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Guide on Retrenchment in Singapore

What constitutes to a retrenchment?

Retrenchment is the termination of permanent or term contract employees (of at least 6 months) because of redundancy or reorganisation of the employer's profession, business, trade or work. Retrenchment may also occur in situations where the employer's company undergoes liquidation, receivership or judicial management, or any other winding up process.

Under Employment Act (Cap. 91), "retrench" in relation to an employee, means to terminate the employee's contract of service at the initiative of the employer because of redundancy or any reorganisation of the employer's profession, business, trade or work.

During COVID-19 (C19), the Ministry of Manpower (MOM) and the Tripartite Alliance for Employment Practices (TAFEP) notes that if an employer terminates an employment contract with no plan to fill the vacancy soon, the employee is considered retrenched. However, if the employer is undergoing a cost cutting exercise and the majority of the employees have agreed to fair wage reductions to preserve their jobs, but an employee disagrees, then the employer can terminate the employment contract of the said employee. This is not considered retrenchment. In this case, the employer must give due notice or pay in lieu of notice, and fulfil all other contractual obligations, before ending the employment relationship.

What is redundancy?

The Singapore legal statues does not define the term "redundancy" explicitly in any form under it's statues. Given the adaptation of common law as the foundational structure of our legal system, the English common law defines it in the following manner;

> S.139 (1) of the Employment Rights Act 1996 (ERA 1996)
> "An employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to —
>
> (a) the fact that his employer has ceased or intends to cease —
>
> (i) to carry on the business for the purposes of which the employee was employed by him, or
>
> (ii) to carry on that business in the place where the employee was so employed, or
>
> (b) the fact that the requirements of that business —
>
> (i) for employees to carry out work of a particular kind, or
>
> (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,
>
> have ceased or diminished or are expected to cease or diminish."

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The fundamental approach of such is consistent to the TAFEP and MOM's advisories:

> "If an employer terminates an employment contract with no plan to fill the vacancy soon, the employee is considered retrenched."

Under the wrongful dismissal claim, MOM further illustrates:

> "Redundancy, e.g; employees' job scope change and the old job scope no longer exists."

What are the "advisories"?

The "advisories" refers to the Advisory on retrenchment benefit payable to retrenched employees as a result of business difficulties due to COVID-19 by MOM, and the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment.

Are the "advisories" legally binding?

The "advisories" are not legally binding on employers but it does outline progressive workplace practices that employers should adopt. MOM will investigate complaints of discriminatory employment practices and take strong enforcement actions for substantiated complaints, such as curtailing work pass privileges of the employer.

What should employers consider during a retrenchment exercise?

As set out in the Advisory and MOM's communications, retrenchment should be considered only as a last resort before terminating an employee.

The selection of employees for retrenchment should be based on objective criteria and conducted in a fair manner. The factors are non-exhaustive and it should also include the following:

1) Ability of employee to contribute to the company's future business needs;
2) No discrimination against a group on grounds of;
    - Age
    - Race
    - Gender
    - Religion
    - Marital status
    - Family responsibility (e.g. pregnant employees)
    - Disability
3) No deprivation of employee entitlements or benefits (e.g. maternity leave); or
4) No punishment for exercising employee rights (e.g. filing a salary-related claim).

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What are the employer's obligation during retrenchment?

When a Company who has at least 10 existing employees during the time of exercise, and had notified 5 or more employees of their retrenchment within any six (6) month period, the employer is obligated to notify MOM under S96A (1) of the Employment Act (Cap.91). The 6 month period is measure from the date on which an employee is informed of their retrenchment, and includes the dates on which all other employees (up to 5 or more in total) are notified, before the end of the 6-month period. This notification must be done within 5 working days after the employer notifies their employees of said retrenchment.

What information employers need to provide in the notification?

The information required in the procedures includes the following:

1) Company and Unique Entity Number;
2) Company contact person details;
3) Name of union (if applicable), and if the union was consulted;
4) Number of employees prior to retrenchment exercise;
5) Details of employees to be retrenched (including Personally Identifiable Information such as name, NRIC/FIN, residential status)
6) Payment of retrenchment benefits and amount; and
7) Provision of employment facilitation assistance.

**note: notification is not compulsory if the company has less than 10 employees or if the retrenchment involves less than 5 employees*

What about retrenchment benefits?

Retrenchment benefits are payable to employees who has 2 or more years' of service, while employees below 2 years' service may only be granted ex gratia payment at the discretion of the employer.

However, retrenchment benefits are not mandated by law. Retrenchment benefits are only payable in accordance to any preceding provisions in the employment contract, memoranda of understanding or collective agreement (for unionised companies). In the absence of such, it is to be negotiated between employees (or through union) and the employers.

The TAFEP and MOM advisory strongly encourages employers to adhere to the advisories, including provide retrenchment benefit to help affected employees while they search for employment as part of the guideline on retrenchment.

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What is the quantum of retrenchment benefits?

The quantum of retrenchment benefit depends on what is provided for in the collective agreement or contract of service. If there is no provision, the quantum is to be negotiated between the employees (via their union in the case of a unionised company) and the employer concerned.

The prevailing norm is to pay a retrenchment benefit varying between 2 weeks to one month salary per year of service, depending on the financial position of the company and taking into consideration the industry norm. However, in unionised companies where the quantum of retrenchment benefit is stipulated in the collective agreement, the norm is one month's salary for each year of service.

**note: If the retrenchment exercise follows shortly after a salary cut, the salary prior to the cut should be used to compute the retrenchment benefit, so that cuts are not implemented just to reduce retrenchment payments*

What else will be in the payments?

Apart from the retrenchment benefits, the general expectation of payment includes separation payments such as their monthly salary due, notice-in-lieu, unused leave balance, allowances and/or expenses.

All wages and retrenchment benefit should be paid to affected employees by the last day of work or within 3 days of the final day of employment.

How long should the retrenchment notice to affected employees be?

According to the advisories, employees being retrenched need time to prepare for and look for alternative arrangements. A longer notice period, to the extent practicable, will be helpful. The Employment Act already provides for the following notice period schedule for termination of employment as a minimum requirement:

Length of Service	Notice Period
Less than 26 weeks	1 day
26 weeks to less than 2 years	1 week
2 years to less than 5 years	2 weeks
5 years and above	4 weeks

Responsible employers are encourage to adopt a longer retrenchment notice period as compared to the normal termination of an employment contract, or to pay in-lieu of such notice. Employers should work out with the unions in the collective agreements or with employees in their contracts of service; or codified in their company HR handbooks.

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How could affected employees file for wrongful dismissal claim?

A wrongful dismissal happens when an employee was dismissed without just or sufficient cause. These include:

- Dismissal on **discriminatory grounds** based on age, race, gender, religion, marital status and family responsibilities or disability.
- Dismissal to **deprive an employee of benefits or entitlements**, e.g. to deprive employee of her maternity benefits.
- Dismissal to **punish an employee for exercising an employment right,** e.g. dismissing employee after employee submitted a mediation request to TADM for salary-related claims.

Further information can be found under the Tripartite Guidelines on Wrongful Dismissal

Claims must be filed within one month from the last day of employment if the individual feels that the dismissal was wrongful. If the dismissal was with notice or salary in lieu of notice, the claimant must show proof that the dismissal was wrongful.

**note: Within the Singapore Laws, employers may still terminate a contract in accordance to the employment contract with no further reasons. Also, for managers and executives there is a minimum service of 6 months with the employer in order to file for claim.*

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