

Cost Cutting Measures in light of COVID-19

Background

In light of the evolving COVID-19 situation, businesses in some sectors have suffered sharp declines in volume and revenue. The tripartite partners – the Ministry of Manpower (“MOM”), the Singapore National Employers Federation (“SNEF”) and the National Trades Union Congress, have revised the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment¹ (“Advisory”) on 11 March 2020 to provide clearer guidance to affected employers on the appropriate measures to manage excess manpower.

The Advisory emphasises the need for companies to maintain a strong Singaporean Core and avenues to help workers who have been displaced. While not legally binding, the Advisory sets out progressive measures that employers should adopt before undergoing a retrenchment exercise.

Alternatives to retrenchment: Managing excess manpower

The Advisory sets out several cost-cutting measures for struggling employers to consider before resorting to retrenchment. These measures are listed below, on a sliding scale of severity.

Employers who wish to scale down or suspend business operations in response to a short, temporary decline in business activities may wish to consider adjustments to work arrangements without wage cuts. In contrast, direct adjustments to wages and no-pay leave may be more applicable to employers if they are suffering from extremely poor or uncertain business conditions that are likely to be long term. Employers should note that it is not reasonable to implement extended no-pay leave or other wage-saving measures without engaging or seeking the consent of their employees.²

It is important for employers to note that, starting from 12 March 2020, employers are required to notify MOM if they implement any cost-saving measures during this period that affects the employees’ monthly salaries, and indicate that they have done so fairly. The new requirement applies to employers with 10 or more employees and is intended to be a temporary measure, until the economy recovers.

1. Adjustment to work arrangements without wage cuts

- a. Employers could redeploy their excess manpower to training and skills upgrading. This would equip employees with better skills and knowledge, ultimately increasing productivity and allows employers to retain skilled employees to enable company to meet business demands when economic growth recovers.
- b. Alternatively, if the changes are structural, employers may consider redeploying or rotate employees within the company when the job scope is enlarged, enriched or restructured.
- c. Employers can also consider implementing a Flexible Work Schedule (“FWS”) by reducing weekly working hours, creating a “timebank” of unused working hours. These can then be

¹ <https://www.mom.gov.sg/-/media/mom/documents/employment-practices/guidelines/tripartite-advisory-on-managing-excess-manpower-and-responsible-retrenchment.pdf?la=en&hash=FED5FC78385A29DE079C113C4DBB0871>

² <https://www.mom.gov.sg/newsroom/press-releases/2020/0423-further-measures-to-help-companies-during-extended-circuit-breaker>

used to offset the increase in working hours in subsequent periods. In offsetting future overtime pay, the employee (or union if company is unionised) and employer may agree on the rate at which the accrued hours are to be valued. Employers who wish to implement FWS need to seek the support of the employees (and union if company is unionised) and thereafter apply to the Commissioner for Labour.

2. Adjustment to work arrangements with wage cuts

- a. Employers could implement shorter work week; shorter work week translates into the reduction of work hours. Employers may:
 - i. Request employees to take 50% of their earned annual leave
 - ii. Implement the reduction in work week such that it does not exceed 3 days in a week (a reduction of 3 days should only be implemented if the company's performance is severely affected) and does not last for more than 3 months at any one instance subject to review
 - iii. Pay the affected employees not less than 50% of their wage on the day(s) when the employees are not working, during the period when the shorter work week is implemented.
- b. Employers may also consider temporary layoff. Employers may:
 - i. Request employees to take up to 50% of their earned annual leave
 - ii. Implement the layoff period such that it does not exceed one month at any one instance subject review
 - iii. Pay the affected employees not less than 50% of their wages during the layoff period.

3. Direct adjustments to wages

- a. Companies with a flexible wage system in place may consider:
 - i. Reducing the annual increment, bonus pay, annual wage supplement or introduce a wage freeze if the situation warrants it.
 - ii. Employers may also consider adjusting the monthly variable component ("MVC"), downwards if the company has already put in place an MVC in the wage structure. For a company which has not implemented the MVC, any cut in basic wages of up to 10% should be consider as MVC cut.

As these measures severely impacts the livelihood of employees, employers should engage and seek the consent of unions and employees before implementing these measures.

4. No pay-leave

- a. As a last resort, employers may consider implementing no-pay leave. Before resorting to this measure, employers should have:
 - i. Considered/ implementing other measures, and consulted unions and employees
 - ii. Recognise the impact on rank-and-file employees in determining the extend and duration of the measure
 - iii. Senior management should lead by example, by accepting earlier and/or deeper cuts in costs saving measures.

Employers should note that the implementation of no-pay leave is strongly discouraged by the MOM – employers are encouraged to tap on government subsidies and support to pay the salaries of local employees.

Governmental subsidies and support for employers

To ease the negative impact of COVID-19 on employers, the Singapore government has introduced several initiatives including the Jobs Support Scheme and Monthly Foreign Worker Levy Waiver. Employers are urged to tap these government initiatives before resorting to cost-cutting measures or retrenchment.

1. Jobs Support Scheme (“JSS”)

Under the JSS, all active employers will receive 25% cash grant on the first S\$4,600 of the gross monthly wages of each local employee on their Central Provident Fund payroll. There are three levels of support for employers in different sectors, as shown in the table below.

	JSS will support the following groups of employers:	JSS will provide the support of:
Tier 1 – Aviation and Tourism	<ul style="list-style-type: none"> • Airlines • Airport ground handles • Airport operators • Qualifying licensed hotels • Qualifying licensed travel agents • Qualifying gated tourist attractions • Cruise lines and Cruise terminal operators 	75% of the first \$4600 gross monthly wages per local employee
Tier 2 – Food Services	<ul style="list-style-type: none"> • Licensed food shops and food stalls (including hawker stalls) 	50% of the first \$4600 gross monthly wages per local employee
Tier 3 – All other sectors	<ul style="list-style-type: none"> • All other employers 	25 % of the first \$4600 gross monthly wages per local employee

In addition, wage support for the month of April and May 2020 will be topped-up to 75% for all sectors to support firms during the ‘circuit breaker’ period. Wage support for other months will remain unchanged as per the table above; the aviation and tourism sectors will continue to received 75% wage support for all applicable months.

a. Employers who have implemented cost-saving measures

Employers that have implemented cost-saving measures could continue with their salary and leave arrangements. Nonetheless, in view of the enhanced JSS payout for April and May, employees should review whether the additional support provided by the

government could be shared with employees during the exceptional period to minimise hardship to them.

b. Employers who have not implemented cost-saving measures

For other employees who have not implemented cost-saving measures, the tripartite partners strongly urge them not to resort to retrenchment or prolonged no-pay-leave to manage business costs during the Circuit Breaker. With the 75% wage support for April and May 2020, employers should pay employees a baseline monthly salary.³

2. Monthly Foreign Worker Levy (“FWL”)

Under the FWL, any business employer who has at least paid up to December 2019’s foreign workers’ levy in full will be eligible for a waiver of the March 2020 foreign worker levy due in April. In addition, employers will also receive a one-off FWL rebate of \$750 for each work permit or S Pass holder, for levies paid in 2020.

Responsible Retrenchment

In the event that retrenchment is inevitable, employers should take note of the following points

- **Fair selection**

The selection of employees be conducted fairly, based on objective criteria such as the ability of the employee to contribute to the company’s future business needs. Employers should discriminate against any particular group on grounds of age, race, gender, religion, marital status and family responsibility or disability

- **Retrenchment benefits**

The amount of retrenchment benefit shall depend on what is provided for in the employment contract of collective agreement (for unionised employees). The prevailing norm is to pay a retrenchment benefit of between 2 weeks to 1 month salary per year of service, depending on the company’s financial position and the industry; in unionised companies where the amount of retrenchment benefit is stated in the collective agreement, the norm is 1 month’s salary for each year of service.

If the retrenchment comes shortly after a salary cut, the salary before the cut should be used to determine the amount of compensation. Both employee and employer do not have to pay CPF contributions for retrenchment benefits.

³ For further details, please visit this link <https://www.mom.gov.sg/covid-19/advisory-on-salary-and-leave#guidelines>

- **Adherence to the Tripartite Guidelines on Fair Employment Practices (“Guidelines”)**

Employers should abide by the Guidelines, 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.

- **Communication to Employees**

Employers should communicate the intentions of retrenchment to their employees early and before the public notice of retrenchment is given. This may include:

- Explaining the business situation faced by the company resulting in the
- need for a retrenchment exercise
- Outlining how the retrenchment exercise will be carried out
- Elaborating on the factors that will be considered
- Specifying the assistance being offered to those affected

When issuing the retrenchment notice, employers should be sensitive to the emotional needs of affected employees. Where necessary, counselling support should be considered and offered.

- **Retrenchment Notice Period to Affected Employees**

The Employment Act 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

Nevertheless, responsible employers are encouraged to adopt a longer retrenchment notice period when compared to the normal termination of an employment contract, or to pay in lieu of such notice. This should be worked out with the union(s) in the collective agreement concerned; or with employees in their contracts of service; or codified in their company HR handbooks.

Employment Facilitation

As responsible employers, companies should help affected employees look for alternative jobs in associate companies, in other companies or through outplacement assistance programmes. Employers are urged 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.

Employers should provide supporting documentations (such as referral letters, service records and past training certificates) where relevant to facilitate the job search of affected employers. Employers could also work with unions, SNEF and agencies such as Workforce Singapore, NTUC's Employment Institute (e2i), Job Security Council and U PME entre, to provide employment facilitation services to help the affected employees.

Closing remarks

Employers should understand that since the Advisory is not legally binding, even if the measures listed in the Advisory have been complied with, there is still the practical risk that an aggrieved employee may seek legal recourse under the Employment Act, arguing unfair dismissal. To mitigate such risk, clear and effective communication with the affected employee is critical.

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 discuss the alternatives to retrenchment in light on COVID-19 and it is not intended to be comprehensive nor should it be construed as legal advice. This article is updated as of 30 April 2020.

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