
workplace
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for the busy executive
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If you have any queries on your workplace rights or obligations, you may contact us at:
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NTUC hotline: **6213 8008**

workplace rights
for the busy executive

preface

Patrick Tay Teck Guan
Director, Legal Services Department
National Trades Union Congress

This book has been written as an easy reference for workplace issues that Professionals, Managers & Executives (PMEs) are typically concerned and faced with. Whilst this book provides a general overview of the employment law in Singapore, it is not possible for a book of this size to cover all aspects and topics. In setting out the fundamentals to employment law, there is, nevertheless, sufficient material for the reader to gain a sound basis for understanding his general workplace rights and obligations. This book incorporates all the relevant labour laws as at 1 October 2011.

This book also marks a milestone in our NTUC's outreach to our PME union members and the PME community in Singapore.

I express my heartfelt thanks to the NTUC Central Committee; Union leaders; Union members; IR practitioners; NTUC colleagues and friends for their numerous inputs to the eventual contents in this book. I am deeply grateful to the Legal Services team for playing a vital role in bringing this book to you.

"This book will serve unions, union leaders, IR practitioners and union members, especially the PMEs, well. It is a handy guide on workplace issues and is a pivotal initiative in NTUC's outreach efforts to PMEs in Singapore."

Cham Hui Fong
Assistant Secretary-General
National Trades Union Congress

"Employment disputes arise usually because employers and employees do not fully understand their rights and obligations under the contract of employment and under the law. This book is a practical and useful guide for professionals, managers and executives in this very area."

Ang Cheng Hock
Senior Counsel
Partner, Allen & Gledhill LLP

"This book is certainly timely and written in a very readable manner. My commendations to NTUC for coming up with this book which will certainly serve as an easy reference on workplace issues for busy PMEs."

Ravi Chandran
Associate Professor
NUS Business School
Author of Employment Law in Singapore

"This book is an invaluable guide for PMEs in Singapore. The NTUC has done a fine job putting it together. Whilst it is not a substitute for legal or union advice in particular cases, it is a very useful starting point where there is uncertainty about employment rights."

George Cooper
Partner
(Regional Employment Law / Workplace Relations)
Blake Dawson (International Law Firm)

contents

workplace rights for the busy executive

part 1

who is an employee?

Q1

What does “PME” stand for?

The term “PME” is commonly used to refer to professionals, managers and executives.

Q2

I am a PME. What are my legal rights at work?

Your legal rights at work will depend on whether you are an employee or a self-employed person (independent contractor). A self-employed person is essentially carrying on a business.

If you are an employee, please see the answer to Q3. If you are self-employed, your rights are explained under Q4.

Legal rights of employees

Q3

As an employee, what legal rights and protections do I have?

Your rights and duties are basically governed by the terms of your employment contract. Typically, employment contracts contain terms on matters such as job scope, salary, benefits and termination of the contract. Sometimes, additional terms may be found in other documents such as the staff handbook.

The employment terms are interpreted in accordance with common law principles (i.e. legal principles developed by the courts and originally derived from English law).

You also enjoy some statutory protections and benefits, including the following:

Statute	Protection/benefit provided
Central Provident Fund Act	Compulsory Central Provident Fund (CPF) contributions by your employer
Child Development Co-Savings Act	Maternity benefits, childcare leave and unpaid infant care leave
Work Injury Compensation Act	Compensation for work-related injuries
Employment Act	Salary claims can be enforced at the Labour Court by junior managers and executives whose basic salary is not more than $4,500* per month (** with effect from 1 February 2011. Prior to this date, the salary ceiling was $2,500 per month.*)

In addition, you may join a trade union. As a union member, you will be entitled to union representation on workplace issues in accordance with the law.

Legal rights of self-employed persons

Q4

I am self-employed. What are my legal rights?

Your legal rights will depend on the terms of the contract between you and the hirer. As you are not an employee, the statutory protections and benefits listed in the answer to Q3 will not apply to you, except for some under the Child Development Co-Savings Act, such as maternity benefits and childcare leave.

Employee or independent contractor?

Q5

Nowadays people are hired in many ways, e.g. on short-term contracts or through employment agencies. How do I know whether I am an employee or an independent contractor?

A person hired on a short-term contract or through an employment agency could be considered to be an employee if the facts of his case support this conclusion.

It is not possible to decide this matter by using any one single test. The courts have approached this question on a case-by-case basis, by looking at all of the circumstances of the case and weighing various factors.

One major factor is the degree of control that is exercised over the person in his or her work. This is called the "control" test. It is based on the idea that in the traditional employer-employee relationship, the employer has the right to order what work is to be done and also to direct how the work should be done.

However, today many employees have highly specialised skills and the employer does not really direct them on how to do their work, so the "control" test alone is not enough to decide the issue. So, in addition to the "control" test, the courts now look at a whole series of other factors.

Some factors which tend to show that a person is an employee:

- His work is an integral part of the business, not just accessory to it.
- He is paid a regular salary for his services.
- He cannot work for other employers at the same time.
- His working hours are specified by the employer.
- He is provided with benefits (e.g. paid annual leave, medical benefits).
- The employer supplies the tools and equipment which he uses in his work.
- The employer contributes to his CPF account.
- There is mutuality of obligation (i.e. the employer must offer work to him when available and he is obliged to do any work that is offered).

However, as explained previously, none of these factors is conclusive in itself. The case must be considered in totality.

Kureoka Enterprise Pte Ltd v CPF Fund Board Suit No. 218 of 1991, Singapore High Court, Unreported.

Ashibi Lounge employed full time and freelance hostesses. Both did the same type of work. The full time hostesses were given employment contracts with benefits and CPF contributions and were not allowed to work for anyone else. The freelance hostesses were paid only for those days they chose to work. They were allowed to do other work and were not entitled to annual leave or bonus. The lounge did not make CPF contributions for them. The freelance hostesses could terminate their contracts by giving one day's notice in writing or paying one day's salary in lieu. The lounge could also terminate their contracts for misconduct.

After weighing all the facts in the case, the Court concluded that the freelance hostesses were employees and not independent contractors:

- The management had substantial control over the work they did and how they did it.
- They were an integral part of the lounge's business.
- They had to accept the work assigned to them.
- They had to perform the work themselves.
- They incurred no financial risk in the business or responsibility in managing it.
- They had no right to price their services.
- The termination clause in their contracts suggested that they were under a contract of service.
- The lack of benefits could simply have meant that full time hostesses had better benefits.

Q6

I was hired on a fixed term contract. I do the same work as other employees in the company but my contract states that I am an independent contractor and not an employee. Does that mean that I am not an employee?

What the contract says about whether you are an employee or independent contractor is not conclusive. Although the statement in the contract is one aspect to be considered, you will have to look at all the circumstances of your case, as explained in the answer to Q5. If most of the factors point to employment, you could be considered to be an employee.

This is a complex area of the law. We recommend that you approach your union for advice.

Who is my employer?

Q7

I got a job at Company A through an employment agency. I signed a contract on the agency's letterhead and the agency pays me my salary. At work, it is my supervisor from Company A who gives me work and directs me. I'm also supposed to obey Company A's staff policies but I don't enjoy any of their benefits. Am I employed by Company A or by the agency?

This is a complex area of the law and it is not possible to give a definitive answer here. Much will depend on the facts of your individual case.

For example, if you are placed exclusively at Company A for a fairly long period of time, if you are essentially doing the same kind of work as the other employees of Company A, and if Company A exercises substantial control over your work, you could arguably be considered to be Company A's employee, even though your salary is paid through the agency.

On the other hand, if you sign up with an employment agency and they send you on a temporary assignment to Company A followed by other temporary assignments to other companies, it will be harder to argue that you are an employee of either Company A or the agency. Instead, you may be deemed to be an independent contractor.

In some rare instances, it may be possible for the employment agency to be considered your employer – for example, if the agency exercises control over your work, provides you with benefits and makes CPF contributions. However, this is not a common scenario.

The above are just some general examples based on cases decided by the English courts. Before signing such an employment contract, you should get confirmation about who your employer is going to be. We would also recommend approaching your union for advice.

part 2

entering into an employment contract

When is the employment contract formed?

Q1

I went for a job interview and was offered a job. Am I bound by an employment contract?

You are only bound when an employment contract is formed.

Generally speaking, an employment contract is formed when one party accepts the offer made by the other party. For example, let's say Company A offers you a job as an executive at a salary of $3,000 per month. If you accept the terms of the offer, a contract will be formed.

On the other hand, if you tell Company A that you will accept the job but you want a salary of $3,500 per month, you are not accepting the offer. Instead, you are making a counter-offer. If Company A agrees to your terms, there will be acceptance and then a contract will be formed.

Q2

I accepted a job offer with Company B and am supposed to start work next month. But now I've changed my mind as another company has offered me a better job with higher pay. Company B insists that I must start work on the agreed date. Can I refuse?

By accepting the job offer, you have entered into a binding contract with Company B. One way out is for you and Company B to end the contract by mutual agreement. Otherwise, if you do not start work on the agreed date, Company B could sue you for breach of contract. Company B could claim damages for the loss it suffered, such as the cost of finding a replacement.

Verbal or written employment contract

Q3

I accepted a job offer and started work two weeks ago but my employer has not given me a written contract. Is this legal?

An employment contract does not have to be in writing. It can arise from a verbal agreement between the parties.

However, having a verbal agreement can be a disadvantage, for the following reasons:

- a verbal agreement may not cover all aspects of the contract, so certain matters may not have been discussed and your rights in these areas may be unclear;
- if a dispute arises under a verbal contract, it may be difficult to prove what the terms are or what the parties had agreed to.

We recommend that you ask for a written contract. In addition to being in writing, the contract should set out the terms of employment clearly and comprehensively. The following are some of the terms that should be included:

- Commencement date
- Appointment
- Remuneration
- Probation terms (if any)
- Hours of work
- Benefits (e.g. Annual leave, Medical Benefits, Annual Wage Supplement/Bonus/Variable Payment, etc.)
- Termination procedure

If your employer refuses to provide a proper written contract, please approach your union for assistance.

part 3

starting employment

Probation

Q1

I started work this month. There's nothing stated in my contract about a probation period but my employer says that all new employees are automatically put on probation for 6 months. During this time, I will not enjoy some of the benefits that are given to confirmed employees. Can my employer do this?

An employee will only be on probation if this is clearly stated in his employment contract. Since your employment contract does not contain any clause on probation, you should be treated as a confirmed employee.

Q2

Under my contract, I was supposed to be on probation for 6 months. I have now been working for 7 months but my employer has not said anything about whether I am confirmed. Can I assume that I am no longer on probation?

If your employer remains silent, you should not just assume that you are confirmed. You should ask your employer for a letter stating that you are a confirmed employee, and the effective date of your confirmation.

If your employer has by conduct started treating you as a confirmed employee (e.g. you are now given the benefits which only confirmed employees are entitled to), this could be taken as an indication that your probation has ended. However, it is still best to obtain a written confirmation.

part 4

documents that form the employment contract

Q1

Where are the terms of my contract found?

Most employees are given an appointment letter, which should at least contain the main terms of employment (such as the job title, salary, commencement date, details of leave entitlement and other benefits, termination procedure, etc.).

However, contract terms may also be found in other documents, such as a collective agreement (where applicable) or a staff handbook (see Q2 below)

Sometimes, the employer may sponsor an employee for training. In return, the employee may be asked to sign a training bond. The terms of the training bond will also be contractually binding on the employee.

In general, you should check all documents thoroughly before signing the contract. Once you have signed the contract, you are bound by its terms and you will not be able to plead ignorance or argue that you did not read them.

Staff Handbook

Q2

My company has a staff handbook which sets out certain benefits and also covers matters like disciplinary procedures and general conduct. Is this part of my employment contract?

While the appointment letter may set out the main terms of the employment contract, it may not be feasible for it to provide a comprehensive list of all employment obligations and benefits. Many companies therefore place these in a separate document, such as a staff handbook.

A staff handbook can form part of the employment contract if the employee is given notice of it before or at the time that he or she enters into the employment contract. For example, the appointment letter may specifically state that “Your employment is subject to the terms in the Staff Handbook.” Or there may be a more general statement, such as: “Your employment is subject to the general terms and conditions of the company.” This could be broad enough to cover documents such as the staff handbook.

If the staff handbook is part of your contract, you should familiarise yourself with it, as you have to comply with its terms.

However, a staff handbook may cover many matters, and not all of them may be employment terms and conditions. Certain minor matters might just be considered to be house rules or guidelines.

ABB Holdings Pte Ltd and Others v Sher Hock Guan Charles [2009] 4 SLR 111

The employee was a director and very senior officer of ABB Holdings. He left the company and went to work for a potential competitor. ABB Holdings sued him for breach of fiduciary duties and the duty of fidelity. His appointment letter stated that his employment was subject to the general terms and conditions of the organisation. ABB's Employee Handbook contained terms on avoiding conflicts of interest and the employee's duty of confidentiality. The Court held that the Employee Handbook was incorporated into his employment contract because:

- Evidence showed that both employer and employee intended it to be part and parcel of the employment.
- The employee had access to it and was aware of the Handbook at all times.
- The Handbook contained contractual terms and conditions.

Q3

My company recently changed some of the terms in the staff handbook without consulting the employees. Can they do this?

Please see the answer to Q3 in Part 7: Changing the Terms of the Employment Contract.

part 5

the terms of my employment contract

Job scope

Q1

I was hired to work as an accountant. Recently, I was asked to take on additional duties such as organising company events. Can my employer do this?

Your job scope will be stated in your employment contract. Essentially, your employer should only ask you to do work that falls within the stated job scope.

However, in many contracts, the job scope is stated in a broad or general way and can encompass many kinds of work. Another possibility is that in addition to stating that you are hired as an accountant, your employment contract may also have a general clause to say that you are required to do such other work as the employer may require from time to time. In both these situations, the wide wording of the contract may give the employer the right to impose other duties.

The employer should, however, provide any training that you need to enable you to perform the additional duties.

Transfer

Q2

I work in the customer service department. Recently, my supervisor told me that I would be transferred to another department doing administrative work. Do I have to accept the transfer?

You should start by checking the terms of your employment contract, as these set out your rights and obligations.

As explained in the answer to question 1 above, if your job scope as stated in the employment contract is wide enough to apply to administrative work, your employer would have the right to transfer you internally to the Administrative Department.

However, an employer should act reasonably by giving the employee sufficient time and notice to prepare for the transfer, as well as providing training if needed to enable him or her to carry out the new duties.

Q3

I work in Company C, which is part of a group of companies. My boss told me I am being transferred to Company D, another company within the group. After the transfer, I will become Company D's employee. Is my employer allowed to do this?

This would depend on the terms of your employment contract. In law, each company is a separate legal entity. If your contract is silent, the employer cannot transfer you such that you become the employee of another company.

However, if the contract does specifically provide for such transfers, the employer would be within its rights to do so, unless the employee is able to show that the transfer was actuated by bad faith.

The employment contract may allow the employer to assign the employee to work in other companies or organisations. This does not necessarily mean that there is a change of employer; it could be a secondment. An example of such a contract is found in the following case:

Alexander Proudfoot Productivity Services Co S'pore Pte Ltd v Sim Hua Ngee Alvin and another appeal [1993] 1 SLR 494

Two employees of the Singapore company were assigned to work in the United Kingdom in another company belonging to the same group. This was pursuant to a clause in their employment contracts which stated that an employee "may be required in pursuance of this employment to be engaged not only on work on behalf of the company but also on work on behalf of any other group company and may be required to travel outside Singapore in the performance of his duties." During the overseas assignment, the employees were still considered to be employed by the Singapore company.

An employee who thinks that a proposed transfer is unlawful can accept the transfer under protest and take up the matter with the employer. This is the safer course, as an employee who refuses to obey a transfer order runs the risk of being in breach of contract if the order turns out to be a valid one. Please approach your union for advice.

Secondment

Q4

My employer told me that I am being seconded to Company B for one year. I don't want to work in Company B. Can I refuse to go?

A "secondment" is different from a "transfer", which was discussed in Q3 above. A seconded employee is sent to work in another organisation but he or she remains employed by the original employer.

If your employment contract contains a clause stating that you can be seconded to another organisation, your employer has the right to second you. If you refuse a valid order of secondment, you will be in breach of your contract.

If your employment contract does not provide for secondment, your employer can only second you to another organisation with your consent.

Q5

My employer has given me a letter offering me a job in an overseas company for one year. If I accept, does this mean that I will be employed by the overseas company?

You should carefully read the terms set out in the letter and also seek clarification from your current employer as to the nature of this new job or posting.

Generally, if you are seconded, you will still be employed by your original employer even though you are based in another company and working under their directions.

If the terms are unclear, we may need to weigh all the circumstances of the case in order to determine who the employer is. The following case illustrates how the court may view such situations:

Mah Wand Hew v Ong Yew Huat & Another [2003] 1 SLR 859

Ms Mah worked for the defendant company in the hotel industry. The defendant company issued a letter of offer to her to work in a hotel in Guangzhou which was owned by a Chinese entity and managed by the defendant company. She accepted the offer and was posted there. Subsequently, the Guangzhou hotel ceased operations and Ms Mah returned to Singapore. The defendant company terminated her employment and went into liquidation, leaving her with claims for unpaid salary, unused annual leave, retrenchment benefits, etc. The company's liquidators rejected her claims on the grounds that she was employed by the owners of the Guangzhou hotel and not by the defendant company.

The Court examined the circumstances of the case and found that Ms Mah was the employee of the defendant company for the following reasons:

- She was recruited by the defendant company and her salary was paid by them.
- The defendant company intended to send Ms Mah to work as an expatriate at the hotel. The recruitment of such expatriates was solely the responsibility of and at the discretion of the defendant company.
- Her work was directed and controlled by higher officers of the defendant company.
- She often took instructions from the managing director of the defendant company.
- The defendant company managed the hotel on its own and the hotel's operations were treated as part and parcel of the defendant company's operations.

As such, Ms Mah succeeded in her claims against the defendent company for unpaid salary, salary in lieu of notice and retrenchment benefits.

Q6

If any problems arise while I am seconded to Company B, can Company B discipline me, or even terminate my employment?

As explained in the answer to Question 5 above, Company A is still your employer during the secondment so generally, any disciplinary action or termination of employment should be carried out by Company A. Nevertheless, you should check the terms of your secondment.

Payment of salary

Q7

When must my salary be paid?

Your contract may state when the salary is payable, e.g. on the 21st of each month. If so, the employer should pay the salary in accordance with the terms of the contract.

If nothing is stated in your contract about when salary is payable:

- If the contract can be divided into periods, such as months or weeks, the salary will be payable after you have worked for that period.
- If the contract is not divisible into periods (e.g. it is a contract for a project or for a fixed period of service), the salary will be payable when the project is finished or the period of service is completed.

Payment of bonus

Q8

My contract states that at the end of each calendar year, a bonus may be paid to me at my employer's discretion. This year, my company did extremely well but I was not paid any bonus. Do I have the right to claim a bonus?

If the contract is worded such that payment of a bonus is solely at the employer's discretion, you will not have the right to insist on being paid a bonus. You can of course try to negotiate with the employer, citing the company's good performance as a justification. Where possible, however, employees are advised to try to negotiate for a more firmly worded bonus clause before signing the contract.

Restraint of trade clause

Q9

What is a restraint of trade clause?

A restraint of trade clause is a clause that seeks to prevent an employee from competing with or affecting the current employer's business after leaving his or her present employment. This could cover activities such as working for a competitor, setting up a competing business, luring away the current employer's customers and/or staff. The restrictions continue to apply after the employment contract has ended.

Q10

Is such a clause valid?

The law recognises the need to balance:

- the employer's interest in protecting legitimate interests (for example, trade secrets and confidential business information);
- the employee's interest in being able to earn a living using his or her knowledge and skills; and
- public interest in preventing monopolies and encouraging competition.

Hence, the law presumes that a restraint of trade clause is invalid, unless it is shown to be reasonable in the interests of the parties as well as in the public interest.

Q11

My employment contract contains a clause which says that if I leave this job, I cannot carry on a business or work for another organisation in the same industry as my current employer for 2 years. All of my working experience is in this industry and it will be very difficult for me to find a job in another industry. Is this clause valid?

Firstly, you have to consider whether you are potentially in a position where you could harm your current employer's legitimate interests by working for a competitor. For example, you may have knowledge of your current employer's trade secrets or other highly confidential information, or be able to influence its customers to move to your new employer. If so, it may be deemed reasonable for your current employer to impose a restraint that prevents you from working for a competitor.

But if you do not have such knowledge or client contacts, a restraint should not be necessary. An employer should not stop a former employee from earning a living using the skill, experience and general know-how that he or she has acquired in the course of working with that employer.

Secondly, even if the employer does have a legitimate interest that needs protecting, the restraint imposed on the ex-employee should not be wider than necessary. The law considers whether the extent of the restraint is reasonable, based on the following factors:

- the geographical area covered (for example, if the company only does business in Singapore, the ex-employee should not be stopped from working in other countries);
- the types of activities prohibited (this should not extend to other areas or businesses that the ex-employee was not involved in or has no special knowledge of); and
- the duration of the restraint (this should not be longer than is necessary to protect the employer's interest).

If the clause is unreasonable, it generally cannot be enforced. The onus is on the former employer to prove that the restraint is reasonable.

Q12

My employment contract has a clause on non-solicitation of customers. It states that I shall not, either during my employment or for a period of 12 months after the termination of my employment for any reason including resignation, and within Singapore, directly or indirectly contact or solicit any customers of the company whom I have dealt with during my employment with the company for the purpose of selling to those customers any services or products which are the same as or substantially similar to, or in competition with those sold by the company. Is this clause valid?

A non-solicitation clause is a form of restrictive covenant. For it to be enforceable, you must be in a position to influence the customers to come over to you. In addition, the clause has to satisfy the reasonableness test in terms of geographical area, duration and scope of activities that are prohibited. This has to be assessed on a case-by-case basis.

Q13 Liquidated damages clause

What is a liquidated damages clause?

This is basically found in situations where the employee agrees to serve the employer for a certain period of time and if the employee leaves before that period is completed, he or she has to pay an agreed amount ("liquidated damages") to the employer.

A common example is a training bond, where the employer sponsors an employee for training. The employee is required to serve the company or organisation for a certain period of time after completing the training, failing which he or she will be required to pay back an agreed amount (usually worked out on a diminishing scale based on the time served).

Q14

Are such clauses valid?

The purpose of a liquidated damages clause is to compensate the employer for the loss it suffers because of the employee's failure to fully serve the bond. For example, the employer may have incurred expenditure to train the employee but is unable to fully benefit from the employee's new knowledge and skills if the employee then resigns.

Such clauses could be valid if the amount that has to be paid back is a genuine estimate of the employer's loss. But they will not be valid if the amount to be paid back is so huge that it is not really meant to compensate the employer's loss but is intended to penalise the employee for leaving.

For example, if the employer's maximum possible loss was $10,000, a clause requiring the employee to pay back $100,000 is likely to be considered a penalty clause.

The amount payable should also reduce over time as the bond is served, otherwise it could be viewed as a penalty clause.

HRnet One Pte Ltd v Choo Wai Ying Adrian [2006] SGDC 202

Mr Choo was employed by HRnet One Pte Ltd as a regional consultant. The Employee Handbook contained a clause stating that upon termination of the employment, the former employee could not engage in any activities that competed with HRnet's business for a period of one year. Employees who breached this clause were required to pay HRnet a sum equal to 12 months of their last drawn pay.

After Mr Choo left his employment, HRnet sued him for breaching the non-competition clause. The District Judge noted that the clause requiring the payment of an amount equal to the 12 months' pay was in every employee's contract at the start of his/her employment. The effect was that any employee who worked for a competitor or engaged in business in competition with the company within a year of leaving the company would be liable to pay a sum equal to 12 months' salary regardless of the length of his or her service with HRnet. In the Judge's view, the amount should have decreased in proportion to the employee's length of service. There was also no evidence indicating that the payment of this sum was based on the company's assessment of the greatest loss that it could conceivably sustain as a result of the breach and was not a genuine pre-estimate of damage. Hence, the District Court held that the clause was a penalty clause and was unenforceable against Mr Choo.

Q15 If my employer gives me notice and terminates my employment before I could complete serving the bond, do I have to pay liquidated damages for the period remaining unserved?

If your employment was terminated by the employer without cause (i.e. not because of any wrongdoing on your part), the employer should not be able to claim liquidated damages for the remaining period of the bond. This would also be the case if you are retrenched.

However, liquidated damages would be payable if you resign or are dismissed for misconduct before the bond is fully served.

Singapore Airlines Ltd v Ahlmark [2000] 1 SLR 603

The defendant was a pilot who had undergone training. Under the SIA training agreement, an employee had to serve the company for a period of 5 years after the training. An employee who was dismissed or whose employment was "terminated for any reason whatever" during the 5-year period would have to pay liquidated damages to the company. While serving the bond, the defendant became drunk and made a nuisance of himself while flying as a passenger on an SIA flight. The company terminated his employment by paying him 3 months' salary in lieu of notice and claimed liquidated damages for the remaining period of the bond. The Court held that the liquidated damages clause could not be enforced as the company had chosen to terminate the contract without cause (i.e. not due to the employee's misconduct or fault).

part 6

where the employment contract is silent

Implied terms of employment

Q1

My employment contract is very brief and only the bare essentials are stated. Does that mean that these are my only obligations?

The law recognises that an employer-employee relationship is somewhat different from a pure commercial transaction, even though both are based on contracts. Also, it is not feasible to expressly set out all of the terms of an employment contract. Hence, certain terms are implied into an employment contract. Basically, both the employer and the employee are deemed to have certain implied rights and duties under the contract, even if these are not stated in the contract itself.

Q2

When does the law imply terms into a contract?

Terms are implied based on the parties' presumed intentions. An implied term must be necessary to give business efficacy to the contract and must not contradict the express terms of the contract. Terms can sometimes be implied based on longstanding custom or usage, or by the law (e.g. maternity benefits and compulsory CPF contributions).

Implied duties of employers

Q3

What are the implied duties of the employer?

There are four main types of implied duties which the employer must comply with. These are explained briefly below:

- Duty to pay salary
- Duty to take reasonable care of the employees' safety – this is a wide duty that covers both physical and psychological safety
- Duty not to act in a way that destroys mutual trust and confidence between the employer and the employee
- Duty to indemnify (reimburse) the employee for expenses properly incurred when carrying out his or her duties.

Implied duties of employees

Q4

What are the implied duties of the employee?

There are four main types of implied duties which the employee must comply with. These are explained briefly below:

- Duty of obedience – a duty to obey all lawful and reasonable orders given by the employer
- Duty of competence – the employee must be able and competent enough to do the job
- Duty of care – the employee must do his work with proper care and skill
- Duty of good faith – this is a very wide duty; essentially an employee must not place himself or herself in a position that conflicts with or is detrimental to the employer's interest (e.g. revealing confidential information, accepting bribes, etc.). Note that the duty of maintaining confidentiality continues even after the employee leaves that employment.

Non-fulfilment of implied duties

Q5

What happens if the employer or the employee does not fulfil these implied duties?

This would be considered a breach of contract. If the employee is in breach, he or she may be subject to disciplinary action and even to summary dismissal if the breach is very serious.

If the employer is in breach, the employee should raise an objection. For very serious breaches, the law provides that the employee may resign without notice and consider himself or herself constructively dismissed. However, this is not an action that should be taken lightly by an employee because if it is later decided that the employer was not in breach of the contract after all, the employee may instead end up being viewed as the one who has breached the contract. In addition, the amount of damages that an employee may claim for constructive dismissal is not likely to be substantial and may be no more than an amount equal to the notice pay under the contract.

part 7

changing the terms of the employment contract

Q1

What is a variation of the contract?

Generally, once a contract is formed, both parties are bound by its terms. If one or both parties wish to change any of the terms, this would be a variation of the contract.

However, note that not all "changes" may actually amount to a variation of the contract. If the contract is very widely worded, it may be broad enough to encompass many things. Thus, the proposed "change" may come within the existing wording and not amount to a variation. An example is a case where the contract required the employee to pass "all prescribed examinations" before he could be confirmed in service. Midway through his probation, the employee was told that he now had to pass one additional examination before he could be confirmed. The court decided that this was not a variation of the contract, as the extra examination came within the scope of the words "all prescribed examinations".

Q2

How can the terms of the employment contract be changed (varied)?

If one party wishes to change any of the terms, one of the following methods will apply:

- Unilateral variation – if the contract allows one party to change the terms, it may do so without obtaining the other party's consent.
- Mutually agreed variation – the other party must agree to the variation. In addition, both parties must provide consideration (i.e. do something extra, or give up some existing right).

Changes to the company's Staff Handbook

Q3

Some of my employment terms are found in the company's Staff Handbook. On page one of the Handbook, it says that the terms there are "subject to change from time to time at the company's sole discretion". Does that mean that the company can change the terms as it likes without consulting the staff?

In this case, the contract gives the employer the right to unilaterally vary these terms of the contract (as explained in the answer to Q2 above). Thus, the employer does not have to seek the employees' consent before changing the terms of the Handbook.

Note that the wording of the contract must clearly and unambiguously give such a right to the employer. The employer also has to act within the limits of the clause.

Nevertheless, this does not mean that an employer has an unlimited right to change the contract terms arbitrarily. The English courts have held that the employer still has to act reasonably in a way that does not destroy mutual trust and confidence. For example, the employer should give employees ample notice before implementing the change. If you are faced with a similar situation, please consult your union for advice.

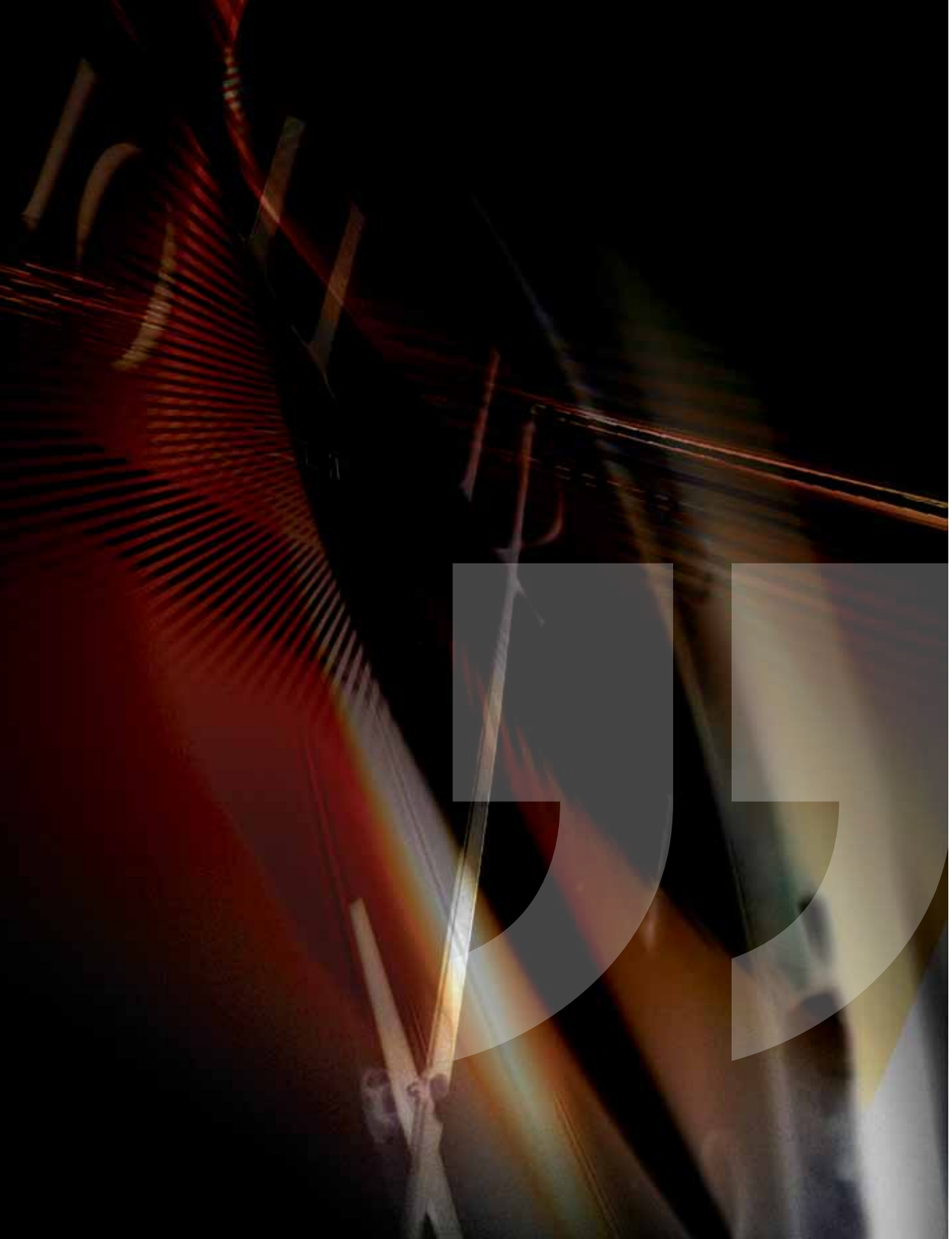
Unauthorised changes by the employer

Q4

What happens if my employer makes an unauthorised variation to my contract?

If the contract does not give the employer the right to make a unilateral variation, the employer has to obtain your consent before making any changes to the contract. This is often done by requiring the employee to sign a letter or other document signifying his or her consent to the new terms.

In such a situation, if the employer tries to impose a change without your consent, the variation would not have any effect and the original terms of the contract will continue to apply. If the employer insists on imposing the variation, this would be a breach of contract on the employer's part.



part 8

maternity benefits & childcare leave

Q1

I am currently 5 months into my pregnancy. What maternity benefits and protections am I entitled to?

The Child Development Co-Savings Act covers parents of children who are Singapore citizens and includes rank-and-file employees, managerial, executive and confidential staff as well as those who are self-employed. Under the Child Development Co-Savings Act, an employee is entitled to maternity leave benefits if:

(a) the child is a Singapore citizen (at least one parent is a Singapore citizen);

(b) the child's parents are lawfully married at the time the child was conceived or at any time before the child's birth; and

(c) the employee has served her employer for at least 90 days before the child's birth (a self-employed mother must be engaged in a trade, business, profession or vocation for at least 90 days immediately preceding her delivery date).

If you do not meet criteria (a) and/or (b) at the time of your confinement but subsequently meet them within 12 months of your child's birth, you will be eligible for the remaining maternity leave from the date you meet all the criteria. The remaining maternity leave entitlement must be taken before your child turns 12 months old.

Maternity leave entitlements

Under the Child Development Co-Savings Act, you are entitled to 16 weeks of maternity leave. For the first two confinements, your employer will pay for the first 8 weeks and the Government will pay for the next 8 weeks capped at $20,000 including CPF contributions from the employer. From the third or subsequent confinements, the Government will pay for the entire 16 weeks capped at $40,000 including CPF contributions from the employer.

Dismissal or retrenchment during pregnancy

In addition, your employer would be required to pay maternity leave benefits if you:

- are dismissed without sufficient cause within the last 6 months of your pregnancy; or
- are retrenched within the last 3 months of your pregnancy.

In the event of disputes relating to unfair dismissal, you should first speak with your employer to understand the situation. If you think that you have been unfairly dismissed, you can:

- seek the union's help (if you are a union member);
- seek legal help; or
- submit an appeal to the Minister for Manpower within 2 months after your child's birth. The Minister for Manpower can intervene to order reinstatement or compensation.

Returning to work during maternity leave

Q2

My estimated delivery date is on 1 March 2011. Two of my colleagues resigned in January 2011 and the company has difficulties meeting the clients' demands. Can my employer insist that I return to work while on maternity leave?

Your employer cannot force you to work during the first 4 weeks of your post natal leave. In fact, it is an offence to require a female employee to work during the first 4 weeks of her post natal leave.

Childcare leave

Q3

Is the company allowed to limit the number of days of my childcare leave to 3 days instead of 6 days if my son turns 7 years on 20 February 2011?

If the child is below 7 years as at 1 January 2011, the employee will be entitled to the full 6 days of childcare leave in 2011 irrespective of the birth-date of the child. In your case, you will be entitled to 6 days of childcare leave in 2011. In practice, the childcare leave can be consumed after your son's 7th birthday but it must be taken within the year if your employer grants childcare leave based on calendar year basis. The 4th to 6th day childcare leave will be reimbursed by the Government for eligible employees.

Q4

If the employee had consumed 6 days of childcare leave by July 2010 and subsequently tendered his/her resignation on 1 August 2010 (last day of service was on 31 August 2010), can the company ask the employee to pay back 2 days of the childcare leave?

If the employee resigns during the year, his/her childcare leave could be pro-rated according to the following table:

Number of completed months of service in the last year of employment before termination	**Eligible Childcare Leave (days)**
1 – 2	0 (if employee has worked with employer for less than 3 months) 2 (if employee has worked with employer for more than 3 months)
3 - 4	2
5 – 6	3
7 – 8	4
9 – 10	5
11 – 12	6

If an employer has provided an employee with more days of childcare leave than he/she is entitled to, the employer may, after pro-rating the childcare leave entitlement, claim back any over-consumed childcare leave from the employer-paid portion (first 3 days) or the Government-paid portion (last 3 days) for the days that have not been reimbursed by the Government.

However, if the Government's reimbursement has already been made, the employer is not allowed to claim back or make deductions for those days. Please note that employers should submit the application for reimbursement within 3 months after the 6th day of childcare leave has been taken. The reimbursement from the Government is capped at 3 calendar days per year and at $500 per day (including CPF contributions) i.e. a maximum of $1,500 per claim per employee in a year.

Any leave that is not consumed within the year shall be deemed to be forfeited and shall not be allowed to be brought forward to the next year.

Example 1
Mrs Tan joined Company ABC on 15 October 2009 and her last day of service was on 30 April 2010. She had already taken 6 days of childcare leave in 2010. Company ABC had sought reimbursement from the Government for the last 3 days.

Company ABC could pro-rate Mrs Tan's entitlement of childcare leave to 2 days. Company ABC would not be allowed to make any deductions from Mrs Tan's salary for the last 3 days which had been reimbursed by the Government. However, as she was entitled to only 2 days of childcare leave, Company ABC would be able to deduct 1 day's pay from her salary (from the 3 days' employer-paid portion).

Example 2
Mrs Leong joined Company XYZ on 1 August 2009 and her last day of service was on 30 April 2010. She had taken 6 days of childcare leave. Company XYZ did not seek reimbursement from the Government for the last 3 days.

Company XYZ could pro-rate Mrs Leong's entitlement of childcare leave to 2 days. Company XYZ would be able to deduct from her salary an equivalent of 4 days' pay (1 day employer-paid portion + 3 days Government-paid portion since the Government had not yet reimbursed Company XYZ).

Example 3
If the employee was retrenched or dismissed on 30 June 2010 and the employee had already used up the 6 days of childcare leave, would the employer be able to recover the excess childcare leave taken from the employee's salary?

If the employer has not yet claimed the reimbursement from the Government, the employer can recover the excess childcare leave taken (3 days) from the employee's salary.

Unused childcare leave upon resignation

Q5

I have just tendered my resignation. Can I apply for childcare leave during the notice period? What happens to my unused childcare leave?

The employee can apply for childcare leave during the notice period. However, the employer may reject the application for childcare leave or arrange for the employee to take the childcare leave on another day if there are good reasons, for instance, due to business exigencies. Any childcare leave not taken will lapse.

Flexible extended maternity leave

Q6

My employer informed me that it would not be feasible for me to take the extended maternity leave flexibly as it would create a lot of unnecessary inconvenience to the company. What is my entitlement under the Child Development Co-Savings Act?

Your employer is not obliged to agree to your request to take the extended maternity leave flexibly.

If you are unable to come to a mutual agreement with your employer regarding the dates or duration of your maternity leave, you would still be able to absent yourself from work 4 weeks immediately before and 12 weeks immediately after the delivery of your child, totalling 16 weeks under section 9(1)(a) of the Child Development Co-Savings Act.

However, if there is a mutual agreement with your employer, you can take the last 8 weeks (9th to 16th week) of maternity leave flexibly over a 12-month period from your child's birth, up to a maximum of 48 days (or the equivalent of 8 weeks' worth of working days).

Maternity leave during probation period

Q7

I am still on probation. My estimated delivery date is on 19 March 2011. Do I qualify for maternity leave?

As long as you have served your employer for at least 90 days before the birth of your child and if you satisfy the other eligibility criteria for maternity leave under the Child Development Co-Savings Act, you will be eligible for paid maternity leave.

Maternity leave for stillbirth

Q8

We are Singapore citizens. My wife had a stillbirth. Is her employer required to give her the 16 weeks of maternity leave under the Child Development Co-Savings Act? Will this affect her maternity leave benefits for the next birth?

Yes, her employer is still required to give her the 16 weeks of Government-paid maternity leave if she meets all the eligibility criteria under the Child Development Co-Savings Act. Application to the employer must be accompanied by a certification from your wife's obstetrician. The stillbirth will not be included in the counting of confinement order for the next birth.

Termination during maternity leave

Q9

Can my employer terminate my services while I am on maternity leave?

Your employer is not allowed to dismiss you while you are on maternity leave. An employer who terminates the services of an employee during her maternity leave will be liable to a fine and/or imprisonment. However, such a prohibition will not apply to the extended maternity leave if that is taken flexibly over a period of time.

Eligibility for childcare leave under the Child Development Co-Savings Act

Q10

What criteria must a working parent satisfy before being eligible for the 6 days of paid childcare leave under the Child Development Co-Savings Act?

A working parent must satisfy all the following criteria:

(a) The child (includes adopted child and stepchild) is less than 7 years old;
(b) The child is a Singapore citizen (at least one parent is a Singapore citizen);
(c) The parent is lawfully married; and
(d) The parent has worked for the employer for at least 3 months before taking leave or if self-employed, the parent must have been engaged in his/her trade, business, profession or vocation for at least 3 months before taking leave and the parent must have lost income as a result of going on childcare leave.

If criteria (b) and/or (c) are not met at the point of the child's birth, the parent will be eligible for childcare leave from the point when all the criteria are subsequently met.

part 9

termination of employment

Termination with and without notice

Q1

What is “termination with notice”?
When does “termination without notice” occur?

Either party to a contract of service may at any time give to the other party notice of his intention to terminate the employment contract. This is the simplest method of terminating a contract.

Notice period

The notice period is generally stated in the employment contract. Even if it is not stated, the contract can still be terminated when reasonable notice (usually one month) is given by either party.

What is “reasonable notice” depends on:-

- the length of service,
- the industry’s standard,
- the type and circumstances of employment,
- the nature of duties performed,
- the qualifications needed, and
- the likelihood and difficulty of obtaining alternative employment or a replacement employee.

Alternatively, employers can also give salary in lieu of notice, i.e. the salary replaces the notice given.

Termination without notice occurs when either party breaches the employment contract by not fulfilling an essential term in the contract, i.e. when the conduct goes against the essence of the contract or there is a fundamental variation to the contract. There must be a serious breach of obligations by either party, such that it destroys the relationship of confidence and trust between the employer and the employee.

Q2

Some executives in my company were given 6 months to improve their performance and they were eventually dismissed. These executives had average to good performance appraisals in previous years of service. What are their remedies?

If the company is not unionised, the executives may commence a civil suit. However, the case is weak as the employer is entitled to terminate employment contracts by giving the requisite notice. If the company is unionised, the union can represent the executives on an individual basis under section 30A of the Industrial Relations Act.

If your company is unionised, we recommend that the executives approach your union for advice.

Unfair dismissal

Q3

Do I have any remedies under the Employment Act in the event that I am unfairly terminated?

When we examine legal issues relating to the termination of employment of an executive in Singapore, we look at the rights and duties arising from the terms of the executive employee's employment contract and such terms are interpreted in accordance with common law principles.

If you are an Ordinary Member of a rank-and-file union in your company, your union may represent you on an individual basis, for limited representation rights, under section 30A of the Industrial Relations Act. The union may make representations to the Minister for unfair dismissal (as explained in the answer to Q3 in Part 10).

If you are not a union member, you can approach the Ministry of Manpower's (MOM) Executive Mediation Unit for voluntary mediation (this is also explained in the answer to Q3 in Part 10).

Entitlement to retrenchment benefits

Q4

Will I be entitled to retrenchment benefits?

Retrenchment occurs when surplus employees are discharged due to economic or business reasons such as when there is a need for cost cutting, restructuring of the business due to mergers or takeovers, recession and sale or purchase of business operations.

An executive employee would be entitled to retrenchment benefits only if this is provided for in his employment contract or the collective agreement (if he is a union member). In the absence of express or implied terms, there is no legal obligation for employers to pay retrenchment benefits to executives.

Retrenchment benefits, if any, are usually given on an ex-gratia basis to executives. Hence, the employer has the absolute discretion to decide the amount of retrenchment benefits to pay the executives. The fact that the employer might have given retrenchment benefits previously would not give rise to any legal obligation to pay retrenchment benefits for the next retrenchment exercise. Both retrenchment benefits and ex-gratia payments do not attract CPF contributions.

Bethlehem Singapore Pte Ltd v Ler Hock Seng and Others [1995] 1 SLR 1

The Court of Appeal held that the company had the absolute discretion to decide the amount of retrenchment benefits it wished to pay the employees. The fact that the employer may have given retrenchment benefits did not give rise to any legal obligation to pay retrenchment benefits for the next exercise.

Loh Siok Wah v American International Assurance Co Ltd [1999] 1 SLR 281

The High Court held that unless contractually or statutorily provided for, there is no legal obligation for employers to pay retrenchment benefits.

Unfair treatment by the employer

Q5

What should I do if my employer has been treating me unfairly?

You can approach your employer to clarify any misunderstanding or you can try to re-negotiate with your employer regarding important aspects or terms of your employment.

Alternatively, you have the option to resign with the requisite notice or you can terminate the contract without notice if your employer fails to perform an essential term or a fundamental obligation stated in your contract, for instance, if your employer fails to pay your salary, puts your safety and life at risk, unfairly reduces your wages, or if your employer forces you to resign or verbally abuses you. In such circumstances, you can resign and indicate that you are treating the contract as repudiated by your employer. It is likely that you would receive damages equivalent to what you would have received if you were duly terminated, namely, salary in lieu of notice and other contractual payments due on termination. In addition, the employer would not be able to enforce post termination restrictions like restraint of trade and confidentiality clauses if the employer had repudiated the contract.

Frustration of the employment contract

Q6

I have been diagnosed with cancer and require long medical leave for chemotherapy and to recuperate from the surgery. I have exhausted my annual leave and my hospitalisation and outpatient sick leave. Can my employer terminate my services on the grounds of "frustration"?

A contract can be frustrated if an event occurs which makes fulfilling the obligations under the contract impossible or radically different from what was agreed upon by the parties or when the parties are unable to continue contractual performance for reasons beyond their control. Such events cannot be self-induced. In the circumstances, it would appear that your employer can terminate your services on the grounds of frustration. Further, your employer does not need to give notice to terminate the contract as under the common law, frustration results in an automatic termination of the employment contract.

Remedies for unfair or wrongful termination

Q7

As an executive employee, what are my remedies when I have been unfairly or wrongfully terminated? Can I be reinstated?

If you are a Union member, the Union may appeal to the Minister on your behalf for reinstatement.

Alternatively, you may commence a civil suit for wrongful dismissal. However, it is very unlikely for the Court to order reinstatement because there is no longer trust and confidence between you and your employer. Moreover, it is undesirable to force an employment relationship to continue as an employment contract involves personal service. In the event of a wrongful termination, monetary compensation or damages is the most common remedy sought.

The measure of damages is generally the amount you would have earned under your employment contract for the notice period. If the notice period is not stated in your contract, the contract can still be terminated with reasonable notice (as explained in the answer to Q1 above).

In addition to this quantum, the Court can also award you other benefits which you would have earned if your contract had not been unfairly terminated, namely, your employer's contributions to CPF and to any other pension or insurance fund, commissions which you would have obtained and any allowances which you would have been entitled to.

Please note that you will have no entitlement to bonus, unless such bonus is specified in your employment contract. Under the common law, you will not be compensated for the distress or any loss of reputation caused by the dismissal nor will you be compensated for any difficulty in obtaining future employment.

Generally, you have a duty to take reasonable steps to minimise or mitigate your losses by attempting to find alternative employment.

Unfair or wrongful termination for fixed term employment contracts

Q8

I have a fixed term 3 year employment contract. There is no termination clause in the contract. What are my remedies if I am unfairly or wrongfully terminated after 2 years and 6 months?

If you have a fixed term employment contract for 3 years, your contract cannot be terminated before the expiry of 3 years by your employer, unless there was misconduct on your part. In your case, the damages payable by your employer would be calculated from the date of your termination to the earliest time at which the contract could have been rightfully terminated by your employer; i.e. you would be entitled to your salary and benefits for the remaining 6 months of that contract.

Inquiry for dismissal without notice

Q9

**My employer alleged that I was negligent and dismissed me without notice and without salary in lieu of notice.
Can I insist that an inquiry be held?**

As an executive, you would be entitled to an internal inquiry only if your employment contract expressly provided for this. If your contract provided for an inquiry, you would have a right to be heard, a right to a fair hearing and an independent panel and you should be given time to defend yourself with respect to the allegations of misconduct or negligence. Your employer also has the onus of proving the allegations of misconduct or negligence.

When an employee is summarily dismissed, the company must be able to justify its grounds for the summary dismissal. If the grounds seem incorrect or insubstantial, the dismissal can be challenged.

Walton International Group (Singapore) Pte Ltd v Loh Pui-Pui Sharon [2011] SGHC 145

The company dismissed Ms Loh, an executive employee and sued her for breach of her employment contract, breach of her fiduciary duty to the company and unlawful interference with its trade. Ms Loh denied the allegations and counterclaimed for damages for wrongful dismissal. Amongst other things, the company alleged that Ms Loh had displayed insubordination as well as breached her implied duty of obedience by refusing to disclose information about the alleged wrongdoings of a former senior executive. The company was unable to prove that Ms Loh had breached her duties. The Court noted that until she was summarily dismissed, Ms Loh had helped the company increase its sales significantly. She was paid well (more than $1.5 million per annum) and there was no reason for her to sabotage the company. The Court found that Ms Loh did not breach her employment contract and even if she did, the company had not suffered any loss.

part 10

resolution of employment disputes

Tripartite mediation

Q1

In the event of employment disputes, what are the available avenues for executives and their employers to resolve such disputes?

Apart from salary claims, executives are not covered by the Employment Act. For disputes relating to salary, executives earning not more than $4,500 per month are able to proceed to the Labour Court for adjudication. Salary disputes include those relating to the computation of salary for an incomplete month's work, payment of salary on dismissal and termination of the employment contract. The amount that the Labour Court can award to managers and executives will be capped at $20,000.

With effect from 1 February 2011, executives may refer the following employment disputes to tripartite mediation:

- disputes relating to a breach of the employment contract by the employer;
- disputes relating to salary claims; and
- disputes relating to retrenchment benefits.

Eligibility criteria for tripartite mediation

Q2

Is the tripartite mediation available to all executives?

To refer the above disputes to tripartite mediation, an executive must meet the following criteria:

- earns not more than $4,500 per month;
- works in a non-unionised company; and
- is a General Branch member of a union which cannot represent him/her for collective bargaining.

Other avenues for resolving employment disputes

Q3

What if I do not satisfy the above criteria? Are there any other avenues available for executives to resolve employment disputes?

A) Executives, who have full representation at executive unions, may resolve their employment disputes through collective bargaining.

B) Executives working in unionised companies may join the rank-and-file unions in their companies as Ordinary Members for limited representation rights. The union may represent such executives on an individual basis under section 30A(1) of the Industrial Relations Act, for the following:

(a) make representations to the Minister for unfair dismissal;
(b) negotiate with the employer for retrenchment benefits payable to the executive employee;
(c) negotiate with the employer to resolve any dispute relating to a breach of the employment contract; and
(d) represent the executive in proceedings before a Court concerning the dismissal or reinstatement of the executive, where the executive had been victimised, due to participation in trade union activities or any matter referred to in (b) or (c).

If conciliation fails, the parties (the union and the employer) can submit the dispute(s) for arbitration at the Industrial Arbitration Court.

Objection by employers

Section 30A(2) of the Industrial Relations Act prevents a rank-and-file union from representing an executive who:

- holds a senior management position or function;
- makes or substantially influences decisions on industrial matters;
- represents the employer in negotiations on industrial matters;
- has access to confidential information on the employer's budget and finances, any industrial relations matters, or the salaries or other personal records of other employees; or
- performs any other functions which may give rise to a potential conflict of interest if the union represents him.

These are the same grounds cited by the employer when he objects to tripartite mediation.

C) Executives, who are not union members and who do not work in a unionised company or organisation, will continue to have access to voluntary mediation at the MOM's Executive Mediation Unit to amicably resolve their employment disputes with their employers. However, the employers have no legal obligation to attend the mediation session(s) and the MOM cannot compel them to attend. If mediation fails, the executives may commence proceedings in the Civil Courts.

Q4

Procedure for tripartite mediation

What is the procedure for referring employment disputes to tripartite mediation?

The tripartite dispute resolution mechanism is essentially an additional forum for executives to resolve certain employment disputes (the disputes are those stated in the answer to Q1 above) in a speedy, efficient, low cost and non-confrontational manner.

If the executive wishes to resolve his employment dispute by tripartite mediation, he will first have to inform his union or the NTUC about the dispute. If the dispute is one that can be referred to tripartite mediation, the union or the NTUC will notify the Commissioner who will then assign or appoint the following persons to assist in the tripartite mediation:

- A conciliation officer to conduct the mediation sessions;
- A tripartite mediation advisor[1] (TMA) and possibly an officer from the employee's union, to assist the employee; and
- A TMA and possibly a representative from any business organisation that the employer is a member of, to assist the employer.

Q5

Objection by employers to tripartite mediation

I have a dispute with my employer regarding a breach of a term in my employment contract. I wish to resolve the matter amicably with my employer through the tripartite mediation. Can my employer object to the mediation?

Your employer may object to tripartite mediation on the same grounds as those stated in the answer to Q3.

[1]Tripartite mediation advisors are appointed by the Minister and their names are published in the Gazette.

Attendance at the tripartite mediation

Q6

What happens if after agreeing to resolve the dispute by tripartite mediation, my employer does not turn up for the mediation session?

Attendance is compulsory for both the executive and his employer:

- If the executive fails to attend without reasonable excuse, the Commissioner can give further directions, including terminating the mediation proceedings and striking off the case.

- If the employer fails to attend without reasonable excuse, the Minister can direct him in writing to attend the mediation session. It is an offence for the employer to refuse to comply with the Minister's directive and he can be fined up to $5,000 if convicted.

- However, the employer may object to tripartite mediation. The grounds are the same as those under Section 30A of the Industrial Relations Act that prevent a rank-and-file union from representing an executive (as stated in the answer to Q3 above).

Parties are not allowed to be represented by lawyers or any paid agents.

Time limit

Q7

What is the time limit for notifying the Commissioner about the dispute?

- For disputes relating to termination of employment, the Commissioner must be notified within 6 months from the date of termination.
- For all other disputes, the Commissioner must be notified not more than 1 year from the date that the dispute(s) arose.

These time limits are similar to those that currently apply to claims that can be brought to the Labour Court under the Employment Act.

Please note that the executive should inform his union or the NTUC about the dispute and it is for the union or the NTUC to assess the case and to notify the Commissioner of the dispute.

Outcome of tripartite mediation

Q8

What is the legal effect of the outcome of the tripartite mediation?

The settlement reached at a tripartite mediation is not binding on the executive and his employer. However, this dispute resolution mechanism provides the executive and his employer with an opportunity to consider viable options and to arrive at mutually acceptable terms. This will avoid protracted and costly litigation proceedings. As the mediation is a tripartite platform, factors such as industry norms and practices will be taken into consideration.

Q9

What happens when parties are unable to reach a settlement at the tripartite mediation?

If parties are unable to reach a settlement for disputes relating to salary claims, the disputes can be adjudicated by the Labour Court. The amount that the Labour Court can award for salary claims will be capped at $20,000.

If the tripartite mediation is unsuccessful for disputes relating to a breach of the employment contract by the employer or for disputes relating to retrenchment benefits, the executive will still be able to commence proceedings in the Civil Courts.

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National Trades Union Congress