



LAWS OF MALAYSIA

Act A1419

EMPLOYMENT (AMENDMENT) ACT 2012

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LAWS OF MALAYSIA**Act A1419****EMPLOYMENT (AMENDMENT) ACT 2012**

An Act to amend the Employment Act 1955.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Employment (Amendment) Act 2012.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Amendment of section 2

2. The Employment Act 1955 [*Act 265*], which is referred to as the “principal Act” in this Act, is amended in subsection 2(1)—

- (a) in the definition of “confinement”, by substituting for the word “twenty-eight” the word “twenty-two”;
- (b) in the definition of “constructional contractor”, by substituting for the word “assigns” the word “assignees”;

(c) by inserting after the definition of “contractor” the following definition:

‘ “contractor for labour” means a person who contracts with a principal, contractor or sub-contractor to supply the labour required for the execution of the whole or any part of any work which a contractor or sub-contractor has contracted to carry out for a principal or contractor, as the case may be;’;

(d) by inserting after the definition of “employee” the following definition:

‘ “foreign domestic servant” means a domestic servant who is not a citizen or a permanent resident;’;

(e) by inserting after the definition of “medical officer” the following definition:

‘ “Minister” means the Minister charged with the responsibility for human resources;’;

(f) by substituting for the definition of “part-time employee” the following definition:

‘ “part-time employee” means a person included in the First Schedule whose average hours of work per week as agreed between him and his employer are more than thirty per centum but do not exceed seventy per centum of the normal hours of work per week of a full-time employee employed in a similar capacity in the same enterprise;’;

(g) by inserting after the definition of “registered medical practitioner” the following definition:

‘ “sexual harassment” means any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment;’;
and

(h) by deleting the definition of “sub-contractor for labour”.

Amendment of section 4

3. Section 4 of the principal Act is amended by substituting for the words “under section 69 or section 73” the words “or decision under section 69, 69B, 69C, 73 or subsection 81D(4)”.

Substitution of section 19

4. The principal Act is amended by substituting for section 19 the following section:

“Time of payment of wages

19. (1) Subject to subsection (2), every employer shall pay to each of his employees not later than the seventh day after the last day of any wage period the wages, less lawful deductions earned by such employee during such wage period.

(2) Wages for work done on a rest day, gazetted public holiday referred to in paragraphs 60D(1)(a) and (b) and overtime referred to in section 60A shall be paid not later than the last day of the next wage period.

(3) Notwithstanding subsections (1) and (2), if the Director General is satisfied that payment within such time is not reasonably practicable, he may, on the application of the employer, extend the time of payment by such number of days as he thinks fit.”.

Amendment of section 22

5. Section 22 of the principal Act is amended—

(a) by numbering the existing section as subsection (1);

(b) by deleting paragraph (c);

(c) by inserting after paragraph (da) the following paragraphs:

“(db) to enable him to purchase a computer;

(dc) to enable him to pay for medical expenses for himself or his immediate family members;

(*dd*) to enable him to pay for daily expenses pending receipt of any periodical payments for temporary disablement under the Employees' Social Security Act 1969 [*Act 4*];

(*de*) to enable him to pay for educational expenses for himself or his immediate family members;";
and

(*d*) by inserting after paragraph (*f*) the following subsection:

“(2) For the purposes of this section, “immediate family members” means the employees’ parents, children, siblings or any other person under the employee’s guardianship.”.

Amendment of Part V

6. Part V of the principal Act is amended by substituting for the heading “RELATING TO THE TRUCK SYSTEM” the heading “SYSTEM OF PAYMENT OF WAGES”.

Substitution of section 25

7. The principal Act is amended by substituting for section 25 the following section:

“Wages to be paid through bank

25. (1) The entire amount of wages earned by, or payable to, any employee in respect of any work done by him less any lawful deductions, shall be actually paid to him through payment into an account at a bank, finance company, financial institution or other institutions licensed or established under the Banking and Financial Institutions Act 1989 [*Act 372*] or any other written law, in any part of Malaysia being an account in the name of the employee or an account in the name of the employee jointly with one or more other persons as stipulated by the employee.

(2) Every employee shall be entitled to recover in the courts so much of his wages, exclusive of sums lawfully deducted under Part IV, as shall not have been actually paid to him in accordance with subsection (1).”.

Amendment of section 25A

8. The principal Act is amended by substituting for section 25A the following section:

“Payment of wages other than through bank

25A. (1) Notwithstanding subsection 25(1), an employer may, upon a written request of the employee, other than a domestic servant, make payment of his employee’s wages—

(a) in legal tender; or

(b) by cheque made payable to or to the order of the employee.

(2) In the case of a domestic servant, the employer shall, upon the request of his domestic servant, obtain approval from the Director General for the payment of wages of the domestic servant to be paid in legal tender or by cheque.

(3) The request by the employee under subsections (1) and (2) may be withdrawn by the employee at any time, by notice in writing, to the employer.

(4) The notice referred to in subsection (3) shall take effect at, but not before, the end of the period of four weeks beginning with the day on which the notice is given.

(5) The request of the employee to the mode of payment of wages under subsections (1) and (2) shall not be unreasonably withheld by the employer.

(6) Any dispute arising out of the request by the employee under subsections (1) and (2) shall be referred to the Director General whose decision on the matter shall be final.

(7) Section 69 shall not apply in respect of any dispute under subsection (6).”.

Amendment of section 31

9. Section 31 of the principal Act is amended by substituting for the words “sub-contractor for labour”, wherever they may appear, the words “contractor for labour”.

Amendment of Part VII

10. Part VII of the principal Act is amended by substituting for the heading “CONTRACTORS AND PRINCIPALS” the heading “CONTRACTORS, PRINCIPALS AND CONTRACTORS FOR LABOUR”.

New section 33A

11. The principal Act is amended by inserting after section 33 the following section:

“Information relating to supply of employees

33A. (1) A contractor for labour who intends to supply or undertakes to supply any employee shall register with the Director General in the prescribed form within fourteen days before supplying the employee.

(2) If a contractor for labour referred to in subsection (1) supplies any employee, he shall keep or maintain one or more registers containing information regarding each employee supplied by him and shall make such registers available for inspection.

(3) A contractor for labour who—

- (a) supplies his employee without registering with the Director General as required under subsection (1);
or
- (b) fails to keep or maintain any register, or make available any register for inspection as required under subsection (2),

commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.”.

Amendment of section 37

12. Section 37 of the principal Act is amended—

(a) by substituting for paragraph (1)(a) the following paragraph:

“(1)(a) Every female employee shall be entitled—

(i) to maternity leave for an eligible period in respect of each confinement; and

(ii) subject to this Part, to receive from her employer a maternity allowance to be calculated or prescribed as provided in subsection (2) in respect of the eligible period.”;

(b) in paragraph (1)(aa), by substituting for the words “paragraph (a)” the words “subparagraph (a)(i)”;

(c) in paragraph (1)(c), by substituting for the words “paragraph (a)” the words “subparagraph (a)(ii)”;

(d) by substituting for paragraph (1)(d) the following paragraph:

“(d) For the purposes of this Part—

(i) “children” means all natural children, irrespective of age; and

(ii) “eligible period” means a period of maternity leave of not less than sixty consecutive days.”;

(e) by substituting for paragraph (2)(a) the following paragraph:

“(2)(a) 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 for a period of, or periods amounting in the aggregate to, not less than ninety days during the nine months immediately before her confinement; and

(ii) she has been employed by the employer at any time in the four months immediately before her confinement;” and

(f) by inserting after subsection (3) the following subsection:

“(4) Any employer who terminates the service of a female employee during the period in which she is entitled to maternity leave commits an offence:

Provided that for the purpose of this section, such termination shall not include termination on the ground of closure of the employer’s business.”.

Amendment of section 40

13. Section 40 of the principal Act is amended by deleting subsection (3).

Amendment of section 42

14. Subsection 42(2) of the principal Act is amended by substituting for the words “a female employee is dismissed from her employment” the words “the service of a female employee is terminated”.

New section 44A

15. The principal Act is amended by inserting after section 44 the following section:

“Application of this Part irrespective of wages of female employee

44A. Notwithstanding paragraph 1 of the First Schedule, this Part extends to every female employee who is employed under a contract of service irrespective of her wages.”.

New sections 57A and 57B

16. The principal Act is amended by inserting after section 57 the following sections:

“Employment of foreign domestic servant

57A. (1) An employer who employs a foreign domestic servant shall, within thirty days of the employment, inform the Director General of such employment in a manner as may be determined by the Director General.

(2) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Duty to inform Director General of termination of service of foreign domestic servant

57B. (1) If the service of a foreign domestic servant is terminated—

(a) by the employer;

(b) by the foreign domestic servant;

(c) upon the expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign domestic servant; or

(d) by the repatriation or deportation of the foreign domestic servant,

the employer shall, within thirty days of the termination of service, inform the Director General of the termination in a manner as may be determined by the Director General.

(2) For the purpose of paragraph (1)(b), the termination of service by a foreign domestic servant includes the act of the foreign domestic servant absconding from his place of employment.

(3) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.”.

Amendment of section 59

17. Subsection 59(1) of the principal Act is amended in the proviso by substituting for the words “Employees Social Security Act 1969 [Act 4]” the words “Employees’ Social Security Act 1969”.

Amendment of section 60

18. Paragraph 60(3)(b) of the principal Act is amended by inserting after the word “monthly” the words “or weekly”.

Amendment of section 60D

19. Section 60D of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the words “a this” the words “at his”;

(ii) in paragraph (a)—

(A) by substituting for the word “ten” the word “eleven”;

(B) by substituting for the word “four” the word “five”;

(C) in subparagraph (iii), by deleting the word “and” appearing at the end of the subparagraph; and

(D) by inserting after subparagraph (iv) the following subparagraph:

“(v) Malaysia Day; and”;

(iii) by substituting for paragraph (b) the following paragraph:

“(b) on any day appointed as a public holiday for that particular year under section 8 of the Holidays Act 1951 [Act 369]”; and

- (iv) by substituting for the proviso to subsection (1) the following proviso:

“Provided that if any of the public holidays referred to in paragraphs (a) and (b) falls on—

- (i) a rest day; or
- (ii) any other public holiday referred to in paragraphs (a) and (b),

the working day following immediately the rest day or the other public holiday shall be a paid holiday in substitution of the first mentioned public holiday.”; and

- (b) in paragraph (3)(aaa), by deleting the word “in” appearing after the word “referred”.

Amendment of section 60i

20. Section 60i of the principal Act is amended—

- (a) in subsection (1c), by inserting after the words “on a daily” the words “or an hourly”; and
- (b) in subsection (1d), by inserting after the words “on a daily” the words “or an hourly”.

Amendment of section 60k

21. Section 60k of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “the nearest office of the Director General with the particulars of the foreign employee” the words “the Director General with the particulars of the foreign employee by forwarding the particulars to the nearest office of the Director General”; and
- (b) by inserting after subsection (2) the following subsections:

“(3) If the service of a foreign employee is terminated—

- (a) by the employer;
- (b) by the foreign employee;
- (c) upon the expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign employee; or
- (d) by the repatriation or deportation of the foreign employee,

the employer shall, within thirty days of the termination of service, inform the Director General of the termination in a manner as may be determined by the Director General.

(4) For the purpose of paragraph (3)(b), the termination of service by a foreign employee includes the act of the foreign employee absconding from his place of employment.

(5) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.”.

Amendment of section 69

22. Section 69 of the principal Act is amended in paragraph (2)(ii)—

- (a) by substituting for the words “sub-contractor for labour”, wherever they may appear, the words “contractor for labour”; and
- (b) by substituting for the word “subcontractor” the word “sub-contractor”.

Amendment of section 69B

23. Subsection 69B(1) of the principal Act is amended by substituting for the words “one thousand five hundred” the words “two thousand”.

Amendment of section 73

24. Subsection 73(1) of the principal Act is amended by substituting for the words “sub-contractor for labour” and “subcontractor for labour” the words “contractor for labour”.

Amendment of section 77

25. Subsection 77(1) of the principal Act is amended by substituting for the words “or 73” the words “,73 or subsection 81D(4)”.

Amendment of section 79

26. Subsection 79(1) of the principal Act is amended by substituting for the words “Electricity Act 1949 [*Act 116*]” the words “Electricity Supply Act 1990 [*Act 447*]”.

New Part XVA

27. The principal Act is amended by inserting after Part XV the following Part:

“PART XVA

SEXUAL HARASSMENT

Interpretation

81A. For the purposes of this Part, “complaint of sexual harassment” means any complaint relating to sexual harassment made—

- (i) by an employee against another employee;
- (ii) by an employee against any employer; or
- (iii) by an employer against an employee.

Inquiry into complaints of sexual harassment

81B. (1) Upon receipt of a complaint of sexual harassment, an employer or any class of employers shall inquire into the complaint in a manner prescribed by the Minister.

(2) Subject to subsection (3), where an employer refuses to inquire into the complaint of sexual harassment as required under subsection (1), he shall, as soon as practicable but in any case not later than thirty days after the date of the receipt of the complaint, inform the complainant of the refusal and the reasons for the refusal in writing.

(3) Notwithstanding subsection (2), an employer may refuse to inquire into any complaint of sexual harassment as required under subsection (1), if—

- (a) the complaint of sexual harassment has previously been inquired into and no sexual harassment has been proven; or
- (b) the employer is of the opinion that the complaint of sexual harassment is frivolous, vexatious or is not made in good faith.

(4) Any complainant who is dissatisfied with the refusal of the employer to inquire into his complaint of sexual harassment, may refer the matter to the Director General.

(5) The Director General after reviewing the matter referred to him under subsection (4)—

- (a) if he thinks the matter should be inquired into, direct the employer to conduct an inquiry; or
- (b) if he agrees with the decision of the employer not to conduct the inquiry, inform the person who referred the matter to him that no further action will be taken.

Findings of inquiry by employer

81C. Where the employer conducts an inquiry into a complaint of sexual harassment received under subsection

81B(1) and the employer is satisfied that sexual harassment is proven, the employer shall—

(a) in the case where the person against whom the complaint of sexual harassment is made is an employee, take disciplinary action which may include the following:

- (i) dismissing the employee without notice;
- (ii) downgrading the employee; or
- (iii) imposing any other lesser punishment as he deems just and fit, and where the punishment of suspension without wages is imposed, it shall not exceed a period of two weeks; and

(b) in the case where the person against whom the complaint of sexual harassment is made is a person other than an employee, recommend that the person be brought before an appropriate disciplinary authority to which the person is subject to.

Complaints of sexual harassment made to the Director General

81D. (1) If a complaint of sexual harassment is made to the Director General, the Director General shall assess the complaint and may direct an employer to inquire into such complaint.

(2) The employer shall inquire into the complaint of sexual harassment when directed to do so under subsection (1) and submit a report of the inquiry to the Director General within thirty days from the date of such direction.

(3) If a complaint of sexual harassment received by the Director General is made against an employer who is a sole proprietor, the Director General shall inquire into such complaint himself in a manner prescribed by the Minister.

(4) Upon inquiry by the Director General of the complaint of sexual harassment under subsection (3), the Director General shall decide if sexual harassment is proven or not and such decision shall be informed to the complainant as soon as practicable.

(5) Notwithstanding subsection (3), the Director General may refuse to inquire into any complaint of sexual harassment received under subsection (3), if—

- (a) the complaint of sexual harassment has previously been inquired into by the Director General and no sexual harassment has been proven; or
- (b) the Director General is of the opinion that the complaint of sexual harassment is frivolous, vexatious or is not made in good faith.

(6) Where the Director General refuses to inquire into the complaint of sexual harassment received under subsection (3), he shall, as soon as practicable but in any case not later than thirty days after the date of the receipt of the complaint, inform the complainant of the refusal and the reasons for the refusal in writing.

Effects of decisions of the Director General

81E. (1) Where the Director General decides under subsection 81D(4) that sexual harassment is proven, the complainant may terminate his contract of service without notice.

(2) If the complainant terminates the contract of service under subsection (1), the complainant is entitled to—

- (a) wages as if the complainant has given the notice of the termination of contract of service; and
- (b) termination benefits and indemnity,

as provided for under the Act or the contract of service, as the case may be.

Offence

81F. Any employer who fails—

- (a) to inquire into complaints of sexual harassment under subsection 81B(1);
- (b) to inform the complainant of the refusal and the reasons for the refusal as required under subsection 81B(2);

- (c) to inquire into complaints of sexual harassment when directed to do so by the Director General under paragraph 81B(5)(a) or subsection 81D(2); or
- (d) to submit a report of inquiry into sexual harassment to the Director General under subsection 81D(2);

commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Application of this Part irrespective of wages of employee

81G. Notwithstanding paragraph 1 of the First Schedule, this Part extends to every employee employed under a contract of service irrespective of the wages of the employee.”.

Amendment of section 82

28. Subsection 82(1) of the principal Act is amended in paragraph (b) of the proviso by deleting the word “male”.

Amendment of section 86

29. Section 86 of the principal Act is amended by substituting for the words “section 69” the words “section 69, 69B, 69C or subsection 81D(4)”.

New section 90A

30. The principal Act is amended by inserting after section 90 the following section:

“Protection of officers

90A. No action shall lie or be brought, instituted or maintained in any court against—

- (a) the Director General, Deputy Director General or any other officer duly appointed under this Act for

or on account of or in respect of any act ordered or done for the purpose of carrying this Act into effect; and

- (b) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Director General, Deputy Director General or any other officer duly appointed under this Act,

if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it.”.

Amendment of section 101A

31. Section 101A of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “or a Deputy Director General appointed under paragraph 3(2)(a)” the words “, Deputy Director General or any officer authorized in writing by the Director General”;
- (b) in subsection (2), by substituting for the words “or the Deputy Director General”, wherever they may appear, the words “, Deputy Director General or any officer authorized in writing by the Director General”;
- (c) in subsection (3), by substituting for the words “or the Deputy Director General” the words “, Deputy Director General or any officer authorized in writing by the Director General”; and
- (d) in subsection (5), by substituting for the words “or a Deputy Director General” the words “, Deputy Director General or any officer authorized in writing by the Director General”.

New section 101B

32. The principal Act is amended by inserting after section 101A the following section:

“Offence by body corporate, etc.

101B. Where an offence under this Act has been committed by a body corporate, partnership, society or trade union—

- (a) in the case of a body corporate, any person who is a director, manager, or other similar officer of the body corporate at the time of the commission of the offence;
- (b) in the case of a partnership, every partner in the partnership at the time of the commission of the offence; and
- (c) in the case of a society or trade union, every office-bearer of the society or trade union at the time of the commission of the offence,

shall be deemed to have committed the offence and may be charged jointly or severally in the same proceedings as the body corporate, partnership, society or trade union.”.

Amendment of section 102

33. Subsection 102(2) of the principal Act is amended—

(a) by substituting for paragraph (i) the following paragraph:

“(i) prescribing fees to be paid for filing of claims under section 69, 69B or 69C and for copies of notes of evidence recorded under Parts XV and XV A;”;

(b) in paragraph (j), by substituting for the full stop a semicolon; and

(c) by inserting after paragraph (j) the following paragraphs:

“(k) prescribing the forms of notice and returns of particulars used under section 60K;

(l) prescribing the procedure to inquire into complaints of sexual harassment under Part XV A;

(m) prescribing the terms and conditions of service of a domestic servant.”.