



巴生中华总商会
Klang Chinese Chamber of
Commerce and Industry

KCCCI EXPERTS ADVISORY PANEL (KEAP) KEAP BULLETIN

DECEMBER 2023



KCCCI EXPERTS
ADVISORY PANEL

CUSTOMS & TARIFFS

1. Question

Our company principally engaged in paper mill / paper manufacturing industry. Please advise us those waste products import under Sirim COA approval can partly use in production, partly sell to third party?

Answer

Sirim officer replied that is up to customers.

2. Question

Company would like to import machine & parts to use in production process from China. Kindly advise us how to waive the import duty.

Answer

Usually most machinery does not incur any duties, however sales tax maybe imposed.

For exemption of duties, usually if FORM E, is available for the items, duties will be exempted, however this is to be confirmed if we have more information on the imported items.

Another option is to apply through Finance ministry or mida for specific exemption.

3. Question

Please advise the purpose of filling project status in PACU Mida system. Is it compulsory?

Answer

Please go to,
<https://www.mida.gov.my/setting-up-content/pacu>, MIDAS portal on PACU.

PACU basically assist investors to expedite the whole process of getting approvals. The information on tax exemption application of machinery are also available there.

It would be faster if investors are doing it through PACU



HUMAN RESOURCES

OT / Public Holiday / Annual Leave Calculation

1. Question

I would like to clarify for overtime calculation which formula should I follow after 1/9/2022 wages /26day /8hours or wages/26 day / 7.5 hours

Answer

Ordinary Rate of Pay and Hourly Rate of Pay
Section 60 I (1A) of the Employment Act 1955 states that:

Where an employee is employed on a monthly rate of **pay**, the **ordinary rate of pay shall be calculated** according to the following formula:

$$\frac{\text{monthly rate of pay}}{26}$$

Section 60 I(1)(b) of the Employment Act 1955 states that the **hourly rate of pay** means the ordinary rate of pay divided by the normal hours of work.

Therefore in calculating the hourly rate of pay, it would be calculated as:

$$\frac{\text{Ordinary Rate of pay}}{8^*}$$

On the assumption that the normal hours of work per day is 8 hours.*

Section 60 I (1)(a) of the Employment Act 1955 states that the **ordinary rate of pay means wages as defined in section 2. Section 2 of the Employment Act 1955** defines wages as follows:

"wages" means basic wages and all other payments in cash payable to an employee for work done in respect of his contract of service but **does not include** -

- (a) the value of any house accommodation or the supply of any food, fuel, light or water or medical attendance, or of any approved amenity or approved service;
- (b) any contribution paid by the employer on his own account to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement scheme, thrift scheme or any other fund or scheme established for the benefit or welfare of the employee;

- (c) any travelling allowance or the value of any traveling concession;
- (d) any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;
- (e) any gratuity payable on discharge or retirement; or
- (f) any annual bonus or any part of any annual bonus;

Section 60 I (2) of the Employment Act 1955 states that an employer may adopt any method or formula other than the method or formula in subsection (1A), (1B) or (1C) for calculating the ordinary rate of pay of an employee; **but the adoption of any other method or formula shall not result in a rate which is less than any of the rates provided in the subsections.**

There is nothing improper for an employer to use the formula of wages/26/7.5 to calculate the hourly rate of pay provided it is more advantageous to the worker. The basis for the company to use 7.5 instead of 8 as the denominator in calculating the hourly rate of pay would be the normal number of hours worked per day would be 7.5 hours instead of 8 hours.

Otherwise it is recommended to stick to 8 for 8 hours of work.

2. Question

If it is a public holiday, how to calculate OT? What public holidays are stipulated by the government?

Answer

Section 60D (1) of the Employment Act 1955 provides that every employee shall be entitled to a paid holiday at his ordinary rate of pay on the following days in any one calendar year:

- (a) on **eleven** of the gazetted public holidays, **five** of which shall be-
 - (i) the National Day;
 - (ii) the Birthday of the Yang di-Pertuan Agong;

- (iii) the Birthday of the Ruler or the Yang di-Pertua Negeri, as the case may be, of the State in which the employee wholly or mainly works under his contract of service, or the Federal Territory Day, if the employee wholly or mainly works in the Federal Territory;
 - (iv) the Workers' Day; and
 - (v) Malaysia Day; and
- (b) on any day appointed as a public holiday for that particular year under section 8 of the Holidays Act 1951 [Act 369].

Section 60D (3) (a) states that 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 be paid **two days' wages at the ordinary rate of pay** if the employee is employed on a monthly rate of pay. This is regardless of the number of hours the employee worked up to the normal hours of work.

For any overtime work carried out by an employee **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**.

3. Question

Latest rules on OT and public holiday and also on annual leave calculation.

Answer

The amendment of the Employment Act 1955 (hereinafter referred to as "Act") which take effect from 1.1.2023 has expanded the coverage of the Act to all those who have a contract of service with an employer. Effectively this would result in workers being protected by the Act with no cap or limit on their salary. This is an important development since the Act provides the minimum benefits to be enjoyed by workers.

The First Schedule of the Act has now be amended. Under the new paragraph 1A of the First Schedule, the following provisions below **shall not be** applicable to person whose wages exceed four thousand ringgit a month.

1. Subsection 60(3): Rates of pay for work on rest day.
2. Subsection 60A(3): Rates of pay for Overtime outside of normal working hours.
3. Subsection 60C(2A): Shift work allowance.

4. Subsection 60D(3): Rates of pay for overtime and allowance for work on paid public holidays.
5. Subsection 60D(4): Rates of payment for work on holidays on half working days.
6. Subsection 60J: Termination, lay-off, and retirement benefits.

Where before the amendments, those earning more than RM2,000.00 is not entitled to the above payments, the limit of wages has now been set to RM4,000.00 per month.



4. Question

Salesperson working hour is 8am-5pm in offer letter (Monday-Friday). Says she's working at exhibition with time 10am-10pm on weekend, then entitled for 2 days replacement leave. However, due to the event's time (10am-10pm), what is the correct practice to compensate or replace? As salesperson unlike office people, they are entitle for sales com... So Is OT applicable? Or depends on company's policy?

Answer

There are several issues but as I have been requested to provide my opinion on the 2 following issues, I shall confine my view on the 2 following issues:

1. What is the correct practice to compensate when an employee work from 10am - 10pm?
2. Are salesperson who are entitled for sales commission also entitled to Overtime?

In the absence of having the benefit of the letter of contract of employment, I would first refer to Section 60A of the Employment Act 1955 (1) which states that except as hereinafter provided, an employee shall not be required under his contract of service to work:-

4. Answer (Cond.)

- (a) More than five consecutive hours without a period of leisure of not less than thirty minutes duration;
- (b) More than eight hours in on day;
- (c) In excess of a spread over period of ten hours in one day;
- (d) More than forty-eight hours in one week;

Provided that:-

- (i) For the purpose of paragraph (1)(a), any break of less than thirty minutes in the five consecutive hours shall not break the continuity of that five consecutive hours.

As stated in the question, the working hours is from 8am to 5pm. On the assumption there is a one hour lunch, the normal working hours would be 8 hours per day. Per Section 60A (3) (b) overtime means the number of hours of work carried out in excess of the normal hours of work per day. Therefore any hours of work in excess of 8 hours may be deemed to be overtime work and the employee would have to be paid accordingly.

Every employee who work in excess of their normal hours of work shall be entitled to be paid overtime, payment for work on rest days and payment for work on public holiday. However paragraph 1A of the First Schedule of the Employment Act 1955 states that the following sections and sub-sections shall not be applicable to those whose wages exceed Four Thousand Ringgit a month:

Subsection 60(3): Overtime for work on rest days.

Subsection 60A(3): Overtime for work outside of normal working hours.

Subsection 60C(2A): Shift work allowance.

Subsection 60D(3): Overtime and allowance for work on public holidays.

Subsection 60D(4): Overtime for work on holidays on half working days.

Subsection 60J: Termination, lay-off and retirement benefits.

Employment Act 1955 does not distinguish whether a person is a salesperson or not to be eligible for overtime except those who are engaged in manual work, engaged in the operation or maintenance of any mechanically propelled vehicle or supervises or oversees other employees in manual work. For these group of workers, even if they earned more than Four Thousand Ringgit a month they are still entitled to overtime (refer to First Schedule of the Employment Act 1955).

Wages has been defined under Section 2(1) to means basic wages and all other payments on cash payable to an employee for work done in respect of his contract of service but does not include: -

- (a) The value of any house accommodation or the supply of any food, fuel, light or water or medical attendance, or of any approved amenity or approved service;
- (b) Any contribution paid by the employer on his own account to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement scheme, thrift scheme or any other fund or scheme established for the benefit or welfare of the employee;
- (c) Any travelling allowance or the value of any travelling concession;
- (d) Any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;
- (e) Any gratuity payable on discharge or retirement; or
- (f) Any annual bonus or any part of any annual bonus.

Given the above definition, commission may be considered as wages. Be that as it way, if an employer were to deny overtime to those who earned more than Four Thousand Ringgit a month, there would be a lot of unhappiness with these group of employees. Furthermore it is disputed whether an employer can request those earning more than Four Thousand Ringgit a month to perform overtime without any payment as this may give rise to unfair labour practice, "forced labour" and at the extreme the possible claim for constructive dismissal.



Minimum Wage

5. Question

Minimum wage of RM1500. This minimum wage is applicable to total salary or merely basic salary itself?

I have driver basic salary is RM1000. But he is getting almost RM3000 per month for trip incentive and commission. Do I need to adjust his basic salary to RM1500 OR can I just maintain the current method and making sure he is getting more than RM1500 in total monthly salary?

Answer

Paragraph 4(2) of the Minimum Wages Order 2022 states that "in relation to an employee who is not paid basic wages but is paid wages based only on piece rate, tonnage, task, trip or commission, the rate of monthly wages payable to that employee with effect from 1 May 2022 shall not be less than RM1,500."

This above may be confusing because what happens if an employee is paid a basic wage (below RM1,500.00) plus trip and commission as in the above example. A verbal telephone query with one of the Labour Department revealed that they are of the view that basic wage must be RM1,500.00. If this is the view of the Labour Department and if we hold a contrary view, then I believe that this matter can only be decided by a decision from the court.

Given the response from one of the Labour Department, the matter therefore still needs further research and deliberations and at this juncture cannot be positively determined should the Labour Department takes a contrary view.



6. Question

During this period of probation time. The company pays me daily wages as and when I come to work. At a daily wage of RM50 per day as I'm still a trainee. Is this below allowed by law? The company has to follow to Employment Act with min wage even though for probation trainee?

Answer

The minimum wages is RM1,500.00 per month and the Minimum Wages Order 2022 does not differentiate between a permanent staff of probationer.



Terminate Staff

7. Question

Other than serving a warning letter, what other actions need to be taken before we can terminate a staff?

This staff is not following working procedures and is making chaos with other colleagues.

Answer

To terminate a staff in Malaysia can be costly especially if the staff is a long serving staff and the salary is high and the employer losses his case in Industrial Court. Before taking any action including termination, it is important that the employer follows certain basic procedures. If there is a written or verbal complaint against an employee, the company should investigate the matter. If there are sufficient evidence and witness, to issue a show cause letter to the employee.

Depending on the reply by the employee to the show cause letter or the outcome of the domestic inquiry (if it is conducted), the company may consider to take the following action as provided for under Section 14 of the Employment Act 1955 which reads as follows:

Section 14. (1) An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, after due inquiry-

- (a) dismiss without notice the employee.
- (b) downgrade the employee; or
- (c) impose any other lesser punishment as he deems just and fit, and where a punishment of suspension without wages is imposed, it shall not exceed a period of two weeks.

The misconduct must be sufficient serious enough before we can consider terminating the employee's service. The punishment to be inflicted must be in proportion to the misconduct. Section 14 (1) above talk about due inquiry. This means that some sort of investigation and inquiry must be undertaken. The giving of show cause letter is to ensure that the employee is given an opportunity to reply to the "misconduct". In any event, before terminating or taking any form of disciplinary action, it is advisable to consult a competent Human Resource Practitioner or an advocate & solicitor.



8. Question

If I were hired being a sales trainee in a company and still during probation period, this company fire me for low skill and unsuitable as the reason with one week notice.

My question is can company fire me base on these reasons? And one week notice is allowed by law? I signed a simple contract saying one week termination notice upon being hired by the company.

Answer

Probationers have rights and you cannot simply dismissed a probationer based on the letter of employment which says that during probation either party may terminate the employment contract. It would be difficult to determine what constitute low skill and unsuitable. It is the employer that bears the burden of proof that the employee has "low skill and unsuitable" for the job.

Another issue would be if the probation period is for 3 months, then terminating the services before 3 months for example during the 1st month may be considered as unfair as not sufficient time has been given for the probationer to learn the job and reached the level of competency.

The law hereby states that the notice of termination must be the same for both parties. In the absence of any written contract, the notice period to be given by either party should be in accordance with Section 12 of the Employment Act 1955. Therefore it is not unlawful to provide one week notice if this is as stated in the letter of employment.

9. Question

This current staff works as salesperson but not performing well for the past 3 months. Affect company overall revenue and also bad mouth about other staff. Can I legally terminate him with one month notice? After Issue warning letter to him?

Answer

There are two issues here pertaining to the employee. One is that he is not performing for the past three months. Before terminating an employee, you should take note of a few procedures that any employer should undertake as follows:

1. *Has the staff been given warning on this poor performance?*
2. *What is the reason for the poor performance in sales?*
3. *Has the company provided assistance, guidance to the employee?*

The second issue is equally serious as the employee has bad mouth other staff. Who is the other staff? What actually did the employee say about the other staff? Any witness?

The burden is on the employer to justify the dismissal of any employee, before taking any actions I would suggest that you obtain advice from a competent human resource practitioner or a lawyer to assess your matter.



Answer

There is two issues relevant to the query. One is whether a 24 hours notice period is adequate and the other is whether notice of termination by whatsapp is an appropriate mode of notice.

There is no reason why a notice cannot be given via a whatsapp message as long as the message is brought to the notice of the employer. If the employer does not want notice to be given via a whatsapp message then I would suggest that this is stated in the letter of employment that all notice of termination should be addressed to the employer e.g. to the director or human resource manager by written notice and to be acknowledge in writing by the employer. If there is such a clause then we can prevent a dispute as the appropriate method of notice and acknowledgement of notice is clearly detailed down.

To answer the question on the notice of termination, let me set out the law on this as stated in the Employment Act 1955.

*Section 10. (1) of the Employment Act 1955 (EA) states that a contract of service for a specified period to time **exceeding one month** or for the performance of a specified piece of work, where the time reasonably required for the completion of the work exceeds or may exceed one month, **shall be in writing**. This is followed by Section 10 (2) which states that in every written contract of service a clause shall be included setting out the manner in which such contract may be terminated by either party in accordance with this Part.*



10. Question

Can employee gives her employer a 24hours notice through whatsapp?

She is an admin sales clerk getting a salary around RM2k per month and has worked for more than a year.

Either party to a contract of service may at any time give to the other party notice of his intention to terminate such contract of service. **The length of such notice shall be the same for both employer and employee** and shall be determined by a provision made in writing for such notice in the terms of the contract of service, or, in the absence of such provision in writing, shall not be less than:-

- (a) Four weeks' notice if the employee has been so employed for less than two years on the date on which the notice is given.

Therefore a 24 hours notice is not sufficient unless it is stated so in the letter of employment as the minimum notice period is four weeks' notice if the employee has been employed for less than two years. The notice period must be the same for both parties.

11. Question

If there are disciplinary issues, how do we legally go about termination?

Answer

To terminate an employee, an employer should be careful. You should only terminate someone with just cause and excuse. However what constitute just cause and excuse is not legally defined. Simply put, before we terminate someone there must be for a good reason like a misconduct like fraud, fighting, cheating or breach of regulations. Before terminating someone, the company should conduct an investigation to ensure that the evidence has been proven. The company should issue a show caused letter detailing out the misconduct and requesting the staff for an explanation. The company may also need to conduct a domestic inquiry to strengthen its case. I would advise the company to exercise caution and seek legal advice before terminating an employee because all cases of termination depends on the facts pertaining to each case which may be different. There is no one reason that can fit into all cases.



MC



12. Question

Can we accept MC from non-panel kliniik? However we have authorized panel Klinik.

Answer

Section 60F. (1) of the Employment Act 1955 states that an employee shall, after examination at the expense of the employer-

- (a) by a registered medical practitioner duly appointed by the employer; or
- (b) if no such medical practitioner is appointed or, if having regard to the nature or circumstances of the **illness, the services of the medical practitioner so appointed are not obtainable within a reasonable time or distance**, by any other registered medical practitioner or by a medical officer, be entitled to paid sick leave.

Therefore you can still accept medical chit from non-panel clinic on condition as stated above i.e. emergency basis having regard to the nature and circumstances of the illness. You need to query the employee on why he obtained medical chit from a non-panel clinic and only if the employer is satisfied with the answer should the employer approved the medical chit.

13. Question

For employee being hospitalized for 2 months due to sickness and never come to work at all. Do we need to pay for her salary, EPF, and SOCSO?

She absent for work since 10th of May and still on sick leave till today.

This is a genuine case with her showing all her MC and she plans to come back to work after she has recovered.

13. Question (Cond.)

And, after she recovered, then she is not able to work to her full ability as like last time. For example, she has to take sick leave for more than 5 days per month. In this kind of situation, as an employer, can we pay to her as and when she comes to work? And how about the EPF SOCSO, do we need to continue paying?

Answer

If the employee is entitled to be paid her salary, then it would follow that she is to be paid EPF and SOCSO, both her contributions and the employer contributions. An employee is now entitled to sixty days hospitalization leave as may be certified by a registered medical practitioner or medical officer as per Section 60F1(bb) of the Employment Act, calculated on a calendar year basis. This is in addition to paid sick leave depending on her years of service between 14 to 22 days. Please refer to Section 60F 1(aa). If the employee has not come back to work after her hospitalization, then her leave of absence can be deemed to be on medical leave if it is certified by a registered medical practitioner. Her maximum medical leave would depend on her years of service and be between 14 to 22 days. Any days in excess of her entitlement to medical leave would be of a no pay basis unless the company on compassionate ground decide to grant her more than her medical leave entitlement.

As EPF and SOCSO is calculated based on the salary received, therefore when it is unpaid leave, which you deduct from her salary, then under such a condition there would not be any payment for EPF and SOCSO which payment is based on the wages received.

Work on Public Holidays

**14. Question**

When an employer requires employees to go to work on public holidays, does it violate laws and regulations?

Answer

Employees may be requested to work on public holidays and provided they are paid according to the Employment Act 1955 there would be no violation of law and regulations.

Salary Calculation on Uncompleted Month

15. Question

Salary calculation on uncompleted month

Answer

18A. Notwithstanding section 60i, an employee who is employed on a monthly rate of pay and has not completed a whole month of service –

- (a) where he commenced employment after the first day of the month;*
- (b) where his employment was terminated before the end of the month;*
- (c) where he took leave of absence without pay for one or more days of the month;*





15. Answer (Cond.)

(d) where he took leave of absence by reason of having been called up for national service under the National Service Act 1952 [Act 425], to present himself for national service training as required under the National Service Training Act 2003 [Act 628] or to comply with any other written law relating to national service, shall be paid wages due to him for that month calculated according to the following formula:-

$$\frac{\text{Monthly wages}}{\text{Number of days of The Particular wage period}} \times \frac{\text{Number of days eligible In the wage period}}$$

Therefore, the use of the above formula would be appropriate to calculate wages for incomplete month of work.

How to Deal with Staff

16. Question

I need some advice on how to deal with staff that always disclose his salary information to others?

Although he has been warning by his manager not to disclose his salary info but he ignore.

Answer

The company should have a written policy (if this is not stated in their letter of employment or employment contract or company human resource handbook) that employees are not allowed to disclose information relating to their personnel records and this would include their salary, bonus, overtime etc. This written policy should be made known and

acknowledged by all employees. The policy should also state that disciplinary actions can be taken against any employees that disclose such confidential information.

When an employee breach such a policy, they may be given verbal warning on the first instance. If the employee continue to breach this policy (as stated in the question), the company should issue a show cause letter to ask the employee to explain why disciplinary action should not be taken against the employee. Presumably the company must have evidence that there is a breach of this policy. Depending on the reply to the show cause action, the company can consider suitable punishment against the employee.

In carrying out disciplinary actions, the company need to do so in a firm and effective manner. If verbal warning is not effective, a written warning may be more effective, provided the warning letter is written in a firm and clear manner and that the employee understand that the company deem such breach as a misconduct and not to be tolerated. Further the company is serious about such breach of company policy. A written warning is normally more effective than a verbal warning.



Part Time Work

17. Question

I am currently employed as a full time worker in ABC company. I take up a part time job as waiter during weekend dinner event by this restaurant in a dining hall. Do this weekend job also provide EPF SOCSO and min wage to me since I already being a full time staff in this ABC company. And being a part timer also protected by employment act?

Answer

If you are a full time worker in ABC Company and you perform duties for ABC Company during weekend, you should be paid based on the Employment Act 1955 i.e payment for work on a rest day or public holiday. The payment should not be less than the payment for rest day or public holiday.

For payment for work on rest day, you should refer to Section 60 of the Employment Act 1955 especially on subsection 3. For work on a public holiday, please refer to Section 60D of the Employment Act 1955 especially on subsection 3.

An employer need not pay EPF for overtime and work on rest days and public holidays. However overtime and work on rest days attract Socso contributions.

There is regulations on part time work. Part-time work is regulated under Employment (Part-time Employees) regulations 2010. Part-time work means an employee who works between 30 percent to 70 percent of the normal working hours of work in a week. Part timers are entitled to a minimum of 7 gazetted public holidays, overtime, annual leave, sick leave and rest days. Their entitlement are as prescribed under the Employment (Part-time Employees) regulations 2010.



Free Lancer



18. Question

As a free lancer such as credit card promoter is hired by a Agensi Pekerjaan company to work in promoting certain banks products. My question is this staff is paid under the Agensi Pekerjaan or the bank? Does the bank hold responsibility for this staff since he/ she is promoting their products. Ultimately, the bank pays to this agency Pekerjaan to do the works.

Answer

It depends on the employment contract. Is it signed by the Agensi Perkerjaan or the Bank as your employer? To determine who is your employment you need to look into your appointment letter, who is paying your salary etc. As to the responsibility of the bank, this would depend on the agreement between the Bank and the Agensi Pekerjaan.



19. Question

For freelance singer whom I engage a contract to perform in my pub every Friday and Saturday night. As a pub owner, do I need to pay her minimum wages and fix salary and also EPF and SOCSO? Or can I pay her on daily wages basis?

**19. Answer**

If it is established that there is a contract of service, then you may need to comply with all the laws and regulations pertaining to employment in an employer-employee relationship. Based on the nature of work you may consider the freelance singer (as an independent contractor), who may also sing in another pub and thus have more than one employer. To formalize this arrangement, you should have a written contract on the terms and conditions on the engagement to sing in your pub. The main thing is to negate that there is a contract of employment.

Temporary Worker

20. Question

How to categorized as temporary worker?

Answer

By temporary worker, this would mean that you are employing someone not on a permanent basis but on a short term contract basis, say for 3 months. Under employment law we would classify such as fixed term contract of employment.

Contract of Service

**21. Question**

What's Contract of service? What's the different from employment contract?

Answer

Contract of service is generally equivalent to mean employment contract. In such contracts there is an employer-employee relationship. Section 2(1) of the Employment Act 1955 state that:

"contract of service means any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an apprenticeship contract"

What is different would be a contract for service. This would be a contract between an employer and an independent contractor.

Current Employee Work More Than One Company

22. Question

Can my current employee works for more than one company?

Answer

In most letters of offer of employment (employment contracts) most employers would not allow their employees to take up another job including on a part time basis. What if the employee work for another competitor? If the employee take another job during his free time, this may affect his health and he may be too tired to work for you in the morning. It is generally expected that an employee devote his / her whole time, attention, energy solely to the business of or as directed by his employer. This should be stated in the letter of employment to avoid future disputes between the employer and the employee.



Deduct Salary



23. Question

Can we deduct an employee's salary if he/she arrives late and leaves early?

Answer

If you look at section 24 of the Employment Act 1955, you will see what are lawful deductions by the employer. You will note that late coming is not provided and legally I am of the view that an employer is not legally allowed to deduct salary even if an employee arrives late. Furthermore by deducting salary you are condoning the staff from coming late and the staff will say that it is ok to come late as the employer can always deduct the salary. What we want is the employee to come early for work and if there is habitual late comings then we should proceed to take disciplinary action to ensure that this does not recur.



LEGAL

1. Question

- 不按照contract 还钱
- 不还钱
- 货物不拿一直放着
- subcontractor agreement
- sharing profit agreement (max 5% per equipment)

Answer

If they are only starting sending out reminders now, then the reminder should set out specifically their contractual arrangement so that there is a valid cause of action. It is advisable to engage a lawyer to do so

2. Question

Would like to know what are the criterias for documents which are accepted and can be presented in court?

For example those "sick leave" medical certificate stating 'not valid for court cases' as compared with the certificate without this clause ?

I am in automotive industry and was asked by customer to give valuation for his vehicle based on my best knowledge for the purpose of presenting in court for "wasiat" purpose.

My question is by giving this letter to my customer do I end up having obligation / responsibility in his court matter?

Answer

I think there are 2 questions posed.

- 1. Medical certificates are generally not acceptable if court attendance is required. You will need documents from a hospital, where usually no such endorsement "tidak boleh digunakan untuk kegunaan Mahkamah" will be made on the medical certificate. As for criteria for documents to be used in Court, we would need more context before we could advise on the position.*
- 2. To the best of our knowledge, there is no such need for valuation to be given for wasiat purposes.*



TAX

1. Question

The 300k for tax deduction for renovation is it applicable for rental retail outlet that went through renovations? What is the documentation needed?

Answer

With respect to the enquiry on the special renovation deduction, please refer to the attached FAQ issued by the Inland Revenue Board (IRB) dated 11 March, 2021.

The renovation done on premises which are used for business will qualify for the special renovation claim and subject to the terms and conditions set by the IRB. The detailed criteria, type of renovation and documentation required are self-explanatory in the FAQ.



FOREIGN WORKERS

Yearly Work Permit Renewal

1. Question

What expense should I, as legal employee, pay to renew foreign worker work permit?

Answer

Legal employer should pay insurance, FOMEMA, Levy, Process, Visa and PLKS.



Check Out Memo (C.O.M)

2. Question

What is Check Out Memo?

Answer

If your foreign worker like to end the employment contract, employer will be required to complete a C.O.M at immigration to remove the employment record from company.

The C.O.M is only effective if the foreign worker leaves the country as planned.



Special Pass (SP)

3. Question

What is Special Pass?

Answer

It is temporary pass which is issued by immigration to allow foreign worker to extend their stay in Malaysia. It is valid for 30 days or shorter. It is due to special circumstances i.e. illness, accident, lost passport, FOMEMA appeal cases.



Illegal Employment

4. Question

What are the consequences for me to hire illegal worker?

Answer

Under Immigration Act Section 55E (2), a employer can be fine RM 5,000-30,000 or imprisonment < 12 months or both for each illegal worker.



Detention

5. Question

Why my worker is still detained by immigration officer even though he has valid work permit?

Answer

Under Malaysia Immigration Act 1959/1963, the act allows a foreign worker (whether legal or illegal) to be detained for a continuous period of 14 days for investigations and making inquiries.



Lost Passport

6. Question

What should I do if my employee has lost his passport?

Answer

You will need to make a police report. Once the report is made, report to the immigration department for recording and updating information. You need to apply a new passport at your employee's respective embassy.



Corporate Partner:



Advisory Partner:



RM 1,200/ANNUM
KEAP 2.0 commencement date: 1st Nov 2023



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