

Basic Guide to Employment Act 1955 Malaysian Labor Laws

The Employment Act provides minimum terms and conditions (mostly of monetary value) to certain category of workers.

The Definition of "Employees"

The following types of employees are included:

- (a) Any employee as long as his month wages is less than RM2000.00 and
- (b) Any employee employed in manual work including artisan, apprentice, transport operator, supervisors or overseers of manual workers, persons employed on vessels and even domestic servants are classified as employees even if their wages is more than RM2000.00 per month.

Contract of Service

“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 the other agrees to serve his employer as his employee and includes an apprenticeship contract

Contract of service shall not contain any condition that restricts rights of employees to join, participate in or organize trade unions.

A contract of service must contain a provision for its termination. In the absence of any agreement to the contrary, period of notice for termination of contracts shall be as follows:

- (a) 4 weeks’ notice if the employee employed for less than 2 years;
- (b) 6 weeks’ notice if so employed for over 2 years but less than 5 years;
- (c) 8 weeks’ notice if so employed for 5 years or more.

A contract of service may be terminated for special reasons as such misconduct on the part of the employee. The employer after due inquiry may take the following types of action:

- (a) dismiss without notice the employee; or
- (b) downgrade the employee; or
- (c) impose any other lesser punishment as he deems just and fit, or suspend the employee without wages for a period not more than two weeks.

When contract is deemed to be broken by employer if he fails to pay wages on or before the 7th day.

An employee shall be deemed to have broken his contract of service with the employer if he has been continuously absent from work for more than two consecutive working days without prior leave from his employer, unless he has a reasonable excuse for such absence and has informed or attempted to inform his employer of such excuse prior to or at the earliest opportunity during such absence.

Payment of wages

Every employer shall pay to each of his employees not later than the seventh day. Payment on normal termination of contract shall be paid to such employee on the same day on which such contract of service terminates.

Advances to employees shall not exceed the aggregate the amount of wages which the employee earned in the preceding month, unless such advance is made to the employee to enable him:

- (a) to purchase a house or to build or improve a house;

- (b) to enable him to purchase land;
- (c) to enable him to purchase livestock;
- (d) to enable him to purchase a motorcar, a motorcycle or a bicycle;
- (e) to enable him to purchase shares of the employer's business offered for sale by the employer;

Wages is not due for absence from work through imprisonment or attendance in court otherwise than as a witness on his employer's behalf.

Wages to be paid in legal tender.

With the employee's written consent, payment of wages through bank or by cheque is allowed. Charging interest on advances is forbidden.

However, it shall not be illegal a contract of service with an employee under which the employer agrees to provide the employee with house accommodation, food, fuel, light, water, medical attendance, or any approved amenity, or approved service in addition to wages but no employer shall provide any employee with any intoxicating liquor as part of the terms of a contract of service.

Employment of Women

No employer shall require any female employee to work in any industrial or agricultural undertaking between the hours of ten o'clock in the evening and five o'clock in the morning nor commence work for the day without having had a period of eleven consecutive hours free from such work

The Director-General may, on application made to him in any particular case, exempt in writing any female employee or class of female employees from any restriction in this subsection, subject to any conditions he may impose.

No female employee shall be employed in any underground working.

Maternity Protection

"Confinement" means parturition resulting after at least twenty-two weeks of pregnancy in the issue of a child or children, whether alive or dead.

Every female employee shall be entitled to maternity leave for a period of not less than sixty consecutive days

A female employee shall be entitled to receive maternity allowance for the eligible period from her employer if:

- (i) she has been employed by the employer at any time in the four months immediately before her confinement; and
- (ii) she has been employed by the employer for a period of, or periods amounting in the aggregate to, not less than ninety days during the nine months immediately before her confinement.

The maternity allowance shall be paid later than the seventh day of the following month.

It shall be an offence for her employer to terminate her services or give her notice of termination of service during her confinement period.

Other benefits

Working hours

an employee shall not be required under his contract of service to work:

- (a) more than five consecutive hours without a period of leisure of not less than thirty minutes' duration;
- (b) more than eight hours in one day;
- (c) in excess of a spread over period of ten hours in one day;



(d) more than forty-eight hours in one week

However, an employee may be required by his employer to exceed the limit of hours above and to work on a rest day, in the case of:

- (a) accident, actual or threatened, in his place of work;
- (b) work, the performance of which is essential to the life of the community;
- (c) work essential for the defence or security of Malaysia;
- (d) urgent work to be done to machinery or plant;
- (e) an interruption of work which it was impossible to foresee; or
- (f) work to be performed by employees in any industrial undertaking essential to the economy of Malaysia or any essential service as defined under the Industrial Relations Act.

Overtime

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

No employer shall require or permit an employee to work overtime exceeding such limit as may be prescribed by the Minister from time to time by regulations made under this Act,

Rest day

Every employee shall be allowed in each week a rest day of one whole day

Where an employee is allowed more than one rest day in a week (places working on 5-day week) the last of the rest days shall be the rest day:

A daily rated worker who works on a rest day, he shall be paid as follows:

- (i) 1 day's wages if the work does not exceed half his normal hours of work; or
- (ii) 2 days' wages if the work is more than half but does not exceed his normal hours of work.

A monthly rated worker who works on a rest day, he shall be paid as follows:

- (i) 1/2 day's wages if the work does not exceed half his normal hours of work, or
- (ii) 1 day's wages if the work is more than half but does not exceed his normal hours of work.

For overtime work on a rest day, an employee shall be paid at a rate which is not less than two times his hourly rate of pay.

Annual leave

An employee shall be entitled to paid annual leave of:

- (a) 8 days for every 12 months of continuous service with the same employer if he has been employed by that employer for a period of less than 2 years;
- (b) 12 days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of 2 years or more but less than 5 years; and
- (c) 16 days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of 5 years or more; and if he has not completed 12 months of continuous service with the same employer during the year in which his contract of service terminates, his entitlement to paid annual leave shall be in direct proportion to the number of completed months of service:

Any fraction of a day of annual leave so calculated which is less than one-half of a day shall be disregarded, and where the fraction of a day is one-half or more it shall be deemed to be one day.



An employee who is on paid annual leave becomes entitled to sick leave or maternity leave while on such annual leave, the employee shall be granted the sick leave or the maternity leave and the annual leave shall be deemed to have not been taken.

If at the request of his employer, the employee agrees in writing not to taken annual leave, he is then entitled to payment in lieu of annual leave.

Public Holidays

Every employee shall be entitled to paid holiday at his ordinary rate of pay on the following days in any one calendar year:

(a) on ten of the gazetted public holidays, four 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 of the State or the Federal Territory Day; and

(iv) the Workers' Day; and

(b) on any day declared as a public holiday under section 8 of the Holidays Act 1951;

If a public holidays falls on a rest day the working day following immediately the rest day shall be a paid holiday in substitution.

Any employee who absents himself from work on the working day immediately preceding or immediately succeeding a public holiday shall not be entitled to any holiday pay for such holiday.

For any overtime work carried out by an employee on a paid public holiday, the employee shall be paid at a rate which is not less than 3 times his hourly rate of pay.

Sick Leave

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

If there is no hospitalization, the number of days of sick leave shall be:

(i) 14 days in each calendar year if the employee has been employed for less than 2 years;

(ii) 18 days in each calendar year if the employee has been employed for 2 years or more but less than 5 years;

(iii) 22 days in each calendar year if the employee has been employed for 5 years or more; or

if there is hospitalization:

(i) 60 days in each calendar year if hospitalization is necessary, as may be certified by such registered medical practitioner or medical officer:

An employee who absents himself on sick leave:

(a) which is not certified by a registered medical practitioner or a medical officer or a dental surgeon; or

(b) which is certified by such registered medical practitioner or medical officer or dental surgeon, but without informing or attempting to inform his employer of such sick leave within forty-eight hours of the commencement thereof:

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shall be deemed to absent himself from work without the permission of his employer and without reasonable excuse for the days on which he is so absent from work.

The employer shall pay the employee his ordinary rate of pay for every day of such sick leave, and an employee on a monthly rate of pay shall be deemed to have received his sick leave pay if he receives from his employer his monthly wages for the day or days on which he is on sick leave.

Complaints

The Director-General may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under any term of the contract of service or provision under the Employment Act.

However, the Director-General shall not inquire into, hear, decide or make any order in respect of any claim, dispute that is:

- (a) pending in any inquiry or proceedings under that the Industrial Relations Act;
- (b) has been decided upon by the Minister under section 20(3) of that Act; or
- (c) has been referred to, or is pending in any proceedings before, the Industrial Court.

The power of the Director-General under section 69(1)(a) also extends to employees whose wages per month exceed 2000.00 ringgit but does not exceed 5000.00 ringgit.

Termination and Lay-off Benefits

In an employee whose contract of service is terminated or he is laid off by his employer he is entitled to the payment by employers of:

- (a) termination benefits;
- (b) lay-off benefits;

However, an employee shall not be entitled to termination benefits payment under the following circumstances -

- (a) upon the employee attaining the age of retirement if the contract of service contains a stipulation in that behalf; or
- (b) dismissed by the employer, on the grounds of misconduct, or
- (c) resigns voluntarily by the employee.

Furthermore, an employee shall not be entitled to any termination benefits payment if -

- (a) his contract of service is renewed, or he is re-engaged by the same employer under a new contract of service on terms and conditions which are not less favourable; and
- (b) the renewal or re-engagement takes effect immediately on the ending of his employment under the previous contract.

An employee is deemed to be laid-off if -

- (a) the employer does not provide such work for him on at least a total of twelve normal working days within any period of four consecutive weeks; and
- (b) the employee is not entitled to any remuneration under the contract for the period or periods (within such period of four consecutive weeks) in which he is not provided with work;

Termination and lay-off benefits payment shall not be less than -

- (a) 10 days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for a period of less than 2 years; or
- (b) 15 days' wages for every year of employment under a continuous contract of serviced with the employer if he has been employed by that employer for 2 years or more but less than 5 years; or



(c) 20 days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for 5 year or more, and pro-rata as respect an incomplete year, calculated to the nearest month.

Any termination or lay-off benefits payment payable shall be paid by the employer to the employee not later than seven days after the relevant date.

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