



Singapore Employers' Obligations To Their Employees During The COVID-19 Outbreak

We are currently living in unprecedented times. The 2020 COVID-19 outbreak has damaged economies, claimed lives, and decimated the fortunes of many people around the world.

We in Singapore are not spared from this terrible outbreak which is wreaking havoc on all sectors of our society. In an effort to stave off the pandemic, the Singapore Government has gradually escalated the “circuit breakers” on society, from social distancing and Work From Home measures, to the closure of schools and all workplaces except for essential services from 7 April 2020 to 4 May 2020, with a possibility of extension if such measures are not enough to control the outbreak.

As a result, firms have experienced a sudden downturn in revenue, resulting in their difficulty in retaining their employees, either at their current wage levels or at all. Although the Singapore government is to be commended for coming out with generous relief packages to help employers and employees tide through this difficult period not once but three times (and counting), people's livelihoods are still being affected and jobs will still be lost, some never to come back.



We are nevertheless heartened that most Singapore employers are trying to keep their employees as best as they can, and are seeking guidance as to how they can go about doing so. They are also keen to know, if they have no choice but to let their employees go, how they should do so fairly and responsibly. In that light, we are pleased to share some pointers in this regard.

WHAT ALTERNATIVE MEASURES CAN EMPLOYERS TAKE INSTEAD OF RETRENCHING THEIR EMPLOYEES?

Due to the various measures undertaken by the Singapore Government to stem the COVID-19 outbreak in the country, including the latest Circuit Breaker in effect from 7 April 2020 to 4 May 2020¹, which requires all employees except those providing essential services to work from home, or to stop work altogether, many businesses may find themselves having excess manpower during this period. The Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment (“Tripartite Advisory”)², which was updated in March 2020, states that, when managing such excess manpower, retrenchment should always be the last resort, after all other options have been considered and found to be unworkable. By doing this, businesses will retain the loyalty of their staff, and be ready to bounce back stronger once the pandemic wanes.

¹ <https://www.gov.sg/article/covid-19-circuit-breaker-closure-of-workplace-premises>

² <https://www.mom.gov.sg/-/media/mom/documents/employment-practices/guidelines/tripartite-advisory-on-managing-excess-manpower-and-responsible-retrenchment.pdf?la=en&hash=FED5FC78385A29DE079C113C4DDB0871>

The National Wages Council 2020/2021 Guidelines³

which was issued in March 2020, outlines a graduated approach that Singapore businesses should take to reduce running costs during the COVID-19 outbreak:

1. First, trim non-wage cost, and consider various measures to re-deploy excess manpower;
2. Second, tap on Government support to offset business and wage costs, and press on with business transformation;
3. Third, trim wage costs;
4. Finally, and only if necessary, retrench workers as a last resort, and in a responsible manner.



1. Trim non-wage costs and re-deploy excess manpower

Businesses face many expenses besides wage costs. One large expense is rental costs. In that regard, businesses should approach their landlords to request for rental rebates due to the reduced revenue during this COVID-19 outbreak period. Responsible commercial landlords like City Developments Limited and Capitaland have already announced rental rebates for their tenants for April and May 2020 and more landlords are likely to follow suit.

Other ways to reduce non-wage costs could be to reduce electricity usage by turning off lights and air-conditioning on all areas of the office or work areas that are unused during the period from 7 April 2020 to 4 May 2020 and/or by reducing usage of stationery by converting documents directly into soft copies without printing them out.

During this period, employers should also consider if they face manpower constraints in some areas of their business which can be alleviated by the excess manpower in other areas. If so, and to the extent practicable, they may consider re-deploying the excess manpower to those areas for a limited period of time.

³ <https://www.mom.gov.sg/newsroom/press-releases/2020/0330-national-wages-council-2020-2021-guidelines>

2. Tap on Government support to offset business and wage costs, and press on with business transformation

The Singapore Government has released a slew of packages to help businesses offset their wage and other costs during this difficult period. They have released the \$6.4 billion Unity Budget on 18 February 2020, the \$48 billion Resilience Budget on 26 March 2020, and the \$5.1 billion Solidarity Budget⁴ on 6 April 2020 in quick succession to help Singapore businesses withstand the financial strains brought on by the preventative measures instituted to combat the virus and mitigate its spread.

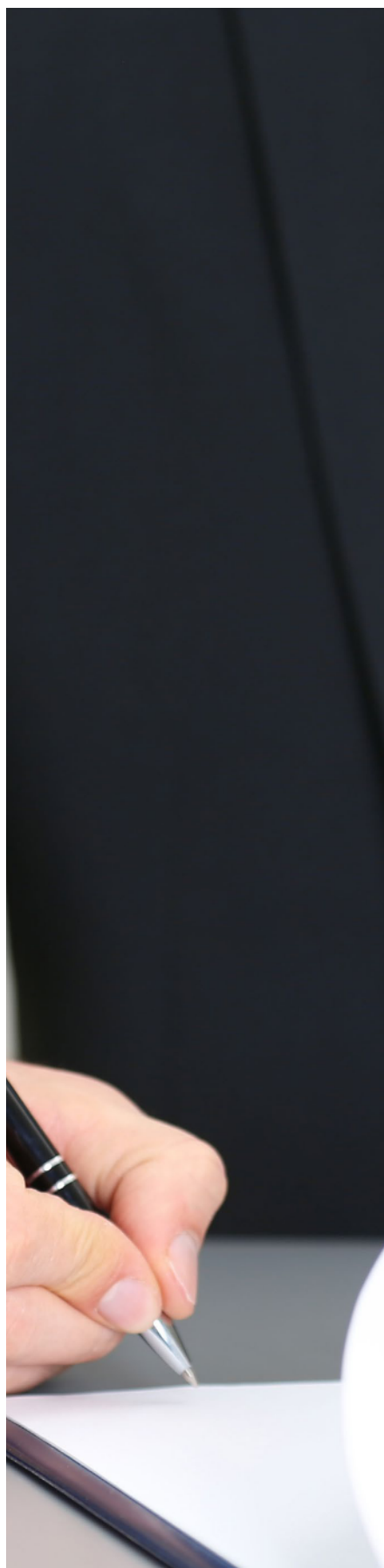
In the Solidarity Budget, the Government will pay 75% of the first \$4,600.00 of gross monthly salaries for all local employees for April 2020. From May 2020, wage subsidy levels will revert to what was announced in the Resilience Budget, which varies from 25% to 75% for the first \$4,600.00 of gross monthly salaries from May 2020 to December 2020. While the support of 25% applies to all firms, those in the food services sector and the aviation and tourism sectors will receive the higher payouts of 50% and 75% respectively. The purpose of these payouts is to encourage businesses to retain their staff and not let them go during this period.

Companies can also use this period of enforced downtime to upskill and transform their workforce. In that regard, the National Wages Council has encouraged employers to do the following:

- Bring forward planned training, putting employees' downtime to productive use;
- Bring forward the implementation of productivity initiatives, including but not limited to remote access software, cloud computing, hot-desking and other measures. Eligible employers may be able to tap onto the new SkillsFuture Enterprise Credit⁵ to defray up to 90% of out-of-pocket expenses for business transformation, job re-design and skills training;
- Set up a Company Training Committee ("CTC") that will work with the labour movement to build up in-house workplace learning capabilities, and re-strategise their businesses;
- Where possible, share productivity gains with employees and offer wage increases, bearing in mind the availability of the Job Credit Scheme, where the Singapore Government will co-fund wage increases up to a qualifying monthly gross wage ceiling of \$5,000.00 up to year 2020 currently.

⁴ <https://www.gov.sg/article/solidarity-budget-2020-more-support-for-workers-during-the-circuit-breaker-phase>

⁵ <https://www.skillsfuture.sg/sfec>



3. Trim wage costs

If, after trimming non-wage costs and tapping on all available Government funding to support the wages of its employees, employers still find the total wage bill untenable, only then should employers consider trimming the wages of their employees. When doing so, certain principles should be adhered to.

Firstly, management must lead by example and cut their pay by more than the rank-and-file staff and ahead of them. Only then can they have the moral authority to impose the wage reduction on their junior employees and seek their buy-in on the decision.



Secondly, exemption for lower-paid staff to wage cuts should be instituted, considering that the same proportionate reduction of salaries across the board hurts the lower-paid wage-earners more than the higher-paid ones.



Thirdly, no distinction is to be made between local and foreign employees in relation to the across-the-board wage cuts, and all employees should be treated equally in this regard without discrimination on grounds of age, race, gender, religion, marital status and/or disability.



Fourthly, employers should reduce other components of employees' wages other than the basic salary first. For example, it may consider reducing or removing the Monthly Variable Component ("MVC") and other allowances first. If MVC has not been instituted, they could consider treating any cut in basic wages of up to 10% as an MVC cut. If employers have no choice but to also cut basic salary, then the reduction should translate into no-pay leave to be taken by the employees during the limited period of such salary reduction.



Finally, any wage reduction should be for a limited period only (for example, 3 months) and not for an extended or indefinite period of time as the COVID-19 situation is very fluid. If need be, the wage reduction may be extended again for limited periods but only after all Government financial assistance and trimming of non-wage costs have been exhausted and found to still be insufficient to support the employers' wage bill.

Employers should note that there is a new directive that they are to report to the Ministry of Manpower on all cost-savings measures during this COVID-19 outbreak period⁶.

⁶ <https://www.mom.gov.sg/employment-practices/retrenchment/mandatory-notifications-on-cost-saving-measures>

4. Retrenchment as a matter of last resort

If all else fails and the employer has no choice but to retrench employees, then the retrenchment should be done responsibly, fairly and with the least amount of disturbance to current operations as possible.



HOW SHOULD EMPLOYERS RETRENCH EMPLOYEES RESPONSIBLY?

The Tripartite Advisory lays down guidelines for the responsible and sensitive implementation of retrenchment, in the event that it is inevitable.

In essence, employers should do at least the following:

- select employees for retrenchment using objective criteria such as the ability of the employee to contribute to the company's future needs without any discrimination on grounds of age, race, gender, religion, marital status, family responsibility or disability;
- where the company is unionised, implement the retrenchment exercise in consultation with the union;
- communicate to the employees early, and before public notice of retrenchment is given, the reason for the retrenchment, including explaining the business situation resulting in the exercise, the selection criteria, how the exercise will be carried out, and what assistance will be offered;
- observe the minimum notice period for the termination of employment as laid out in the Employment Act⁷ or the employment contract, whichever is longer;
- offer retrenchment benefits to the best of the company's ability; and
- pay all wages due and retrenchment benefit by the last day of work.

⁷Section 10(3) of the Employment Act (Cap. 91).

RETRENCHMENT BENEFITS

Employees in Singapore currently have no statutory entitlement to retrenchment benefits. In fact, no employee who has been in continuous service with an employer for less than 2 years shall be entitled to any retrenchment benefit⁸. However, the Tripartite Advisory recommends that those with less than 2 years' service be granted an ex-gratia payment.

If the employment contract does not provide for retrenchment benefits, and no collective agreement on the same has been signed with any union, then the Tripartite Advisory states that the prevailing norm is to give a retrenchment benefit of 2 weeks to 1 month of salary for each completed year of service. Further, if the employee's salary was cut shortly before the retrenchment exercise, then the retrenchment benefit should be calculated based on the employee's salary prior to the cut.

EMPLOYEE FACILITATION

Retrenchment can be a distressing time for most employees. Quite apart from offering counselling during the actual retrenchment exercise, companies are exhorted by the Singapore Government to assist affected employees look for alternative jobs either in associated companies, in other companies, or through outplacement programmes. Companies should not hesitate to issue supporting documentation (testimonials, service records and past training certificates) to assist employees land their next job.

Companies should be well-reminded that if they must retrench, then they should retrench as few employees as possible, bearing in mind that in a business upturn employers will require all hands on deck to manage the increased business.

Please note that there is a mandatory retrenchment notification to the Ministry of Manpower for all Singapore-registered business having at least 10 employees and who have retrenched at least 5 of their employees within any 6-month period⁹.

⁸ Section 45 of the Employment Act (Cap. 91).

⁹ <https://www.mom.gov.sg/-/media/mom/documents/employment-practices/guidelines/tripartite-guidelines-on-mandatory-retrenchment-notifications.pdf?la=en&hash=BE87D4CEB4BCDBE219A961149A1BB979>



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RHTLaw Asia COVID-19 Response Team will continue to bring you further updates following developments in Parliament.

If you would like to join our webinar on this topic, please express your interest here