

A Guide to Employment Termination in Singapore

Overview of Employment Termination

1. What are the main sources of law covering the termination of employment?

The Employment Act (Cap 91) is the main legislation that provides for the basic terms and working conditions for employees. All employees except for seafarers, domestic workers and public servants are covered by the core provisions under the Employment Act. To the extent that terms in employment contracts are less favourable than Employment Act, they shall be illegal, null and void.

Other relevant legislation and subsidiary legislation include: (a) the Central Provident Fund Act (Cap 36); (b) the Employment of Foreign Manpower Act (Cap 91A); (c) the Industrial Relations Act (Cap 136); (d) the Personal Data Protection Act; (e) the Retirement and Re-employment Act (Cap 274A); (f) the Trade Unions Act (Cap 333); (g) the Work Injury Compensation Act (Cap 354); (h) the Workplace Safety and Health Act (Cap 354A).

2. What are some of the typical grounds on which an employment contract can be terminated?

Depending on circumstances, an employment contract can be terminated by either the employer or employee: (a) giving notice or paying salary in lieu of notice; or (b) without giving any notice or paying salary in lieu of notice.

In certain situations, employment contracts come to a natural termination and no notice or salary in lieu of notice is required. Natural termination refers to instances such as expiry of fixed term contract, end of probationary period (insofar as the employment contract is not confirmed) or death of employee.

Termination by Employer

3. Under what circumstances can an employer terminate an employment contract?

There are a number of grounds under which an employer may terminate an employment contract. These are:

Grounds	Notice Requirements
Unsatisfactory performance during probation	Depends on contract
Breach of contract by employee	Without notice
Dismissal on grounds of misconduct	Without notice
Employee transfer	With notice (see Question 6)

Employee retirement	With notice (see Question 6)
Employee retrenchment	With notice (see Question 6)

All contractually agreed procedures (i.e., warning letters, counselling, disciplinary procedures) and company internal policies (i.e., employee handbook) should be followed prior to termination. Also, principles of natural justice should be adhered to in conducting inquiries or disciplinary procedures.

(a) Unsatisfactory Performance During Probation

Depending on the terms of the employment contract, the employer may be entitled to terminate the employment before the completion of the probationary period by providing notice or by paying salary in lieu of notice.

(b) Breach of Contract by the Employee

An employer may usually terminate the employment contract if the express terms of the contract has been breached by the employee (for e.g., unapproved absences from work). This may be effected without giving notice to the employee or paying salary in lieu of notice.

(c) Dismissal for Employee Misconduct

The employer may terminate the employment contract without notice or salary in lieu of notice if the employee is guilty of misconduct. The law does not state the degree of misconduct that justifies dismissal. However, misconduct generally arises when an employee fails to fulfil his conditions of employment which may be express or implied. Examples include disorderly or immoral conduct at work, gross negligence and recklessness, insubordination, leaking of trade secrets, misappropriation of company property and theft.

Prior to terminating the employee for misconduct, the employer should conduct an inquiry over the employee's misconduct. This inquiry should include informing the employee of the misconduct and allowing the employee an opportunity to present his case before an impartial decision maker. If it is established that the employee is indeed guilty of misconduct, the employer may terminate the employment contract.

(d) Transfer of Employee

In circumstances where an employer intends to transfer its employee to another employer (for e.g. a subsidiary company), the employer must notify the employee of such transfer, update the employee on the terms of the contract and ensure that the new terms of employment are not less favourable than the existing terms. Thereafter, the

employment contract will be terminated and the employee will enter into a new employment contract with the new employer.

(e) Retirement

The minimum retirement age in Singapore is 62. Employers may initiate termination of employees who are nearing the retirement age by giving notice in accordance with the terms of the employment contract. Under the Retirement and Re-employment Act, employers are required to offer re-employment to eligible employees up to the age of 67.

(f) Retrenchment

In Singapore, there is no statutory framework for retrenching an employee. As long as notice is provided for in accordance with the employment contract, the employer is generally not required to establish a genuine business reason for termination (whether on the grounds that the employee's role has become redundant or that it is uneconomic for the employer to continue employing the employee). However, the employer is obliged to inform, and furnish information to, the relevant authorities regarding the retrenchment of its employees. The employer should also give employees notice of retrenchment and the duration of the notice should be in accordance with the terms of the employment contract. In the absence of any express notice period, the notice period to be served would be dictated by the Employment Act (see Question 6 below).

Whilst there is no statutory entitlement to redundancy benefits, employment contracts may sometimes provide for such rights. Further, the Singapore Ministry of Manpower stipulates that for employees who have been employed for at least two years, it is normal for retrenchment benefit to be two weeks to one month of salary for every year of service. Should retrenchment benefits be paid out, such benefits, along with the employee's accrued salary and other employment benefits, shall be due on the employee's last day of employment.

Termination by employee

4. Under what circumstances can an employer terminate an employment contract?

Some of the common grounds of termination of an employment contract by the employee include resignation, breach of contract by the employer and retirement.

(a) Resignation

An employee can terminate the employment contract by submitting a notice of resignation in accordance with the terms of the employment contract. This can occur during or after the probationary period. The employee is required to give notice or pay

salary in lieu of notice in accordance with the terms of the employment contract. In the absence of any express notice period, the notice period to be served would be dictated by the Employment Act. This notice period may be wholly/partially offset by any accrued annual leave of the employee.

(b) Breach of Contract by the Employer

An employee may choose to terminate the employment contract if the employer breaches the terms of the employment contract (for e.g. failure to pay salary). The employee is entitled to terminate the contract without giving notice or paying salary in lieu of notice.

(c) Retirement

Employees nearing retirement age who wish to retire can initiate termination before his or her 62nd birthday. Employees are not obliged to accept the employer's offer of re-employment mandated by the Retirement and Re-employment Act.

Natural Termination

5. Under what circumstances does an employment contract terminate naturally?

(a) Expiry of Fixed Term Contract

A fixed term contract terminates automatically upon its expiry. If an employer wishes to engage the employee for a subsequent term, a new employment contract must be executed. Otherwise, the employment contract terminates at the end of the fixed term and no notice period or payment of salary in lieu of notice is required by either party.

(b) End of Probation Period

Depending on the terms of the employment contract, an employee's contract of employment may terminate automatically upon the end of the probation period if the employer does not confirm the employee's employment. No notice period or payment of salary in lieu of notice is required by either party.

(c) Death

The employment contract is terminated automatically upon the death of the employee.

Notice Period

6. What is the applicable notice period that parties are required to serve to effect termination with notice?

The notice period is typically determined by the terms of the employment contract. Absent any express terms, the following minimum notice periods in the Employment Act apply:

Duration of Employment	Minimum Notice Period
Less than 26 weeks	1 day
Between 26 weeks and 2 years	1 week
Between 2 and 5 years	2 weeks
More than 5 years	4 weeks

7. Can an employer require employees to be put on garden leave?

Employers may require their employees to serve a period of garden leave during their notice period. If garden leave is provided for in the employment contract, the employee remains employed but does not have to fulfil any positive obligations of the employment contract (for e.g., attend work) during this period. However, negative obligations of the employee (for e.g., not to display acts of disloyalty towards the employer) would typically remain binding on the employee.

In circumstances where garden leave is not provided for in the employment contract, employers may place their employees on garden leave only with the agreement of the employee.

Claims for Dismissal without Just Cause or Excuse

8. What constitutes dismissal without just cause or excuse?

Dismissal without just cause or excuse can include dismissal on discriminatory grounds based on age, race, gender, religion, marital status, family responsibilities, disability or as punishment for exercising his employment rights or retaliation for whistleblowing.

Dismissal without just cause or excuse can also include circumstances where an employer has misled an employee as to the reasons for the employee's termination (even where that termination has been effected in accordance with the notice provisions in the contract). For example, if an employee has been terminated on the grounds of retrenchment (when in fact the real reason is retaliation for whistleblowing), then the dismissal will be without just cause or excuse.

9. What recourse does an employee have against dismissal without just cause or excuse?

An employee must prove that the reason given to the employee for the dismissal is untrue. This includes circumstances where an employer gave a reason for dismissal with notice, but the reason given is proven to be false.

An employee may lodge a claim for mediation at the Tripartite Alliance for Dispute Management (“**TADM**”) within one month from the employee’s last day of employment. Should mediation fail, the dispute will be referred to the Employment Claim Tribunal for determination. Claims filed with the TADM are limited to S\$20,000 and available to employees that have served the employer for at least six months. Legal representatives are not allowed to represent any party.

Alternatively, the employee may pursue his or her cause of action before the Singapore courts or other forms of alternative dispute resolution options such as mediation or arbitration (if agreed by parties).

Risks Associated with Termination

10. What are the associated risks following an employee’s termination?

An employee, especially senior employees and employees in sensitive roles, may: (a) hold confidential commercial information that may benefit a competitor at the expense of the employer; (b) have existing client relationships that may be major sources of revenue for the employer; and/or (c) solicitate the employment of other employees that may ultimately weaken the human capital of the employer.

11. What are the typical ways in which an employer can safeguard against such risks?

Employers should take care to safeguard their commercial interests by incorporating confidentiality clauses, as well as non-compete clauses and non-solicitation clauses (collectively, “**restrictive covenants**”), in their employment contracts and/or termination agreements.

Confidentiality clauses prevent the departing employee from disclosing confidential information of the employer (for e.g., commercial secrets, intellectual property, proprietary information, etc) to third parties unless the employer’s prior consent has been obtained. Often, such clauses would be accompanied by an exception that disclosure may be permitted when compelled to do so to a legal institution or public authority.

Restrictive covenants prevent the departing employee from competing with the employer or soliciting clients of the employer for a fixed period of time after the termination. Often,

the validity of such covenants is closely connected to degree of restraint placed on the departing employee.

12. What are the requirements of a valid confidentiality clause?

There is no legislation governing confidentiality clauses in Singapore. However, judicial decisions have provided some guidance on the key elements of such clauses. These are:

- stipulating (and defining) the type of information to be protected by the confidentiality clause;
- stipulating the legal obligations of the employee to dispose or return such information after the term of employment; and
- insofar as confidential information cannot be disposed or returned, stipulating the conditions under which such information may be disclosed.

Generally, the Singapore Courts will uphold confidentiality obligations in employment contracts. In making such determination, the Singapore Courts will look at: (a) whether the information falls within the definition of confidential information or whether the information was imparted in circumstances that would attract confidentiality obligations; and (b) whether there was unauthorised disclosure of the confidential information to the detriment of the employer.

13. What are the requirements of a valid restrictive covenant?

In Singapore, the starting point is that restrictive covenants are generally unenforceable unless the former employer can show that it has a legitimate interest to protect and that the restrictive covenant is reasonable having consideration to the interests of the parties and the public. In general, the reasonableness of the duration of the restraint depends the seniority of the former employee, the nature of the interests for which protection is sought, as well as the nature of the restriction (for e.g., the activity restricted, temporal restriction and geographical extent).

14. What assistance may be sought for breach of a confidentiality clause or restrictive covenant?

Confidentiality clauses and restrictive covenants are usually enforced by way of a prohibitory injunction from the Singapore Courts on the basis that damages are not an adequate remedy.

However, if the breach has also led to financial loss suffered by the former employer, the employer may pursue a claim for damages in the Singapore Courts against its former employee.