

## **Empowering Businesses: How Malaysia's Employment Law Benefits Employers**

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### **1. Introduction**

Despite the recent revision of the Employment Act 1955 (Act 265), the primary legislation governing the employment framework in Malaysia, effective from 1 January 2023, the overall employment law is still perceived as favoring businesses.



While the improvement aligns Malaysia's employment laws with global standards of benefits and protection to employees, the restrictions and gaps remains in the law have contributed to a pro-business climate attractive to investors to operate in Malaysia.

Furthermore, Malaysia is widely recognized as a strategic investment destination, thanks to its robust economy driven by key industries such as manufacturing, agriculture, retail, and hospitality. Additionally, Malaysia's favorable immigration standards exemplify the government's proactive approach in promoting foreign investment. These factors collectively contribute to Malaysia's reputation as an attractive and welcoming environment for investors from around the world.

This newsletter will explore the advantages of Malaysia's employment framework for business owners and its impact on the country's strategic business environment. We will delve into the specific factors that make Malaysia an attractive destination for businesses.

### **2. The Employment Framework**

**The laws and regulations.**

Compared to other countries, Malaysia has a relatively limited number of legislations governing its employment framework. In the past, only three main legislations, namely the Employment Act 1955, the Industrial Relations Act 1971, and the Trade Union Act 1959 which dictated employment practices. Only recently there has been a positive shift with the introduction and enforcement of crucial legislations like the Minimum Wage Act and the Minimum Retirement Age Act. These developments indicate an ongoing effort to improve the employment framework in Malaysia. This suggests that the employment framework in Malaysia is still developing with certain areas requires more improvement.

**Main employees benefits and protections that employers should know.**

Prior to 1 January 2023, the Employment Act 1955 is catered only to lower earners employees in Malaysia paid at RM2,000 and below. Now all employees, regardless of their level of wage are entitled to several benefits, among others, annual leave, maternity and paternity leave, sick leave, minimum amount of overtime pay. However, there are still restrictions favouring the employers in the recent amendments where it restricts certain benefits, such as overtime payment, termination and layoff benefits, only to employees earning a monthly salary of RM4,000 or below.

In addition to the aforementioned benefits, employees in Malaysia also enjoy important individual protection regarding unfair dismissal. As per the Industrial Relations Act 1971, all employees, regardless of their salary level, have the right to file a representation in the industrial court if they have been dismissed without *just cause and excuse*. In general, employers have the right to dismiss employees; nevertheless, this action must be supported by valid justifications, including cases of misconduct, redundancy, or retrenchment. Further, fair procedures must be followed even if the employment contract allows unilateral termination without assigning any reason.

### **3. Advantages of doing business in Malaysia**

(a) The conservative minimum wage law.

The recent Minimum Wage Order 2022 revised the previous minimum wage from RM1,200 to RM1,500 per month, regardless of the employment location. However, certain exemptions have been granted until July 1, 2023, allowing more time to small business owners with fewer than 5 employees to adhere to the new minimum wage. Despite this adjustment, the minimum wage in Malaysia is still considered relatively low when compared to neighbouring countries like Singapore, taking into account Malaysia's prevailing economic conditions.

On the employers' perspective, the low minimum wage offers advantages to companies, primarily in terms of reducing labour costs, especially for businesses that heavily rely on low-skilled workers. Additionally, employers could benefit from the flexibility to hire additional employees or maintain a larger workforce while keeping labour expenses manageable. Consequently, the low minimum wage can contribute to overall cost reduction and potentially improve profit margins for businesses.

(b) The restricted movement of trade union.

Malaysia relies on foreign direct investment from overseas for their economy stability. As such although the establishment of trade union is governed by the Trade Union Act 1959, and unlike other countries, the main and strong tools of a trade union movement such as strike is generally prohibited and allowed only after strict protocols have been met. This is due to the reason that strike could have an adverse effect to the economy.

As a result, employers in Malaysia can benefit from this prohibition as it shields their reputation, even when employees trade unions are present within their companies.

(c) No specific legislations on discrimination

Unlike some other countries, Malaysia does not have legislation that specifically prohibits discrimination in employment based on gender, race, or sexual preferences, despite its diverse population comprising various racial, ethnic, and religious groups. Although anti-discrimination and equality have been recently advocated in workplaces, employers in Malaysia still have the discretion in their hiring practices and may base employment decisions on specific criteria that they deem necessary, such as language requirements (e.g., Mandarin proficiency) and not exposed to any specific law's infringement. Additionally, there is no legal requirement for employers to adhere to diversity quotas when recruiting or hiring employees.

(d) Other factors – the friendly immigration standard

Malaysia welcomes the expatriates from professional level to low-skilled workers. It constantly improves the immigration standard to allow more foreign nationals to start a business in Malaysia. Employment visa is not required for short term business travels, allowing foreign investors to come and conduct the business feasibility studies, enter into business contracts, or any other business purposes in Malaysia without restrictions. In addition to the above, Malaysia also has an existing program known as “Malaysia My Second Home” or MM2H program which encourages foreign nationals to reside in Malaysia on a long-term basis. It was introduced by the Malaysian government in 2002 with the aim of promoting the country as a preferred destination for foreigners to live, work, and retire.

Under the MM2H program, eligible foreigners are granted a multiple-entry social visit pass with a long-term validity period. The program offers various benefits and privileges, including the opportunity to live in Malaysia with their immediate family, the ability to purchase property, tax incentives, and ease of travel in and out of the country subject to certain financial and medical criteria.

#### 4. Conclusion

The employment law in Malaysia is undergoing continuous development, particularly in response to the changing work landscape brought about by the pandemic and emerging technologies. With the rapid shift to remote work and increased reliance on technology in workplaces, new legal issues may arise. Nonetheless, it is worth noting that the current employment framework in Malaysia tends to favour a business-friendly environment compared to countries with stricter employee protections.

Despite this, employers still face employment risks, especially given the constant changes in the legal landscape. As such, investors who benefit from Malaysia's evolving employment laws should stay updated on the latest developments and adjust their policies accordingly. Seeking legal advice before making any decisions related to employees is crucial to mitigate potential legal liabilities.

Our team in Malaysia is well-versed in advising on various employment issues and actively assists clients with their day-to-day employment concerns. If you require our services, please feel free to contact us.

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