

Client Alert

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The Tripartite Guidelines on Managing Excess Manpower and Responsible Retrenchment has been revised - How this will affect employers

On 25 May 2016, the Ministry of Manpower ("**MOM**"), the Singapore National Employers Federation ("**SNEF**") and the National Trades Union Congress ("**NTUC**") released the revised Tripartite Guidelines on Managing Excess Manpower and Responsible Retrenchment ("**Guidelines**"), the focus of the changes were to state that retrenchment should only be considered as a last resort measure, and if retrenchment has to take place it should be done so in a responsible and sensitive manner as advised in the Guidelines. It also urged employers to consider other avenues to manage excess manpower. Details of the changes are set out below.

Carrying out retrenchment responsibly

The Guidelines advise that before retrenchment takes place, the relevant trade unions should be consulted as early as possible. The time period is normally stated in the collective agreement. Employers are also encouraged to notify the Ministry of Manpower (Labour Relations & Workplaces Division) and/or the Tripartite Alliance for Fair and Progressive Employment Practices of their impending retrenchment exercise as soon as possible. All notifications will be kept confidential.

Employers should announce the retrenchment to the affected employees before information regarding it is released into the public domain. When doing so, employers should explain the reason why a retrenchment exercise is necessary, how it will be carried out and the assistance that will be provided to the affected employees.

Employers are to be mindful of the termination notice period and if possible give the affected employees a longer notice period to look for alternative employment arrangements.

Employers are encouraged to provide employees who have worked for them for more than 2 years with retrenchment benefits. However, unless set out in the collective agreement or in an agreement between the employer and employee, this is not a mandatory obligation. Nevertheless, an ex-gratia retrenchment benefit can be made to employees, and the prevailing norm is to pay a retrenchment benefit varying between 2 weeks to 1 month salary per year of service, depending on the financial position of the employer and taking into consideration the industry norm.

The Guidelines strongly encourage employers to help affected employees look for alternative jobs in associate companies, in other companies or through outplacement assistance programmes. It urges employers to go beyond advisory assistance, and make practicable efforts to place affected employees in their next jobs, possibly with the help of intermediaries such as

employment/placement agencies. Supporting documentation (such as referral letters, service records and past training certificates) should also be provided where relevant to facilitate the job search of affected employees.

Employers can work with unions, SNEF and agencies such as Workforce Development Agency, NTUC's U PME Centre and the Employment and Employability Institute (e2i) to provide employment facilitation services to assist the affected employees. Early notification to MOM can allow the agencies to better assist employers.

Any retrenchment exercise must be carried out in a non-discriminatory manner. In the event MOM receives complaints of discriminatory employment practices which are substantiated, employers will have their work pass privileges curtailed.

Possible Cost-Saving Measures to Manage Excess Manpower

The Guidelines set out the following possible measures:

1. redeploy workers to alternative areas of work within the employer;
2. shorter work week, temporary layoff or other work arrangements;
3. part-time work, sharing of jobs and flexible work schedule;
4. flexible wage system ie reduce the variable components of wages;
and
5. placing employees on no pay leave.

Conclusion

The Guidelines were issued in 2008 during the global financial crisis and the timing of this revision is timely given that many employers are now undergoing restructuring due to this downturn making it an appropriate time for the Guidelines to be revised to reflect the realities of the current economic climate. Employers are advised to follow the Guidelines when carrying out any retrenchment exercises to ensure a smooth process and also avoid unnecessary scrutiny from the authorities in Singapore.