

5 September 2022

Key Amendments to Employment Act 1955

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Introduction

Pursuant to the gazette of Employment (Amendment) Act 2022 (“**EA Amendment 2022**”) and the Employment (Amendment of First Schedule) Order 2022 (“**Amendment Order**”), the amendments to certain provisions in the Employment Act 1955 (“**EA**”) shall come in force with effect from 1 September 2022. However, the effective date for the amendments to come in force has been subsequently delayed to 1 January 2023, as the Human Resources Ministry states that most of the industry players are not ready. In order to prepare the employers and employees for the said amendments, we have summarised the key amendments to the EA in this article.

Key Amendments

The key amendments from the EA Amendment 2022 and Amendment Order can be summarised as below:

1. Application of Employment Act

Prior to the Amendment Order, the EA only applies to the employees who (i) make monthly earning of not more than RM2,000 or (ii) those who are engaged in manual labourers, (iii) engaged in supervising manual labourers or (iv) in the operation or maintenance of any mechanically propelled vehicle operated for the transports of passengers or goods or for commercial purposes.

Pursuant to the coming in force of the Amendment Order, the EA will be applicable to any person who has entered into a contract of service, irrespective of their monthly salary.¹

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2. Maternity leave and pregnancy

Maternity leave of 60 days previously would be extended to 98 days.²

Further, it is now an offence for the employer to terminate a female employee who is pregnant or is suffering from an illness arising out of her pregnancy, except on the grounds of (i) willful breach of a condition of the contract of service, (ii) a misconduct inconsistent with the fulfilment of the express and implied conditions of his service that justifies a dismissal after due inquiry, or (iii) closure of the employer's business.³

The burden of proving that the termination of the aforementioned female employee is not on the ground of pregnancy or illness arising out of her pregnancy shall rest with the employer. On conviction, the employer shall be liable to a fine not exceeding RM50,000.⁴

3. Paternity leave

With the latest amendment, a married male employee shall be entitled to 7 consecutive days of paid paternity leave for each confinement, with limit up to 5 confinements, irrespective of the number of spouses.⁵

The married male employee shall be entitled to paternity leave from his employer if: (i) he has been employed by the same employer at least 12 months immediately before the commencement of such paternity leave; and (ii) he has notified his employer of the pregnancy of his spouse at least 30 days from the expected confinement or as early as possible after the birth.

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4. Flexible working arrangements

New provisions have been inserted to allow the employees to apply in writing for a flexible working arrangement to vary the hours of work, days, or place of work.⁶

Upon the application is made, the employer shall within 60 days of such application, inform the employee in writing of his approval or refusal of such application. In the event the employer refuses the employee's application, the employer shall state the grounds for such refusal.⁷

5. Working Hours and sick leave

The maximum number of working hours per week is now reduced from 48 hours to 45 hours.⁸ Accordingly, employee who works beyond the newly prescribed working hours would be entitled to overtime pay. Failure to comply with the provision will subject the employer to a fine not exceeding RM50,000.⁹

6. Sexual harassment

New provision is introduced where the employer is required to exhibit conspicuously at the workplace a notice to raise awareness on sexual harassment.¹⁰

Further, the relevant maximum penalty imposed in relation to the offence of an employer's failure to inquire into complaints of sexual harassment has been increased from RM10,000 to RM50,000.¹¹

7. Foreign employees

Pursuant to the Amendment Order, employer shall obtain prior approval from the Director General prior to employing foreign employee.¹² Failure to do so is an offence and upon conviction, would subject the employer to a fine not exceeding RM100,000 or to imprisonment for a term not exceeding 5 years or to both.¹³

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Furthermore, the Amendment Order imposes new obligation on the employer to inform the Director General of Labour of the termination of the service of a foreign employee within 30 days from the date of the termination. On the other hand, if the foreign employee terminates his service or absconds from his place of employment, the employer shall also inform the Director General of Labour within 14 days of the termination of service.¹⁴

8. Discrimination

The Director General of Labour is now empowered to inquire into and resolve any dispute between an employee and his employer regarding any matter relating to discrimination in employment and make an order in respect of the dispute. The employer shall comply with the order given by the Director General of Labour as failure to do so constitute an offence and shall on conviction be subject to a fine not exceeding RM50,000.¹⁵ In case of a continuing offence, the employer shall be liable to daily fine not exceeding RM1,000 for each day the offence continues after conviction.

9. Provisions not applicable to employees whose monthly salaries exceed RM4,000

Notwithstanding that the EA is applicable to all employees regardless of their salaries, certain sections of the EA are **not applicable** to employees who earns more than RM4,000 monthly.¹⁶ These sections are reproduced as Appendix A of this Article for those who are interested.

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Recommendation

For any employee whose earning is above RM2,000 per month, his employment contract is not governed by the EA prior to the effective date (i.e. 1 January 2023) and therefore may stipulate terms that deviate from the provisions of the EA. However, in view that most of the provisions of the EA (save for those highlighted in paragraph 9 above) would be applicable (i.e. effectively from 1 January 2023) to all employees regardless of the employee's salary, employers are urged to review the template employment agreement to ensure that the terms therein (eg: notice period for termination, hours of work, annual leave, sick leave, etc) comply with the provisions of the EA in order to avoid any penalty.

Disclaimer: this article is for informational purposes only and does not constitute legal advice.

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References

1. Section 2(a) of the Employment (Amendment of First Schedule) Order 2022
2. Section 12 of the Employment (Amendment) Act 2022, amending the subsection 37 of the EA
3. Section 13 of the Employment (Amendment) Act 2022, inserting a new section 41A to the EA
4. Section 43 of the Employment (Amendment) Act 2022, amending the section 99A of the EA
5. Section 23 of the Employment (Amendment) Act 2022, inserting a new section 60FA to the EA
5. Section 23 of the Employment (Amendment) Act 2022, inserting a new section 60FA to the EA
6. Section 27 of the Employment (Amendment) Act 2022, inserting new Section 60P to the EA
7. Section 27 of the Employment (Amendment) Act 2022, inserting new Section 60Q to the EA
8. Section 20 of the Employment (Amendment) Act 2022, amending section 60A of the EA
9. Section 43 of the Employment (Amendment) Act 2022, amending the section 99A of the EA
10. Section 36 of the Employment (Amendment) Act 2022, inserting a new Section 81H to the EA
11. Section 34 of Employment (Amendment) Act 2022, amending section 81F of the EA
12. Section 24 of the Employment (Amendment) Act 2022, new section 60K substituting the existing section 60K in the EA
13. Section 24(5) of the Employment (Amendment) Act 2022
14. Section 25 of the Employment (Amendment) Act 2022, inserting new section 60KA to the EA
15. Section 30 of the Employment (Amendment) Act 2022, inserting new section 69F to the EA
16. Section 2(b) of the Employment (Amendment of First Schedule) Order 2022.

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Appendix A

Sections which are not applicable to employees who earns more than RM4,000 monthly

Sections	Brief Description
S.60(3)	<p>The pay rate of working on a rest day</p> <p>(a) Employee employed on a daily, hourly, or other similar rate of pay who works on a rest day, he shall be paid for any period of work -</p> <p>(i) which does not exceed half his normal hours of work, one day's wages at the ordinary rate of pay; or</p> <p>(ii) which is more than half but does not exceed his normal hours of work, two days' wages at the ordinary rate of pay.</p> <p>(b) Employee employed on a monthly or weekly rate of pay who works on a rest day, he shall be paid for any period of work-</p> <p>(i) which does not exceed half his normal hours of work, wages equivalent to half the ordinary rate of pay for work done on that day; or</p> <p>(ii) which is more than half but which does not exceed his normal hours of work, one day's wages at the ordinary rate of pay for work done on that day.</p> <p>(c) For any work carried out in excess of the normal hours of work on a rest day by an employee mentioned above, he shall be paid at a rate which is not less than two times his hourly rate of pay.</p>

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Appendix A (cont.)

Sections which are not applicable to employees who earns more than RM4,000 monthly

Sections	Brief Description
S.60A(3)	<p>Overtime for work outside of normal working hours</p> <p>For any overtime work carried out in excess of the normal hours of work, the employee shall be paid at a rate not less than one and half times his hourly rate of pay irrespective of the basis on which his rate of pay is fixed.</p>
S.60C(2A)	<p>A new provision pursuant to the Amendment Act which empowers the Minister of Human Resource to make regulations in connection with the entitlement of allowance during shift work</p>
S.60D(3)	<p>Overtime and allowance for work on public holidays</p> <p>(a) Any employee may be required by his employer to work on any paid holiday to which he is entitled under the said subsections and in such event he shall, in addition to the holiday pay he is entitled to for that day-</p> <p>(i) in the case of an employee employed on a monthly, weekly, daily, hourly, or other similar rate of pay, be paid two days' wages at the ordinary rate of pay; or</p>

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Sections	Brief Description
S.60D(3)	<p>(ii) in the case of an employee employed on piece rates, be paid twice the ordinary rate per piece, regardless that the period of work done that day is less than the normal hours of work.</p> <p>(aa) For overtime work carried out by an employee referred to in (a)(i) above, in excess of the normal hours of work on a paid public holiday, the employee shall be paid at a rate which is not less than three times his hourly rate of pay.</p> <p>(aaa) for the overtime work carried out by an employee referred to in (a)(ii) above in excess of the normal hours of work on any paid holiday, the employee shall be paid not less than three times the ordinary rate per piece.</p>
S.60D(4)	<p>Overtime for work on holidays on half working days</p> <p>For the purpose of this section if any such holiday falls on a half working day, the ordinary rate of pay payable shall be that of a full working day.</p>
S.60J	<p>Termination, lay-off and retirement benefits.</p> <p>Termination, lay-off and retirement benefits are not applicable to employees whose monthly salaries are more than RM4,000.</p>