

Guide to Malaysian workplace laws and regulations

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Introduction



Introduction

This Guide is a one-stop introductory guide to Malaysian workplace laws and regulations. Employment law in Malaysia is generally governed by the Employment Act 1955 (“Employment Act”) and the Industrial Relations Act 1967.

The **Employment Act** outlines certain minimum benefits that apply to all employees in Malaysia, regardless of their wages or occupation.

However, employees earning above RM4,000 per month are exempted from certain provisions in the Employment Act, such as:

- Overtime rates for employees working on rest days;
- Overtime rates outside working hours;
- Allowance for shift-based work;
- Overtime on public holidays;
- Overtime for half working days on holidays; and
- Termination, lay-off, retirement benefits.

Any clause in an employment contract that purports to offer less favourable benefits than those set out in the Employment Act, shall be void and replaced with the minimum benefits in the Employment Act.

Domestic employees are excluded from the subsection 5 of Section 2(1) under the Act's First Schedule, exempts domestic workers from major provisions (Sections 12, 14, 16, 22, 58A, 60, 60A, 60B, 60C, 60D, 60F, 60FA, 60I, 61 and 64 and Parts IX and XIIA).

In Malaysia, employment issues are governed primarily by statute and contract. In respect of enterprises with large scale workforces, which would include the financial, manufacturing, industrial and plantation sectors, collective agreements between employers and registered trade unions are important in regulating the employment relationship between the parties.

The statute governing employment disputes between employer and either trade unions or individual employees, is **The Industrial Relations Act (IRA) 1967**. The Industrial Court is the adjudicatory body empowered under the IRA 1967 to deal with all disputes arising under the Act including, the settlement of terms and conditions of a collective agreement where parties are in dispute over such terms.

The others main statutes and regulations relating to employment in Malaysia are as follows:

Trade Unions Act 1959

This Act regulates the registration and constitution of trade unions and the rights and liabilities of trade unions.

Employees' Provident Fund Act 1991

The Employees' Provident Fund Act (the EPF Act) applies to all employees in Malaysia.

Employees' Social Security Act 1969

This Act provides social security for all employees, and makes it mandatory for employers and employees to contribute to the fund at the rate prescribed by the Act.

Employment Insurance System Act 2017

The Employment Insurance System Act (the EIS Act) provides certain benefits and a re-employment placement programme to insure people in the event of the loss of employment, and makes it mandatory for employers and employees to contribute to the fund at the prescribed rate.

Children and Young Persons (Employment) Act 1966

This act prohibits children from working near hazardous and poisonous materials.

Occupational Safety and Health Act 1994 and Occupational Safety and Health (Amendment) Act 2022

The Occupational Safety and Health Act (OSHA) is based on the philosophy of self-regulation, and imposes general duties on employers to secure the safety, health and welfare of people at work.

Factories and Machinery Act 1967

Provide for the control of factories on matters relating to the safety, health and welfare of people, and the registration and inspection of machinery.

Employment (Restriction) Act 1968

Non-Malaysian citizens are required to obtain a valid work permit before they can be employed locally.

Minimum Wages Order 2018

This Order prescribes the minimum wage payable to employees.

Minimum Retirement Age Act 2012

The Minimum Retirement Age Act (MRA) sets the minimum (not mandatory) retirement age at 60 years old.

Personal Data Protection Act 2010

The Personal Data Protection Act (PDPA) regulates the processing of personal data and sensitive personal data, including employee data.

Malaysian workplace laws and regulations



1. Employer legal entity requirements

There is no requirement for a foreign employer to establish an entity in Malaysia purely to engage an employee in Malaysia. This is of course subject to tax and permanent establishment considerations, depending on the nature of the business and the role of the employee.

While the Companies Act requires foreign companies to be registered as a foreign company in Malaysia before “carrying on business in Malaysia”, merely hiring employees does not constitute “carrying on business”.

Foreign companies can choose to incorporate a subsidiary in Malaysia, or register a branch or representative office.

2. Pre-employment considerations

There is no regulation of pre-employment background checks, and extent of these checks are industry or employer-specific. Employers should obtain the individual's consent for the processing of any personal data, and ensure compliance with the Personal Data Protection Act 2010.

3. Options for engagement

Employees can be engaged on a permanent, fixed-term, full-time, or part-time basis. Individuals can also be engaged as independent contractors either directly or through a service provider. There is a risk of misclassification, and the courts will look at the substance of the relationship (including work instructions, level of control, exclusivity, it should benefit entitlements, organisational integration) over its form.

4. Employment contracts, policies, and other documentation

The Employment Act requires that a contract of service is in writing where the contract is for a specified period of 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. The Employment Act also requires this written contract of service to include a clause setting out the manner in which such contracts may be terminated by either party.

a) Probationary periods

Probationary periods are not regulated, and it is common to see probationary periods of 1-6 months. Probationers are generally entitled to similar security of tenure as confirmed/permanent employees, and any non-confirmation of employment during or at the end of the probationary period must be reasonable.

b) Other employment policies

There are no compulsory employment policies. Common policies include those in relation to workplace safety and health, whistleblowing, grievance and harassment, and intellectual property or proprietary invention and assignment matters. Some employers also have a standalone data privacy policy to address the consent/notice requirements of the Personal Data Protection Act.

5. Minimum wage

The minimum monthly wage is set by the government and is revised regularly. The appropriate wage level for any business can be obtained from the local government.

Each employer shall pay wages to their employees no later than the 7th day after the end of any wage period. Depending

on the employment contract, the wage period is usually one month. If the employment contract does not specify the wage period, it will be considered as one month.

6. Minimum employment rights, and standard terms and conditions

a) Hours of work

Employee shall not be required under their contract of service to work:

- more than 5 consecutive hours without a period of leisure, no less than 30 minutes;
- more than 8 hours in one day;
- in excess of a spread over period of 10 hours in one day;
- more than 45 hours in one week,

provided that,

- any break of less than 30 minutes in the 5 consecutive hours shall not break the continuity of that 5 consecutive hours;
- if work must be performed continuously and employees are required to work for 8 consecutive hours, employees should be provided with meal breaks totalling not less than 45 minutes;
- where, by agreement under the contract of service between the employee and the employer, the number of working hours on one or more days of the week is less than 8, the limit of 8 hours may be exceeded on the remaining days. However, no employee shall be required to work more than 9 hours in any one day or more than 45 hours in any one week.

b) Overtime payments

Employees with wages of up to RM4,000/month are entitled to overtime compensation under the Employment Act. Pursuant to the Employment Act, for any overtime work carried out in excess of the normal hours of work, eligible employees shall be paid at a rate not less

than 1.5 times their hourly rate of pay irrespective of the basis on which their rate of pay is fixed. Here “normal hours of work” means the number of hours of work as agreed between an employer and an employee in the contract of service to be the usual hours of work per day.

c) Public holidays

Employees are entitled to a paid holiday at the ordinary rate of pay on 11 of the gazetted public holidays and on any day designated as a public holiday under the Holidays Act 1951.

The Employment Act provides that five of those 11 gazetted public holidays must be,

- the National Day;
- the Birthday of the Yang di-Pertuan Agong;
- 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;
- the Workers’ Day; and
- Malaysia Day.

If a particular public holiday falls on a rest day (usually a Sunday), the next working day immediately thereafter should be recognised as a public holiday in substitution.

In addition, before the start of each calendar year, employers must conspicuously display a notice regarding the 6 chosen public holidays their employees are entitled to. Employers and employees can also mutually agree to using other days as a substitution, for one or more of the 6 chosen public holidays.

If any of the 11 public holidays or substituted days falls within the period during which an employee is on sick or annual leave, the employee is entitled

under the Employment Act to be granted another day as a paid holiday, in substitution for the public holiday they missed.

d) Annual leave

Employees are entitled to paid annual leave of,

Length of service	Annual leave entitlement
More than 1 year but less than 2 years	8 days
2 years or more, but less than 5 years	12 days
More than 5 years	16 days

It can also be prorated, if an employee has worked less than a full year in that calendar year.

While on annual leave, employees remain entitled to sick leave or maternity leave. In applicable cases, the annual leave should be cancelled and replaced with the appropriate type of leave. Additionally, employees may be paid in lieu of unused annual leave at the employer's request, provided the employee gives written consent.

e) Sick leave

Employees are entitled to the following paid sick leave, where no hospitalisation is necessary:

Length of service	Sick leave entitlement (per annum); where hospitalisation is not necessary
Less than 2 years	14 days
2 years or more, but less than 5 years	18 days
More than 5 years	22 days

Where hospitalisation is necessary, employees are entitled to 60 days sick leave in the aggregate in each calendar year.

f) Maternity leave

Female employees are entitled to paid maternity leave of not less than 98 consecutive days.

g) Paternity leave

Male employees are entitled to paid paternity leave of not less than 7 consecutive days.

h) Statutory deductions

Regardless of whether the employee is under the purview of the Employment Act, the employer is under legal obligations to make the following statutory contributions:

1. The Employees Provident Fund (EPF)
2. The Social Security Organisation (SOCSO)
3. The Employee Insurance System (EIS)
4. The Inland Revenue Board (IRB)
5. Trade Union Subscription Fees (if requested in writing by the employee)
6. The National Higher Education Fund Corporation (PPTN) loan repayment (if requested in writing by the employee)

i) Minimum retirement age

In Malaysia, the minimum retirement age for private-sector employees is 60. This is set by the Minimum Retirement Age Act 2012, which covers most private employers and workers. Employers can set a higher retirement age, but they need approval from the Minister.

j) Flexible working arrangement

The Employment (Amendment) Act 2022 entitles employees to apply to their employment for a flexible working arrangement to vary the hours, days, or place of work.

An employer must approve or refuse the application within 60 days, stating the grounds for any refusal.

It is not mandatory to have a Flexible Working Policy, but it is a recommended best practice.

7. Data privacy

The collection and processing of personal data is governed by the Personal Data Protection Act 2010. Employers must obtain employee consent before collecting and processing their personal data. Explicit/express consent is required if “sensitive personal data” is involved. Employers must notify their employees of the nature and purpose of information being collected, to whom it is being disclosed, and that the employees have the right to access such data. Consent is also required before this data is shared with third parties. A bilingual (in English and Bahasa Malaysia) employee consent/notice document is required.

8. Employee transfers in sale of assets/business transactions

There is no mechanism for the automatic transfer of employment in sale of assets/business transaction, and employees will by default remain employed by the seller in such transactions. Any “transfer” of employees in such transactions is effected by a termination (by the seller) and rehire (by the buyer), and the seller will be exempted from paying any statutory severance payment under the Employment (Termination and Lay-Off Benefits) Regulations 1980 if the new offer from the buyer is under terms and conditions of employment not less favourable than those under which the employee was employed by the seller. An employee will not be entitled to statutory severance payment if the employee unreasonably refuses the new offer.

9. Termination of employment

Termination should be based on reasonable cause. There is no fixed or comprehensive list of acceptable reasons for an employer to terminate an employment contract, but common reasons include misconduct, poor performance, layoffs, or business closure.

All employees must be protected from unfair dismissal.

a) Termination notice

Employees are entitled to the following minimum notice periods for termination of employment:

- 4 weeks' notice if employed for less than 2 years.
- 6 weeks' notice if employed for 2 years or more but less than 5 years.
- 8 weeks' notice if employed for 5 years or more.
- Alternatively, either party may choose to provide payment in lieu of notice.

Notice of termination is not required if there is a serious misconduct or a “wilful breach” of the employment contract.

b) Severance payments

Employees with wages of up to RM4,000/month who have been employed for 12 months or more are entitled to the following minimum statutory severance payments pursuant to the Employment (Termination and Lay-Off Benefits) Regulations 1980:

- 10 days' wages for each year of continuous service with the employer, if the employee has been employed for a period of less than 2 years.
- 15 days' wages for each year of continuous service with the employer, if the employee has been employed for 2 years or more but less than 5 years.
- 20 days' wages for each year of continuous service with the employer,

if the employee has been employed for 5 years or more.

For employees with wages of more than RM4,000/month, the entitlement to severance payments depends on the employment contract. If the contract does not specify, there is no statutory right to termination benefits, but in some circumstances there is a general expectation that a financially-able employer should pay reasonable severance compensation.

c) Retrenchment/redundancy

When carrying out a retrenchment exercise, employers must submit a notification using the standard 'Borang PK' form to the nearest Department of Labour office at least 30 days before the termination takes effect.

Retrenchments can be justified by various reasons, such as redundancy, or for financial reasons. However, if challenged, employers must be able to prove that the retrenchment was carried out for genuine reasons. Employers must also use the "Last In, First Out" (LIFO) principle, or an alternative fair and objective selection criteria.

Employers are encouraged (but not required) to abide by the Code of Conduct for Industrial Harmony when implementing a retrenchment exercise.

d) Poor performance dismissals

Poor performance is recognised as a valid reason that may constitute just cause for unilateral termination. However, the employee must be treated fairly throughout the process. If an employer dismisses an employee for poor performance without following fair procedures, the dismissal may be deemed unfair by the Industrial Court. Whether the termination is considered fair will be assessed on a case-by-case basis.

To be deemed fair, a termination based on poor performance generally requires the following:

- The standard of performance expected must be reasonable, clear, and measurable, and the employee must be aware of these standards.
- The employer must have clearly communicated to the employee that their performance has not been meeting expectations.
- The employer must have offered constructive feedback and guidance on how the employee can improve to meet expectations.
- The employee must be given sufficient guidance or training if required, and afforded a reasonable timeframe in which to improve their performance.
- There may need to be more than one round of feedback and opportunity to improve, and any feedback sessions should be documented.

e) Mutually-agreed separations

Where an employer is uncertain whether a dismissal would be considered fair – bearing in mind that, in an unfair dismissal claim, the burden of proof lies with the employer – or where the employer seeks the employee's agreement to additional post-employment covenants, some employers may choose to offer an ex-gratia payment in exchange for the signing of a mutual separation agreement. In such cases, the separation is no longer regarded as a unilateral termination by the employer, but rather as a mutually agreed separation.

The benefit of a mutual separation agreement is it reduces the likelihood of an employee bringing an unfair dismissal claim. However, the release of claims cannot effectively bar an employee from making such a claim.

f) Post-termination restrictions

Post-termination non-compete restrictions are generally void and unenforceable under Section 28 of the Contracts Act, as they constitute a restraint of trade.

Post termination non-solicitation restrictions (of customers and employees) do not directly breach Section 28 of the Contracts Act, but are difficult to enforce and are typically only enforceable to the extent that there has been a breach of confidentiality, or misuse of confidential information or trade secrets.

g) Unfair dismissal claims

An employee may file an unfair dismissal complaint with the Industrial Relations Department within 60 days from the date of termination. This is a strict statutory deadline.

Upon receiving the complaint, the Department will arrange an informal conciliation meeting between the employer and the employee to attempt a mediated settlement. If no settlement is reached, the case will be referred to the Industrial Court for adjudication.

In the event of a successful unfair dismissal claim, the potential financial exposure for the employer includes:

- Back wages of up to a maximum of 24 months; and
- compensation in lieu of reinstatement, typically calculated at one month's wages for each year of service.

10. Children and Young Persons (Employment)

This Children and Young Persons (Employment) Act 1966 prohibits children from working near hazardous and poisonous materials.

No child (under the age of 15 years) or young person (between age of 15 years and under the age of 18 years) engaged in any employment shall in any period of 7 consecutive days be required or permitted to work for more than 6 days.

A child is only allowed to work up to 6 hours a day, while a young person may work up to a maximum of 7 hours per day.

No child or young person shall be required or permitted to engage in any employment that is contrary to the provisions of the Factories and Machinery Act 1967, the Occupational Safety and Health Act 1994, or the Electricity Supply Act 1990, or in any job that requires working underground.

11. Occupational Safety and Health

The Occupational Safety and Health (Amendment) Act 2022 and the Factories and Machinery (Repeal) Act 2022 were gazetted on 16 March 2022. These changes consolidate workplace safety regulations under a single, comprehensive framework. As a result, the Factories and Machinery Act 1967 was officially repealed and ceased to be in force after June 2023.

The Safety and Health Act 1994 (OSHA 1994) now serves as the primary legislation governing the safety, health, and welfare of all workers in Malaysia, as well as protecting others from risks arising from work-related activities.

Section 15 outlines the duties of the employer include maintenance of plant and systems that are safe and without risk to health, provides information, instruction, training and supervision to ensure the safety and health at all places of work. Section 16 requires the employers to formulate safety and health policy at all workplaces and regularly

revise the policies and align the policies with global changes and best practices.

Safety and Health Policy is to demonstrate the company's commitment and concern to ensure Safety and Health at all places of work throughout Malaysia. Issues on safety and health stated in the policy must be taken into account. Penalty rate of RM500,000 for employers or principals who breach their respective duties under the amended OSHA.

12. Employment (Restriction)

This Employment (Restriction) Act 1968 which provides the legislative framework for non-Malaysian citizens are required to obtain a valid work permit before they can be employed locally.

Working without a valid work permit is strictly illegal under the Immigration Act 1966.

13. Discrimination and harassment

a) Discrimination in employment

The amendment to the Employment Act aligns with the International Labour Organisation's Discrimination (Employment and Occupation) Convention 1958 (No. 111). Under this amendment, the Director General is empowered to investigate and resolve disputes between employees and employers concerning discrimination in employment.

Any form of discrimination in employment can be reported by the employee involved, for example discrimination in terms of terms and conditions of employment based on race, religion, gender or political beliefs.

The protection introduced through this amendment applies to individuals who have entered into a contract of service.

b) Harassment

Although Malaysia does not have a standalone anti-harassment law, the principle that every employee is entitled to a safe and conducive work environment applies to harassment complaints. The Employment Act provides a mechanism for employees to seek redress in cases of sexual harassment. Additionally, concerns raised by employees who feel discriminated against due to their own or another employee's status as a foreign national may also be addressed under the Act.

Under the Employment Act (EA), an employer is required to inquire into all complaints of sexual harassment, regardless of whether the employee involved is an EA or Non-EA employee. Failure to do so by the employer will result in a fine of RM50,000.

Appendix

Laws used for reference

1. Employment Act 1955 ("Employment Act")
2. Employment (Amendment) Act 2022
3. Employment (Amendment of First Schedule) Order 2022 effective 1 January 2023
4. Industrial Relations Act 1967
5. Personal Data Protection Act 2010
6. Holidays Act 1951
7. Weekly Holidays Act 1950
8. Income Tax Act 1967 (Schedular Tax Deduction)
9. Children and Young Person (Employment) Act 1966
10. Employees Provident Fund Act 1991
11. Employees Social Security Act 1969
12. Minimum Retirement Age Act 2012
13. National Wages Consultative Council Act 2011
14. Employment Insurance System Act 2017
15. Employment (Part-time Employees) Regulations 2010
16. Minimum Wages Order 2018
17. Employment (Restriction) Act 1968
18. Occupational Safety and Health Act 1994
19. Occupational Safety and Health (Amendment) Act 2022
20. Factories and Machinery Act 1967
21. Factories and Machinery (Repeal) Act 2022
22. Trade Unions Act 1959

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