry of Manpower (MOM) where the employer is recalcitrant or unresponsive, and the MOM may impose certain administrative sanctions against errant employers (eg, curtailing work pass applications and privileges).

The TAFEP has also introduced the FCF to specifically target discrimination against locals. Under the FCF, employers submitting Employment Pass and S Pass applications must first advertise on MyCareersFuture and fairly consider all candidates unless the candidate qualifies for a relevant exemption. Further, the MOM proactively identifies employers with indications of discriminatory hiring practices and places them on the FCF Watchlist for further scrutiny. The MOM is additionally concerned about employers with an exceptionally high percentage of foreign PMETs compared to industry peers, or high concentrations of single nationalities, as these are indicators of possible discriminatory hiring practices.

WHISTLEBLOWING

There is currently no stand-alone legislation in Singapore which provides a framework for protection against dismissal for employees who "blow the whistle" on wrongdoing or criminal behaviour; however, there are several statutory provisions that offer some form of protection for whistleblowers under Singapore law. For example, section 208 of the Companies Act 1967 offers protection to company auditors by ensuring that they will not be liable for defamation for any statement made in the course of their duties. Section 36 of the Prevention of Corruption Act 1960 ensures that a complainant's identity will not be disclosed, even during court proceedings, unless the court finds that they have willfully made in the complaint a material statement which they knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer. Sections 39 and 40A of the Corruption, Drug-trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (CDSA) provides statutory protection to whistleblowers if such whistleblower has information or suspicion that any property may be connected with any act which may constitute drug dealing or criminal conduct provided certain criteria are met. Sections 43 and 44 of the CDSA also provides statutory protection to whistleblowers in relation to money-laundering offences provided certain criteria are met.

There are no restrictions against a corporate whistleblowing program, and employers are free to dictate the terms of the same (provided they company with other applicable laws, such as data protection laws).

BENEFITS & PENSIONS

For employees who are Singapore citizens or permanent residents, the employer is required to make mandatory employer contributions to the CPF. Employees are also required to make mandatory employee contributions to the CPF. Contributions are based on the prevailing rates under the relevant legislation.

Benefits offered to an employee will usually depend upon their level of seniority within the organization. EA Employees are entitled to minimum standards of benefits under the applicable part of the EA. Those at the managerial and/or executive level are likely to be offered additional benefits, which are usually contractually provided for. Many organizations provide for leave pay, sick leave pay and notice requirements in excess of statutory entitlement to a wide range of employees.

DATA PRIVACY

Generally, employers are required to at least notify applicants of the purposes for which their personal data is being used in connection with the management and termination of employment and/or obtain their consent where collecting, using or disclosing their personal data.

However, under the PDPA, an employer is permitted to collect, use and disclose the employees' personal data for purposes of managing or terminating an employment relationship without the need to seek employee's consent, so long as the employee has been notified of the purposes of such collection, use and disclosure and/or provides their consent prior to such collection, use and disclosure. Further, employers may collect, use and disclose personal data without obtaining the employees' consent or notifying them where it is necessary for evaluative purposes, including the determination of the suitability or eligibility of an individual to whom the data relates for employment, continuance in employment or promotion.

Note that employers must seek consent for purposes that are not related to, or for the collection of personal data that is not relevant to, the management or termination of an employment relationship or that are not relevant for evaluative purposes, unless any other exception under the PDPA applies.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

Under the EA, EA Employees are automatically transferred if an undertaking or part thereof is transferred from one person to another as a going concern. There are notification and consultation requirements required under the EA relating to the automatic transfer of EA Employees. Non-EA Employees do not transfer automatically and instead must have their employment contractually terminated by the transferor on a business transfer, after which they may then be rehired by the transferee or have their contracts novated.

EMPLOYEE REPRESENTATION

Trade unions are administered by, inter alia, the Industrial Relations Act 1960 (IRA), the Trade Disputes Act 1941 (TDA) and the Trade Unions Act 1940.

The IRA regulates relations between employers and employees and provides the legal framework to prevent and settle trade disputes by collective bargaining, conciliation and industrial arbitration. Individual disputes fit within

the definition of trade disputes under the TDA. The TDA defines illegal industrial action and illegal lock-outs and provides penalties for the same.

Collective agreements are common in Singapore within specific industries, such as transport and manufacturing. Even where a trade union has been statutorily recognized but no formal collective agreement has yet been entered into, disputes may potentially still be referred to the Industrial Arbitration Court and decided in accordance with principles of equity and fairness (rather than strict contractual principles).

TERMINATION

Grounds

There is no legal requirement to state the reason for termination, so long as termination is effected in accordance with the express termination provisions of the employment contract. However, if an EA Employee is dismissed without "just cause or excuse," they may lodge a wrongful dismissal claim with the Tripartite Alliance for Dispute Management (TADM), and thereafter with the Employment Claims Tribunal (ECT) if it cannot be successfully resolved at TADM. EA Employees in a managerial or executive position who have been dismissed with notice (or payment in lieu) must also have worked for their employer for at least 6 months in order to be eligible to bring a claim. The Tripartite Guidelines on Wrongful Dismissal provide examples of dismissals that will be considered to be wrongful, including discrimination, depriving an employee of benefits or entitlements they would otherwise have earned, punishing an employee for exercising their employment rights and providing a false reason for termination, among others.

In addition, an employer has a right to summarily dismiss an employee in exceptional circumstances, including misconduct, provided the employer has first conducted a "due inquiry". It is prudent to set out in the employment contract the circumstances and grounds on which the employee may be summarily dismissed. Suspension is also only possible for EA Employees for the purposes of a due inquiry for a maximum period of 1 week, unless otherwise agreed by the Commissioner, and provided the employee is given at least half pay with the unpaid half being restored if the due inquiry does not find any misconduct on the employee's part.

Employees subject to termination laws

The EA is the main piece of legislation governing termination of employment of EA Employees. For those employees not covered by the EA (which is rare), termination is governed by the employment contract between the employer and the employee.

Restricted or prohibited terminations

There are restrictions against terminating the employment of female employees on maternity leave, and employees who attain the minimum retirement age but remain eligible for re-employment under the conditions stated in the RRA or on the grounds purely of old age. There is also legislation governing the termination of employees in respect of their trade union activities under the IRA, employees in respect of their national service duties under the Enlistment Act 1970 and employees in respect of health and safety reporting or investigations under the Workplace Safety and Health Act.

Third-party approval for termination/termination documents

None required.

Mass layoff rules

There are no laws prohibiting mass layoffs, but these are subject to any restrictions under the individual contracts of employment and collective agreements, if any. The Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment (Advisory) issued by the MOM provides guidance on redundancy situations and, while not legally binding, is commonly followed by employers. In October 2020, the Advisory was updated to encourage employers who are contemplating retrenchments to first take a long-term view of their manpower needs and the need to maintain a "strong Singaporean core." Following this, retrenchments should generally not result in a reduced proportion of local employees.

Any redundancy exercise should be implemented in consultation with a trade union (if the company is unionized, including if a union has been statutorily recognized).

When undertaking a redundancy exercise, employers who employ at least 10 employees must make mandatory notifications in the prescribed form to the MOM. While there is no legal definition of redundancy in Singapore, in this context, retrenchments are taken to mean dismissal on grounds of redundancy or by reason of any reorganization of the employer's profession, business, trade or work. This requirement to make mandatory notification applies to permanent employees, as well as contract workers with full contract terms of at least 6 months. The MOM must also be notified if employers implement cost-saving measures that affect employees' salaries.

Employers are obliged to provide information to the Commissioner of Labor in relation to the retrenchment of an employee, if so requested. There will be penalties for non-compliance.

Notice

Employment contracts typically specify a required notice period for termination. For an EA Employee, the length of such notice must be the same for both employer and employee and is determined by the notice provision specified in the terms of the employment contract. In the absence of a specified term, where the employee is an EA Employee, the required notice of termination is dependent upon the employee's length of employment (from 1 day for those employed for less than 26 weeks to 4 weeks for those employed for 5 years or more). A non-EA Employee is not subject to the statutory minimum notice period, and instead is entitled to reasonable notice (usually not less than the statutory minimum notice period) if their employment contract does not set out an express notice period.

Statutory right to pay in lieu of notice or garden leave

Even if not made express in the employment contract, it is possible for either the employer or the employee to make a payment in lieu of notice for EA Employees — a sum equal to the amount of salary which would have been earned by the employee during the required period of notice. For non-EA Employees, the employer or the non-EA Employee may only terminate the employment contracts by paying salary in lieu of notice if there is an express contractual right to do so, or unless there is mutual consent between the parties.

Employees serving their notice period before termination may be placed on garden leave if expressly set out in their employment contract and, if not, only if they provide their express consent. During this time, they should continue to be treated as an employee and receive their full contractual benefits up to their last day with the employer.

Severance

Unless the employment terms expressly provide that severance, retrenchment or redundancy benefits are payable, there is no obligation on the part of the employer to pay non-Part IV EA Employees such benefits, and any retrenchment benefits are to be agreed between the employer and the employee. This is a matter of contract, company policy, subsequent negotiations and financial position, or what has been agreed collectively. When dealing with unionized employees, employers are obliged to negotiate in good faith with the union and may not have absolute discretion to determine the terms of the retrenchment benefits.

Part IV EA Employees are, however, entitled to request for retrenchment benefits if they have worked for their employer for at least 2 years. The amount is subject to agreement between the employer and the Part IV EA Employee where there are no applicable contract, policy or other employment terms.

Pursuant to the Advisory, the MOM strongly encourages payment of retrenchment benefits to employees with at least 2 years' service ranging from 2 weeks' to 1 month's salary per year of service depending on the financial position of the employer and taking into account industry norm. Employers who conduct retrenchment irresponsibly, such as an employer who is in a sound financial position but chooses not to provide any retrenchment benefit, may be denied future government support or have their work pass privileges suspended.

Employees who are eligible for re-employment under the RRA may also have a right to receive an employment assistance payment of 3.5 months' salary at the gross rate of pay (subject to a minimum of SGD6,250 and a maximum of SGD14,750, which decreases progressively as the termination date falls after the retirement age).

POST-TERMINATION RESTRAINTS

Covenants in restraint of trade, such as non-competes and non-solicits, are *prima facie* void in Singapore. They are only considered enforceable if they can be shown to be reasonable, such as by proving that they are required to protect the legitimate proprietary interests of the employer, and go no further than is reasonably necessary to protect those interests (especially in terms of duration, scope and geographic coverage). The courts have recognized 3 legitimate proprietary interests thus far: an employer's trade secrets and confidential information, the protection of trade connections and the maintenance of a stable trained workforce.

WAIVERS

A waiver must be clear, but may be either oral or written. A waiver need not be express, but may be inferred from a course of conduct.

REMEDIES

Discrimination

None currently. However, this may change if and when the Singapore government introduces workplace discrimination legislation, currently expected by the end of 2022 (see Discrimination above).

Unfair dismissal

If an EA Employee is dismissed without "just cause or excuse," they may lodge a wrongful dismissal claim with TADM, and thereafter with the

ECT if it cannot be successfully resolved at TADM. EA Employees in a managerial or executive position who have been dismissed with notice (or payment in lieu) must also have worked for their employer for at least 6 months in order to be eligible to bring a claim.

Employers and employees with salary and dismissal-related claims should first register their claims at TADM, which provides advisory and mediation services before claims may be heard at the ECT. Claims that cannot be resolved through mediation are issued with a claim referral certificate and referred to the ECT. The types of claims that may be heard by the ECT include:

- Statutory salary-related claims from all employees covered by the EA, RRA and CDCSA. This includes claims for unpaid salary, overtime pay, salary in lieu of notice, employment assistance payment and maternity benefits;
- Contractual salary-related claims by all EA Employees – for example, payment of allowances, bonuses, commissions, salary in lieu of notice and retrenchment benefits, provided that these are expressed in monetary terms in the contract; and
- Wrongful dismissal claims from all employees covered by the EA and CDCSA, including constructive dismissal claims.

The ECT may also hear claims for salary in lieu of notice for all employers. These claims must be filed within the specified time period.

The claims limit is SGD30,000 per case for cases which go through mediation (whether through the Tripartite Mediation Framework) or mediation assisted by unions recognized by the IRA with union involvement, compared to SGD20,000 for all other claims.

Failure to inform & consult

There is generally no obligation on an employer to inform and/or consult the employee on matters related to their employment. This usually only arises in a business transfer situation or whether the employee is subject to a collective bargaining agreement as mentioned above.

In a business transfer situation, if the transferor fails to discharge their obligations under the EA to inform and consult EA Employees prior to the transfer, the employee may refer the matter to the Commissioner of Labor for adjudication, and the Commissioner is empowered to:

- Delay or prohibit the transfer of the employee concerned; and
- Order the transfer of the employee on such terms as the Commissioner considers just.

CRIMINAL SANCTIONS

Criminal sanctions include fines or imprisonment for offenses under the EA or other applicable statutes. Offenses under the EA include, but are not limited to, wrongful detention of an employee by the employer after a contract of services have been determined, obstructing an employee appearing before an inquiry held by the Commissioner, fraudulently inducing an employee to emigrate out of Singapore to work and failure to pay salary as stipulated.

Any director, manager, secretary or other officer of the company may also be charged with the same offense and punished upon conviction if it can be shown that the offense is committed with the consent or connivance of any act or default of such persons.

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