

Employment Law Update

Tripartite Guidelines on Wrongful Dismissal

On 1 April 2019, the Ministry of Manpower (“**MOM**”) released the Tripartite Guidelines on Wrongful Dismissal (the “**Guidelines**”). The Guidelines may be accessed [here](#).

The effects of the Guidelines are far-reaching given that 430,000 more professionals, managers and executives (“**PMEs**”) are now covered under the Employment Act after the 1 April 2019 amendments.¹ The 1 April 2019 amendments lifted the salary cap for PMEs, meaning that PMEs earning above S\$4,500 will now be statutorily protected against wrongful dismissal, which is provided for under Section 14 of the Employment Act.

The Guidelines provides illustrations of what would constitute as a wrongful dismissal in the workplace. It covers dismissals in the areas of:

- Misconduct;
- Poor performance;
- Termination with notice based on the contract;
- Redundancy;
- Discrimination;
- Seeking to deprive the employee of benefits and/or entitlements;
- Punishing the employee who sought to exercise his or her employment right;
- Giving a false reason for dismissal with notice.

Essentially, misconduct is the only legitimate reason for dismissal without notice. This ground of dismissal may be evoked after the employer conducts due inquiry into the incident(s). Under due inquiry, the employee ought to be given a chance to defend himself, and the decision-maker must not be a person prejudiced against the employee in question.

For other grounds of dismissal, the employer may only dismiss the employee with notice. For example, if an employee is poorly performing at work, dismissal must be accompanied with notice. In fact, the Guidelines also explain that dismissal with notice is legitimate when the employer has such a contractual right. Dismissals because of redundancy are also permitted when it is accompanied with notice.

Nonetheless, the Guidelines have outlined situations where there may be dismissals may be wrongful, even when the employer provides notice. Wrongful dismissals include dismissals due to discrimination against the employee’s age, race, gender, religion, marital status, family responsibilities or disabilities. It is also wrongful for employers to dismiss employees for the reason of depriving the employees of their benefits or entitlements, or as a punishment to employees for trying to exercise their employment rights (i.e. such as claiming for overtime pay or declining to work overtime).

Notably, the Guidelines clearly provides that when an employee argues that the dismissal was for a wrongful reason, the onus is on the employee to prove these reasons. Although the onus may have also been on the employee to prove a wrongful reason for dismissal previously, this is now clearly articulated by the Guidelines.

¹ <https://www.mom.gov.sg/newsroom/speeches/2018/0305-speech-by-mr-lim-swee-say-minister-for-manpower-at-committee-of-supply-2018>.

Ultimately, whether a dismissal is wrongful or not would depend on the particular facts of each case. The Guidelines are a useful indicator to certain kinds of dismissals, but the outcome would always depend on all the circumstances of each individual case.

Should you have any queries as to how this update may affect you or your organisation or require further information, please do not hesitate to email us.



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This article is intended to highlight the Tripartite Guidelines on Wrongful Dismissal put forward by the Ministry of Manpower. It is not intended to be comprehensive nor should it be construed as legal advice. This article is updated as at 5 April 2019.