

CCS Insights: Retrenchment 9 – Pay Cut

see BEYOND THE NUMBERS

Pay Cut

In a salary reduction, an employer reduces the amount of salary that employees receive as payment for the job they perform. Seems unfair? Everyone may feel this way.

However, sometimes your employer needs to reduce your salary for a variety of reasons.

Most Common Reasons for a Salary Reduction

The economic downturn or other unpredictable events, such as Covid-19, will affect the company's sales and profitability, and even affect the company's ability to operate. Employer needs to save money but has also assessed that the company will not be able to operate successfully without the current number of employees.

In a salary reduction situation, employees are generally not happy. But, depending on the economic circumstances, they may appreciate keeping their jobs, and especially, their benefits.

The salary reduction may be temporary or permanent, and does not mean that the responsibility to be taken will be reduced.

Is it legal for employers to cut employees' salaries? In many cases, the answer is yes, because the money you earn is not guaranteed

Salary can be cut, as long as each affected employee agrees. Without this agreement, a reduction in salary is a breach of employment contract.

Employers must obtain written consent to salary reductions.

减薪

在减薪的过程中，雇主降低了员工所应得的薪酬。看起来好像很不公平对不对？大家可能都会有这种感觉。

但是，有时你的雇主出于各种原因，确实需要调低你的薪水。

减薪最常见的原因

经济不景气或发生其他不可预测的事件，例如新冠肺炎，将会影响公司的销售、盈利能力，甚至影响企业经营的能力。

公司一方面需要省钱，另一方面雇主同时也评估过，如果没有目前的员工人数，公司也将无法成功运营。

当减薪的情况发生时，员工一般都会不满意。但是，至少他们保留了自己的工作，这也包括他们的基本福利。

减薪可以是暂时性的，也可能是永久性的，同时不代表所要承担的责任会减少。

雇主削减员工的薪水，这合法吗？

在许多情况下，答案是肯定的。因为对于你所挣到的钱，其实是没有任何保障的。

只要受影响的每个员工都同意，公司就可以削减薪水。但是如果没有这项协议，削减薪水是违反雇佣合约的。

因此，雇主必须获得减薪书面同意。

If salary reduction measures are to be implemented, the fairest approach is:

- Both local and foreign employees should receive the same treatment;
- Compared with the lower-level employees of the company, the higher-level employees with higher salary take a large cut than those who are at the lower levels;
- Management should lead by example before reducing pay:

However, wages cannot be reduced below the level of the minimum wage.

RM 1,200 minimum wage per month or RM5.77 an hour has been gazetted and encompassed 56 city and municipal council areas from 1 Feb 2020.

The gazette states that the minimum wage rates payable for those outside the listed areas will be RM5.29 an hour or RM1,100 per month.

In the event of a dispute, the Industrial Court will review all circumstances to determine whether the salary cut was an unfair labour practice.



如果要实施减薪措施，最公平的做法是：

- 本地员工和外籍员工都获得平等待遇；
- 与公司较低层级的员工相比，较高层级的员工因为有着较高的工资待遇，因此削减的幅度要比较低层级的员工大；
- 管理层在减薪之前应以身作则：

但是，薪水不能削减低过最低薪金制所规定的。

宪报颁布，从 2020 年 2 月 1 日起，全国 56 个城市和市政局，每个月最低的薪金为 RM 1,200 或每小时 RM5.77。在这些地区以外的其他地区，每个月最低的薪金为 1100 令吉或每小时 5.29 令吉。

当发生纠纷时，工业法庭将审查所有情况，以确定减薪是否存在不公平的待遇。



North Malaysia Distributors Sdn Bhd v Ang Cheng Poh [2001]

The claimant, a spare parts manager, claimed that he was constructively dismissed by the company on the ground that he was re-designated as a workshop assistant.

He submitted that the company pursued such actions when he refused a pay cut.

The company nevertheless proceeded to unilaterally cut his pay and it was added that they had even asked the claimant to resign.

The claimant left the company, contending that the company had committed a fundamental breach of his service contract.

The court held that the unilateral pay-cut was a clear wilful breach of the employment contract on the part of the company. The salary of an employee being the fundamental factor in a contract of employment has been Breached.

The Company was ordered to pay the sum of RM29,610 to the claimant backwages and compensation in lieu of reinstatement.

Employers are required to submit PK Form to any Labour Office, failure of which carries a punishment of a fine of RM10,000.

North Malaysia Distributors Sdn Bhd v Ang Cheng Poh [2001]

索赔人是一名配件经理，声称他被公司推定解雇，理由是他被重新任命 [降级] 为车间助理。

他指出，公司采取了这种行动，是因为他拒绝接受减薪。

尽管如此，公司过后依然继续单方面削减他的薪水，甚至要求索赔人辞职。

索赔人离开公司后，认为公司违反了雇佣合约的条规，因此举报公司。

工业法庭认为，单方面减薪显然是公司一方故意违反雇佣合约，因为员工的薪水，是雇用合约的基本要素。

公司被勒令向索赔人支付 29,610 令吉的薪金追溯和复职替代补偿金。

雇主必须向劳工部提交 PK 表格，否则将面对 10,000 令吉的罚款。

Salary Reduction

Subject: Salary Reduction Notification

Dear [name of employee],

For the last several months, our industry remains at the mercy of the COVID-19 pandemic. [Company Name] has experienced financial constraints and short-term cash flow difficulties as a result.

In the past month we faced the hard decision of either reducing our staff headcount or exploring other areas of cost reduction so that our employees do not lose their jobs.

After careful consideration, we have decided that the best course of action for our company is to reduce salary for our employees.

We know that will have an impact on you and your family, and because of that it was a very difficult decision. However, we feel that this choice will have the least impact overall on all our employees.

Effective immediately, all employees will receive a cut to their salary as follows:-

| Salary (RM) | Pay Cut % |
|------------------|-----------|
| 10,000 and above | 30 |
| 8,000 – 10,000 | 25 |
| 6,000 – 8,000 | 20 |
| 4,500 – 6,000 | 15 |
| 3,500 – 4,500 | 10 |
| 3,000 – 3,500 | 5 |
| 2,500 – 3,000 | 3 |
| Below 2,500 | 0 |

We will continue to review our financial status on a quarterly basis and will communicate to you regularly about any changes to salary that will result from this.

We appreciate your continued hard work, dedication, and loyalty to our company as we continue to strive toward long term business success. If you have any questions, please feel free to contact our human resources manager [name] at [phone number or email] to arrange a time for discussion.

Sincerely,

[CEO]

减薪

事项：减薪通知

致[员工姓名]，

在过去的几个月中，我们的行业仍然受新冠肺炎大流行的影响。

[公司名称] 也因此，遭受财务限制和短期现金流困难。

在过去的一个月中，我们面临着艰难的决定，要么减少员工人数，要么探索其他降低成本的措施，以便我们的员工不会失去工作。

经过深思熟虑，我们决定，对公司而言最好的做法就是降低员工的薪水。

我们知道这将对你和你的家人产生影响，因此，这是一个非常困难的决定。

但是，我们认为这项措施是对我们全体员工而言，是影响最小的。

立即生效，所有员工减薪如下：

| 薪水 (RM) | 减薪 % |
|----------------|------|
| 10,000 或以上 | 30 |
| 8,000 – 10,000 | 25 |
| 6,000 – 8,000 | 20 |
| 4,500 – 6,000 | 15 |
| 3,500 – 4,500 | 10 |
| 3,000 – 3,500 | 5 |
| 2,500 – 3,000 | 3 |
| 2,500 或以下 | 0 |

我们将继续每季度审查一次我们的财务状况，并会定期与你联系有关减薪的进展。

我们感谢你在公司业务长期发展的过程中，继续努力、奉献与忠诚。

如有任何疑问，请随时通过 [电话号码或电子邮件] 与我们的人力资源部经理 [名称] 联系，以安排时间进行讨论。

真诚的

[总裁]

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