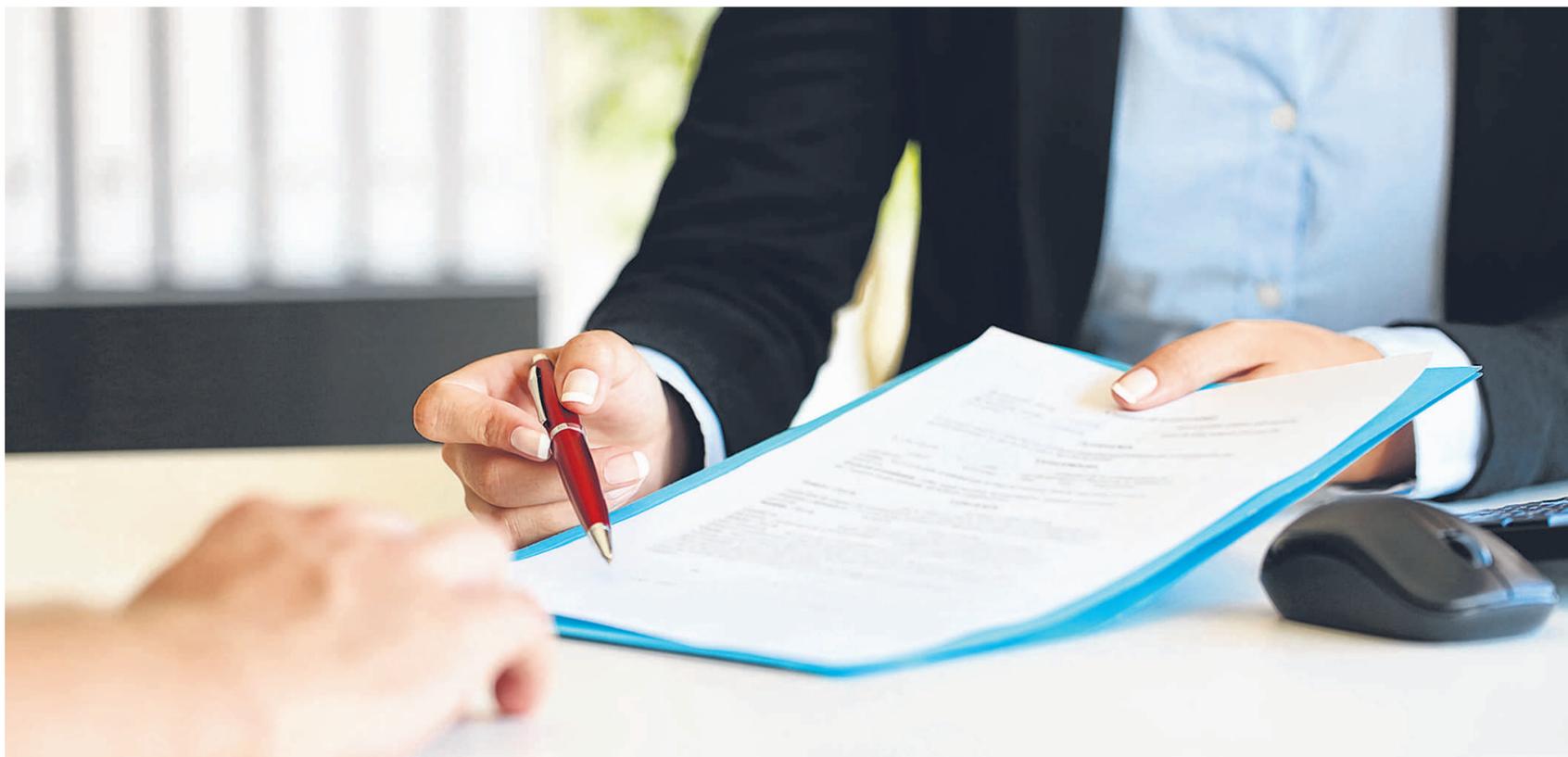


Rescinded job offers: What employees can do



The general rule in Singapore is that employment relationships are presumed to be "at-will". This means that subject to contrary provisions, the employer is able to rescind the job offer with or without any reason (except an illegal one) and at any time, without adverse legal consequences. This includes the period of time after the employee has accepted the offer but before he starts work. PHOTO: ISTOCKPHOTO

Although companies can legally withdraw such offers, employees can better prepare themselves to deal with any monetary loss

Ben Chester Cheong

For The Straits Times

It was widely reported recently that a 28-year old engineer who spent about \$10,000 to relocate to Singapore had his job cancelled by his employer, Shopee.

He said he first received a job offer in September last year, but had his starting date as an engineer at the e-commerce platform postponed to this year due to the Covid-19 pandemic.

Preparations he undertook before arriving in Singapore from China for the job included applying for an employment pass and booking a flight to Singapore. He said he had learnt from the experience that nothing was guaranteed until one started work on the first day.

Such stories are now commonplace across technology firms with the current elevated level of uncertainty in the broader economy. This is unlike a year ago when technology companies were actively recruiting, as demand for technology services increased due to more people working from home.

Then, there was also an increase in demand for cryptocurrency trading and digital services. But now, with falling prices in cryptocurrencies and the

Russia-Ukraine war contributing to rising food and energy prices and disrupted supply chains, it has been a challenging time for most technology firms.

A strong US dollar increases technology firms' costs and erodes their international earnings. The inflationary environment is also impacting consumer behaviour.

As the situation worsens, it is worth looking at potential legal consequences arising from a rescinded job offer.

RESCINDING A JOB OFFER

A company is able to rescind a job offer for many reasons. These include unsatisfactory background check results, falsification of supporting documents, unfavourable post-offer interactions with the candidate, and budget freezes.

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This includes the period of time after the employee has accepted the offer but before the employee has started work.

Even in the highly unlikely

scenario of a prospective employee succeeding in suing the employer for breach of contract, the principle adopted by the courts would be to order the employer to pay the employee the amount that it would have to pay under an employment contract if it was terminated lawfully.

This would be equivalent to the stipulated amount in lieu of notice, or a salary equivalent to the notice period it was required to give to terminate the employment.

SEEKING COMPENSATION

There is a case to be made that the amount equivalent to the notice period may be insufficient to compensate for steps taken to prepare for the new job, such as resigning from an existing one, selling a house and purchasing a new home in another country to begin work there. Should the job offer be rescinded, the employee may have to quickly sell the new house at a loss.

In some American states such as New Jersey, although employment is "at-will", the courts have developed an exception. The employer would be subject to potential liability for damages if the prospective employee relies on the unfulfilled promise of employment to his or her detriment, by leaving another job or moving. This is known as the "promissory estoppel" doctrine.

This would potentially cover damages consisting of lost earnings that the employee would have received from the former

employer had the promise not been detrimentally relied on, as well as amounts incurred for moving expenses and possibly making a loss from selling property.

However, in other states such as New York, such claims would be rejected, as the employee had not yet commenced work.

In Singapore, the doctrine of promissory estoppel cannot be used to commence a cause of action against the employer. From an employee's perspective, being able to sue for breach of promise in such cases would help to alleviate the cost incurred when a job offer is withdrawn.

WHAT EMPLOYEES CAN DO

To better protect his or her rights, a prospective employee should insist that a termination provision be included in the employment contracts to cover the period between signing the contract and the start of employment.

If the employment contract states only a commencement date in the future, then it is unlikely that the employer would be liable to make any payment in lieu of notice. Fighting a case in court to sue for the amount equivalent to the notice period would expend time and money.

But even if such provisions were added to the employment contract, they would need to be reasonable. The amount the employer must pay should be not disproportionate to the employee's monetary loss. Also, the employee risks losing the job offer if the employer decides that

the terms of such provisions are too onerous.

Another way for prospective employees to better protect themselves is by asking their new employers for sign-on bonuses. If the offer is rescinded, this will help to mitigate the cost without having to go through a lengthy process for compensation.

Additionally, employers should be upfront about the conditions attached to job offers that must be satisfied prior to employment. They should also state that prospective employees should not resign from their jobs until confirmation that all conditions for employment have been satisfied.

So what should employees with rescinded job offers do?

Other than looking for new employment and moving on, they could also look into the possibility of returning to their old jobs. Of course, this would depend on the type of relationship they had with their former employers.

In terms of compensation, the employee could also try to work out an amicable solution on a reasonable amount, although this would have to be at the sole discretion of the employer.

Generally, avoiding reputational loss would be a factor for the employer to consider when deciding on the appropriate compensation.

stopinion@sph.com.sg

• Ben Chester Cheong is a lecturer of law at the Singapore University of Social Sciences and an of counsel at RHTLaw Asia.