

Singapore

Introduction

The Employment Act and the Retirement Age Act are the two key statutes in Singapore relating to the termination of employment contracts and discrimination against employees. In the absence of a relevant statute, common law applies (because English cases are highly persuasive in Singapore, it is largely English common law principles that are applied by local courts). Other statutes dealing with various aspects of employment are the Industrial Relations Act (which has provisions for a collective agreement process involving trade unions), the Central Provident Fund Act, the Factories Act, Workplace Safety and Health Act, Work Injury Compensation Act, Trade Union Act and Employment of Foreign Manpower Act.

Terminations

Restrictions On Employers

Singapore's Employment Act applies generally to persons who have entered into or who work under a contract of service. It does not apply to persons employed in managerial, executive or confidential positions. In cases where the Act does not apply, the terms and conditions of employment are left to be agreed upon by the employer and the employee and are usually written into a contract of service signed by both parties.

The Employment Act contains general provisions on terms of employment, including payment of salary, terminations, periods of notice for termination and liability for breach of contract. It also includes provisions on maximum hours of work, sick leave, retirement and retrenchment benefits, which apply only to employees earning less than S\$1,600 per month.

An employer and employee are free to negotiate the terms of employment. However, the Act provides that any terms in a contract of service to which the Act applies that are less favorable to an employee than any of the conditions or service prescribed by the Act are illegal, null and void.

Notice Provisions/Consequences Of A Failure To Provide The Required Notice

Managerial Employees

Notice periods and other procedures required to dismiss a managerial employee are typically outlined in the employment contract and are enforceable under the general principle of freedom of contract. A provision in an employment contract expressly providing for payment of a sum in lieu of notice is also generally enforceable. In the absence of such provisions in an employee's contract, the employee is entitled to "reasonable" notice, depending on factors, such as age, seniority, length of service, functions and position of the employee in the company, and the salary period. For example, a fairly junior management employee who receives a monthly salary may be entitled to notice of only one month. On the other hand, a senior executive who is 50 years old or more, and who has been with the company for 20 years, may be entitled to at least six months notice. The provision of one to three months notice of termination of employment or payment in lieu thereof (where no contractual notice period is specified) is a "rule of thumb" in Singapore, but is not absolute. It is not uncommon for the termination benefits payable to an executive or management employee (whose employment has not been terminated for cause) to be set at up to six months salary, which may or may not include a payment equivalent to a specific amount per year of service.

If a managerial employee is not given notice of termination in accordance with the provisions of his or her contract or, in the absence of an express contractual provision concerning notice, is not given "reasonable" notice of termination, he or she is entitled to damages. In practice, instead of giving full notice of termination and requiring an employee to serve out a period of notice, an employer will frequently terminate the employee's contract with immediate effect and pay the employee an amount equal to the salary that would have been due during the period of such notice (whether contractual notice or "reasonable" notice). The employee also may receive other benefits where the relevant employment contract is silent as to whether it may be terminated upon the payment of salary only. When an employer follows this course of action, the termination is technically a breach of contract. However, the breach is substantially satisfied by the payment of liquidated damages equivalent to such salary and benefits (as applicable).

If a contract of employment is for a fixed period, it generally may not be terminated prior to the end of such period unless there are provisions to the contrary in the contract. The termination of a fixed-term contract by the company before the expiry of the term would also constitute a breach of that contract, and the employee would be entitled to compensation by way of damages. The damages due would normally be equal to the salary (and value of benefits) that the employee would have earned during the unexpired portion of the fixed term, less any salary earned from other employment during the unexpired portion. The employee has an obligation to mitigate his or her loss by trying to find alternative employment.

Non-Managerial Employees

The Employment Act applies to all those employees who are not in “managerial, executive, or confidential” positions. The contracts of non-managerial employees can be oral or in writing, although written contracts are preferred to avoid uncertainty in the terms of the agreement. If the contract is for a specified piece of work or for a specified period of time, it automatically terminates upon expiration or when the specified work is completed.

In fixed-term and indefinite-term contracts, if the contract provides for a specified period of notice of termination, then the company should comply with those requirements when it terminates an employment agreement. However, in the absence of a provision in a contract of employment for an indefinite term dealing with notice for termination, then the company must give notice in accordance with Section 10(3) of the Act, which requires certain minimum notice periods, ranging from one day to one month, depending on the length of employment.

In lieu of providing the employee with the notice, the company may pay the amount of salary that would have accrued to the employee during the period of notice.

Termination Indemnities

Retrenchment/Redundancy Payments

Currently, no law exists specifically compelling employers to provide, or even merely governing, redundancy payments in Singapore. However, Section 45 of the Employment Act provides that an employee with less than three years of continuous service is not entitled to any retrenchment benefit, if retrenchment has arisen on grounds of redundancy or reorganization of the employer’s profession, business, trade or work.

For employees employed in continuous service with an employer for more than three years, the statutory provision had previously been used to support the view that a claim for retrenchment benefits for termination on the ground of redundancy is available. However, this view has been rejected by the courts.

Because the Employment Act does not apply to persons employed in managerial, executive or confidential positions, entitlement to redundancy payments for these types of employees is generally a matter of contract law. In practice, even where there is no legal obligation to make redundancy payments, employers in Singapore generally are willing to pay retrenchment benefits to their employees. This helps to pre-empt any complaints made by disgruntled employees to the Ministry of Manpower. In the absence of contractual commitments, the precise quantum of retrenchment benefits remains entirely a matter of negotiation. However, it is common practice to pay retrenchment benefits of about one month for each year of service.

Laws On Separation Agreements, Waivers, And Releases

It is not illegal for employers to seek a release of liability from workers at the time of their dismissal in return for receiving something of value from the employer that the latter has no legal obligation to give to the worker. Consideration, in most circumstances, involves the payment of money. However, consideration is not limited to money; for example, it can include waiving a loan for the employee.

The enforceability of separation agreements, waivers and releases is a function of the common law generally, and there are no prescribed formats or statements to be included before such documents will be upheld.

Employment Discrimination

Laws On Employment Discrimination

The only type of employment discrimination currently legislated in Singapore is in regard to age. Notwithstanding any contrary agreement, the Retirement Age Act prohibits dismissal of any employee who is below the retirement age of 62 (or other retirement age prescribed by the Minister for Manpower) on the grounds of age. An employer who dismisses an employee on the grounds of age will be guilty of an offence and is liable upon conviction for a fine of up to S\$5,000 and/or imprisonment

of up to six months. If the employee feels that he or she has been unlawfully dismissed on the grounds of age, he or she may make representations to the Minister for Manpower to seek reinstatement.

Unlike the Employment Act, the provisions of the Retirement Age Act apply to all employees including executives, managers and professionals.

Singapore does not have any equal opportunities legislation and, therefore, there are no explicit laws preventing sexual and racial discrimination. Article 12 of the Constitution does however provide 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. Challenges on constitutional grounds are however rare in Singapore. The government has stated that it believes legislation in the area of equal opportunities will not be effective. Instead, it has chosen to address the issue using moral persuasion. For example, guidelines on job advertisements were recently issued by the Singapore National Employers Federation, the National Trades Union Congress and the Ministry of Manpower. The guidelines stipulate that race, religion, marital status, age and gender should not be used as job criteria in advertisements. Although these guidelines do not have the force of law, they are likely to have some influence on general employment practices.

The Employment Act does, however, provide statutory entitlement to maternity leave and protection from dismissal for employees while on maternity leave. If an employer dismisses a pregnant female employee or fails to pay her what she is entitled to under the Employment Act, the employer is guilty of an offence and will be liable upon conviction to a fine of up to S\$1,000 and/or imprisonment of up to six months. The Employment Act also makes null and void any contractual provisions that purport to remove or reduce the employee's statutory right to paid maternity leave and the employer's statutory duty to pay for such leave. Because managers, executives and persons in a confidential position are not covered by the Employment Act, they do not enjoy this protection.

Sexual Harassment

Laws On Sexual Harassment

There is currently no local legislation dealing directly with sexual harassment and, therefore, sexual harassment is not illegal in itself. However, certain types of sexual harassment may give rise to claims under other areas of law, such as defamation or assault and battery at common law. In addition, the Singapore Penal Code has provisions that may apply. For example, if anyone utters any word “intending, to insult the modesty of any woman,” he or she may be liable under this Code.