



MINISTRY OF HUMAN RESOURCES MALAYSIA

**BRIEFING
AMENDMENT TO EMPLOYMENT ACT 1955 [ACT 265]
WITH
KLANG CHINESE CHAMBER OF COMMERCE AND
INDUSTRY**

BY:

DEPARTMENT OF LABOUR PENINSULAR MALAYSIA
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A. BACKGROUND

- Employment Act 1955 [*Act 265*] :-
 - The primary labor law which regulates the relationship between the employer and the employee in private sector
 - Provides minimum protection and benefits to the employee
 - Enforced in year 1957 and has been amended eleven (11) times
 - the last amendment was made in year 2012



B. PRIMARY AMENDMENTS

AMENDMENTS (28 SECTIONS)

1. MATERNITY LEAVE

AMENDMENT

- Maternity leave is increased from sixty (60) days to ninety eight (98) days.
(Section 37)

JUSTIFICATION

- Enable female employee to get adequate rest after delivery.
- Strengthen bonding between mother and newborn.
- Consistent with ILO Maternity Protection Convention 2000 (No. 183) which encourages the period of maternity leave must not be less than fourteen weeks (14) weeks (98 days).

2. WORKING HOURS

AMENDMENT

- Working hours is reduced from forty eight (48) hours to fifty five (45) hours per week.

(Section 60A)

JUSTIFICATION

- Encourage Work-Life Balance culture.
- Reducing the rate of workplace accident.
- In accordance with the International Labour Standards, Reduction of Hours of Work Recommendation 1962, ILO (No. 116) which propose the reducement of weekly working hours.
- Working hours in other countries :- Singapore: Forty four (44) hours, Brunei: Forty four (44) hours and Australia: Thirty eight (38) hours.

3. SICK LEAVE

AMENDMENT

- ❑ Separation of sick leave and hospitalization leave entitlement.

(Section 60F)

JUSTIFICATION

- In aggregate, sick leave and hospitalization leave entitlement will increase from sixty (60) days per year to seventy four (74) days - eighty two (82) days per year depending on length of service. The increased hospitalisation leave will allow the employee to get the optimal treatment and rest.
- This amendment is in accordance with the implementation of quarantine leave practiced in the public service and the changing of the stipulated quarantine period during the pandemic and endemic phases of COVID-19.
- As a control mechanism for employer and employee during the infectious epidemic period

4. PAYMENT OF WAGES

AMENDMENT

- To require the employer to pay employee's wages through employee's bank accounts and at the registered financial institutions.
- To require the employer to obtain approval from the Director General for the payment of wages in legal tender or by cheque upon the written request of his employee
- To empowers the Minister to appoint an approved issuer of a designated payment instrument for the purpose of payment of wages
(Section 25 and 25A)

JUSTIFICATION

- This amendment is in consistent with the modernization of the banking system which promotes a cashless society where financial transactions are commonly conducted through electronic medium.
- Facilitate the Ministry through the Department of Labour Peninsular Malaysia (JTKSM) in monitoring and enforce the matter related to the payment of employee's wages.

5. EMPLOYMENT OF FOREIGN EMPLOYEE

AMENDMENT

- Requirement to obtain prior approval from Director General of Department of Labor Peninsular Malaysia before employing foreign employee.
- Approval can be given provided that the employer comply with labor laws, social security law and human trafficking law.
- The employer who employs foreign employee without Director General's approval shall be fined not more than RM100,000.00 or imprisonment not more than five (5) years.
(Clause 24 – Section 60K)

JUSTIFICATION

- Enable Department of Labour Peninsular Malaysia to monitor the employment of foreign employee more effectively, including human trafficking and forced labour activities.

6. GENERAL PENALTY

AMENDMENT

- General penalty increased from RM10,000 to RM50,000.

JUSTIFICATION

- Improving compliance of the Act.
- In line with the increase of penalty amount provided under Children and Young Persons Act (Employment) [Act 350], Employees' Minimum Standards of Housing and Amenities (Amendment) Act 2019 (Act 446) and Occupational and Safety Health Act 1994 [Act 514] enforced by Ministry.

19. CONTRACTOR FOR LABOR

AMENDMENT

- It is compulsory for the contractor for labour who supplies employees to the principal, contractor or subcontractor to enter into written contract.

(Section 33A)

JUSTIFICATION

- This protection is intended to ensure that the employee supplied by a contractor for labour will also be entitled to the benefits provided under this Act.
- To lay down joint liability between principal, contractor and subcontractor with regards to the payment of wages.

21. SCOPE OF PROTECTION

AMENDMENT

- ❑ Extend the coverage of Act 265 to all private sector employees regardless of wages amount or type of employment, in contrast with previous coverage which applicable for private sector employees who earn RM2,000 and below per month only.

(Amendment to the First Schedule)

- ❑ The employee who earns up to RM4,000 per month will be entitled for overtime pay, work on rest days and public holidays as well as termination benefits.

- ❑ The employee who earns more than RM4000 per month (regardless of their employment) will be exempted from sec. 60A(3) (overtime pay), 60(3) (payment for work on rest day), 60D(3) & (4) (payment for work on public holidays) and 60J (termination benefits) and 60C(2A) (shift allowance).

JUSTIFICATION

- Ensure that all employees receive the protection and basic benefits provided under the Act.

- Improve the welfare of B40 employee who earns RM4,000 and below per month.

- Reduce the cost burden to the employer.

NEW PROVISIONS (10 SECTIONS)

7. PROHIBITION OF DISCRIMINATION

NEW PROVISION

- ❑ Prohibition of any form of discrimination with regards to employment issues.
- ❑ The Director General has the power to inquire into and decide any dispute between an employee and his employer in respect of any matter relating to discrimination in employment and the Director General may pursuant to such decision make an order.

(Section 69F)

JUSTIFICATION

- Combat discriminatory practice in order to maintain harmony at the workplace.
- In line with the Discrimination (Employment and Occupation) Convention 1998 ILO (No.111) which require ratifying countries to promote and combat the practice of workplace discrimination.
- Malaysia did not rectify this convention.

8. RESTRICTION ON TERMINATION OF PREGNANT FEMALE EMPLOYEE

NEW PROVISION

- Restriction on termination of pregnant female employee due to her pregnancy or suffering from illness arising out of her pregnancy.
(Section 41A)

JUSTIFICATION

- This provision is to ensure that employer does not terminate a pregnant female employee on the ground of failure to show satisfactory job performance.
- In accordance with ILO resolution No. 34/180 Convention on the Elimination of All Forms of Discrimination Against Woman (CEDAW).

9. FLEXIBLE WORKING ARRANGEMENT

NEW PROVISION

- ❑ New provision in order to allow the employee to apply to the employer for flexible working arrangement (working hours, working days, workplace) for the appropriate type of work.
- ❑ The employer must answer in writing to the employee whether the employer is agreeable to the application or reject the application within sixty (60) days.

(Section 60P and 60Q)

JUSTIFICATION

- To enable flexible working arrangement to suit with the hybrid working culture, particularly in situations where employee is encourage to work from home.
- Flexible working arrangement does not affect the provisions regarding the minimum terms and conditions of employment under this Act.
- Increase employee productivity and to promote work-life balance as well as to optimize the use of resources, energy and costs of employer.

10. NOTICE ON SEXUAL HARASSMENT

NEW PROVISION

- ❑ Impose additional responsibility on employer to display sexual harassment prevention notice at the workplace.

(Section 81H)

JUSTIFICATION

- This provision aims to raise awareness among the employer and the employee to maintain conduct and ethics in the workplace and not to engage in any form of actions that could lead to sexual harassment.

11. PROHIBITION OF FORCED LABOR

NEW PROVISION

- ❑ Prohibit practice of forced labor at the workplace.
- ❑ Enforcement action can be taken against the employer when these elements exist :
 - Threat, deceive or force by an employer against an employee to do any activity, service or work
 - Prevent the employee from leaving the workplace.
- ❑ Penalty not more than RM100,000.00 or imprisonment not more than two years or both.

(Section 90B)

JUSTIFICATION

- To combat any form of forced labour practices in the workplace as one of Malaysia's efforts to address exploitation of labour whether involving local or foreign employee.
- In accordance with Forced Labour Convention, 1930 (No. 29) and Abolition of Forced Labour Convention, 1957 (No. 105) ratified by Malaysia.
- To improve Malaysia's current position in the US-TIP Report (Trafficking in Persons) which currently at Tier Three.

12. PRESUMPTION OF “EMPLOYEE”

NEW PROVISION

Provision stipulating that a person is considered an “employee” when one of these elements exists:

- Control of method of work
- Control of working hours
- Work becomes part of business
- Supply of tools, raw materials or equipments
- Work done for benefit of others
- Payment of salary by schedule payment and the payment is the primary source of income

(Section 101C)

JUSTIFICATION

- To clarify the employment relationship between employer and employee.
- In consistent with Relationship Recommendation 2006 ILO (No. 198) which propose these elements to be considered in determining the status of “employee”.
- To facilitate the process of investigation and prosecution for offences under the Act.

13. PATERNITY LEAVE

NEW PROVISION

- Seven (7) days paternity leave for married male employee subject to a maximum of five (5) confinements.

(Section 60FA)

JUSTIFICATION

- Allow married male employee to take care of his wife and the child or children and at the same time managing child birth documents.
- This amendment is in accordance with seven (7) days unrecorded leave given to male public servants in order to assist with post-delivery matters. (*Pekeliling Perkhidmatan Sumber Manusia Ceraian SR.5.4.2*), which emphasizes on the concept of prioritizing family - “Family First” .

15. CALCULATION OF WAGES FORMULA

NEW PROVISION

- Provide a formula for the calculation of wages if the employee is unable to complete a whole month of service.

$$\frac{\text{Monthly wages}}{\text{Number of days of the particular wage period}} \times \text{Number of eligible days in the wage period}$$

- Unable to complete a whole month of service on the grounds:
 - The employee commenced employment after the first day of the month
 - The employee was terminated before the end of the month
 - The employee took leave of absence without pay for one or more days of the month
 - The employee took leave of absence subject to the National Service Act 1952 [Act 425] and the National Service Training Act 2003 [Act 628].

(Clause 4 – Section 18A)

CADANGAN

- This provision will clarify the calculation of salary if the employee is unable to complete a whole month of service which was previously calculated based on the ruling in the case of *Lee Fatt Seng v Harper Gilfillan [1988] 1 CLJ*.

Wages calculation formula

- **Current practice** : referring to the case of *Lee Fatt Seng v Harper Gilfillan [1988] 1 CLJ*.
- **After amendment** : formula provided in the Act



THANK YOU