



Employment Bill 2021 The Proposed Changes on Malaysia's Employment Act 1955

January 2022
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1. Introduction

The proposed changes on Employment Act 1955 or known as Employment Bill 2021 ("Bill") were recently tabled to the Malaysian Parliament on 25th October 2021. The Bill is currently at the second reading and will go through the full process of parliament before it is approved and enforced as a law.



The Bill had proposed several changes that we will summarize below. These changes are in line with the standards required by the International Labour Organisation and Malaysian's Human Resource Minister has taken the steps to follow the same by proposing the Bill.

All employers would be required to be aware of these changes and to comply with the new laws once it is enforced by amending their internal policies, contracts and guidelines relating to the employees.

2. Summary of Key Amendments in the Bill

(a) Employment of foreign workers

Section 60K of the Employment Act 1955 is proposed to be substituted with a new Section 60K relating to Employment of foreign employees. The changes appear to be stricter in employing foreign workers as employer will be required to submit an application and obtain prior approval from the Director General of Labour ("DGL"). Previously it is only

required for employers to notify the DGL of the particulars of the foreign workers to be employed by the employer.

Further to the above, the employer's application will be subject to certain conditions which includes:

- No outstanding matter relating to any decision, order or directive issued by the Act;
- No outstanding matter or case relating to any conviction for any offence under the Act, SOCSO Act 1969, the Employees Minimum Standards of Housing, Accommodation and Amenities Act 1990 or the National Wages Consultative Council Act 2011; or
- The employer has not been convicted of any offence under any written law in relation to anti-trafficking of persons and forced labour.

Any contravention of the above section, it is proposed that, upon conviction, the employer will be liable to a fine not exceeding RM100,000.00 or imprisonment for a term not exceeding five (5) years or both.

(b) Maternity Protection and introduction to Paternity Leave

(i) Maternity leave and termination of pregnant employees

Section 37 of the Act is proposed to be amended by substituting the 60 days of maternity leave to 90 days leave. Further, it is also proposed that it should be an offence for employer to terminate pregnant employees except for wilful breach of employment contract, misconduct or closure of the employer's business. In the current Act, the prohibition to terminate pregnant employees only exclude the event of business closure by employers.

(ii) Introduction to paternity leave

Another change is the introduction of paternity leave for male employees. Male employees will be entitled to three (3) consecutive paid leave at his ordinary rate subject to the employee having been employed for at least twelve (12) months and has notified the employer of the expected confinement at least 30 days earlier. These

proposed changes are one of the most welcomed changes that will be positively accepted by employees.

- (iii) Deletion of Section 44A – exclusion of female employees with wages more than RM2000.00

Notwithstanding of the above positive changes, it is also important to note that the Bill has proposed to remove Section 44A from the Act. The current Section 44A provides that the maternity protection provided under Part XI is applicable to all female employees regardless of the level of wages. Should the Bill be passed with this proposed removal, the scope of application for the maternity protection will be limited to female employees paid under RM2000.00 only.

(c) Requirement to exhibit notice regarding awareness of sexual harassment and the increase of penalty

The Bill introduces a new Section 81H that require employers to exhibit conspicuously at the place of employment, a notice to raise awareness on sexual harassment. Further on this subject, the penalty for employer's failure to inquire into complaints of sexual harassment in Section 81F is proposed to be increased from RM10,000.00 to RM50,0000.00.

(d) Reduction of maximum weekly working hours and revised terms on sick leave

The weekly maximum working hours is also proposed to be reduced from maximum of 48 hours to 45 hours. Further on sick leave, the existing proviso on Section 61F which provides that the aggregate sick leave shall include 60 days of hospitalization is proposed to be removed. Due to this removal, employees may utilise the 60 days hospitalisation without having to deduct from their normal sick leave entitlement.

(e) Flexible working arrangement

A new Part XIIIc is introduced in the Bill for the flexible working arrangement that employees may apply to their employers. The application may involve variation of work hours, work days or place of work in relation to the employment. Employers upon receiving such application may approve or refuse the same. In the event of refusal, the employer must notify the grounds of refusal to the employee in writing.

This change is potentially introduced due to the flexible working arrangement that many employers had adopted since the imposition of movement restriction order (MCO) by the government due to pandemic COVID-19. Many employers chose to continue the said arrangement even when the MCO had been relaxed as many it proved advantages for both employers and employees. This change in the Bill addresses this point aptly and once passed it will definitely enhance the working culture following the emerging and developing technologies in Malaysia.

3. Other Amendments

Apart from the above changes in which the author ought to consider as significant to the current Employment Act regime, there are several other changes were proposed in the Bill. This includes new sections on the calculation of wages for incomplete month's work and new offence on forced labour.

4. Conclusion

At the time of this publication, the Bill is still in progress and had not been enforced as a law. The Bill, if approved and passed by the parliament will require employers to take the necessary steps to amend their existing employment's regime. The importance of the subject matter of the revised sections may vary depending on the nature of the employers' businesses. Certain sections may give a significant impact on the operation of an employer while other employers may adopt the same without any anticipated issues.

In light of this, we assist our clients in providing the appropriate advice on the impact of the Bill and we are able to draft bespoke contracts, internal policies or regulation of employments for your company. If you have any questions about our services, please do not hesitate to contact us.

Reference: Employment Bill (Amendment) 2021 [PN(U2)3164]

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