

Dealing with manpower costs during the COVID-19 pandemic

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The COVID-19 pandemic and the prohibition on building works in Singapore from 7 April 2020 to 4 May 2020 (See our other article) will severely affect construction and supply companies.

One area where this impact will be felt is the labour costs during this period. This article will address the measures put in place by the Singapore government to assist companies, and other measures that can be taken by the companies, as well as some frequently asked questions.

RELIEF MEASURES FROM THE GOVERNMENT

(A) Foreign Levy

The foreign worker levy due in April 2020 will be waived, and construction companies will receive a rebate of S\$750 for each work permit or S pass holder, based on previous levies paid in 2020.

This means that the companies will not have to pay the Foreign Worker Levy for the month of April 2020 (due in May 2020), and will instead receive a rebate as early as 21 April 2020.

Employers can also apply for the levy to be waived for up to 90 days (increased from 60) for foreign workers who are currently on overseas home leave. This includes employers who send their foreign workers home from now until the end of 2020. Employers arranging for their workers to leave Singapore and seeking a return subsequently will be subject to the prevailing conditions then. You can apply for the waiver at CPF website at <https://www.cpf.gov.sg/eSvc/Web/Employer/MyRequestEmployer>

Small and medium enterprises (SMEs) will now have 5 months (increased from 3 months) to pay the foreign worker levy. Firms who are making use of the extended timeline should retain existing workers and should not be employing new foreign workers. The late payment penalty of 2 percent monthly will still apply for levies that are deferred.

(B) Man-Year Entitlement Refund for Construction Firms

Currently, some construction firms are unable to fully utilise the man-year entitlements (MYE) allocated for their projects due to delays in overseas supplies and travel restrictions.

MOM, in partnership with the Singapore Contractors Association Limited (SCAL) and the Building and Construction Authority (BCA), has introduced a temporary six-month scheme from 1 April 2020 to refund unused MYEs due to work disruptions from COVID-19. Firms have the flexibility to use the refunded MYE within one year to hire new workers or renew existing ones.

Affected firms can apply to the BCA for the MYE refund. The BCA will provide more details on the application process.

(C) Job Support Scheme

The Jobs Support Scheme (JSS) was launched in the 2020 budget to help enterprises retain their local employees (Singapore citizens and permanent residents) during this period of economic uncertainty.

Employers do not need to apply for the JSS. The grant will be computed based on Central Provident Fund (CPF) contribution data. Employers eligible for the additional tiers of support will be informed closer to the date of the first payout.

For the month of April, employers will now receive a 75 percent cash grant on the first S\$4,600 of the gross monthly wages of each local employee on their CPF payroll. This will be based on the employees' salaries for October 2019.

For subsequent months, employers will receive 25 percent cash grant on the first S\$4,600 of the gross monthly wages of each local employee on their CPF payroll. This will be adjusted to account for the difference between the April 2020 and October 2019 wages. The JSS will cover a total of nine months of wages to help employers retain their local employees, and will be paid in the following tranches:

Pay-out Number	Employers will receive payout in	Payout will cover wages paid in
1 st pay-out	End of April 2020	October - December 2019 (75% of first SGD 4,600 of gross monthly wages per local employee)
2 nd pay-out	End of July 2020	February - April 2020 (25% of first SGD 4,600 of gross monthly wages per local employee)
3 rd pay-out	End of October 2020	May - July 2020 (25% of first SGD 4,600 of gross monthly wages per local employee)

The term gross monthly wages include employee CPF contributions, but exclude employer CPF contributions, which have to be made by 14 February 2020, 14 May 2020 and 14 August 2020 for each pay-out respectively.

Firms on GIRO and PayNow can expect to receive their payouts for the first tranche slightly earlier than the rest of the businesses, who will receive their payouts through cheque.

Can an Employer just pay the local employees the amount subsidized by the government rather than paying the full salary amount?

An employer should continue paying their employees the full salary amount. However, if absolutely necessary, the employer and employee can agree to cost-saving measures - including paying only the JSS payout to the employee (see below at paragraph 18), but this requires the consent of the employees.

ADJUSTMENTS TO WAGES AND WORKING ARRANGEMENTS

(A) MOM Advice to minimize Salary and Leave Arrangements during the Circuit Breaker Period

On 6 April 2020, the MOM issued a Guideline on Salary and Leave Arrangements during the circuit breaker period, encouraging employers who had worked out cost-saving measures with their employees to review these measures in view of the enhanced JSS pay-out, to minimize the hardship to employees.

For local employees who do not work full-time during this period, the MOM has suggested that employers who cannot afford to pay the normal wages do the following arrangements, at a minimum:

	Gross monthly salary of local employee	
	Up to \$4,600	More than \$4,600
Employer assigns work to employee to complete at home	Continue to pay their prevailing salaries, including employer's CPF contributions.	Use all the enhanced JSS pay-out for April to provide for a baseline pay to employees including the employer's share of the CPF contributions; and Provide for work done on a pro rata basis – for example, if the employee works half-load (i.e. at 50%), the employer should pay the employee 50% of his monthly salary in addition to the JSS pay-out for April, subject to a cap of his prevailing salary.
Employer does not assign work to employee	Use all the enhanced JSS pay-out for April to provide for a baseline pay to the employee including employer's CPF contributions.	

The 2nd and 3rd JSS pay-outs would be calculated based on February to July 2020 wages. Therefore, employers who reduce their employees' wages or put their employees on no-pay leave during this period will have their subsequent JSS pay-outs reduced correspondingly. See the following illustration from MOM:

	JSS Payout		
	Payout 1	Payout 2	Payout 3
Scenario 1 Employer continues to employ worker in April 2020 and pay regular wage	3,750	2,250	2,250
Scenario 2 Employer puts worker on No Pay Leave for April 2020	3,750	0	2,250
Scenario 3 Employer retrenches worker in April 2020	3,750	0	0
Scenario 4 Employer cuts wages by 1,500 in February 2020 and retrenches worker in April 2020	3,750	-750	0

The employer may also consider the following measures:

- a) send the employee for training courses approved for Absentee Payroll Funding⁴ so that salary paid to the employee during training would be mostly supported by the Government;
- b) apply for Flexible Work Schedule (FWS) which allows "time banking" of additional salary payments to offset overtime payments in the future;
- c) grant additional paid leave to the employee;
- d) allow the employee to consume his existing leave entitlements; or
- e) where possible, allow and support their local employees to take on a second job (e.g. part-time or temporary job with another employer) in companies or public agencies that could continue to operate.

(B) Tripartite Guidelines on Salary and Leave Arrangements

Companies that have no choice but to implement cost-saving measures should take into account the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment (which was very recently updated in March 2020), ("**Tripartite Guidelines**"), which provides guidelines on how to apply measures in situations of excess manpower.

The Tripartite Guidelines recommend that companies apply measures gradually, in the following sequence:

- a) adjust working arrangements without wage cuts (i.e. encourage paid annual leave);
- b) adjust working arrangements with wage cuts. For example, by having shorter work weeks, or temporary lay-offs
- c) decrease wages, with the consent of their employees; and
- d) put employees on no pay leave, as a last resort.

Employers that implement cost-saving measures during the Circuit Breaker between 7 April and 4 May 2020 (inclusive) must notify MOM if the cost-saving measures result in more than 25% reduction in the salaries of their employees and the employer has at least 10 employees.

(1) Paid Leave

Employers can ask employees to use their annual leave entitlement during this period. In some cases, the employment contract may allow the employer to compel the employee to take their annual leave. Even if the contract does not, it is likely that most employees will agree to do so if requested by their employers.

(2) Shorter Work Week / Temporary Lay-off

Employers can ask employees to stop coming to work for a short period (temporary lay-off) or stop coming to work on certain days in a week (shorter work week).

However, the employers must still pay at least 50 percent of the employees' gross salary during the days that they are temporarily laid off.

The reduction in work days should not exceed three days in a week, and one month at any one instance should not last for more than 3 months at any one instance. The temporary lay-off should not exceed 3 months at any one instance.

Shorter work weeks and temporary layoffs, while being permissible cost-cutting measures, are consensual arrangements that cannot be forced upon the employees. Employers should hold discussions with their employees and seek their consent to be placed under these work arrangements for the period during which the company is affected by the COVID-19 pandemic. If the employees are not agreeable to these cost saving measures, they are able to continue coming to work on every working day of the month and receive their full monthly salary.

(3) Voluntary No Pay Leave

No-pay leave is a drastic measure, companies should ensure that:

- a. they have considered and/or implemented other measures, and consulted their unions and employees;
- b. senior management should lead by example, by accepting earlier and/or deeper cuts in cost-saving measures; and
- c. no-pay leave should be applied in conjunction with other cost-saving measures.

No-pay leave is voluntary and cannot be forced on the employees. However, during this period, employees may agree to take no pay leave, if the alternative is the employer ceasing operations and retrenching its staff. The employer should keep a record of all the leave applications/correspondence, whether paid or unpaid

It is mandatory for employers to notify the Ministry of Manpower within 1 week after adjusting the workers' pay or imposing no-pay leave.

(C) Foreign Workers

Under Section 22A(1) of the Employment of Foreign Manpower Act, it is an offence for any person to deduct any sum from the salary payable to a foreign employee, as consideration or as a condition for the continued employment of the foreign employee.

Therefore, placing foreign workers on no-pay leave or reducing their salary may be an offence, unless prior approval is obtained from the Ministry of Manpower approval from the Controller of Work Passes.

The MOM has stated that during this Circuit Breaker period, foreign employees may agree to cost-saving measures. However, employers should provide salary support, including payment for upkeep and well-being of their more vulnerable foreign employees during this period, in the following manner:

- a. foreign employees who continue to work full-time during Circuit Breaker must be paid their prevailing salaries.
- b. for foreign employees who could not work during Circuit Breaker, employers must continue to be responsible for their **maintenance and upkeep and work out mutually agreed salary and leave arrangements with the unions and employees**, especially for the low-wage work permit holders who may need more support. For example, employers can ask their foreign employees to consume their leave entitlements.
 - i) where leave entitlements are exhausted, employers should provide salary support for their foreign employees and may apply for FWS to time-bank part of the salaries to cover overtime work after Circuit Breaker; and
 - ii) employers must treat their foreign employees fairly and responsibly taking into consideration the levy waiver and rebate provided by the Government. **For example, for a low-wage work permit holder who is staying at a purpose built dormitory and drawing a basic pay of \$600 per month, a responsible employer can pay the foreign employee \$450 as salary and also for his food and accommodation during Circuit Breaker.** However, the foreign employee would forego his work-related allowances, such as his transport and shift allowances of \$400 per month.

As long as the foreign worker is in Singapore, the employer is obliged to pay for their medical care.

Can the Contractor claim for the costs of employee's wages, during the Circuit Breaker period, from the Developer?

The costs incurred by the contractor, or sub-contractor, during the period when work has stopped would constitute "loss and expense". Whether the contractor is entitled to such loss and expense depends on the terms of the contract. For instance, Clause 22 of the PSSCOC Conditions (2008 Edition) entitles a main contractor to bring a claim for all loss and expense incurred during the period of work suspension or disruption.

On the other hand, some contracts provide a fixed sum for preliminaries. In such situations, the main contractor will not be able to bring a claim for loss and expense even if the main contractor is entitled to an EOT. Currently, unless modified, none of the SIA forms after 1980 has a "loss and expense" clause for prolongation.

It is also common for a construction contract to provide for a fixed daily rate for prolongation cost. In such cases, the quantum of such loss and expense is predetermined by the construction contract itself

The contractor would have to prove that the loss and expense was caused by the event that caused the EOT. This is unlikely to be controversial where work was stopped because of COVID-19, and the contractor continues to pay wages, since there is no possibility of redeploying the workers.

It is important to note that even if a contractor is entitled to Loss and Expense, he or she may not be able to recover them through the SOP Act. This is because S17(2A) of the SOP Act, an adjudicator must disregard claim for damage loss or expense unless supported by: (i) any document showing agreement between the parties on the quantum of the claim; or (ii) any certificate or other document that is required to be issued under the contract.

If recovery through the SOP Act is not available, the contractor may have to resort to litigation or arbitration to recover these costs.

What if the Dormitory is gazetted as an Isolation Area?

At least two dormitories have been gazetted as isolation areas, to avoid the risk of further transmissions from any potentially infected workers to others in the dormitories, as well as into the community. In this case, all the affected workers will not go to work.

MOM has stated that:

- a. the workers **must continue** to be paid their salaries for the duration of the quarantine. Their period of absence from work is treated as **paid hospitalisation leave as part of the worker's leave eligibility under the Employment of Foreign Manpower Act (EFMA)**. Their employers are eligible to claim for the \$100 daily quarantine allowance;
- b. arrangements will be made to cater three meals a day for all affected workers for the duration of the quarantine. They will also be issued with reusable masks, surgical masks, thermometers, hand sanitisers and other essentials so they can keep themselves safe and comfortable; and
- c. Onsite medical support has been deployed to support the workers residing at both dormitories. The dormitories have also implemented enhanced health screening measures, such as requiring workers to check and report their temperature twice daily, as well as the regular monitoring for fever and respiratory symptoms. Those who are unwell will be isolated and will be assessed by medical personnel for further attention.

Companies that are providing essential services with workers affected by this quarantine order will be supported and arrangements will be made to ensure these essential services can continue to be provided.

In the event that the dormitory is gazetted as an isolation area, it is unlikely that the contractor can claim the costs of the workers' salary from the developer, unless there is a specific clause in the contract that allows them to do so.

RETRENCHMENT

As a last resort, employers may be forced to retrench their employees in order to stay afloat.

Retrenchment is largely a matter of contract between the employer and the employee. If there is no provision for severance pay in the contract, there is no need to pay severance pay. Nonetheless, the Tripartite Alliance for Fair and Progressive Employment Practices (TAFEP) recommends payment of a retrenchment benefit varying between two weeks to one month's salary per year of service. TAFEP also recommends that employers take certain steps to assist the employees during this period, such as offering help with job searches and placing them in roles in associate organisations, wherever possible.

Employers that employ at least ten employees and terminate the employment of at least five employees within a 6-month period are required to notify the Ministry of Manpower that they are carrying out a retrenchment exercise. This should be done within 5 working days after the employees are notified about their retrenchment.

For More Information

If you have any questions about this *Jun{}*, please contact *Mj wnu\xx*, any of the attorneys in our Singapore office or the attorney in the firm with whom you are in regular contact.

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