COVID-19 Updates for Singapore Employers:

Cost Reduction, Mandatory Notifications and Government Support from the Fortitude Budget

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COVID-19 RESOURCES

Following the end of the "circuit breaker" period in Singapore on 1 June 2020, Singapore is implementing a gradual resumption of businesses. During this period, employers are likely to continue to have concerns over cost-saving and business continuity measures, and the government support available to them.

Since our previous article, there have been a number of updates and advisories from the Ministry of Manpower (MOM) providing additional guidance to employers during the circuit breaker period and beyond. Shortly before the end of the circuit breaker period, the Singapore government had also presented the Fortitude Budget on 26 May 2020, which includes, among others, additional support for employers.

The following guidance aims to give an update on the current MOM guidance on cost-saving and business continuity measures, and highlight the key government support provided to employers under the Fortitude Budget during this health and economic crisis.

Updates from the Fortitude Budget

Singapore's Fortitude Budget was presented by Deputy Prime Minister and Finance Minister Heng Swee Keat in Parliament on 26 May 2020. The Fortitude Budget builds on the previously announced Unity, Resilience and Solidarity Budgets to help businesses and individuals adapt and build resilience amid the COVID-19 pandemic. Together with the Unity, Resilience and Solidarity Budgets, the Singapore government has dedicated close to S$100 billion (S$92.9 billion), almost 20% (19.2%) of Singapore's GDP, to support COVID-19 relief measures and support schemes.

Further details of the support given to employers under the Unity, Resilience and Solidarity Budgets can be found in our previous article here.

The central focus of the Fortitude Budget is the protection of jobs. In light of that aim, the Fortitude Budget includes a number of key measures and enhancements which are relevant for employers. We set these out below.

Extension of the Jobs Support Scheme (JSS) coverage to cover an additional month for all firms

Broadly, the JSS is a scheme where the Singapore government co-funds between 25% to 75% of the first S$4,600 of gross monthly wages paid to each local employee, depending on industry sector. Employers need not apply for the scheme, as the cash grant will be automatically computed based on Central Provident Fund (CPF) contribution data.

Under the Fortitude Budget, JSS coverage was extended to cover wages paid in the month of August 2020, bringing the total wage support under the JSS to ten months. Support for August 2020 will be paid out in October 2020.

Continuing wage support for firms who are not allowed to re-open

Due to the phased re-opening of businesses, not all firms are allowed to re-open commencing from 1 June 2020. Wage support at 75% of the first S$4,600 of gross monthly wages paid to each local employee will continue to be given for all businesses until August 2020 or when they are allowed to re-open, whichever is earlier. These will benefit firms who are not allowed yet to re-open, such as retail outlets, gym and fitness studios, and cinemas.

Business can check if they are allowed to resume operations at the GoBusiness Portal here.

Refinement of JSS Tiers

The level of JSS support available for businesses are split into three tiers, with wage support at 75%, 50%, or 25%, depending on the severity of the effect of the COVID-19 pandemic on their industry. Wage support has been increased for some specific types of businesses to either 75% or 50%. A detailed list of the new classification and the eligibility criteria can be found here.

Firms who have their level of wage support increased will receive a back-payment to top up their previous JSS payouts to the higher level of support. This retrospective payment will be made by July 2020.

The enhancements to the JSS contained in the Fortitude Budget will cost S$2.9 billion. In total, the JSS will result in S$23.5 billion of support to businesses.

Foreign Worker Levy waiver and rebate

Under the previous budget announcements, the monthly foreign worker levies payable in April and May 2020 were waived. Following the Fortitude Budget, the foreign worker levy waiver has been further extended to a 100% wavier for June 2020 and a 50% waiver for July 2020 for businesses who are not allowed to resume operations on-site immediately following the end of the "circuit breaker" period.

Employers have also previously been provided with a foreign worker levy rebate of S$750 for each Work Permit or S Pass holder for the months of April 2020 and May 2020. Following the Fortitude Budget, the foreign worker levy rebate will now also be given for the months of June and July for businesses who are not allowed to resume operations (and include all companies in the construction, marine shipyard and process sectors). The levy rebate will be S$750 in June and S$375 in July. For clarity, if a business is allowed to resume in July, they will not be entitled to the levy rebate for July.

Please note that to receive this additional levy rebate, an online acknowledgement will have to be submitted by 10 June 2020 to MOM at the following link.

Other support for businesses

Besides the abovementioned enhancements to the JSS and the foreign worker levy waiver and rebates, which would be relevant to all employers, the Fortitude Budget also introduces other measures aimed at assisting businesses during this period and moving forward, such as:

(a) Deferring the previously planned increase in CPF contribution rates for senior workers by one year, from 1 January 2021 to 1 January 2022.

(b) Cash grant to offset the rental costs of small to medium enterprise (SME) tenants, to be disbursed through property owners. Taken together with the property tax rebates provided in the previous budget announcements, the government will, in effect, offset about two months of rental for qualifying SME tenants of commercial properties, and about one month for qualifying SME tenants of industrial and office properties.

(c) Further rental waivers for government tenants:

   1. Commercial tenants will have a total of four months of rental waivers (an increase of two months).

   2. Stallholders in hawker centres and markets managed by government agencies will get a total of five months of rental waiver (an increase of two months).

3. Industrial, office, and agricultural tenants of government agencies will have a total of two months of rental waiver (an increase of one month).

(d) Further financing support for start-ups: S$285 million has been set aside to co-invest in promising startups with the private sector where the government intends to use this sum to attract at least another S$285 million in matching private investments.

(e) Sector-specific support for the aviation, tourism, land transport, arts and culture, financial, and maritime sectors, as well as the built environment sector (which includes construction).

(f) Promotion of digital transformation: To encourage businesses to digitalise, the government has set aside a bonus of S$300 per month over five months (given subject to sustained use of e-payments systems) to encourage adoption of e-payments by stallholders in hawker centres, wet markets, coffee shops, and industrial canteens. Enhanced support will be provided for businesses who are ready to take the next step to digitalise. Eligible businesses in the F&B and retail sectors will receive a pay-out of up to S$5,000 if they adopt PayNow Corporate, e-invoicing, business process or e-commerce solutions. S$250 million has also been set aside to help businesses digitalise in partnership with digital platform solution providers and industry champions.

(g) The introduction of a SGUnited Jobs and Skills Package: This package aims to expand public-sector hiring, subsidise training and certification courses, and work with businesses to create traineeship and hiring programs in the private sector to create 40,000 jobs, 25,000 traineeships and 30,000 skills training opportunities.

For more details on the Fortitude Budget, please visit the link to the budget statement here.

Updated advisory on retrenchment benefits

Supplementing the Tripartite Advisory on Managing Excess Manpower and Responsible Retrenchment published by the tripartite partners on 20 March 2020 (Tripartite Advisory), MOM had on 20 May 2020 published further guidelines on the recommended retrenchment benefits in respect of companies who are looking to retrench their employees, if retrenchment is inevitable.

Retrenchment should always be the last resort to manage manpower costs

MOM recommends that employers should only consider retrenchment as a last resort and consider other cost-saving measures outlined in the Tripartite Advisory before turning to retrenchment. Further details of the recommendations in the Tripartite Advisory have been discussed in our previous article here.

Even if an employee is not working due to the business restrictions in place, MOM recommends that a baseline wage be paid to all employees, and that employers can tap on the payouts under the JSS for this purpose.

Guidelines on retrenchment benefits

Employers in sound financial position

Employers who are in sound financial position should continue to pay retrenchment benefits according to the employee's agreed-upon retrenchment benefits, which may be set out in the existing employment contracts, employee handbooks, collective agreements, or memoranda of understanding. If there are no such contractual provisions, the employers can consider adopting the prevailing norms for retrenchment benefits (between two weeks and one month's salary per year of service) stated in the Tripartite Advisory.

Employers whose businesses are adversely affected

For employers whose operations and business prospects are adversely affected, the employer should work with the union or the employees to renegotiate for a fair retrenchment benefit linked to the employee's years of service.

Employers in severe financial difficulties

Employers that are unionised should negotiate with their unions for a mutually acceptable retrenchment benefit package. Non-unionised employers should support their retrenched employees by providing a lump sum retrenchment benefit. Instead of linking retrenchment benefit to employees' years of service, a lump sum of between one and three months of salary could be provided, taking into consideration the JSS pay-outs that employers have received and their financial position.

Consideration for lower wage employees

In all cases of retrenchment, employers are urged to be more generous towards their lower wage employees (e.g. employees eligible for the Workfare Income Supplement), and provide them greater retrenchment benefits, after carefully considering the impact of retrenchment on the livelihoods of the affected employees.

Support for retrenched employees

Employers should support their retrenched employees in seeking new employment, either through their business networks, or by referring them to Workforce Singapore (WSG) or Employment and Employability Institute (e2i) for employment facilitation.

Retrenched Singaporean and Permanent Resident employees who meet the eligibility criteria can also apply for the COVID-19 Support Grant (eligible applicants can receive a monthly cash grant of up to S$800 for 3 months (i.e. up to S$2,400 in total)) as well as tap on the various training support grants.

Employers planning to undergo a restructuring and/or retrenchment exercise should also join NTUC's Job Security Council (JSC), which offers support to both employers and displaced employees, such as outplacement services that match displaced employees to other employers within the JSC network.

Reminder to all employers

Employers are reminded to ensure that their employees are treated with empathy and dignity and the retrenchment exercise is conducted in adherence to the Tripartite Advisory, i.e. fair selection of employees for retrenchment, early consultation with unions, early communication to affected employees and employment facilitation for affected employees.

An employer must also notify MOM of the retrenchment exercise, if the employer has at least 10 employees and retrenches 5 or more employees within any 6-month period.

Updated Advisory on Salary and Leave Arrangements

On 9 June 2020, MOM issued an updated Advisory on Salary and Leave Arrangements (Advisory) to guide employers and employees on post-circuit breaker salary and leave arrangements.

Cost-saving measures could continue

Employers who have worked out cost-saving measures with their unions and employees should continue these measures as necessary.

Employers whose businesses are operating

Employers must pay prevailing salaries to local employees who continue to work fully. This includes the employers' contributions to CPF. For employers who will require more time to resume the full scale of their business operation, the tripartite partners strongly encourage employers to consult and reasonably implement the cost-saving measures outlined in the Tripartite Advisory.

Employers that cannot resume business operations

Employers that cannot resume operations immediately after the end of the circuit breaker period will continue to receive JSS support of 75%. MOM has provided recommended salary arrangements as follows:

	Gross monthly salary of local employee up to S$4,600	Gross monthly salary of local employee more than S$4,600
Employer assigns work to employee to complete	Continue to pay their prevailing salaries, including employer's CPF contributions.	Use the enhanced JSS payout to provide for a baseline monthly salary 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 abovementioned baseline monthly salary, subject to a cap of his prevailing salary.
Employer does not assign work to employee	Use the enhanced JSS payout to provide for a baseline monthly salary to employees, including the employer's share of the CPF contributions.	

What counts as "baseline" pay has not been defined by MOM, and MOM has stated that the baseline salary may vary across employers due to different financial positions and business prospects. However, we recommend that employers take initiative in acting reasonably in determining such pay, with a view to providing sufficient living wages to their employees. For reference, MOM has suggested that an employer who is financially healthy may give a non-working employee salary equivalent to their JSS payout (i.e. 75% of their salary, if the business is unable to resume).

If, after implementing the abovementioned measures, the local employee's salary is still below his usual monthly salary, MOM recommends that the employer should also consider the following measures:

(a) Send the employee for training courses approved for Absentee Payroll Funding so that the overall salary paid to the employee during the training period would be mostly supported by the government. The Absentee Payroll Funding scheme is a grant to help employers defray the manpower costs incurred when they send their employees for approved certifiable skills training. Under the scheme, a certain percentage of the hourly wages of the employee is subsidized by the government to account for the time spent in training.

(b) Apply for Flexible Work Schedule (FWS) which allows "time banking" of additional salary payments to offset overtime payments in the future. The Flexible Work Schedule scheme is relevant for workers who are entitled overtime. Employers can submit proposals to MOM to have a weekly, monthly, or quarterly roster of hours for the employees, and these proposals must have been consented to by the employees. This allows an employer to roster less hours now, and more hours later, and those additional hours later would not require overtime payments (if approved by MOM). They key is that the employee should still get a monthly basic salary during the periods they are working less.

(c) Grant additional paid leave to the employee.

(d) Allow the employee to consume their existing leave entitlements.

(e) Where possible, employers should also allow and support their local employees to take on a second job, such as one under the SGUnited Jobs Initiative.

Further comments on implications of taking on a second job

We note that many employee's contracts may have contractual provisions on loyalty or contain non-competition provisions. If an employer intends to allow its employees to take on a second job, an understanding should be reached that its employees should be required to keep the employer updated on the job requirements in the second job so that the employer is aware of any conflicts of interests which may arise. Another consideration for employers to take into account is whether the employee will be able to resume work with them on short notice after the employers have been allowed to resume business. As such, it may be more appropriate to allow employees to take on second jobs of a relatively temporary nature. The MOM has also released further guidance on second job arrangements for employees.

MOM warns that employers facing financial difficulties who are unable to adhere to MOM's recommendations should not act unilaterally and put their local employees on prolonged no-pay leave without any baseline salary. Employers should discuss with their unions and employees to come to an agreement on how the JSS payouts are to be used, in order to strike a balance between ensuring business survival and providing salary support. While doing so, employers should also give special consideration to their lower-wage employees and provide more support to them.

Foreign employees

Employers should continue to take care of the well-being of all their foreign employees in Singapore. Employers have a legal obligation to provide upkeep and maintenance for work permit holders while they are in Singapore.

As with local employees, foreign employees who work full-time must be paid their prevailing salaries. Employers who are unable to allow foreign employees to resume full-time work in Singapore are encouraged to continue to pay the employees their prevailing salaries by using the following measures:

(a) Allow the employees to consume their existing leave entitlements;

(b) Redeploy the affected foreign employees to another role within the company;

(c) Provide the foreign employees with relevant training and upskilling to get ready for the full resumption of business activities; or

(d) Apply for FWS.

If employers are unable to pay prevailing salaries because of the need to reduce wage costs, employers should come to an agreement with their unions and foreign employees on the appropriate salary and leave arrangements during this period. Employers must obtain written consent before placing a foreign employee on no-pay leave for an extended duration.

Additionally, in correspondence with the MOM during the circuit breaker period, the MOM had previously advised that employers should, at the minimum, pay non-working foreign workers at least the balance of the foreign worker levy rebate after deducting the actual costs of housing and food incurred by the employer, or the workers' in-principle-approval salaries, whichever is lower.

Mandatory Notification Requirements for Cost-saving Measures

MOM has imposed a mandatory requirement that employers must notify MOM within one week after implementing cost-saving measures, if the employer:

(a) is registered in Singapore;

(b) has at least 10 employees; and

(c) implements cost-saving measures that result in more than 25% reduction in gross monthly salary for local employees or more than 25% reduction in basic monthly salary for foreign employees.

By filing the notification, approval from the Controller of Work Passes need not be sought prior to reducing the salary for foreign employees. Nevertheless, before implementation of the cost-saving measures, employers should consult and obtain the consent of unions and employees early, and communicate the impact of the measures clearly.

Please note that the same notification requirements as set out above were implemented during the circuit breaker period. Following the end of the circuit breaker period, MOM has continued to maintain these notification requirements.

Conclusion

Despite the gradual return to normalcy, the COVID-19 pandemic is far from over and the economic and social impacts of the pandemic will continue for the foreseeable future. Employers will continue to face challenges balancing the survival of their business and the livelihood of their employees. In the process of implementing cost-saving arrangements, employers need to consider both the requirements and recommendations of the MOM and the tripartite organisations, and be aware of and make full use of the support provided by the government.

While this article covers the concerns specific to employment, this current pandemic has resulted in major disruptions for global businesses, affecting not just employment and human resources matters, but also causing issues involving contractual performance, supply disruptions, funding concerns, talent acquisition and development, and others.

For More Information

If you have any questions about this *Update*, please contact Derrick Boo, Evan Teoh Ye Oon, 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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