



ASIA PACIFIC  
**Redundancies and  
Terminations Overview**





## **Asia Pacific** Redundancies and Terminations Overview

Economic uncertainty and slowing growth in parts of Asia mean redundancies and terminations remain a hot topic. We have summarised key provisions on statutory entitlements, classes of protected employees and collective dismissals across Asia Pacific. Terminations come with inherent risks of employees bringing claims against the employer, and can be expensive. With the position drastically different across the region, multinational employers must pay close attention to the local requirements in each jurisdiction.

# Statutory Entitlements

## Jurisdiction

Are there any statutory entitlements that apply in relation to redundancies and/or termination, such as notice period or severance payments?



Australia

The National Employment Standards apply to all Australian employees and provide for:

- a minimum notice of termination or payment in lieu of 1-5 weeks; and
- a minimum statutory redundancy/severance pay of 4-16 weeks.



China

- Employees may only be unilaterally terminated on narrow statutory grounds.
- One of the statutory grounds, a "major change in objective circumstances," requires 30 days' notice (or pay in lieu) and statutory severance.
- "Collective dismissal" grounds require employee/union consultation 30 days in advance and dismissals must be recorded with local labor bureau. Statutory severance must also be paid.
- Poor performance termination requires 30 days' notice (or pay in lieu) and statutory severance.



Hong Kong

- Statutory severance payment if employee is continuously employed for 24 months and made redundant.
- Long service payment if employee is continuously employed for five years.
- Minimum notice periods or payment in lieu of notice requirements are set out in the Employment Ordinance.



Indonesia

- No statutory entitlement for "redundancy" as there is no right to terminate an employee due to "redundancy" under the Labor Law, i.e., termination due to "redundancy" must be agreed with the employee. Employees will not normally agree to a "redundancy" unless they are paid the highest statutory termination payment where termination is initiated by the employer due to no fault of the employee.
- Statutory termination payments for terminations that are regulated under the Labor Law depend on the type of employment (e.g., permanent or fixed term) and the reason for the termination.



Japan

- No statutory severance payments.
- 30 days' prior notice or payment in lieu is required for a unilateral termination.
- It is safer and recommended to try to get the employee to agree to resign by offering an *ex-gratia* severance payment.

# Statutory Entitlements

## Jurisdiction

Are there any statutory entitlements that apply in relation to redundancies and/or termination, such as notice period or severance payments?



Malaysia

- Statutory severance payments are only applicable to employees covered by the Malaysian Employment Act ("EA Employees").
- EA Employees are entitled to minimum prescribed notice periods (or payment in lieu thereof), the length of which depends on the EA Employees' years of service.



Philippines

- Statutory severance payments and a notice period will apply to terminations due to redundancy or other business reasons. Payment in lieu is not allowed, but garden leave is.
- No statutory severance payments for termination due to serious misconduct or other causes attributable to employees, but employers are required to give employees an opportunity to explain their actions.



Singapore

- No statutory severance payments.
- Minimum notice periods (or salary in lieu of notice) are only applicable for employees covered by the Employment Act.



Taiwan

- Statutory severance payments and notice (or payment in lieu) are required for employees protected by Labor Standards Law, unless termination is for reasons such as violation of work rules or breach of employment contract in a serious manner.



Thailand

- Severance pay
- Notice of at least one pay period, on or before any payday, so that the termination of the employment contract will take effect on the next payday, or a longer period if specified under the employment agreement, or payment in lieu.
- Special severance pay if a redundancy results from introduction or change of machineries or technology.
- Cost of return journey (only if the employer brought the employee from elsewhere to work at the employer's own expense).

# Statutory Entitlements

## Jurisdiction

Are there any statutory entitlements that apply in relation to redundancies and/or termination, such as notice period or severance payments?



Vietnam

Unilateral termination:

- Notice period: 3 working days, 30 days or 45 days in advance, depending on the type of labor contract.
- Severance allowance: equivalent to half a month's salary for each year of service where the parties did not participate in unemployment insurance.

Redundancy:

- Notice period: no statutory requirement, but notice periods applicable to unilateral termination are recommended.
- Job-loss allowance: equivalent to one month's salary for each year of service, but at least two months' salary, where the parties did not participate in unemployment insurance.

Dismissal:

- Notice period: no statutory requirement.
- No severance nor job-loss allowance.

# Protected classes of employees

## Jurisdiction

**Are there classes of employees that are protected from termination? What are the rules that apply to these employees?**



Australia

All Australian employees who have completed six months service and are either:

- covered by the terms and conditions of a modern industrial award or enterprise agreement; and/or
- are paid a base salary under AUD 138,900 per annum (indexed annually) have protection from unfair dismissal.

An employee will be unfairly dismissed if the termination is 'harsh, unjust or unreasonable', with substantive and procedural fairness both being relevant.

All Australian employees enjoy protection from dismissal on the grounds of:

- temporary absence from work because of illness or injury;
- trade union membership or non-membership;
- race, colour, sex, sexual preference, transgender status, age, physical or mental disability;
- marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- absence from work during maternity or parental leave; or
- exercising a "workplace right" that includes making a complaint or participation in proceedings against an employer involving an alleged violation of laws or regulations, or recourse to competent administrative authorities.

Depending on the applicable state or territory law, employers are also prohibited by workers compensation law from dismissing a worker who is incapacitated due to a compensable injury/illness for a specified period.

# Protected classes of employees

## Jurisdiction

**Are there classes of employees that are protected from termination? What are the rules that apply to these employees?**



China

An employer cannot unilaterally terminate an employee who:

- suffers from an occupational disease or injury, and is confirmed to have lost or partially lost the ability to work;
- is in a statutory medical treatment period for a non work-related illness or injury;
- is pregnant, or within one year after childbirth;
- is engaged in operations exposing him/her to occupational disease hazards and has not undergone a pre-departure occupational health check-up, or is suspected of having contracted an occupational disease and is being diagnosed or under medical observation;
- has worked for the employer continuously for at least 15 years and is less than five years away from his or her legal retirement age;
- is still in his or her term as a union chairman, vice-chairman, or union committee member; or
- is still in his or her term as a collective bargaining representative during collective bargaining negotiations.



Hong Kong

- Pregnant employees cannot be dismissed from the date the notice of pregnancy is served to end of maternity leave. Prohibition does not apply if the employee is dismissed summarily or is dismissed during the first 12 weeks of her probationary period.
- Employees on sick leave cannot be dismissed.
- Employees who are injured at work and have a claim for compensation under the Employees' Compensation Ordinance pending cannot be dismissed, unless the Commission for Labour consents.
- An employee cannot be dismissed on unlawful discriminatory grounds of sex, marital or family status, race or disability.

# Protected classes of employees

## Jurisdiction

Are there classes of employees that are protected from termination? What are the rules that apply to these employees?



Indonesia

Employers cannot dismiss employees for the following reasons:

- illness for a period less than 12 months;
- performing duties to the state;
- performing religious rituals;
- marriage;
- pregnancy, giving birth, miscarriage and breastfeeding;
- blood/marital relationship with other employees, except if already stipulated in employment agreement, company regulations or collective labor agreement;
- forming a union, becoming a union member/management team, performing union activities;
- reporting an employer to the authorities for crime;
- difference in ideology, religion, political alliance, race, skin color, group, gender, physical condition or marital status; or
- permanent disability, illness due to occupational accident, or employment relationship.

# Protected classes of employees

## Jurisdiction

Are there classes of employees that are protected from termination? What are the rules that apply to these employees?



Japan

An employee cannot be terminated:

- during or within 30 days after leave due to work related illness/ injury;
- on the grounds of marriage, pregnancy, childbirth, or of having taken maternity leave;
- on the grounds that an employee is a member of a labor union, has attempted to join or organise a labor union, or has engaged in a legitimate union activity; or
- based on discriminatory grounds of gender, nationality, creed or social status.



Malaysia

- Employers are not allowed to terminate an employee during her maternity leave unless it is pursuant to a closure of business.
- Employees are protected against discrimination on grounds of disability and trade union membership.



Philippines

- Employers are not allowed to dismiss employees who are on leave or in confinement due to pregnancy.
- Employers are not allowed to discriminate against employees based on age or gender.



Singapore

- Employers are not allowed to dismiss employees on maternity leave.
- Pregnant employees, if terminated without sufficient cause or made redundant, remain entitled to applicable maternity benefits.
- Employees who are Singapore citizens/permanent residents ("Local Employees") and are approaching the age of 62 should be offered a re-employment if they fulfil the relevant conditions. If unable to offer re-employment, employer is required to offer Local Employees an Employee Assistance Package.
- Employers are not allowed to dismiss Local Employees on grounds of age.

# Protected classes of employees

## Jurisdiction

Are there classes of employees that are protected from termination? What are the rules that apply to these employees?



Taiwan

- Employers are not allowed to dismiss employees on maternity leave or sick leave due to occupational hazards or injuries.
- Employees are protected from discrimination based on race, class, language, thought, religion, political party, place of origin, place of birth, gender, sexual orientation, age, marital status, appearance, facial features, disability, or past membership in any labor union.



Thailand

- An employer is restricted from terminating a female employee on the basis of her pregnancy.
- An employee who is a member of an employee committee cannot be dismissed unless the employer gets court approval.
- An employer cannot dismiss an employee who exercises their rights under the Labour Relations Law. This means that:
  - employees who are involved in submitting a labour demand to an employer (and the demand is still being negotiated or a collective bargaining agreement is still in force) cannot be dismissed, unless the employee commits a wrongdoing; and
  - employees cannot be dismissed due to their labour union membership.
- Employment legislation protects employees from discrimination based on gender, and other discrimination protections are included in the Thailand constitution, including protection against discrimination based on place of birth, nationality, language, gender, age, physical or health condition, economic or social status, religious belief, education or training, or political ideology.

# Protected classes of employees

## Jurisdiction

Are there classes of employees that are protected from termination? What are the rules that apply to these employees?



Vietnam

An employer is prohibited from dismissing or unilaterally terminating a labour contract with:

- employees who are sick or suffering from an injury caused by a work-related accident or occupational disease and are receiving medical care;
- employees who are on annual leave, personal leave and other leaves as agreed by the company;
- female employees who are pregnant or on maternity leave, or are raising a child under 12 months old; and
- part-time trade union officers; while under the strict wording of the law, only part-time trade union officers are protected from redundancy terminations, the authorities may interpret the law broadly to extend this protection to the other groups listed above as well.

General protection against discrimination based on gender, race, social class, marital status, beliefs, religion, HIV infection, disability, or trade union activity exists.

# Collective dismissal

## Jurisdiction

**What are the regulatory requirements or approvals required to effect redundancies or termination, particularly in relation to collective dismissal?**



Australia

- Australian employees covered by modern awards/enterprise agreements will have a right to be consulted prior to the implementation of any redundancies. This may result in consultation with an employee representative such as a union.
- Where an Australian employee has access to unfair dismissal remedies, it is highly recommended that the employer consider redeployment of the individual where possible.
- Where 15 or more redundancies are to occur, the employer must notify Centrelink of the redundancies.



China

An employer undertaking collective dismissals must:

- explain the reasons for the dismissals to its labor union or to all employees 30 days in advance of the dismissals;
- consider the opinions of the labor union or the employees; and
- report its plan for workforce reduction to the local labor bureau.

There may be local variations to the procedural requirements set out above.



Hong Kong

There is no legislation governing redundancy procedure but best practice is to follow a selection process and consult with employees.



Indonesia

- Subject to certain very limited exceptions (e.g., an employee resigns, passes away, reaches retirement age, is in probation period, etc.), a prior court order is required to terminate an employee in Indonesia. A formal process including a number of steps must be carried out to obtain the court order.
- If an employee agrees to a "mutual termination," a joint agreement must be entered into between the employer and the employee, and registered by the employer at the relevant Industrial Relations Court.
- A collective labor agreement may include a requirement for the employer to notify the union of the terminations.

# Collective dismissal

## Jurisdiction

## What are the regulatory requirements or approvals required to effect redundancies or termination, particularly in relation to collective dismissal?



Japan

- If a company intends to terminate 30 or more employees in a one-month period, the company must submit a notification of large-scale employment adjustment to a local Public Employment Security Office at least one month before the termination.
- If the workforce reduction is due to the company's business being reduced for economic reasons, the company must submit a re-employment support plan, in place of the notification for large-scale employment adjustment. The re-employment support plan must be accompanied by an opinion from an employee representative and it needs to be approved by the local Public Employment Security Office.



Malaysia

- There is no requirement to obtain the approval of any regulatory body.
- When making employees redundant, the employer must notify the nearest State Labour Department officer at least 30 days in advance of the employees' final employment date by completing and submitting the relevant PK Form. This is merely a notification requirement primarily to compile workforce-related statistics.



Philippines

- The requirements for collective and individual redundancy dismissal are the same.
- There are statutory severance payments and notice period requirements for redundancy dismissal.
- There are no statutory severance payments for dismissal due to serious misconduct, but there is requirement to give the employees an opportunity to explain their actions.



Singapore

- Employers must notify the Ministry of Manpower of redundancies within five working days after they notify the affected employees.
- Employers are encouraged under the Tripartite Guidelines on Managing Excess Manpower and Responsible Retrenchment to consult with the relevant trade union prior to carrying out the dismissal if the company is unionised.

# Collective dismissal

## Jurisdiction

### What are the regulatory requirements or approvals required to effect redundancies or termination, particularly in relation to collective dismissal?



Taiwan

- Employers must notify the relevant labor authorities and employee representatives at least 60 days prior to a "mass severance" as defined under the Mass Severance Law.
- A "mass severance" will occur if:
  - a business of fewer than 30 employees intends to lay off over 10 employees within 60 days;
  - a business of more than 30 employees but fewer than 200 employees intends to lay off one-third of the total number of employees within 60 days, or more than 20 employees within one day;
  - a business of more than 200 employees but fewer than 500 employees intends to lay off more than one-fourth of the total number of its employees within 60 days, or more than 50 employees within one day.
- When a "mass severance" occurs, the business entity implementing the mass severance must follow specific procedures, including proposing to the local labor authority and the affected staff a Mass Severance Plan ("MSP") 60 days prior to the termination date of the employment.
- Within 10 days of the date of submission of the MSP, the company and its employees must enter into negotiations on the content of the MSP. If the employees or the company refuse to do so, or if agreement is not reached within 10 days, the local labor bureau will invite the employees and the company to form a negotiation committee to negotiate the terms of the MSP and propose alternatives.
- The negotiations with the employees' representatives must take place bi-weekly, and there is no payment in lieu of notice for the 60-day negotiation period.
- If negotiations fail, then the mass severance will take place at the end of the 60-day period.

# Collective dismissal

## Jurisdiction

**What are the regulatory requirements or approvals required to effect redundancies or termination, particularly in relation to collective dismissal?**



Thailand

- No regulatory approval is required.
- However, in the case of redundancy due to the improvement of the organizational structure, manufacturing process, sales or service, as a result of the use of new machinery or a change of machinery or technology, the employer is required to give advance notice with details on the effective date of termination, the reason for termination, and a list of affected employees to a labor inspector and the terminated employees no less than 60 days before the effective date of termination.



Vietnam

For redundancies due to organizational restructuring or technological changes, or due to economic reason, employers must:

- consult with the trade union and form a labor use plan; and
- notify the labor authority 30 days prior to termination.

For redundancies due to a merger or acquisition or a transfer of use rights or ownership of assets:

- employers must consult with the union and form a labor use plan; and
- there is no requirement to notify the labor authority (but recommended to minimise any legal risks).



## **Asia Pacific** Specialised Employment Dispute Resolution Forums

Post-termination restrictions and terminations can often end in disputes between the employer and employee. Employers need to be aware of the dispute resolution options available to them across Asia Pacific, as different forums can have an impact on the cost and timing of resolving any dispute. Below we have summarised the different forums for resolving employment law disputes across Asia Pacific.

## Jurisdiction

### Outside of the courts, are there any dispute resolution forums or tribunals designed to manage disputes related to termination and redundancies?



Australia

- The Fair Work Commission is a specialist tribunal that regulates the national framework for industrial relations and employment. The Fair Work Commission deals with unfair dismissal, collective labour issues and creation/amendment of awards.
- In each state and territory, there are specialist tribunals that deal with unlawful discrimination complaints.



China

- Local employment dispute arbitration commissions are mandatory dispute resolution forums.
- If either party is dissatisfied with an arbitration decision, generally, they may bring claim in court.



Hong Kong

- The Labour Relations Division of the Labour Department provides conciliation services.
- If conciliation fails, disputes will be heard by the Labour Tribunal.



Indonesia

- Prior to applying to the Industrial Relations Court to obtain a court order approving a termination of employment, the employer and the employee must conduct bipartite negotiation, and then mediation or conciliation.



Japan

- The Labor Tribunal is the most common dispute resolution forum. It is a quicker and more flexible process specifically designed for labor disputes.
- The Labor Bureau also offers conciliation. It is not mandatory to attend such conciliation even if the employee initiates this process.

## Jurisdiction

### Outside of the courts, are there any dispute resolution forums or tribunals designed to manage disputes related to termination and redundancies?



Malaysia

- There are no formal dispute resolution forums/tribunals specific to managing redundancies/termination-related matters.
- However, when an unfair dismissal claim is filed by an employee, whether pursuant to a redundancy or otherwise, a conciliation meeting will be held at the Industrial Relations Department between the parties together with an officer present, to try and reach a settlement in relation to the matter.
- If the matter remains unsettled, it will go to the Malaysian Industrial Court.



Philippines

- Employees can seek assistance against their employers using the "Single Entry Approach," which provides for a inexpensive and accessible settlement procedure for all issues/complaints arising from employer/employee relations.
- Under the "Single Entry Approach," all labor and employment disputes shall undergo a 30-day mandatory conciliation-mediation process to reach a settlement.
- If the Single Entry Approach fails, the employee may file a formal complaint with the regional arbitration branch of the National Labor Relations Commission.



Singapore

- The Employment Claims Tribunal was established in April 2017 to hear contractual salary-related claims.
- The Tripartite Alliance for Dispute Management provides mediation for issues such as statutory entitlements, re-employment issues, salary arrears and payment of redundancy benefits.



Taiwan

- Parties can negotiate among themselves, initiate a civil lawsuit or apply for conciliation at the labor administration agencies of the county or city where the employee works.



Thailand

- The Labour Court is obliged to reconcile both parties in the first instance.
- Labour Court decisions can be appealed up to the Supreme Court.
- Possible to refer certain issues not relating to a legal requirement to an arbitration, but enforceability of the award is still not certain.



Vietnam

- Parties must first use a reconciler, which is an optional forum for unilateral termination and dismissal disputes.

The labor reconciler:

- is appointed by the district, town, or provincial-city-level labor body; and
  - must reach a resolution within five working days of receiving a request for dispute resolution
- If the parties cannot reach a resolution, they may bring their case to the labor court.

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