

Amendments to the Employment Act and the practical responses required from companies ~Extension of the scope of the Employment Act~

2022/09

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1. Amendments to the Employment Act and changes in the scope of application

As reported in the news, the Malaysian Employment Act has been recently amended to extend the maternity leave period and grant paternity leave to male employees (for details of the amendments, please refer to our May newsletter issued earlier this year).



This Amendment Act made no mention of any changes to the scope of the Employment Act, which in principle only applies to employees earning less than 2,000 ringgit per month.

However, on 15 August 2022, the Ministry of Human Resources, the ministry overseeing employment matters, published a Ministerial Order in the Federal Gazette amending the First Schedule which sets out the scope of application of the Employment Act (EMPLOYMENT (AMENDMENT OF FIRST SCHEDULE) ORDER 2022 ("the Ministerial Order"). The Ministerial Order and the Amendment Act are to come into force on 1 January 2023, based on a subsequent Cabinet decision.

This article lays out the extended scope of the Employment Act and attempts to examine how companies should respond to these changes. Many Japanese-owned companies, except those in the manufacturing industry, had no issue paying no attention to the Employment Act in the past, as their employees' salaries are thought to be more than RM2,000.

2. Changes in the scope of the Employment Act

Prior to the changes, the Employment Act in principle only applied to employees earning less than RM2,000 a month.

The relationships between the employees who are not covered by the Employment Act and the company were entirely governed by the employment contracts and employee handbook. In other words, the company is free to decide whether or not to pay these employees overtime pay, and how it should be calculated, without being dictated by the employment law.

2.1 The changes brought by the Ministerial Order on the scope of the Employment Act

The Ministerial Order amends the previous provisions and redefines the term 'employee' to "Any person who has entered into a contract of service". Making it clear that all persons who enter into a contract of service are 'workers' for the purposes of the employment law.

Therefore, from 1 January 2023 onwards, all employees will be considered 'workers' under the Employment Act.

However, some exemptions should be noted, as follows

2.2 For workers whose monthly wages exceed RM 4,000

Notwithstanding the above provisions, the Ministerial Order provides that workers whose monthly wages exceed RM4,000 shall be exempted from the benefits conferred by Section 60(3) (overtime pay on rest days), 60A(3) (overtime pay on working days), 60C(2A) (shift work pay), 60D(3) (pay on public holidays and rest days), 60D(4) (half day pay on public holidays) and Article 60J (termination, retirement and lay off benefits).

However, manual labour workers ("manual labour"), which have existed in the First Schedule for some time, continue to be separately defined as "employees" (First Schedule, paragraph 2(2)), consequently they are not excluded as "employees", and all Employment Act provisions still apply to them, regardless of their monthly wage.

2.3 Organising the scope of employment law application

In light of the above, it follows that (1) all employment law provisions, including overtime pay, apply to employees with a monthly wage of RM4,000 or less, and (2) for employees



with a monthly wage in excess of RM4,000, all employment law provisions, except those relating to overtime pay and termination pay will apply.

3. Measures to be taken by companies

3.1 Effects of employment contracts in breach of employment law

Firstly, employment contracts and employee handbooks with terms that are less favourable than the provisions of the Employment Act are invalid, and the Employment Act and regulations passed under the Employment Act shall take precedence (Section 7 of the Employment Act).

The general penalty for non-compliance with the Employment Act or the regulations under the Act is a fine of up to RM50,000 (Section 99A of the Employment Act).

Companies are therefore required to have employment contracts and employee handbooks that comply with the Employment Act.

3.2 Key points for reviewing employee handbook

It is assumed that many companies have employment handbooks in place to supplement employment contracts and to provide a more consistent labour management.

Based on our personal experience, many companies have employment handbooks which refer to the Employment Act but do not provide terms as favourable as the statutory entitlements. This is due to the expectation that the Employment Act would not cover a majority of the employees. However, in 2023, the Employment Act will in principle apply to all employees, as such the previous employment handbooks will no longer be lawful.

The following section sets out a number of matters that are likely to contravene the latest Employment Act, we hope you will find it useful.

① Working hours

The amended Employment Act sets the maximum weekly working hours at 45 hours (Section 60A).

Are the working hours of your company's employees still 48 hours?

② Flexible working, remote working arrangements

The amended Employment Act requires that when an application is made for a change in the hours or place of work, it must be approved or rejected with the reasons given.

Is there any provision that uniformly prohibits flexible working arrangements?

③ Overtime pay

The overtime pay provisions of the amended Employment Act also apply to employees earning less than 4,000 ringgit per month.

Are there any provisions in the employee handbook or employment contracts stating that overtime pay is not payable? And do the calculations of overtime pay comply with employment law?

④ Annual paid leave

Employment law grants workers the right to enjoy paid leave.

Have you previously reduced the amount of paid leave to less than the statutory prescribed paid leave because the Employment Act does not apply? Are there any provisions that may contravene the Employment Act, such as matching the days of paid leave to the days of paid leave in Japan?

Other common examples include restricting the right to paid leave during the probation period, which is not permitted under the Employment Act. Consequently, this time around, the changes in the law plus the extension of the scope of the Employment Act make it necessary to review the entire labour operation, including the employee handbook.

4. Conclusion

Our Firm provides services to assist Malaysian companies in complying with the amendments to the Employment Act and accommodating the changes in the scope of application.

As mentioned above, compliance with the Employment Act must be done by the end of 2022, before the amendments come into force. If you have any questions regarding the amended Employment Act, please do not hesitate to contact us.

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Before returning to Malaysia, he worked at a London based charity where he provides legal advice, case preparation and advocacy in social security tribunal cases. He also did some employment tribunal cases when he was there.

Before he joined One Asia lawyers, he was a member of a tax legal team of a law firm located in Kuala Lumpur, he worked on transfer pricing, tax, SST & GST and Customs cases. After joining One Asia Lawyers, he has been providing services for regulatory compliance, employment law, contract law and land law matters.



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