



How To Establish A Spectacular Global Workforce in Singapore

Insights

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Year after year, Singapore is one of the most prime and thriving economy's in Greater Asia. Given its centrally situated geographic location, Singapore possesses a competitive economy for investments, as well as numerous business opportunities for a vast variety of service industries. If your company is considering doing business in Singapore, an understanding of the Singapore's employment and labor laws are essential.

In Singapore, the Employment Act, the Industrial Relations Act, and the Retirement Act are the three key statutes governing employment law. Additionally, other statutes, include, Trade Unions Act, Trade Disputes Act, Work Injury Compensation Act, Retirement Age Act, Workplace Safety and Health Act, Central Provident Fund Act, the Factories Act, and Employment of Foreign Manpower Act. In the absence of relevant statutory authority, common law applies and English cases are highly regarded and persuasive in Singapore.

Who Is Covered Under the Employment Act:

The Employment Act covers every employee (regardless of nationality) who is under a "Contract of Service" with an employer, except (1) persons employed in a managerial or executive position, (2) seamen, (3) domestic workers, and (4) persons employed by a Statutory Board or the Government.

In establishing a workforce in Singapore, the biggest area for a company is determining if an employee falls within a "managerial or executive" position. Positions regarded as "professional positions" or requiring and necessitating specialized training, skills, and knowledge (e.g. accountants, doctors, dentists, lawyers) are deemed to be in a managerial or executive position. However, with the exception of high level executives, the majority of business positions fall within a gray area. As a rule of thumb, managers and executives are defined as employees with executive or supervisory function, which include the: (a) authority to make decisions or influence issues of recruitment, hiring, discipline, termination, assessment of performance; (b) involvement in the formulation of strategies and policies of the company or enterprise, or (c) the involvement in overall operations and management of the company or enterprise. Depending on the position (e.g. lower level managers, executives), the specific duties and responsibilities engaged by the company to perform, and the salary negotiated, a position can be deemed partially covered by the Employment Act and partially not covered. Therefore, if a position falls within a gray area, it is ideal to consult with an attorney to make an educated and well-informed decision before proceeding to ensure compliance with Singaporean laws, including statutory law as well as case law.

What Is A Contract of Service?

In Singapore, a Contract of Service is an agreement, oral or written, that provides the terms and conditions of employment. A Contract of Service ideally must include certain information, including: (1) commencement of employment; (2) job title and scope; (3) hours of work; (4) benefits; (5) termination; and (6) code of conduct. It is noteworthy that any terms or condition less favorable than the provisions required under the Employment Act is considered illegal, null and void, and the Employment Act takes precedence over any particular contractual term or provision that is less favorable.

Firstly, the Contract of Service should at the very least state the commencement of employment or the employment period if possible. If an employee accepts a job offer agrees to a Contract of Service, but fails to appear for work, the Employment Act does not apply because the length of an employee's service is calculated from the date on which the employee commences work and not the date of confirming acceptance. Secondly, the Contract of Service should state the specific appointment, meaning the job title and job scope describing the duties and responsibilities. For best business practice, the more detail in this provision the better for the employer to ensure effective communication with the employee, and for purposes of evaluating performance and termination due to substandard performance. Thirdly, the Contract of Service should state the hours of work, the probationary period (if any), and remuneration. Fourthly, the Contract of Service should detail the employee's benefits (e.g. sick leave, annual leave, maternity leave). Employers should be mindful that maternity leave is highly regarded in Singapore and employers must comply with the well codified requirements under the Employment Act. Fifth, the Contract of Service should state the method in termination of the employment relationship and also state the notice period required. Lastly, but not least, an ideal Contract of Service explains the code of conduct expected from the employee (e.g. punctuality, performance, professionalism in the work place, etc.). A provision explaining that misconduct (e.g. dishonesty, theft, disorderly or immoral conduct, willful subordination, etc.) will be investigated thoroughly, and disciplinary action up to termination can and will be effectuated, should be included.

The employer may terminate a Contract of Service without waiting the notice period to expire by paying the other party a sum equal to the salary that would have been earned by the employee during the required notice period. Contracts that require employees to pay a monetary amount (in addition to notice pay) to the employer for terminating the contract are not governed by the Employment Act, and civil court remedies must be sought to determine the outcome. Employers must be mindful that an employee may terminate an employment relationship with justification without giving notice if the employer (1) fails to pay the employee's salary within seven (7) days after salary is due or (2) if the employee is called upon to engage in work activities outside the scope of the terms of the contract.

What Is the Difference Between Contract of Service vs. Contract for Service?

In Singapore, there is a clear and distinct difference between a Contract of Service and a Contract for Service. A Contract of Service (as described above) is an agreement whereby a person is employed

and agrees to serve his employer as an employee, and the employer contributes to the Central Provident Fund and provides the employee with benefits (i.e. sick leave, annual leave, etc.).

A Contract for Service, however, is comparable to circumstances when a person is engaged as an independent contractor. As such, the person is a self-employed person or outside vendor engaged for a fee to perform and carry out an assignment(s) or task(s) or project(s) for the company. Under such a work arrangement, there is no employer-employee relationship, and the person is not covered under the Employment Act. To determine if a Contract of Service or a Contract for Service applies, companies need to take into consideration the degree of control over the person's performance of work, ownerships of factors of production (e.g. tools, equipment, work place, materials, etc.) and economic considerations (e.g. if the person is engaged in business for the company or for his/her own account). It is ideal to consult with an attorney to make an educated and well-informed decision before proceeding to ensure compliance with a Contract of Service or a Contract for Service.

What Laws on Employment Discrimination Are Applicable in Singapore?

The only type of employment discrimination codified in Singapore is with regard to age. The Retirement Age Act prohibits dismissals of any employee who is below the retirement age of 62 on the grounds of age. Unlike the Employment Act, the provisions of the Retirement Act applies to all employees including executives, managers, and professionals. Any employer found liable for age discrimination is held liable for a civil fine and potential imprisonment.

Although Singapore does not have equal opportunities legislation codified for other protected categories (e.g. gender, race, etc.) or laws prohibiting sexual harassment, its Constitution provides for entitlement to equal protection under the law and that there should be no discrimination based on religion, race, descent or place of birth. As a result, although rare but increasing, challenges can be brought under constitutional grounds. Under these circumstances, civil courts look to English law for constructive guidance and permit moral persuasion. Based on Singapore's work-friendly culture and its extremely low unemployment rate, it is essential for companies to ensure a respectful and fair work environment in order to prosper in Singapore's economic and business climate.

Are Contract of Service Employer Friendly?

Companies engaging in Singapore's thriving business economy must keep in mind that the employer-employee relationship is governed by the Contract of Service. Case law demonstrates that the Contract of Service has more weight than employee handbooks or other materials detailing company policies and procedures. Hence, the Contract of Service is essential in employing and managing employees effectively. If implemented and utilized properly, Contracts of Service can be an effective tool in building your global workforce and enhancing productivity in Singapore.