

Legal updates: the New Minimum Wage and the Recently Passed Employment (Amendment) Bill 2021

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1. The New Minimum Wage

Pursuant to Section 23 of the National Wages Consultative Council Act 2011 [Act 732], the Minister of Human Resources of Malaysia has made the Minimum Wages Order 2022 [P.U.(A) 140/2022] which was gazetted on 27th April 2022 (“MWO”).



The operation of the rules provided under the MWO will be enforced by categories (as explained below) in which the earliest shall commence on the 1st May 2022. It is imperative to note that the MWO does not apply to domestic servants¹.

In this section, we will highlight the key provisions of the MWO and the recommended steps for employers and Human Resource (HR) professionals to take in order to ensure their compliance with the law.

1.1 The key provisions

(a) **Category 1 - For employees employed by an employer who employs five (5) or more employees, the MWO provides as follows:**

- **With effect from 1st May 2022, the monthly wages shall not be less than RM1,500.00.**

¹ “Domestic servant” as defined under subsection 2(1) of the Employment Act 1955, Subsection 2(1) of the Sabah Labour Ordinance [Sap. 67] and Subsection 2(1) of the Sarawak Labour Ordinance.



- It is also applicable to employees employed by professional bodies² regardless of the number of the employees (“Professional Bodies”).

(b) **Category 2 - For employees employed by an employer who employs less than five (5) workers other than Professional Bodies**, the MWO provides as follows:

- **With effect from 1st May 2022 to 31st December 2022, the** monthly wages shall be not less than RM1,200.00 (applicable to employees in City Council or Municipal Council area) or RM1,100.00 (other than City Council or Municipal Council area).
- **With effect from 1st January 2023**, the monthly wages shall be revised to be not less than RM1,500.00.

In summary, employers with more than five (5) employees and professional bodies (regardless of number of the employees) shall follow the new minimum wage commencing on 1st May 2022. As for the employer with less than five (5) employees (other than Professional Bodies), the effective date to follow the new salary is on 1st January 2023. Therefore, the minimum wage for the period 1st May to 31st December 2022, shall follow the employment area as stated at the above.

As such, employers who are affected by the MWO must ensure the salary adjustment is in line with the new minimum wage and to communicate the same with the employees. The existing payroll scheme ought to be revised and the records to be in order.

Employer who fails to pay the basic wages as specified in the minimum wages order to his employees commits an offence and shall, on conviction, be liable to a fine of not more than RM10,000.00 for each employee³.

2. Employment Act (Amendment) 2021 – Passed by the Parliament.

We have previously issued a newsletter dated 6th January 2022 on the Proposed Changes on the Employment Act 1955. On 21st March 2022, the House of Representative of the Malaysian Parliament has passed the said amendments which was tabled via the Employment Act (Amendment) Bill 2021 (“Bill”). The Bill however is not being enforced yet as now it is still pending the approval by the Senate and to obtain the Royal Assent.

² “Professional bodies” who carry out the professional activities under the Malaysia Standard Classification of Occupations (MASCO) as published by the Ministry of Human Resources. For example: engineers, lawyers, surveyors, and medical practitioners.

³ Section 43 of the National Wages Consultative Council Act 2011 (Act 732),

2.1 Further changes to Maternity Leave and Paternity Leave.

It is worth to note that certain changes proposed in the said Bill were further revised during the passing in the house of the Parliament specifically on the number of days for maternity leave and paternity leave. Instead of the proposed 90 days of maternity leave, the Parliament has increased it to 98 days in order to follow the international labour standard.

As for paternity leave, seven (7) days was passed rather than three (3) days per the initial proposal in the Bill to encourage male workers to play their parts during the early days after childbirth. This change is seen to be a positive change to support workers with families.

Other changes as proposed in the Bill were passed without further notes including the flexible working arrangement, exhibition of non-sexual harassment notice, employment of foreign workers, changes to impede forced labour and others (read further in our previous newsletter dated 6th January 2022 – *Proposed Changes to the Employment Act 1955*)

2.2 The salary cap for EA employees.

The existing RM2,000.00 salary cap for which employees will be subject to the EA will be removed as assured by the Minister of Human Resources during the second reading of the Bill. However, this change was not proposed under the Bill and the amendment of the salary cap under the First Schedule will be done by way of Minister's Orders.

The said Minister's Order if it ever be gazetted, will certainly expand the employment protection to all employees, regardless of the amount of salary. However, it is expected that certain conditions may be introduced.

3. Conclusion

The employment law in Malaysia is regarded as one of the most rapidly changing laws in the recent years. Since the global pandemic of COVID-19 up until the Endemic phase, the employment sector has been constantly affected and yet thriving at the same time.

The minimum salary, employment protection and benefits and working environment have been constantly improved in order to accommodate with the modern necessity that promote healthy

and balanced working culture. The working arrangement has also significantly changed to flexible and remote setting as to leverage with the latest technology.

As these changes being in place, the laws and policies makers shall act in line with the modern necessities to ensure the relevancy and the applicability of the law in every aspect of employment. As legal professionals, we will continue to provide the update of the recent changes of Malaysian law and we commit to provide our advice in accordance with your business needs. If you wish to seek legal advice on employment law, please do not hesitate to contact us.

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