



# Mass layoffs and collective redundancies guide

## Overview

As COVID-19 continues to impact the global economy in unprecedented ways, companies that have had to scale back or shut down operations are bracing for what the next few months will bring, and what this means for their workforces. While the hope is that most workforce measures will be temporary – whether that’s furlough, short-term closures, hiring freezes etc. – given the scale and fluidity of the pandemic, other longer term measures may become necessary over time.

Even though these current circumstances are extraordinary, employers remain subject to important legal obligations when considering permanent layoffs, which vary significantly across countries.

In this publication, we examine key considerations for employers looking to make permanent reductions in force across the Asia Pacific region.

## Generally, is it permissible for companies to conduct mass layoffs and/or collective redundancies in your jurisdiction?

Australia	It is permissible for companies to conduct mass layoffs and/or collective redundancies in Australia. The Fair Work Act 2009 oversees most Australian workplaces and sets out the minimum redundancy procedure that an employer must follow. However, particular state legislation and industrial instruments (such as awards and enterprise agreements) may apply to entities that are not covered by the federal industrial relations system (most commonly state civil servants) and may stipulate a separate procedure for redundancy.
China	It can be difficult for an employer to establish sufficient grounds for redundancy in China. Where an employee is made redundant in China, the provisions of the Employment Contract Law (ECL) must be complied with. In practice, to avoid future dispute and legal exposure, employers should seek a mutual termination with employees subject to Art. 36 of ECL.
Hong Kong	In the absence of any procedural unfair dismissal regime in Hong Kong and provided impacted employees are not within a protected category, termination of an employment contract by reason of redundancy, is generally considered to be fairly straightforward. The Employment Ordinance sets out the concept of redundancy and prescribes minimum statutory provisions and a statutory entitlement to a severance payment in cases of redundancy for eligible employees.
India	<p>Yes, but this is subject to procedures prescribed under the Industrial Disputes Act, 1947 (IDA).</p> <p>The IDA is the primary law in India that governs an employer's ability to 'lay-off'* and also undertake redundancies (i.e., retrenchment or termination). The termination procedure under the IDA applies only to employees who fall within the definition of 'workmen' (i.e., individual contributors). For other categories of employees (i.e., those primarily in supervisory or managerial roles), 'lay-off' and termination is governed by their employment contract and/or the shops and establishments (S&amp;E) Act of the relevant State.</p> <p>The IDA procedures to be followed for commercial establishments for both a lay-off and a retrenchment is to notify the State government authorities of the same. However, for factories with workmen beyond a particular threshold, it requires the State government's prior permission.</p> <p>* Note: Under the IDA, 'lay-off' is specifically defined to mean an employer's failure/refusal/inability to provide work on account of pre-defined reasons such as, shortage of coal/power/raw materials, accumulation of stocks, breakdown of machinery, natural calamity, etc. In case of a 'lay-off' under the IDA, the employment relationship would continue to exist, and employers would be required to pay compensation (at 50% wages) during the lay-off period. Hence, the non-provision of work in case of a lay-off is only temporary.</p> <p>** A 'workman' is broadly defined as any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This definition excludes those employed mainly in a managerial or administrative capacity; those employed in a supervisory capacity drawing monthly wages in excess of INR 10,000; and sales employees engaged in certain industries.</p>

Indonesia	<p>There is no specific definition of redundancy or layoff. Employers seeking to make employees redundant should ensure that they provide valid evidence as grounds for the redundancy. All dismissals on redundancy grounds require approval from the Industrial Relations Court – “IRC” (if not mutually agreed). A consultation process must be completed before notice of termination is given to employees. Where a redundancy occurs, the employer must pay the employee a termination package consists of severance pay, term of service recognition pay (if applicable) and compensation pay.</p> <p>Under the Manpower Law, the employees may be made redundant for the following reasons:</p> <p>a. Article 164 (1): the company is closing the business in which the employees are employed because the company has suffered a loss for at least two consecutive years evidenced by the audited financial statements, or due to <i>force majeure</i> which is not defined further. The termination package should be:</p> <p>1x Severance Pay (<i>Pesangon</i>) + 1x Term of Service Recognition Payment (<i>Penghargaan Masa Kerja</i>) + Compensation</p> <p>b. Article 164 (3): the company is permanently closing the business in which the employees are employed because the company wishes to improve efficiency. The termination package should be:</p> <p>2x Severance Pay (labor <i>Pesangon</i>) + 1x Term of Service Recognition Payment (<i>Penghargaan Masa Kerja</i>) + Compensation</p> <p>In practice, terminations for efficiency without the company closing down permanently are acceptable, particularly if efficiency or redundancy is covered by the employment agreement, Company Regulations, or Collective Labor Agreement which will serve as the legal basis on which the company terminates some employees due to redundancy.</p>
Japan	<p>It is very difficult to dismiss an employee in Japan, even in a redundancy situation. There is no statutory definition of redundancy. Dismissals due to economic conditions are not prohibited in Japan, but the right to do so is severely limited by the Labor Contract Act and court precedent. Japanese law provides that if a termination lacks objectively reasonable grounds and is not considered appropriate under standard social norms, it will be deemed an abuse of an employer’s right to dismiss the employee.</p>
New Zealand	<p>It is permissible for companies to conduct mass layoffs and/or collective redundancies in New Zealand. There are no specific requirements for collective redundancies, as opposed to individual. For all redundancies, employers must use a fair and reasonable process when implementing a redundancy. An employer needs to show that there is a genuine commercial reason for any redundancy decision.</p>

Philippines	<p>There are no specific mass layoff rules. Layoff, used interchangeably with retrenchment or redundancy, would be a valid ground for termination, if the company meets the statutory requirements for retrenchment or redundancy. For both redundancy and retrenchment, there must be fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.</p>
Singapore	<p>It is lawful to terminate an employee's employment by reason of redundancy in Singapore, subject to any restrictions under the contract of employment and any applicable collective bargaining agreement/union agreement. The Tripartite Guidelines on Managing Excess Manpower and Responsible Retrenchment issued by the Ministry of Manpower are used for guidance in redundancy situations and are often followed by employers in Singapore, but are not legally binding.</p>
South Korea	<p>Mass layoffs are lawful, provided an employer fulfils the following statutory requirements: (i) urgent business necessity, (ii) fair criteria for selecting the employees to be laid off, (iii) every effort to avoid layoffs, and (iv) 50 days' prior notice and good faith consultation with a labor union (if there is no such union, then with a representative of the majority of employees).</p> <p>The urgent business necessity standard means that a company must demonstrate losses over a considerable period of time (at least one or two years). The performance of the company as a whole, will be examined. In addition, a business line or division closure may constitute an urgent business necessity if such closure is resulted from restructuring or reorganization of a company to improve productivity, strengthen competitiveness, change the business of the company, or change the organizational structure of the business or industry.</p> <p>The employer must engage in good faith consultations as to possible measures to avoid dismissals and the selection criteria for dismissals. If a certain threshold number of employees is to be laid off (generally 10%), a layoff report must be filed with the Ministry of Employment and Labor (MOEL) at least 30 days prior to the effective date of the layoffs.</p> <p>Measures a company is required to take to avoid layoffs include the following: salary freezes, freezes on new hiring, reductions of work hours and elimination of overtime, rationalization of the work system, cost-cutting measures, transfers of employees to other departments or for education or training, temporary suspensions, and seeking voluntary resignations.</p> <p>If within three years after a layoff the employer decides to reinstate jobs from which employees were dismissed, the employer must first offer those jobs to the previously dismissed employees before hiring new employees.</p>

Taiwan	<p>The Mass Layoff Protection Act applies depending on the number of employees affected and the time-frame anticipated and imposes notification and consultation requirements.</p> <p>The Mass Layoff Protection Act will be triggered when one of the following is met:</p> <ul style="list-style-type: none"> <li>• Where a site in an enterprise of fewer than thirty (30) employees intends to lay off over ten (10) employees within sixty (60) days;</li> <li>• Where a site in an enterprise of thirty (30) employees or more but fewer than two hundred (200) employees intends to lay off over twenty (20) employees within one day or over one-third (1/3) of the total number of employees within sixty (60) days;</li> <li>• Where a site in an enterprise of two hundred (200) or more but fewer than five hundred (500) employees intends to lay off more than one-fourth (1/4) of the total number of its employees within sixty (60) days, or more than fifty (50) employees within one day;</li> <li>• Where a site in an enterprise of five hundred (500) or more employees intends to lay off one-fifth (1/5) of the total number of its employees within sixty (60) days, or more than eighty (80) employees within one day; or</li> <li>• Where a site in an enterprise intends to lay off more than two hundred (200) employees within sixty (60) days or more than one hundred (100) employees within one day.</li> </ul>
Thailand	<p>In Thailand the Labour Protection Act ("LPA") regulates termination of employment and is applicable in redundancy situations. The LPA contains provisions relating to suspension, dismissals for cause, notice requirements and explains when an employer is liable to pay severance payments to its employees.</p>
Vietnam	<p>Mass layoff rules apply in cases of termination of employment due to restructuring, change of technology or changes for economic reasons. If the employer is unable to create new jobs and must make employees redundant, such employer may have to pay severance allowances to those employees.</p>

## Are temporary workplace closures and lay-off allowed during COVID-19?

Australia	<p>In Australia this is commonly referred to as a 'stand down'. The legislation in Australia allows employers to stand down workers without pay in certain circumstances including where there is a stoppage of work for any cause for which the employer cannot reasonably be held responsible and where the employees cannot be usefully employed in some other way. The stand down can continue for as long as the stoppage of work continues. While the employee is stood down the employment relationship is otherwise maintained. The Government has also implemented the JobKeeper wage subsidy scheme under which qualifying employers may be able to issue 'JobKeeper enabling stand down directions' to eligible employees to not work on a day or days on which the employee would usually work, work for a lesser period than the employee would ordinarily work on a particular day or days, or work a reduced number of hours (compared with the employee's ordinary hours of work) which can include reducing the employee's working hours to nil.</p>
China	<p>Where an employer has encountered difficulties in its business operations due to the coronavirus outbreak, it may close its business short-term. The authorities have the entire discretion to decide whether the employer is qualified for short-term closure or not.</p> <p>Where an employer suspends its operations during a wage payment period, the employer should pay wages to its employees according to the standards set out in the employment contract. For those employees who are unable to work as normal, the employer should pay for living expenses – the standards for living expenses are set by measures of the province, autonomous region or municipality directly under the Central Government.</p>
Hong Kong	<p>There are no statutory provisions allowing (or preventing) employers from laying-off employees or closing the workplace temporarily specifically as a result of COVID-19. If this happens, it will trigger redundancies and liability to pay statutory severance to eligible employees in the normal manner.</p> <p>Any agreement to work less hours/receive less compensation/be furloughed requires employee consent. Failure to obtain consent can give rise to claims including: unreasonable variation of employment terms, breach of trust and confidence, failure to pay wages and/or constructive dismissal. Failure to pay wages is a criminal offence and there can be personal liability for directors, officers and senior managers in certain circumstances. Having said that, the practical risk of these claims is generally lower in the current climate given that the alternative for employees is often redundancy.</p>

India	<p>It is possible to undertake temporary workplace closures or 'lay-off' employees temporarily.</p> <p>Lay-off: This would be allowed (with 50% salary) only for the specific pre-defined reasons under the IDA (including shortage of coal, power, raw materials, breakdown of machinery, natural calamity, etc.). A notification to the State government or the State government's permission is required depending on the nature of the establishment and number of workmen employment.</p> <p>Temporary closure: While a company could close its offices/premises for a temporary period during COVID-19, it would need to make regular salary payments to its employees. Further, if an establishment/factory is not permitted to operate due to its being situated in a containment zone, it would need to remain closed – in such case again, there would be a requirement to pay regular salary. If this closure is temporary and is covered as a 'lay-off' under the IDA, then the employer would have an obligation (in addition to paying 50% salary) to obtain the State government's permission (in case of factories).</p> <p>Employers and employees can independently (or with the involvement of labour authorities) enter into negotiations to resolve disputes around salary payments (for the period their establishments were closed during the COVID-19 lockdown).</p>
Indonesia	<p>Temporary workplace closure as a preventive measure to the spread of COVID-19 is allowed during the pandemic.</p> <p>Lay-off during COVID-19, in theory, should be the last resort in line with Ministry of Manpower Circular Letter No. SE-907/MEN/PHI-PPHI/X/2004 on the Prevention of Mass Termination which provides for the following measures to be carried out before deciding on mass termination:</p> <ul style="list-style-type: none"> <li>a. reducing the salaries and allowances provided to managers and directors;</li> <li>b. reducing the number of shifts;</li> <li>c. limiting or eliminating overtime;</li> <li>d. reducing working hours;</li> <li>e. reducing working days;</li> <li>f. suspending employees in rotation;</li> <li>g. not extending employment contracts when they expire; and</li> <li>h. pensioning off eligible employees.</li> </ul> <p>As additional ground for the lay-off, we may also refer to force majeure under Article 164 (1) of Manpower Law following the issuance of President Decree No. 12 of 2020 dated 13 April 2020. Only a 'one-time' severance is payable under such circumstances.</p>



Japan	<p>Whether the COVID-19 outbreak could be an “economic reason” justifying a headcount reduction via forced redundancies remains to be seen over the coming months.</p> <p>Nonetheless, particular attention would need to be paid to whether the employer’s financial health is declining and will continue to decline due to the COVID-19 outbreak. If so, the COVID-19 outbreak may potentially satisfy item (i) of the “four factor test.” However, an employer would still need to satisfy the other factors before proceeding with the forced redundancies via unilateral terminations. There are currently subsidies that may be available to employers and whether an employer has explored these subsidies could impact item (ii) of the test.</p> <p>The four factors are as follows: (i) a strong economic necessity to reduce the number of employees exists; (ii) the employer has exhausted other less drastic methods before resorting to unilateral termination (e.g., suspension of hiring new employees; reduction of management compensation; suspension of salary increases; reduction of bonuses; reduction of overtime work; reducing usage of contractors; inviting voluntary resignation; and transfer to other sections/secondment, etc.); (iii) fair and non-discriminatory criteria must have been used in selecting the employees who were terminated; and (iv) the employer has provided sufficient explanations to and consulted with the employees or the union.</p>
New Zealand	<p>There are no statutory provisions allowing (or preventing) employers to temporarily suspend or lay off as result of COVID-19. If this happens, the general procedures related to redundancy related terminations is relevant. Some employment agreements will contain a force majeure cause which could be implemented with some consultation although such clauses are not widely tested by the courts.</p>
Singapore	<p>There are no statutory provisions allowing (or preventing) employers to lay-off employees temporarily specifically as a result of COVID-19. If this happens, the general procedures related to redundancy related terminations should apply along with the terms of the Tripartite Guidelines on Managing Excess Manpower and Responsible Retrenchment read with the new advisory on 20 May 2020 on the retrenchment benefit payable to retrenched employees as a result of business difficulties due to Covid-19. Employers may however be mandated to temporarily close their premises or to cordon off an area of their premises due to Covid-19 but employees should continue to be paid during such time.</p>

South Korea	<p>An employer may implement a temporary business suspension during COVID-19. However, the Labor Standards Act obligates employers to provide “business suspension allowance” for any suspension in business due to a reason attributable to the employer. The business suspension allowance must be at least 70% of average wage (if the amount equivalent to 70% of the average wage exceeds the ordinary wage, the employer may pay the ordinary wage as the business suspension allowance). However, if the employer is forced by the government to suspend its business, the employer would not be required to pay business suspension allowances.</p> <p>An employer may also implement a layoff during COVID-19 as long as the statutory requirements for a layoff are fulfilled. However, note that if an employer engages in a layoff during certain period in relation to the employment maintenance subsidy (further explained in our response below), the employer may not be eligible for part or all of the employment maintenance subsidy.</p>
Taiwan	<p>There is not any limitation on implementing workplace closures and redundancies that are specific to COVID-19 situation. However, a statutory reason for redundancies must exist for it to be lawful. An office/site shutdown can be the statutory reason for redundancies. If the office/site will remain open, and thus some employees are laid off and some retained, the employer has to meet one of the statutory reasons, such as “transfer of the assets,” “suspension of business,” “operating loss,” “contraction of the business,” “the employee is not competent for the work assigned to him/her,” or “change of business nature that results in the reduction of employees.”</p>
Vietnam	<p>There are no specific COVID-19 laws or regulations that allow workplace closures and lay-offs. However, pursuant to provisions of the Labour Code, an employer may have the right to unilaterally terminate a labour contract in certain circumstances as a result of a natural disaster, fire or for any other reason of force majeure as prescribed by law (i.e., which may include epidemics or narrowing of production) where the employer, despite having taken all necessary measures to remedy the problem, still needs to narrow production and reduce the number of jobs. Additionally, the Labour Code allows employers to retrench employees due to restructuring, change of technology or changes for economic reasons following certain procedures at law.</p>

## Are there any government measures to support employers and employees during COVID-19?

Australia	<p>Employees who have been stood down from their employment without pay will have access to enhanced Government funded social security benefits from 27 April 2020 to 31 December 2020. Employees are currently able to apply for these benefits and have these payments backdated to the date of their application. These benefits are those that already exist for individuals who are unemployed and now include an additional Coronavirus supplement. In Victoria, employees who are required to self-isolate for 14 days as a result of COVID-19 and do not have available leave are entitled to a pandemic leave disaster payment in the amount of AUD 1,500. The Fair Work Commission has temporarily varied some modern awards to give employers greater flexibility to reduce hours and direct the taking of leave through consultation but without the requirement for consent in the hope of minimising redundancies, stand downs without pay or complete unpaid leave. The modern awards have also been temporarily varied to provide employees with 2 weeks' of unpaid pandemic leave which is to be utilised when an employee is directed to self-isolate by the Government or medical authorities due to COVID-19. Under the Government's JobKeeper wage subsidy scheme, qualifying businesses and not-for-profit organisations significantly affected by COVID-19 can claim a reimbursement of AUD 1,500 (before tax) per fortnight for each eligible employee who was employed by their employer on 1 March or 1 July 2020 and who remains employed for the fortnights that the employer is claiming reimbursement for (including those who are stood down). The Government has recently passed legislation to extend the JobKeeper wage subsidy, at reduced amounts, to 28 March 2021.</p>
China	<p>For small and medium-sized enterprises with few or zero layoffs, the maximum return of unemployment insurance premiums could be 100% of the amount paid in the previous year. In addition, there are other assistance measures imposed by the government. For example, in April 2020, the State Council encouraged state-owned real estate companies to exempt three months' rent for small and micro enterprises in service industries in the first half of the year.</p>
Hong Kong	<p>The Hong Kong government previously announced a HKD 137.5 billion package of relief measures to tackle the COVID-19 outbreak. This includes an HKD 80 billion Employment Support Scheme to encourage employers to retain staff through the provision of a wage subsidy expected to benefit 1.5 million employees. All private sector employers who have been making Mandatory Provident Fund/other occupational retirement scheme contributions were eligible to claim up to 50% of the employee's monthly salary. This was capped at HKD 9,000 per employee per month for a period of six months. The subsidy was disbursed in two tranches, with the second tranche scheme now in effect from September to November. The subsidy is conditional on the employer undertaking they will not implement any redundancies during the subsidy period. If this undertaking is breached, the government has reserved the right to apply headcount reduction penalties and to seek clawbacks of all or part of the level of subsidy received.</p> <p>There are also a series of one-off grants for the hardest-hit sectors including tourism, aviation, catering/food and beverage, and education.</p>

India	<p>Yes.</p> <p>Employers</p> <ul style="list-style-type: none"> <li>• Provident fund (PF) law (which is a central law applicable to all States) –             <ul style="list-style-type: none"> <li>a) The Indian government was making monthly PF contributions (of 24% of an employee's basic wages) between March 2020 to August 2020. This benefit was available only for small establishments having up to 100 employees, of which 90% or more earn below INR 15,000 per month. Establishments eligible for this benefit did not have to make any separate application to receive the benefit.</li> <li>b) For establishments not covered under point (a), the rate of PF contributions was reduced from 12% (for employer and employee each) to 10%. This reduction was in effect from May 2020 to July 2020.</li> </ul> </li> <li>• Karnataka: The State Department of Labour has permitted postponement of payment of variable dearness allowance (VDA) for the period from 1 April 2020 to 31 March 2021, payable by the employers who were directed by the central government to pay wages to their employees for the lockdown period.</li> <li>• Haryana: All the micro, small and medium enterprises (MSME) units in Haryana will be eligible for 100% interest benefit on loans availed for payment of wages to employees and/or other expenses up to a maximum of INR 20,000 per employee, but various criteria need to be satisfied.</li> <li>• Shortly after the government-imposed COVID-19 lockdown in India, the governments in various States (such as, Karnataka, Maharashtra, Odisha, Chandigarh, etc.) increased the maximum working hour limits and related limits for factories. Several State governments have now withdrawn these relaxations.</li> <li>• Relaxation from applicability of certain laws: Some State governments have increased the applicability threshold of certain labour laws. These relaxations do ease the compliance requirements for employers who do not meet the increased thresholds.</li> <li>• Relaxations in timelines for compliance under labour laws, such as, filing returns, submitting ECRs, etc.</li> <li>• Waiver on rental payments and electricity bills.</li> </ul>
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## Indonesia

For employees, the government introduced a salary aid program in August 2020 under Minister of Manpower Regulation No. 14 of 2020.

1. Workers/laborers who receive government aid in the form of a salary/wage subsidy must meet the following requirements among other things:
  - a. be Indonesian citizens as evidenced by a national identification number;
  - b. be registered as an active participant in the Employment Social Security Program (*Badan Penyelenggara Jaminan Sosial (BPJS) Ketenagakerjaan*/"Manpower BPJS") as evidenced by a membership card number;
  - c. be an active participant in the Manpower BPJS who pays monthly premium calculated on the basis of a monthly salary/wage below IDR 5,000,000 according to the latest salary/wages reported by the employer to Manpower BPJS and recorded in Manpower BPJS; and
  - d. have an active bank account.
2. The subsidized salaries/wages is provided in the form of cash in the amount of IDR 600,000 per month for four months.

For employers, the government issued a tax incentive in July 2020 under Minister of Finance ("MOF") Regulation No. 86/PMK.03/2020 (as amended by Regulation 110/PMK.03/2020) on Tax Incentives for Taxpayers Affected by Covid-19, which among other things, provides the following tax incentives (up to December 2020):

1. an exemption from Article 21 and Article 22 income tax;
2. a final income tax incentive set at 0.5% of the relevant gross turnover, granted during the April to December 2020 Tax Period;
3. a final income tax of construction services is borne by the government (from August up to December 2020) for the eligible taxpayer;
4. a 50% reduction in Article 25 Income Tax instalments (an increase from the initial 30% reduction); and
5. a paid In-Advance VAT Refund.

The above exemption from Article 21 income tax is provided for employees working under certain business activities (listed under the above MOF Regulation) with the annual gross income of up to IDR 200 Million. The amount of income tax withholding under Article 21 income tax (from April up to December 2020) will be borne by the government and therefore the relevant employees will receive the withhold amount.

Japan	<p>If the company has to reduce its business operation due to economic reasons due to COVID-19, under some conditions including creating a labor-management agreement and submitting a “plan” to the authority, the company may be able to obtain subsidies of 2/3 or 4/5 of compensation paid to employees (i.e., at least 60% of salary) up to JPY 15,000 per day per person up to 100 days per year plus a target period from 1 April 2020 to 31 December 2020.</p> <p>If the company introduces a telework arrangement/system as a measure to address difficulties caused by COVID-19, 1/2 of costs to implement the same (e.g., costs to consult with outside counsel, software, training) may be covered by the subsidy under some conditions (the cap subsidy is JPY 1,000,000).</p> <p>Further, if the company implements and facilitates the environment for employees to more easily take leave (e.g., creating special paid leave for COVID-19), 3/4 or 4/5 of costs to implement the same (e.g., costs to create or amend work rules) may be covered by the subsidy under some conditions (the cap subsidy is JPY 500,000).</p> <p>If a parent takes a leave of absence to take care of his/her child during the period of school closure due to COVID-19, and if the company pays normal salary during such leave (not consuming annual paid leave), the company may be able to obtain subsidies up to JPY 15,000 per day per person.</p>
New Zealand	<p>The Government introduced a Wage Subsidy for employers affected by COVID-19 which aligned broadly with the minimum wage and had to be passed direct to employees. It then announced a COVID-19 Wage Subsidy Extension, to support employers who are still significantly impacted by COVID-19. This is available from 10 June 2020 until 1 September 2020, and employers must have experienced a revenue loss of at least 50% in the 30 days before application, compared to last year. Receiving this eight-week subsidy comes with a number of obligations including retention of the employees for the duration of the subsidy.</p>
Singapore	<p>The Jobs Support Scheme (“JSS”) which was previously announced and which was due to expire in August 2020 has been further extended for up to seven months to include wages paid up to March 2021. Companies will receive between 10% to 50% support for wages for Singapore citizens and Singapore permanent residents up to a cap of SGD 4,600 per month depending on the effect of Covid-19 on the specific industry.</p> <p>To support hiring in growing sectors such as biomedical sciences, financial services, public healthcare and long-term care sectors, the Singapore Government will launch a SGD 1 billion Jobs Growth Incentive (“JGI”) to help firms in such sectors increase headcount of local workers in the course of the next six months. The intent of the JGI is to support the Government’s efforts to create new jobs for workers, especially in relation to mature workers. As part of the JGI, the Government will co-pay up to 25% of salaries of all new local hires aged 39 and under for a year, subject to a wage cap, and up to 50% of salaries for all new local hires aged 40 and above. Further details on the JGI will be provided by the Ministry of Manpower in due course.</p>

<p>South Korea</p>	<p>The government will provide Employment Maintenance Subsidy to employers experiencing difficulties due to COVID-19 (e.g., sales decreased by 15%) and thus facing the need to take actions such as terminating employees but which take other actions (paid leave of absence, business suspension) instead.</p> <p>To receive this subsidy, an employer shall pay employees their full wages for the remaining working hours (if any), and at least 70% of the average wage in the form of business suspension allowance (for the suspended/non-working working hours) during such period while reducing the working hours of its work force by 20% or more in one month or providing its employees paid leave of absence for more than one month. In reviewing whether the 20% requirement is met, the government will compare the working hours during the period of employment-maintenance measure with the average monthly working hours based on an aggregate of the working hours of the three-month period from six months prior to the month in which the employment maintenance measure is implemented.</p> <p>An employer shall not terminate any employees during the “employment maintenance period” it reported to the government and one month thereafter, and an employer cannot hire new employees during the employment maintenance period, unless the Employment Center recognizes such new hire as “inevitable”.</p>
<p>Taiwan</p>	<p>The Taiwan government implements bailout measures in response to the COVID-19 pandemic. The major bailout measures are summarized as below.</p> <p>1. Employment</p> <p>Assisting employees who are under the reduced wage/work hours or furlough arrangements: The Ministry of Labor will provide (i) such employees with a job training subsidy of NTD 158 per hour, up to 120 hours per month, and (ii) the employers that provide job training courses with a subsidy of up to NTD 3.5 million.</p> <p>If the employees do not receive any job training, there is another employment subsidy program to shorten employees’ salary gap due to the reduced wage/work hours or furlough arrangements. The subsidy is equivalent to 50% of the employees’ salary gap and is capped at NTD 11,000 per month up to 6 months.</p> <p>Assisting redundant employees: In addition to the current unemployment payment, the government will provide a tuition subsidy to the children of those who have been laid off due to COVID-19. Depending on the impact of COVID-19 on the job market, a “steady employment program” may be launched to encourage employers to hire redundant workers who cannot find a new job for more than 30 days.</p>

Taiwan	<p>2. Tax-break</p> <p>Lenient assessment of a decrease in operating income:</p> <ul style="list-style-type: none"> <li>i. Business Tax: If a company's income is reduced or if it cannot continue operation due to the impact of COVID-19, the tax authority may reduce its assessed business taxes.</li> <li>ii. Income Tax: A company experiencing overall loss is not required to pay profit-seeking enterprise income tax and may enjoy tax deductions within the next 10 years if such loss meets certain requirements.</li> </ul> <p>Tax deferral or payment in instalments: The tax authorities may extend the tax payment deadline for taxpayers who cannot file or pay taxes on time due to COVID-19.</p> <p>Tax break based on salaries paid to employees during epidemic-prevention leave: employers that provide full-pay or half-pay epidemic-prevention leave to employees may enjoy an income tax deduction equivalent to 200% of the salaries paid to those employees on epidemic-prevention leave for the year in which such expenses are declared in the tax return filing.</p>
Vietnam	<p>Salary support regarding employees – (a) An amount of VND 1,800,000/ person/month (approximately USD 77) was granted to support employees working under a labour contract, being forced to agree to temporarily suspend their labour contract or to have unpaid leave from one month or more from 1 April to the end of 30 June 2020 and satisfying certain conditions; (b) The period for support was stated to follow the actual period of temporary suspension of labour contract or unpaid leave, be calculated per month and subject to the reality of the epidemic development, calculated from 1 April 2020, and cannot be more than three months.</p> <p>Salary support regarding employers – (a) Employers can borrow loans without secured assets for an amount of a maximum 50% of regional minimum salary for each employee for the actual salary payment period but being not more than 3 months, with a 0% interest rate, for a maximum loan term of 12 months, from the Vietnam Bank for Social Policies (VBSP) if they meet various conditions; (b) The loans borrowed must be used to pay the remaining salary of suspension of job to “furloughed” employees and disbursed monthly directly to the “furloughed” employees; and (c) the relevant employer must conduct the procedures provided in Decision No.15/2020/QĐ-TTg in order to borrow the loans from the VBSP.</p> <p>It appears that the period of the above support has essentially completed. The Government is currently considering to offer an additional support package to employees and employers but details have not been finalised.</p>



## What are the statutory process and timing in relation to mass layoffs and/or collective redundancies in your jurisdiction?

Australia	<p>An employer must:</p> <ul style="list-style-type: none"> <li>• Comply with any obligation contained in a Modern Award or enterprise agreement to consult about the redundancy;</li> <li>• In order to minimise exposure to unfair dismissal claims and redundancy pay, consider whether the employee can be redeployed into the employer's enterprise or into an associated entity;</li> <li>• If proposing to make 15 or more employees redundant the employer shall follow other statutory requirements, including consulting with any trade unions about the redundancies where the affected employees are members of a trade union and submitting a form to Services Australia providing details about the proposed redundancies.</li> </ul> <p>The employer should give the employee written notice of termination or payment in lieu of notice. The required amount of notice under the Fair Work Act is between 1 and 5 weeks depending on the employee's period of continuous service with the employer and his/her age but the employer must provide any greater period specified in a contract of employment.</p>
China	<p>If the employer implement Article 41 ECL dismissals, the employer must follow the process below. Nevertheless, most redundancies end up being negotiated and agreed terminations due to the difficulty to establish sufficient grounds for redundancies.</p> <ul style="list-style-type: none"> <li>• Explain the circumstances to its labor union or to all of its employees 30 days in advance of making the redundancies;</li> <li>• Consider the opinions of the labor union or the employees; and</li> <li>• Report the redundancy plan to the local labor authority (this timeframe may be different in some cities).</li> </ul> <p>The employer cannot make payments in lieu of the notice required to be given under this Article.</p> <p>The employees who are on long-term fixed-term contracts, indefinite term contracts or the sole income earners in families that have old people or minors to support have priority rights to be retained when the employer follows the economic redundancy procedure under Article 41 ECL.</p>

Hong Kong	<p>The only statutory procedural requirement is to give the requisite notice or payment in lieu of notice to terminate the employment, and to make the termination payments in accordance with the employment contract and the Employment Ordinance. The minimum statutory notice period for terminating a continuous employment contract is seven days (or the contractual notice period will apply where greater). No notice is required where employment is terminated during an employee's 1st month of probation unless the contract provides otherwise. It is, however, unlawful to terminate employees who are in a protected category (such as employees who are in receipt of statutory sickness allowance or employees who are pregnant or on statutory maternity leave).</p>
India	<p><b>Redundancies</b></p> <p>Where an employer plans to retrench a workman employed in a commercial establishment who has been in continuous service for at least one year (i.e., 240 days), the following steps should be taken:</p> <ul style="list-style-type: none"> <li>• The employer must ordinarily retrench the workman who was the last person to be employed in that category (last in first out). If the employer retrenches any other workman it must record the reason for doing so;</li> <li>• Requisite period of notice or payment in lieu of notice and retrenchment compensation. In addition, notice in the prescribed manner must be served upon the appropriate government authority.</li> </ul> <p>For a workman employed in a factory, plant or mine with the prescribed minimum number of workmen who has been in continuous service for at least 1 year (i.e., 240 days), the following steps should be taken:</p> <ul style="list-style-type: none"> <li>• The last in first out rule must be followed;</li> <li>• Besides requisite period of notice or payment in lieu of notice and retrenchment compensation, prior permission of the appropriate government authority is required.</li> </ul> <p>For employees who are primarily employed in supervisory or managerial roles, the steps which the employer must take will be as stated in the employment contract and/or the provisions of the relevant state's S&amp;E Act. Note that some state specific S&amp;E Act do require the employer to show reasonable cause before terminating the service of such employees.</p> <p><b>Lay-off</b></p> <p>For laying-off workmen under the IDA who have been in continuous service for at least one year (i.e., 240 days), the following steps should be taken:</p> <ul style="list-style-type: none"> <li>• the workmen must be paid for all days when they are laid-off (except weekly holidays) compensation equal to 50% of the total basic wages and dearness allowance.</li> <li>• further, before such lay-off, factories/mines/plantations with a certain number of workmen must obtain prior permission of the appropriate government authority (unless the lay-off is due to shortage of power or natural calamity). A copy of the application for obtaining such permission should also be served on the workmen.</li> </ul>

Indonesia	<p>The formal termination procedure under the Manpower Law should commence with a bipartite meeting between the employer and the employee to discuss the redundancy and termination and to provide the employee a chance to ask questions. Reaching a mutual (termination) agreement (“MTA”) during the bipartite meeting is crucial to avoid a lengthy procedure, particularly if the employee is uncooperative. If a settlement agreement is reached, the signed MTA must be registered with the local IRC as evidence of settlement between the parties and (although not quite relevant to the Client’s case) to avoid any future claims being made by the employee.</p> <p>By law, the bipartite meetings may continue for up to 30 working days, and then, if no agreement is reached, a tripartite meeting (usually mediation chaired by an official mediator from the Ministry of Manpower) must be held, failing which, the termination must be approved by the IRC and if the employee appeals to the Supreme Court, a final and binding court ruling on the termination will be required for the termination to be valid.</p>
Japan	<p>If an employer unilaterally terminates an employee, the employer is required to give at least 30 days’ notice of dismissal or can choose to make a payment in lieu of notice. In a reduction in force through the use of voluntary severance agreements, employees are usually first informed of the planned reduction in force and the severance packages that will be offered to all or some of the employees. Employees are then provided around one to two weeks to consider the packages and apply for the severance program. Alternatively, if the company is very small and/or the number of the targeted employees is very limited, the employer may solicit and encourage the targeted employees only to leave the company voluntarily with the package.</p>
New Zealand	<p>New Zealand law requires the following process is undertaken:</p> <ul style="list-style-type: none"> <li>• The employer must meet with all affected staff and the union (where relevant). The employer must explain that there is a restructure proposal and how it could affect their positions;</li> <li>• The employer must explain the reasons for the restructure proposal and provide information relevant to the decision to the employee and listen to the opinions from the employees;</li> <li>• If the employee is made redundant, the employer must tell the employee their position is being made redundant and provide the employee with the notice period and any redundancy entitlements set out in their employment agreement.</li> </ul> <p>All employment agreements must contain an ‘employment protection provision’ which specifies the processes which will be followed if an organization is sold or reorganized resulting in potential layoffs of staff. The employer must provide to the employee the notice and redundancy provisions (if any) provided for in the individual employment agreement. The employer must pay any outstanding holiday pay and benefits the employee is entitled to.</p>

Singapore	<p>Redundancy is usually effected by terminating an employee by giving the requisite notice or payment in lieu of notice to terminate the employment, and make the termination payments in accordance with the employment contract and the Employment Act (Cap. 91). Where a contract of employment provides for a notice period longer than the minimum periods prescribed in the Employment Act, this must be observed. It is, however, unlawful to terminate employees who are in a protected category (such as employees who are on statutory maternity leave).</p> <p>There is otherwise no general consultation requirement for a redundancy unless the same is prescribed in the employment contract or policies, a collective bargaining agreement or an agreement with the union.</p> <p>An employer is however required to notify the Ministry of Manpower within five working days of notifying its employees of their redundancies if such employer has at least 10 employees and has made at least five employees redundant over a six-month period.</p>
South Korea	<p>In addition to the procedural requirements explained above (i.e., 50 days' prior notice), a duty to report dismissals to the Ministry of Employment and Labor at least 30 days prior to the mass dismissal may be triggered depending on the number of employees routinely hired:</p> <ul style="list-style-type: none"> <li>• Where 99 or less employees are routinely hired, 10 or more dismissals will trigger a duty to report;</li> <li>• Where 100-999 employees are routinely hired, dismissal of 10% of the workforce will trigger a duty to report; and</li> <li>• Where 1000 or more employees are routinely hired, 100 or more dismissals will trigger a duty to report.</li> </ul>
Taiwan	<p>Once the requirements under the Mass Layoff Protection Act are triggered, an employer must comply with the following procedures set forth under the Mass Layoff Protection Act before making any redundancy.</p> <p><b>Redundancy Plan</b></p> <p>The employer should establish a redundancy plan (the "Redundancy Plan") and submit the same at least 60 days before the effective date of employment termination (the "Date of Mass Redundancy") to the labor authority, labor union (if any), and the employees affected. The Redundancy Plan, among other things, should include (i) the grounds for redundancy; (ii) the department(s) to which the redundant employees belong; (iii) the Date of Mass Redundancy, (iv) the total number of redundant employees; (v) the criteria for determining which employees are redundant; and (vi) the formula for calculating severance pay as well as the measures for providing outplacement assistance.</p> <p><b>Consultation and Negotiation with Employees</b></p> <p>The employer should consult and negotiate with the redundant employees or the labor union (if any) about the severance pay, outplacement arrangements, other benefits and related matters within 10 days from submission of the Redundancy Plan.</p>

Taiwan	<p>If an agreement could not be reached after the consultation within the 10-day period, the labor authority will convene a Consultation Committee Meeting. The Consultation Committee should have five to 11 members. The chairperson should be appointed by the labor authority while the employer side and the employee side should each designate an equal number of representatives for the Consultation Committee. The employee representatives for the Consultation Committee should be appointed by the labor union (if any), or be elected among the redundant employees.</p> <p>The Consultation Committee Meeting should be convened once every two weeks under the labor authority's supervision. An agreement reached during a Consultation Committee Meeting binds both the employer and the employees concerned.</p> <p>In the event that the employer and the redundant employees fail to reach an agreement before the Date of Mass Redundancy, the Redundancy Plan would still take effect on the Date of Mass Redundancy. In the above event, severance pay should be paid in accordance with the Redundancy Plan. Unless it is absolutely necessary (which is very rare), the labor authority generally will not require that Consultation Committee Meetings be convened after the Date of Mass Redundancy.</p>
Thailand	<p>There is no legally specified process/timing for mass layoffs/collective redundancies. Where there will be termination of employment, the period of advance notice under the LPA will apply. An employer must give written notice of termination to an employee of at least one whole payroll period (but not more than three months) unless the employer is making a payment in lieu of notice.</p>
Vietnam	<p>Where employees are retrenched due to restructuring, change of technology or changes for economic reasons, the employer must formulate and implement a labour usage plan (which must include various information required by law). The labour usage plan must be formulated with the participation of the company trade union (or district labour federation if there is no company trade union). If new jobs are created, then the employer must prioritize retraining for employees in order to continue to employ them. If the employer is unable to resolve new jobs but must retrench employees, then the employer may be required to pay severance allowances for job loss in accordance with law.</p> <p>Where multiple employees are being retrenched a dossier must be submitted to the relevant labour authority containing both a Notice of Retrenchment (which must contain various information required by law) and the labour usage plan, the dossier must be submitted to the labour authority at least 30 days in advance of any retrenchment for acknowledgment.</p>

## What are the statutory entitlements of employees as a result of mass layoffs and/or collective redundancies, such as severance payment?

Australia	<p>Employees who are terminated due to redundancy are entitled to redundancy pay. Under the Fair Work Act, the amount of redundancy pay owing to an employee is dependent on an employee's continuous length of service with their employer, and varies between 4 weeks' to 16 weeks' pay which is calculated based on the employee's base rate of pay for their ordinary hours worked. If an employee is covered by a modern award or enterprise agreement, then those industrial instruments may stipulate the amount of redundancy pay to be paid to the employee. On termination of employment due to redundancy, the employee is also entitled to notice of termination or payment in lieu of notice, payment for all accrued but unused annual leave entitlements and long service leave entitlements (where applicable) and any outstanding pay owing to the employee up to the termination date.</p>
China	<p>If there is sufficient grounds for termination, employers must pay a statutory severance payment equivalent to 1 month's average income per year of service. Year of service is usually rounded up to the nearest 1/2 or one year. For years of service after 1 January 2008, the average monthly income is subject to a statutory cap which varies depending on the region in which the employee is employed. Most employers end up paying more to achieve a negotiated and agreed separation.</p>
Hong Kong	<p>An employee who has been employed under a continuous contract for at least 24 months is entitled to a statutory severance payment when dismissed by reason of redundancy. The amount of statutory severance payment is 2/3 of the employee's last full month's wages or 2/3 of HKD 22,500 (i.e., HKD 15,000), whichever is less, for every year of service. An employer may offset against the severance payment any amount which has been contributed by the employer to the Mandatory Provident Fund or retirement scheme on the employee's behalf. The statutory severance payment is currently subject to a cap of HKD 390,000.</p>
India	<p><b>Redundancies</b></p> <ol style="list-style-type: none"> <li>1. Retrenchment compensation is payable to the workman equivalent to 15 days' average pay for every completed year of continuous service or any part thereof in excess of 6 months or such other compensation prescribed by the appropriate state government</li> <li>2. Gratuity payable to employees with at least five years of continuous service (normally interpreted as four years and 240 days), equivalent to 15 days' pay (which here would include only the basic salary and dearness allowance (if any) component of the salary).</li> <li>3. Encashment of un-availed but accrued annual leave (calculated on the last months' pay or in some States, average of the last three months' pay)</li> <li>4. Payment in lieu of notice (which is payable in case notice is not served)</li> </ol>

India	<p>5. Unpaid salary as of exit date</p> <p>6. Contractual payments (such as, bonus)</p> <p><b>Lay-off</b></p> <p>For lay-off under the IDA, workmen must be paid for all days when they are laid-off (except weekly holidays) compensation equal to 50% of the total basic wages and dearness allowance. In other cases of lay-off (i.e., not covered under the ID Act), there would be an obligation to pay regular/full salary.</p>
Indonesia	<p>The statutory entitlements will depend on the ground used for the termination as explained above.</p>
Japan	<p>There are no specific rules regarding severance payments under Japanese law. It is common to pay a severance allowance in exchange for a voluntary resignation by the employee. In the rare event that a unilateral termination is justified, severance payments are not statutorily required unless it is provided for in the employment contract or work rules, or if the employer has an established fixed practice of paying such allowances.</p>
New Zealand	<p>New Zealand law does not require severance payments other than payment of untaken holidays, and notice. The payment of severance or redundancy compensation is however often provided for in the employment agreement. There are however specific entitlements to severance payments for “vulnerable employees” whose employment is terminated by the employer to whom they compulsorily transfer.</p>
Philippines	<p>Where the ground for termination is retrenchment to prevent serious losses or closure of the business, the separation pay shall be equivalent to one month’s pay or one-half month’s pay for every year of service, whichever is higher, a fraction of six months considered as one year.</p>
Singapore	<p>Employees who fall within the purview of Part IV of the Employment Act (Cap. 91) and who has been in continuous service with an employer for at least two years are entitled to request for retrenchment benefits on his/her dismissal on the ground of redundancy or by reason of any reorganization of the employer’s profession, business, trade or work. The amount of such retrenchment benefit or severance payment is subject to agreement between the employer and employee if not contractually provided for in the employee’s employment contract or policies.</p> <p>Save for the statutory entitlement to request for redundancy payments as set out above, there are no statutory or general rights to request for redundancy payments unless otherwise prescribed in the employee’s employment agreement, policies or union/collective bargaining agreement.</p>

Singapore	<p>The Ministry of Manpower has however issued the Tripartite Guidelines on Managing Excess Manpower and Responsible Retrenchment (the “Guidelines”) which recommends that employees pay between two weeks to one month of salary for each year of service. Whilst an employer is not legally obligated to comply with the Guidelines, it is common for employers to comply with the same.</p> <p>Additionally, the tripartite partners have issued a new advisory on 20 May 2020 on the retrenchment benefit payable to retrenched employees as a result of business difficulties due to Covid-19 (the “Retrenchment Benefit Advisory”). While this Retrenchment Benefit Advisory is not statutorily binding, employers should comply with the advisory and MOM may investigate complaints against employers who fail to do so. The Retrenchment Benefit Advisory recommends different retrenchment benefits for employers depending on their financial position ranging from the recommendations in the Guidelines for employers in sound financial position to a lump sum for employers in severe financial difficulties. Employers are also encouraged to be more generous towards lower wage employees.</p>
South Korea	<p>Only employees with one consecutive year of employment or more are legally entitled to statutory severance pay (which is a minimum of 30 days’ average wage per year of employment), unless the employment agreement or the employer’s internal regulations provide otherwise.</p>
Taiwan	<p><b>Notice</b></p> <ul style="list-style-type: none"> <li>• for service of more than three months to one year – 10 days’ notice;</li> <li>• for service of more than one year to three years – 20 days’ notice; and</li> <li>• for service of more than three years – 30 days’ notice.</li> </ul> <p>Payment in lieu of notice is acceptable.</p> <p><b>Severance</b></p> <p>Under the Old Pension System, an employee is entitled to one month’s average salary for each year of continuous service with the employer. Service periods of less than one year are calculated proportionately and service period of less than one month equals one month.</p> <p>Under the New Pension System, new employees hired after 1 July 2005 (or existing employees who elect to belong to the New Pension System) will only be entitled to 1/2 month’s average salary for every year of service with a maximum payout of six months’ salary for years of service under the new pension scheme.</p> <p>Please note that foreign employees, if any, are not covered by New Pension Scheme. Their severance pay should be as the same as the employees under the Old Pension System.</p>



Taiwan	<p>“Average salary” refers to the employee’s average monthly salary for the six months preceding the day on which the relevant calculation occurs.</p> <p><b>Other Payments</b></p> <ul style="list-style-type: none"> <li>• Accrued but untaken holiday/annual leave.</li> <li>• Outstanding wages, including overtime pay.</li> <li>• Outstanding expenses.</li> <li>• Any other contractual entitlements, such as a commission and performance bonus.</li> <li>• Any other enhanced severance payments agreed between the employer and employees during the Consultation Committee Meeting.</li> </ul>
Thailand	<p>Severance payments are paid with reference to an employee’s years of service: 30 days’ pay for employees with at least 120 days but less than one years’ service; 90 days’ pay for employees with at least one year but less than three years’ service; 180 days’ pay for employees with at least three years but less than six years’ service; 240 days’ pay for employees with at least six years but less than 10 years’ service; 300 days’ pay for employees with at least 10 years but less than 20 years’ service; and 400 days’ pay for employees with at least 20 years’ service.</p> <p>If a redundancy occurs due to an improvement in machinery or technology, 60 days’ advance notice must be given to the local labor office and the relevant employees. If this notice is not given or given but not in a timely manner, 60 days’ compensation (special severance pay) must be given to the relevant employees.</p>
Vietnam	<p>Employees must be paid all accrued but unpaid/untaken entitlements under their labour contract (i.e., for accrued salary, accrued but untaken annual leave and potentially certain allowances and benefits). Further, employees may be entitled to severance allowances in certain circumstances. Specifically, pursuant to the Labour Code, an employer must pay severance allowances for job loss to an employee who has regularly worked for the employer for 12 or more months and who is retrenched as noted above. The severance allowance payable is one month’s wages for each working year but with a minimum of at least 2 months’ wages. The length of the working period for calculating the severance allowance for job loss will be the total working time the employee actually worked for the employer minus the period for which the employee contributed to the unemployment insurance regime in accordance with the Law on Social Insurance and any working period for which the employee has already been paid a severance allowance.</p>

Welcome to visit our website at <https://knowledge.dlapiper.com/dlapiperknowledge/globalemployment> if you have further questions.

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