
A Guide to Employment Law Considerations in Singapore

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INTRODUCTION

Hiring employees is an important part of growing and developing a business. But before any hiring takes place, an employer should be aware of the myriad legal issues that arise in the hiring process. For example, there are distinct procedures that must be followed when hiring a foreigner as opposed to a Singapore citizen or permanent resident.

Moreover, employees have varying rights, depending on whether they are highly skilled professionals or unskilled laborers, whether they are local or foreign, and whether they are managers or executives. Importantly, an employer's failure to observe the rights and obligations could result in significant penalties, including criminal penalties involving fines and imprisonment. Therefore, it is paramount for an employer to be know her obligations and duties.

The following is meant to provide a general overview of a few key topics that typically come up in the employment context.

Employee or Independent Consultant?

Many startups and early-stage companies initially tend to grow their business by bringing independent contractors onboard rather than hiring employees. Employers prefer engaging independent contractors for a variety of reasons.

Employers should take note, however, that simply terming the relationship an employer–contractor relationship does not make it so. Nor is there a single, bright-line test to conclude whether the working relationship is employer–contractor or employer–employee. Rather, a variety of factors are considered in identifying the type of relationship established, including control of the manner in which work is to be done, whether responsibility for result only, which party supplies the tools and whether payment is by time or by the job.

Thus, it is critical to evaluate all the factors to correctly identify the nature of the working relationship. An employer who incorrectly identifies an employer–contractor relationship could find himself subject to investigation and legal action for failing to observe duties under the Employment Act.

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Independent Consultant/Contractor

In general, an employer–contractor relationship will be found where the person engaged:

- Has her own office;
- Performs similar work for other clients;
- Uses her own resources and equipment to do the work specified;
- Performs the work on her own schedule and sets her own hours

Employee

In general, an employer–employee relationship will be found where the person engaged:

- Works only for one employer;
- Works at the employer’s offices or workplace;
- Uses the employer’s resources and equipment to complete work;
- Works the hours set by the employer;
- Contract includes terms typical in an employment contract including salary, working hours, leave benefits, medical benefits, etc.

The Employment Act

The Employment Act (the “Act”) is Singapore’s labor law, and the administrative body responsible for overseeing employment issues is

the Ministry of Manpower (“MOM”). The Act sets forth the basic terms and conditions for employees covered by the Act.

Who is Covered?

The Act covers local and foreign¹ employees, whether such employees are employed on a full-time, part-time, temporary, or contract basis. The Act, however, **does not cover**² employees who are managers or executives with a monthly basic salary of more than SGD 4,500. A manager or executive is typically someone whose duties include any of the following:

- Managing the business;
- Developing business strategies and policies; or
- Having influence over or making personnel decisions such as hiring, discipline, termination of employment, and performance evaluation.

The manager/executive category also includes highly skilled professionals with advanced education, and whose terms of employment are more similar to managers or executives. Such professionals include physicians, lawyers, and accountants.

Part-time Employees

A part-time employee is one who is under a contract of service to work less than 35 hours per week. Such employees are also covered by the Employment (Part-Time Employees) Regulations, which afford the employer and employee

¹ Foreign employees are also covered under the Employment of Foreign Manpower Act, and the additional procedures to hire such foreign employees is covered in Section 1.e.

² It also does not cover seafarers, domestic workers, or a statutory board employee or civil servant. It is important to note, however, that there may be other employment-related legislation or regulations that cover such individuals.

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flexibility with regard to rights and benefits, including pro-ration of benefits.

A key benefit for part-time employees is the entitlement to pay for overtime work. The amount of payment depends on whether the hours worked exceed the normal working hours for a similar full-time employee. Under the Act, the overtime rate of pay must be at least 1.5 times the basic hourly rate of pay.

Key Employment Terms (“KETs”)

Beginning April 1, 2016, and as a result of amendments to the Act, all employers will be required to provide KETs to employees covered under the Act. This requirement will allow employees to understand better their employment terms and benefits, and, for the employers, reduce misunderstandings and disputes. Common KETs (*e.g.*, leave policy, medical benefits) can be issued in different forms, including an employee handbook or provided on a company intranet. Unless a specific term does not apply to certain employees (*e.g.*, no overtime for managers or executives), the KETs must include the following:

- Employer’s full name;
- Employee’s full name;
- Job title, main duties, and responsibilities;
- Employment start date;
- Employment duration (if on fixed-term contract);

- Working arrangements, including daily working hours, number of working days per week, and rest day;
- Basic salary³ and salary period;
- Fixed allowances;
- Fixed deductions;
- Overtime payment period and rate of pay;
- Other salary-related components including bonuses and incentives;
- Leave (annual, outpatient sick leave, hospitalization, maternity, child care);
- Medical benefits (insurance, medical, dental)
- Probation period; and
- Notice period.

In addition, the amendments will require an employer to issue itemized pay slips to all employees covered by the Act. In addition to the employer and employee’s full names, the itemized pay slips must include (unless inapplicable):

- Date(s) of payments;
- Start and end date of salary period;
- Basic salary (and for hourly, daily, or piece-rated employees, the rate of pay and total number of hours or days worked or pieces produced);

³ For employees paid on an hourly, daily, or piece-rate system, the basic rate of pay should be the number of dollars per hour, day, or piece.

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- Allowed, additional payment, or deductions for the salary period;
- Overtime hours worked, overtime pay; and
- Net salary paid in total.

Working hours

The Act only regulates the hours of work and overtime for employees who are covered under the Act and who earn less than SGD 2,500 per month. Such employees are not required to work more than 8 hours a day or 44 hours in one week. There are also additional regulations regarding when rest breaks should be provided and the duration of the same.

The working hours for employees who do not fall into this category are determined by contract between the employer and employee.

Salary

Singapore does not have a prescribed minimum wage, regardless whether the employee or worker is foreign or local. As a result, salaries are subject to negotiation between the employer and employee. The Act does, however, prescribe when salaries should be paid. Employees covered under the Act must be paid at least once a month, and salaries must be paid within 7 days after the end of the salary period. Any overtime pay must be given to the employee within 14 days after the end of the salary period. In the case of termination, an employee's final salary payment must be provided on the last day of the employment, unless the employee resigns without notice and does not serve the notice period. In such cases, the final salary is paid to the employee within 7 days of the last day of employment. Finally, as mentioned above, from April 1, 2016, all employers must issue itemized pay slips to employees covered under the Act.

Leave

Maternity and Paternity Leave

Working mothers covered by the Act are entitled to 12 weeks of maternity leave so long as they have worked for at least three continuous months before the birth of the child. The employer will pay the mother's usual monthly salary for the first 8 weeks of leave, subject to certain conditions. The last 4 weeks of the leave period are unpaid. Where the child is also a Singaporean citizen and the working mother is legally married to the child's father, the mother is entitled to 16 weeks of government-paid maternity leave.

There are also enhanced protections afforded to pregnant employees: employers must pay maternity leave benefits to a pregnant employee who has been dismissed without sufficient cause or retrenched at any stage of the pregnancy. This protection is available to employees who have been working for three continuous months under the employer and who have received a certification from a physician confirming the pregnancy prior to the dismissal.

Working fathers are also eligible for government-paid paternity leave of 1 week only if: (a) the child is a Singaporean citizen; (b) the father has been lawfully married to the child's mother between conception and birth; and (c) the father has been working for three consecutive months before the birth. Working fathers are eligible for 1 additional week of government-paid leave if the employers voluntarily agree to provide it.

It will be mandatory for employers to provide a second week of paternity leave to fathers of citizen children born from January 1, 2017 onwards.

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Subject to certain eligibility requirements and conditions, employees covered under the Employment Act may avail of additional benefits such as adoption leave, childcare leave, and unpaid infant care leave.

Other Types of Leave

Annual Leave. Employees covered under the Employment Act and who earn less than SGD 2,500 per month and who have worked for at least three months are entitled to 7 days' paid annual leave for the first 12 months of service. Each additional year of service adds one more day of paid leave up to a maximum of 14 days paid annual leave. Such leave is in addition to rest days, holidays, and sick leave. If the employee has worked for 3 months but less than the year, the employee is entitled to annual leave in proportion to the number of completed months of service in that year.

Sick Leave. Employees covered under the Act are entitled to paid sick leave if they have served under the employer for at least three months. The sick leave must be certified by a company doctor, a company-approved doctor, or government doctor. Additionally, the entitlement is conditioned upon the employee informing the employer within 48 hours of taking the leave. The amount of leave an employee is entitled to is based upon how long the employee has been employed. Employees who have completed six months or more of service are entitled to a maximum of 14 days paid sick leave for outpatient and non-hospitalization leave and 60 days for hospitalization leave. The 60 days includes the 14 days of outpatient leave. For employees who have been employed at least three months but less than six, the amount of sick leave is provided on a pro-rated basis:

From April 1, 2016, employers are required to keep and maintain detailed employment records of employees covered under the Act. For current employees, employers must maintain records of the latest two years. For former employees,

Months of Service Completed	Paid outpatient or non-hospitalization leave (days)	Paid hospitalization on leave (days)
3	5	15
4	8	30
5	11	45

records of the last two years must be maintained for one year after the end of employment.

The types of records that must be maintained fall into two categories: employee records and salary records. The kind of information that must be maintained for salary records is the same as required for the itemized pay slips, discussed above. For employee records, employers must maintain information on the employee's:

- Address
- NRIC number (or FIN number, work pass number, etc.)
- Date of birth
- Gender
- Employment start date (and end date, for former employees)
- Working hours, including duration of breaks
- Dates and other details of public holidays and leave taken

Employment Records

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Employment Contracts

The statutory and regulatory standards mentioned above set the minimum standards in regards to the employment terms and conditions. The ultimate relationship between the employer and employee is largely governed by the parties' employment contract. The terms of the employment contract must be no less favorable than the provisions in the Employment Act. Terms that are typically included in an employment contract include the job title or position and job duties; the employment's start date; salary and bonus package; working hours; benefits; probation period, if any; and termination.

Enforcement of Amendments to Employment Act; Breaches of Employment Act

The requirement for employers to issue KETs and itemized pay slips to employees covered under the Act and the requirement for employers to maintain employment records are the key components to the amendments to the Act and were announced in 2014. Employers were given a two-year period to prepare to comply with the amendments, which were made effective April 1, 2016.

The Singapore government has recognized, however, that small businesses may need additional assistance to comply with the requirements or may benefit from additional guidance. In that regard, the Singapore government has enlisted several agencies to provide small businesses tools to comply, including templates for pay slips, free software to generate pay slips, and one-to-one assistance.

In addition, the government is providing a one-year grace period in terms of enforcing the amendments. From April 2016 until the end of March 2017, MOM will take a "light touch"

enforcement approach, where the focus of enforcement will be on educating employers to bring them into compliance rather than taking punitive measures.

Until the amendments came into effect April 2016, all breaches of the Act were considered criminal offenses, even in instances where the breach was of an administrative nature (*e.g.*, failure to maintain records). The amendments introduced a civil, administrative penalty framework whereby certain breaches of the Act would entail the issuance of a fine but no criminal record. The types of breaches that would fall under this framework include:

- Failure to issue KETs in writing;
- Failure to issue itemized pay slips;
- Failure to maintain detailed employment records; and
- Providing inaccurate information to the Commissioner or inspecting officer inadvertently or without the intent to mislead or defraud.

Hiring Foreign Employees

Along with the Act, the Employment of Foreign Manpower Act (EFMA) governs and regulations the employment of foreigners. Such foreign employees are issued a work pass that allows them to work in Singapore. There are different types of work passes that can be issued, including an Employment Pass ("EP"), an S Pass, and Work Permits. S Passes and Work Permits are typically issued to mid- to low-skilled workers, including technicians, workers in the manufacturing or construction industries and foreign domestic workers. Applications for work passes are submitted by the employer on behalf of the employee.

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Employment Passes are for foreign professionals who have a job offer to work in Singapore and work in a managerial, executive, or specialized job. The earned fixed monthly salary must be at least SGD 3,300. In reviewing whether to issue an EP to a foreign candidate, MOM typically examines the foreign candidate's qualifications, skills, employment history, and education, including the universities from which the candidate has received her degree(s).

While Singapore endeavors to be a business-friendly jurisdiction, it has also taken concrete steps to slow the growth of foreign workforce. The government has recognized that as an increasing number of Singaporeans are completing higher education and are becoming employed as professionals, managers, and executives (PMEs), it is more critical to afford such Singaporean PME's additional support. In July 2015, the MOM issued several initiatives as part of the Fair Consideration Framework ("FCF") that favor employing Singaporean PME's and place employment pass ("EP") applications submitted for foreigners under increased scrutiny. For example, MOM may require certain employers (most often those who typically have a weaker Singaporean core of PME's) to provide information regarding whether Singaporeans were interviewed for a job vacancy as well as the company's current ratio of Singaporeans in PME-related positions.

In addition, as part of the FCF, employers may be required to advertise job openings on the designated Jobs Bank for at least 14 days before submitting an EP application for a foreign candidate. The advertisement must be open to Singaporeans and must include published salary ranges. There are, however, exemptions from the Jobs Bank advertisement requirement. Employers do not need to advertise if:

- The company has 25 employees or less;
- The job position is paying a fixed monthly salary of at least SGD 12,000;
- The job is to be filled by an intra-corporate transferee ("ICT") who hold senior positions in the company or have certain expertise; or
- The duration of the employment does not exceed one month.

It should be noted that despite these exemptions, guidance from MOM suggests that companies are "strongly encouraged" to advertise job openings on the Jobs Bank since "[a]ll companies are expected to have fair employment practices."

There are additional tax considerations when a foreign employee leaves employment, leaves on an overseas posting, or leaves Singapore for a more than three months. Employers are responsible for ensuring that such employees have paid any and all taxes due. Employers must notify the Inland Revenue Authority of Singapore ("IRAS") and are required to withhold all payment due the employee from the day notice of termination is given (by either employer or employee) or when a decision is made to post the employee overseas. Upon notification, IRAS determines whether all taxes due have been paid by the employee. Once all taxes are paid, IRAS issues a tax clearance certificate, and final payment can be made to the employee.

Central Provident Fund

The Central Provident Fund ("CPF") is Singapore's mandatory social security savings scheme designed for employees who are citizens or permanent residents of Singapore to fund their retirement, housing, and healthcare needs. It does not apply to foreign employees.

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The CPF is funded by employer and employee contributions; it is the responsibility of the employer to pay both the employer and employee's contributions to the fund every month. The employee's share is taken from the employee's wages.

The level of contribution depends on various factors, including:

- The employee's age;
- The employee's wage;
- Whether the employee is a citizen;
- Whether the employee has recently obtained permanent residency status or is in her third year (or later) of permanent residency; and
- Whether the employee is pensionable or non-pensionable.

The level of contribution is also subject to certain caps. The CPF Board, which administers the fund, has published rate booklets to help employers determine what level of contribution they should make on behalf of employees. Currently, for a non-pensionable employee aged 55 and below and whose wages are over SGD 750 per month, the employer is required to contribute 17% of the wage, and the employee is required to contribute 20% of the wage. The rates decrease as the age of the employee increases.

Late payment or failure to pay CPF contributions is a criminal offense under the CPF Act and can subject an employer to late payment interest at 18% per annum and a fine of SGD 1,000 per offense. An employer is typically given the opportunity to settle any violations by paying the CPF contributions and the late payment out of court. An employer who fails to comply, though, will face legal action may also face a court fine of

up to SGD 5,000 and no less than SGD 1,000 per offense and/or up to 6 months' imprisonment for the first conviction. The penalties double for subsequent convictions. Consequently, employers must be aware of and comply with their obligations and responsibilities to pay the appropriate contributions to the CPF.

Termination

Employment can terminate for different reasons—either an employer dismisses an employee, an employee resigns, or the contract of employment expires because a project is completed or the time period has ended. The terms and conditions for termination are typically provided for in the contract of employment. There are instances, however, where the terms and conditions of termination are not explicit in the contract of employment. In such cases, the Act fills in these gaps, as discussed below.

Termination with Notice

If the contract of employment provides a notice period, the employer and employee must serve notice or pay salary in lieu. If the contract does not provide a notice period, the Act sets forth the requisite notice period, depending upon the length of service:

Length of Service	Notice Period
Less than 26 weeks	One day
26 weeks or more but less than 2 years	One week
2 years or more but less than 5 years	Two weeks
5 years or more	Four weeks

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The notice period can be waived, however, and such waiver should be in writing. During the notice period CPF contributions must still be paid.

Termination Without Notice

Either an employer or an employee can terminate a contract of employment without serving notice. An employer is entitled to terminate without notice if an employee is absent for more than 2 working days, without approval or a reasonable excuse, or if the employee has not informed or attempted to inform the employer of the reason for the absence. Where there is termination without notice, salary in lieu of notice is pay the party terminating the employment. In such cases, no CPF contributions are required on this payment.

Employee Misconduct

The Act permits an employer to dismiss an employee without notice on the grounds of misconduct. And while the Act does not require an employer to conduct an inquiry into the alleged misconduct, it is advisable for an employer to hold some type of inquiry in the event an employee challenges the dismissal. There is no fixed procedure for an inquiry. At a bare minimum, however, an employer should ensure that the person leading the inquiry is not in a position to be biased and should also ensure that the employee is given the chance to present her case.

An employer may suspend an employee while the inquiry is taking place, but the period of suspension must not exceed 1 week. During this time, the suspended employee is entitled to pay equaling half her salary.

If the employer has determined that misconduct has taken place, an employer may terminate the employee's employment without notice,

downgrade the employee, or suspend the employee for at most one week without pay. If no misconduct has occurred, the employee must be reinstated and be paid the full amount of salary if any was withheld during suspension.

The Act gives certain employees who believe they have been dismissed without just cause the right, within one month of the dismissal, to apply to MOM to be reinstated into their former employment. If it is found that the employee was unfairly dismissed, the Minister may order the employer to reinstate the employee or pay the employee compensation.

Foreign Employees

A foreign employee's work pass (whether it is an EP or S Pass) must be cancelled within 7 days of termination of employment. When the work pass is cancelled, a 30-day short term visit pass will be issued. Any other passes related to the EP or S Pass (such as Dependent Passes) will also be cancelled.