



MALAYSIA

Decent Work Check 2019

Iftikhar Ahmad

Ashikin

WageIndicator Foundation - www.wageindicator.org

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

The authors

Ashikin is a team member from Malaysia.

Corresponding author: Iftikhar Ahmad works as Labour Law Specialist with WageIndicator Foundation. He can be contacted at iftikharahmad@wageindicator.org

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Address: P O Box 94025, 1090 GA Amsterdam, The Netherlands

Email office@wageindicator.org.

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INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental principles and Rights at Work and Core ILO Conventions, are practiced, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects, which are deemed important in attaining "decent work". The work makes the rather abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and gives a score to the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Workers can compare their own score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

Decent Work Check is useful both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also useful for researchers, labour rights organizations conducting surveys on the situation of rights at work and general public wanting to know more about the world of work. WageIndicator teams, around the world, have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed - being a workers, self-employed, employee, employer, policy maker, labour inspector - there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer) and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work especially the effective enforcement of legislation in financially constrained states, rise of precarious employment and measuring the impact of regulatory regimes.

Currently, there are more than 100 countries for which a Decent Work Check is available here: www.decentworkcheck.org During 2019, the team aims to include at least 10 more countries, thus taking the number of countries with a Decent Work Check to 115!

Major Legislation on Employment and Labour

1. Minimum Wages Order 2012
2. Employment Act 1955 (Act 265)
3. Employees Provident Fund Act 1991 (Act 452)
4. Employment (Limitation of Overtime Work) Regulations 1980
5. Children and Young Persons (Employment) Act 1966(Act 350)
6. Holiday Act 1951(Act 396)
7. Employment Regulations 1957
8. Minimum Retirement Age Act 2012
9. Industrial Act 1957
10. Employment (Termination and Lay-off Benefits) Regulations 1990
11. Employment (Minimum rate of maternity allowance) Regulations 1976
12. Occupational Safety and Health Act 1994 (Act 514)
13. Factories & Machinery Act 1967
14. Occupational Safety & Health (Use & Standards of Exposure of Chemical Hazardous to Health) Regulations 2000
15. Employees' Social Security Act 1969 (Act 4)
16. Workmen's Compensation Act 1952
17. Workmen's Compensation (Foreign Workers' Compensation Scheme) (Insurance) Order 2005
18. Federal Constitution of Malaysia 1957
19. Penal Code 1936 (Act 574)
20. 1999 Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace
21. Education Act 1996

01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

Malaysia has ratified the Conventions 95 & 131 only.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- Minimum Wages Order 2012
- Employment Act 1955 (Act 265)
- Employees Provident Fund Act 1991 (Act 452)

Minimum Wage

The minimum wages legislations in Malaysia are National Wages Consultative Council Act 2011[Act 732], Minimum Wages Order 2012, Guidelines on the Implementation of the Minimum Wages Order 2012, Minimum Wages(Amendment) Order 2012, Minimum Wages(Amendment) Order 2013, Minimum Wages(Amendment)(No.2) Order 2013, Minimum Wages (Amendment) (No. 3) Order 2013, Employment Act 1955, Sabah Labour Ordinance [Cap. 67], Sarawak Labour Ordinance [Cap. 76], Industrial Relations Act 1967 [Act 177], Employment (Part-Time Employees) Regulation 2010, Labour (Part-Time Employees)(Sarawak) Rules 2013, Labour (Part-Time Employees)(Sabah) Rules 2013 and Income Tax (Deduction For Expenditure In Relation to Minimum Wages)Rule 2014.

Malaysia has different wage rates for different regions. For the Peninsular Malaysia, the monthly rate of minimum wages is different from the one in Sabah, Sarawak and Federal Territory of Labuan. This is in accordance with §4 of the Minimum Wages Order 2012.

Malaysia's minimum wages policy is decided under the National Wages Consultative Council Act 2011 (Act 732). There is a tripartite body known as the National Wages Consultative Council which is formed to recommend the minimum wages rate to the Government and once approved by the Government, the Minister of Human Resources makes a Minimum Wages Order.

The criteria to decide minimum wages are divided into two; base and adjustment criteria. Base criteria include Poverty Line Income (PLI) and Median Wage while the adjustment criteria include changes in Consumer Price Index (CPI), Productivity Growth (P) and Real Unemployment Rate (UE).

Enforcement officers, as are appointed under the Employment Act, enforce the provisions on minimum wage. An employer who fails to pay the basic wages as are specified in the minimum wages order to his employees commits an offence and shall, on conviction, be liable to a fine of not more than 10,000 ringgits for each employee.

An employer who is convicted of failing to pay the basic wages as specified in a minimum wages order may, in addition to a fine, be ordered to pay the difference between the minimum wages rate as specified in the minimum wages order and the basic wages paid by the employer to the employee, including the outstanding difference and any other payments accrued.

For any repeated offence, a person shall be liable to imprisonment for a term not exceeding 5 years (or a fine not exceeding 20,000 ringgits).

Sources: §4 of the Minimum Wages Order 2012; §2, §60I, Part III-§18-23, Part IV –§24 of the Employment Act 1955(Act 265); §2 of the Employees Provident Fund Act 1991 (Act 452)

For detailed minimum wage rates, kindly refer to the §on minimum wages.

Regular Pay

There are several legal definitions of the word wages under the written laws.

Wages are defined under the Employment Act 1955 as “basic wages and all other payments in cash payable to an employee for work done in respect of his contract of service”. Certain exclusions are applicable like wages do not include value of any house accommodation, travelling allowance, gratuity, annual bonus, etc. Wages have different meanings under different Acts and thus a different explanation of wages is found under §2 of Employees Provident Fund Act 1991.

The Employment Act 1955 also has stated some rules and laws on the payment of wages. The Act specifies that a wage period cannot exceed one month and even when the employment contract (referred to as contract of service under the law) does not specify the wage period, it is deemed to be one month.

The Employment Act also touches on the time of payment of wages. Every employer is required to pay wages to each of his employees within seven days of the last day of the wage period after making law deductions. The wages for overtime, work done on weekly rest days and public holidays must be paid by the last days of the next wage period. If the Director General of Labour is convinced 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.

Employment Act has detailed instructions on deductions from workers’ wages. It sets a general rule that no deductions can be made by an employer from the wages of an employee otherwise than in accordance with Employment Act. It then lists out the conditions when an employer can make lawful deductions (deductions for overpayment, deductions for indemnity due to employer, deductions for recovery of advance without interest) and the certain conditions of deductions that shall not or shall be made except with the request in writing of the employee (payments to a registered trade union, payment for any shares of employer’s business) or the Director General (payments into any superannuation or worker welfare scheme, payments for recovery of advance with interest, payments for accommodation and food, etc.).

Employers are required to provide a wage slip to every employee (relating to details of wages and other allowances earned during each wage period as specified in Employment Regulations 1957) on or before the date of payment of wages.

A draft amendment in the Employment Act, to be tabled in the Parliament in 2019, plans to make the Employment Act applicable to all workers irrespective of their wages or job type. Currently, the Employment Act is applicable to only those employed whose wages do not exceed RM2,000 or those workers who are engaged in manual labour. While the amended law will be applicable on all workers, certain provisions such as working hours, retrenchment benefits or compensation for working on a public holiday will still not be available for employees earning more than Rm5,000.

Source: §2, 18, 19 & 24 of the Employment Act 1955 (Act 265); §2 of Employees Provident Fund Act 1991; Regulation 9 of the Employment Regulations 1957

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

Malaysia has not ratified the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter times (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

Regulations on compensation:

- Employment Act 1955(Act 265)
- Employment (Limitation of Overtime Work) Regulations 1980
- Children and Young Persons (Employment) Act 1966(Act 350)

Overtime Compensation

The general weekly working hours, as stated in the Employment Act 1955, are eight (8) hours a day and forty-eight (48) hours a week. The maximum overtime hours are 104 hours a month as stated under Employment Act and Employment (Limitation of Overtime Work) Regulations 1980.

A worker may be required to exceed working hour limits, i.e., engage in overtime in the case of actual or imminent accident in or with respect to workplace; work, the performance of which is essential to the life of community; urgent work on machinery and plant; any work interruption which could not be foreseen; work performed by the essential services as defined under Industrial Relations Act; and work essential to defence and security of Malaysia.

For any overtime work carried out in excess of the normal hours of work, the employee is paid at a rate at least one and half times his hourly rate of pay (150%) irrespective of the basis on which his rate of pay is fixed. If the overtime work is done on a weekly rest, the payment is two times the hourly rate of pay (200%) and in the case of public holidays, the payment is raised to three times the hourly rate of pay (300%).

Working hours of children and adolescents are determined through Children and Young Persons (Employment) Act 1966 (Act 350). A child (under 15 years) is not allowed to work more than 6 hours per day. If he/she is attending school, the total number of hours spent at school and work should not exceed seven hours per day. Young persons (under the age of 18 years) cannot work for more than seven hours per day. In case they are attending school, the total number of hours spent at school and work should not exceed eight hours per day.

Sources: §59, 60A(1), 60A(4)(a), 60A(3)(a), and 60D of the Employment Act 1955 (Act 265); Regulation 2 of Employment (Limitation of Overtime Work) Regulations 1980; §5 and 6 of the Children and Young Persons (Employment) Act 1966 (Act 350)

Night Work Compensation

No provisions could be located on night work and its compensation under the Malaysian labour law.

Compensatory Holidays / Rest Days

Employment Act has provisions on compensatory holiday if a worker is engaged to work on a public holiday. By an agreement between the worker and employer, any other day or days may be substituted for one or more of the six gazetted public holidays which means that substitution is not possible for five compulsory public holidays provided under the Employment Act 1955.

Where any of gazetted public holidays or any other substituted day falls within the period during which an employee is on sick leave or annual leave to which the employee is entitled under this Act, or falls during the period of temporary disablement under the Workmen's Compensation Act 1952, or under the Employees Social Security Act 1969, employer has to grant another day as a paid holiday in substitution for such public holiday or the day substituted therefore.

No such provisions on compensatory or substitute holidays could be located if workers have to work on weekly rest days.

Source: §60D of the Employment Act 1955(Act 265)

Weekend / Public Holiday Work Compensation

Employment Act has provisions on monetary compensatory if a worker is engaged to work on a public holiday or a weekly rest day.

Working on a Rest Day

If a worker is employed on an hourly, daily or other similar rate of pay and has to work on a rest day, he is paid (at the ordinary rate of pay) as follows:

- i. One day's wages if he works for less than half of his daily normal hours of work; and
- ii. Two days' wages if he works for more than half but less than his total daily normal hours of work.

If a worker is employed on monthly rate of pay and has to work on a rest day, he is paid (at the ordinary rate of pay) as follows:

- i. Half day's wages if he works for less than half of his daily normal hours of work; and
- ii. One day's wages if he works for more than half but less than his total daily normal hours of work.

If the work is carried out in excess of normal hours of work on a rest day, the worker is paid at a rate which is not less than two times his hourly rate of pay. In the case of an employee employed on piece rate, he/she is paid twice ordinary rate per piece for working on a rest day.

Working on a Public Holiday

If a worker is required to work on a public holiday, he is paid extra amount in addition to the holiday pay for that day and even if the period of work is less than his normal daily hours of work. The amount is as follows (paid at the ordinary rate of pay):

- i. Two days' wages if paid at hourly, daily, weekly, monthly or another similar rate; or
- ii. Twice the (ordinary) rate per piece if paid at piece rate

If a worker is made to work on a public holiday and works in excess of his daily normal hours of work, he/she is paid as follows (paid at the ordinary rate of pay):

- i. At least three times his hourly rate of pay if paid at hourly, daily, weekly, monthly or another similar rate; or
- ii. thrice the (ordinary) rate per piece if paid at piece rate

Source: §59 & 60D of the Employment Act 1955(Act 265)

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days. In addition, for several industries, different Conventions apply.

Malaysia has not ratified the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

Regulations on annual leave and holidays:

- Employment Act 1955(Act 265)
- Holiday Act 1951(Act 396)

Paid Vacation / Annual Leave

Annual leave (paid by the employer at ordinary rate of pay for everyday of annual leave) is provided under the Employment Act and it ranges from 8 calendar days to 16 calendar days depending on the length of service. A worker must have completed 12 months of continuous service with the employer for entitlement to annual leave. A worker is not entitled to leave if he has absented himself from work without the permission of his employer and without reasonable excuse for more than 10% of the working days during the preceding 12 months.

An employee who has completed twelve months of service is entitled to paid annual leave of:

- i. 8 calendar days if length of employment is less than two years;
- ii. 12 calendar days if employee has worked for two or more years but less than five years;
- iii. 16 calendar days if the length of employment is five years or more;

On the other hand, if a worker has not completed 12 months of continuous service and his employment contract terminates, he has entitlement to annual leave on pro rata basis, i.e., in direct proportion to the number of completed months of service. A worker is required to take annual leave within 12 months of entitlement otherwise such entitlement to leave ceases. Employment Act allows payment in lieu of annual leave if the worker, at the request of employer, agrees not to avail any of all of his annual leave.

A worker is entitled to avail his annual leave and leave accrued during the year before termination of contract however law allows payment in lieu of leave (at the rate of ordinary pay for everyday of such leave) if the contract of employment was terminated by either party before such leave could be taken by the worker. Payment in lieu of available and accrued leave is possible only if employment contract was not terminated on the grounds of misconduct.

Source: §14(1)(a) and 60E of the Employment Act 1955(Act 265)

Pay on Public Holidays

Public holidays (paid by the employer at the ordinary rate of pay) are regulated under Holidays Act 1951 and Employment Act 1955. First schedule under the Holidays Act provides a list of 11 public holidays. The public holidays are religious and historical in nature. These holidays are:

- i. Birthday of the Prophet Muhammad (PBUH);
- ii. Hari Kebangsaan or National Day;
- iii. Chinese New Year (one day in the States of Kelantan and Terengganu, two days in the other States);
- iv. Wesak Day/ Buddha Day;
- v. Birthday of the Yang di-Pertuan Agong;
- vi. Hari Raya Puasa/Eid el Fitr-Festival at the end of Ramadan (2 days);
- vii. Hari Raya Haji/Festival of Sacrifice (two days in the States of Kelantan and Terengganu, one day in the other States);
- viii. Deepavali/Diwali-Festival of Lights; and
- ix. Christmas Day

The list provided in Employment Act is a bit different. Under the Act, of the eleven gazetted public holidays, five holidays are these:

- i. National Day;
- ii. Birthday of the Yang di Pertuan Agong;
- iii. Birthday of the Ruler or the Yang di Pertua Negeri 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. Workers' Day;
- v. Malaysia Day; and
- vi. Any day declared as a public holiday for a particular year under §8 of the Holidays Act 1951

Public holidays are to be paid at the employee's ordinary rate of pay, except where the employee absents himself from work on the working day immediately preceding or immediately succeeding a public holiday without the consent of his employer (unless he has a reasonable excuse for his absence). If a public holiday falls on a rest day or any other public holidays (as referred above), the working day immediately following the rest day or other public holiday is a paid holiday in substitution of the first mentioned public holiday.

Source: §60D of the Employment Act 1955 (Act 265); First Schedule of Holiday Act 1951 (Act 396)

Weekly Rest Days

Employment Act requires a weekly rest day of one whole day (24 hours) to each worker. The day of rest can be determined by the employer. In the case of workers engaged in shift work, a period of at least 30 hours constitutes as rest day.

Source: §59 of the Employment Act 1955 (Act 265)

04/13 EMPLOYMENT SECURITY

ILO Conventions

Convention 158 (1982) on employment termination

Malaysia has not ratified the Convention 158.

Summary of Provisions under ILO Convention

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

Regulations on employment security:

- Employment Act 1955 (Act 265)
- Employment Regulations 1957
- Minimum Retirement Age Act 2012
- Industrial Act 1957
- Employment (Termination and Lay-off Benefits) Regulations 1990

Written Employment Particulars

Employment Act 1955 has provisions on employment contracts (referred to as contract of service). The Act defines a contract of service as “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”. Similar definition is found in Industrial Relations Act 1967. Thus, a contract of service can be in writing, oral, express or implied.

The Employment Act provides that employment contracts lasting for more than one month must be in writing and that employment contracts must include a provision for termination. However, the lack of a written contract does not invalidate the employment relationship. The Act requires an employer to prepare and keep register(s) containing such information regarding each employee employed by him as prescribed under a Regulation. Every employment particular, recorded in a register, must be preserved in such a way so that it is available for inspection for at least six years after its recording.

Employment Regulations 1957, framed under the Act, require an employer to not only maintain registers (as specified above) but also furnish certified copy of particulars. Under the Regulations, employer has to maintain register which keeps the three kinds of particulars about each employee, i.e., personal details, details of terms and conditions of employment, and details of wages and allowances earned during each wage period. Employer has to furnish, to each employee, on or before date of commencement of employment and subsequently on any change in the terms and conditions of employment resulting in any change in his wages a copy of these particulars on “terms and conditions of employment”. These are name of employee and National Registration Identification Card No.; occupation or appointment; wage rates (excluding other allowances); other allowances payable and rates; rates for overtime work; other benefits (including approved amenity and service); agreed normal hours of work per day; agreed period of notice for termination of employment or wages in lieu thereof; No. of days’ entitlement to holidays and annual leave with pay; and duration of wage period. If a collective agreement is in force and applicable to an employee, employer is required to provide a copy of collective agreement to the employee or display it at conspicuously at the workplace.

Personal Data Protection Act 2010 also requires employers to provide specific information in writing to employees.

Source: §2, 10 & 61 of the Employment Act 1955 (Act 265); Regulation 5 and 8 of the Employment Regulations 1957

Fixed Term Contracts

Employment Act has provisions on fixed term and indefinite term contracts. §11 of the Act reads as under:

- 1) A contract of services **for a specified period of time or for the performance of a specified piece of work** shall, unless otherwise terminated in accordance with this part, terminate when the period of time for which such contract was made has expired or when the piece of work specified in such contract has been completed.”
- 2) A contract of service **for an unspecified period of time** shall continue in force until terminated in accordance with this Part.

The above text talks about contracts for a specified period of time which are generally referred to as fixed term contracts. The Act does not provide reasons behind engaging workers on fixed term contracts and the total term of such contracts including renewals and extensions.

Case law however recognizes that workers can be engaged on fixed term contracts when there is a “genuine need” and where “both parties recognize there is no understanding that the contract will be renewed on expiry”. Examples of genuine fixed term contracts include “seasonal work, work to fill gaps by temporary absence of permanent staff, training and performance of specific tasks such as a research project funded from outside the employer’s undertaking”. These are the type of contracts envisaged under the Employment Act (§11).

It is interesting to note however that the words “fixed term contract of service” are used in Minimum Retirement Age Act 2012 (setting the minimum retirement age as 60 years) which says it is not applicable on, among others, “a person who is employed on a fixed term contract of service, inclusive of any extension, of not more than twenty-four months”. This law implicitly sets the maximum term for the fixed term contract of service as 24 months.

Source: §11 of the Employment Act 1955 (Act 265); Schedule under §2 of the Minimum Retirement Age Act 2012; Han Chiang High School/Penang Han Chiang Association v. National Union of Teachers in Independent School West Malaysia (Award no. 306 of 1988)

Probation Period

There is no specific legal provision on probation or trial period. The Employment Act does not distinguish between an employee under probation and other employees. Such employee who is under probation enjoys all the same rights as any other confirmed/permanent employee. The difference is that they are under the employer's observation on their suitability to be regular employees.

Though there is no specific provision on probation period, it is common practice for the probationary periods to vary between 3 months (non-executive positions) to 6 months (executive and managerial positions). Maximum length of probation period is not provided under the Employment Act or Case Law. However, "an employee on probation enjoys the same rights as a permanent or confirmed employee and his/her services cannot be terminated without just cause or excuse. If the dismissal of a probationary employee is found to be a colourable exercise of the power to dismiss or is a result of discrimination or unfair labour practice, the Industrial Court has the jurisdiction to interfere and to set aside such dismissal".

Source: *Khaliah bte Abbas v. Pesaka Capital Corp Sdn Bhd* [1997] 3 CLJ 827

Notice Requirement

Notice period is regulated under the Employment Act 1955 and contract of service. An employment contract can be terminated by either party, at any time, by giving the other party a notice of his intention to terminate such contract. Notice period can be determined under the contract of service (thus in writing) and its length is essentially the same for worker and employer. If the notice period is not determined in writing in the contract of service, the minimum notice period (as provided under Employment Act), must be followed:

- i. Four weeks if length of employment is less than two years;
- ii. Six weeks if employee has worked for two or more years but less than five years; and
- iii. Eight weeks if the length of employment is five years or more

Notice is served in written form. Payment in lieu of notice is allowed. Even when the termination notice has already been served, either party may pay a sum equal to the unexpired term of notice and terminate the contract instantly. Although notice is provided under the Employment Act, it also says that either party may waive its right to notice.

Employment Act allows contract termination without notice in the following cases:

- i. Contract termination by either party in the event of wilful breach of a condition of contract by other party;
- ii. Summary dismissal on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service;
- iii. Contract termination who has been continuously absent from work (for more than two days) without prior leave from employer (unless there is a reasonable excuse)
- iv. Contract termination by the worker here he or his dependents are immediately threatened by danger to the person by violence or disease such as such employee did not by his contract of service undertake to run
- v. If the employee committed sexual harassment and the case was proved and decided by the Director General

Source: §12-15 and 81E of the Employment Act 1955 (Act 265)

Severance Pay

The legal provision on severance pay (referred to as termination benefits) are found in the Employment (Termination and Lay-off Benefits) Regulations 1980. An employer is liable to pay termination or lay-off as specified below to an employee (who has been employed for at least one year) if the contract of service has been terminated or the employee is laid off. An employee is entitled to termination benefit when his employment is terminated except in the following cases:

- i. If employment is terminated by employer upon the employee attaining the age of retirement (60 years) if the contract of service contract has stipulation in that regard;
- ii. If the employment is terminated by employer on the grounds of misconduct after due inquiry;
- iii. If the employment is terminated by employee voluntarily except for the cases specified under the Act (on wilful breach of contractual terms by the employer or he or his dependents are immediately threatened by danger to the person by violence or disease);
- iv. If the contract of service for a worker is renewed or if the worker is re-engaged by the same employer under a new contract whose terms are not less favourable and the renewal or re-engagement takes effect immediately on the ending of his employment under the previous contract.

Lay-off benefits are payable if a worker is laid off which happens if the employer does not provide work to the worker for at least a total 12 normal working days within any period of four consecutive weeks and the employee is not entitled to any remuneration under the contract for the period (or periods) in which he is not provided with the work.

Payment of termination benefits must be in accordance with contract of service however the minimum is prescribed under Employment (Termination and Lay-off Benefits)

Regulations 1980. Minimum termination and lay-off benefits are payable on the following rates, depending on the length of service:

- i. 10 days' wages for each year of service if the employee has worked less than two years;
- ii. 15 days' wages for each year of service if the employee has worked for two years but less than five years; and
- iii. 20 days' wages for each year of service if the employee has worked for five or more years.

The termination benefits are calculated through this formula:

$(\text{Total 12 months' wages} / 365 \text{ days}) \times (\text{service period, i.e., No. of years of service}) \times (\text{Eligibility, i.e., 10/15/20 days})$

Other than termination benefits, a worker is entitled to following in the event of contract termination:

- i. Payment in lieu of notice;
- ii. Payment in lieu of annual leave balance and accrued leave during the year; and
- iii. Balance of salaries

Source: §1-6 of the Employment (Termination and Lay-off Benefits) Regulations 198

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981)
Recommendation 165: Workers with Family Responsibilities (1981)

Malaysia has not ratified the Convention 156.

Summary of Provisions under ILO Convention

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

Paternity Leave

There is no provision on paternity leave in Employment Act or any other labour law. It depends on the company policy to provide such leave, usually ranging between 1-3 days, or require new fathers to take unpaid leave or use (part of) annual leave as additional time off. Malaysian civil servants are entitled to seven days of paternity leave while some state government employees can take up to 14 days of paternity leave.

Parental Leave

The term parental leave doesn't exist in Malaysian legislation. Thus, the law is silent on it and it depends on the company policy.

Flexible Work Option for Parents / Work-Life Balance

The law doesn't have specific provisions on the topic for flexible work options for parents with minor children.

A draft amendment in the Employment Act, to be tabled in the Parliament in 2019, plans to allow workers to have "flexible working arrangements". The proposed amendment requires the employers to favourably consider an employee's request for flexible work arrangement unless such facility leads to additional costs for the employer, or has an impact on performance or quality or where employer cannot reorganize work among its workforce or is unable to recruit an additional worker.

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

Malaysia has not ratified the Conventions 103 & 183.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

Regulations on maternity and work:

- Employment Act 1955 (Act 265)
- Employment (Minimum rate of maternity allowance) Regulations 1976

Free Medical Care

Employment Act 1955 has no express provisions on free medical care to pregnant women workers. Article 40(4) of the Act makes allusion to the free medical services provided by the employer however no § can be identified in Employment Act which this medical service as an employer's duty. Thus, this "free medical service" may not be mandatory on employer.

The above referred article provides that "any female employee whose employer provides free medical treatment for his employees and who (when she is pregnant) persistently refuses or fails to submit to such medical treatment offered free by her employer (as certified necessary or desirable for pregnancy or confinement by a registered medical practitioner), she loses the maternity allowance she is entitled to extent of seven days.

Source: §40(4) of the Employment Act 1955 (Act 265)

No Harmful Work

Employment Act 1995 restricts women from working at night (between the hours of ten o'clock in the evening and five o'clock in the morning) and underground work. However, these restrictions are applicable generally are not specific to pregnant workers. The Employment Act allows the Minister to prohibit or permit employment of female employees in such circumstances or under such conditions through an Order. No such Order could be located.

Source: §34-36 of the Employment Act 1955 (Act 265)

Maternity Leave

Maternity leave is provided under the Employment Act 1955 for a period of at least 60 consecutive days. The maternity leave may not commence earlier than 30 days prior to the expected date of confinement or later than the day immediately following confinement.

If a medical officer or a registered medical practitioner (appointed by the employer) certifies that the pregnant worker, as a result of advanced stage of pregnancy, is unable to perform duties satisfactorily, she may be required to commence her maternity leave at any time during a period of 14 days preceding to the date of confinement. If a pregnant worker abstains from work to commence her maternity leave on a date earlier than 30 days prior to confinement, it is not treated as maternity leave and she is not entitled to any maternity allowance for those days.

A worker who is entitled to maternity leave but not to maternity allowance may, with employer's consent, commence work at any time during the eligible period (of 60 days) if she is certified fit to resume work by a registered medical practitioner.

Any condition in a contract of service whereby an employee relinquishes or is deemed to relinquish any right (with regard to maternity leave or maternity allowance) is void.

A draft amendment in the Employment Act, to be tabled in the Parliament in 2019, plans to raise the current 60-day maternity leave to 98 days.

Source: §37 & 43 of the Employment Act 1955 (Act 265)

Income

Employment Act 1995 has provision on maternity allowance for a period of at least 60 consecutive days. While every female pregnant worker is entitled to maternity leave, maternity allowance has separate conditions as follows:

- i. The worker must have less than five surviving natural children, irrespective of their age;
- ii. The worker must have been employed by the employer for a period of, or as an aggregate, at least 90 days during the 9 months immediately before confinement and must have been employed by the employer at any time in 4 months immediately before her confinement.

Other than these, there are also "information" conditions:

- i. A female employee must, within a period of sixty days immediately preceding her expected confinement, notify her employer of it and the date from which she intends to commence her maternity leave. If she commences such leave without so notifying her employer, the payment of maternity allowance to her may be suspended until such notice is given to her employer;
- ii. A female employee who is about to leave her employment and who knows or has reason to believe that she will be confined within four months from the date she leaves employment must, before leaving her employment, notify her employer of her pregnancy. If she fails so to do, she shall not be entitled to receive any maternity allowance from such employer.

The failure to give any such notice within the period specified does not prejudice the right of a female employee to receive any maternity allowance if it is found that the failure was caused by mistake or other reasonable cause.

The maternity allowance is based on the monthly wages if a worker is employed on monthly rate of pay. Otherwise, a worker is entitled to receive her ordinary rate of pay for each day of the eligible period of maternity allowance or at the rate prescribed by the Minister, whichever is higher. The minimum prescribed daily rate is 06 Malaysian Ringgit.

If a female worker, after commencing her maternity leave, dies from any cause during the eligible period (of 60 days), employer is required to pay maternity allowance to the nominee or legal representative from the day of commencement of maternity leave to the day immediately preceding her death.

Source: §37-44A of the Employment Act 1955 (Act 265); Employment (Minimum rate of maternity allowance) Regulations 1976

Protection from Dismissals

Employment of a worker is secure during the term of maternity leave. An employer who terminates the services of a female worker during maternity leave commits an offence unless the termination is based on the ground of closure of employer's business.

The restriction on dismissal extends to 90 days after expiration of the eligible period of 60 days (thus effective protection for nearly 150 days/5 months). The absence must be caused as a result of illness, certified by a registered medical practitioner, arising out of pregnancy and confinement and rendering the worker unfit to work. After expiry of maternity leave (60 days) and further expiration of 90 days, an employer may terminate a female worker or give termination notice.

A draft amendment in the Employment Act, to be tabled in the Parliament in 2019, plans to prohibit termination of employment even during pregnancy. The current law prohibits dismissal during maternity leave only.

Source: §37(4) & 42 of the Employment Act 1955 (Act 265)

Right to Return to Same Position

Right to return to same position is not expressly provided under the Employment Act. The Act prohibits dismissal of female workers during maternity leave (60 days) and illness related to pregnancy and confinement (90 days). Since, dismissal is not allowed, the right to return is presumably provided under the law.

Source: §37(4) & 42 of the Employment Act 1955 (Act 265)

Breastfeeding

There is no provision on nursing and breastfeeding breaks under the Employment Act for new mothers in order to feed their children during working hours.

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

Malaysia has ratified the Convention 81 only.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Occupational Safety and Health Act 1994 (Act 514)
- Factories & Machinery Act 1967
- Occupational Safety & Health (Use & Standards of Exposure of Chemical Hazardous to Health) Regulations 2000
- Employment Act 1955 (Act 265)

Employer Cares

The provisions on health and safety are found in the Occupational Safety and Health Act 1994 (OSHA). In accordance with the Act, it is “the duty of every employer and every self-employed person to ensure, so far as is practicable, the safety, health and welfare at work of all his employees.

The above duty includes the provision and maintenance of plant and systems of work which are safe and without risks to health; arrangements for ensuring safety and absence of risks to health in connection with the use or operation, handling, storage and transport of plant and substances; provision of necessary information, instruction and supervision; provision and maintenance of safe means of access and exit; and provision and maintenance of a safe working environment with adequate facilities for workers’ welfare at work.

It is the duty of every employer and self-employed person to prepare (and revise as and when necessary) a written safety and health policy and indicate the organization and arrangements for carrying out that policy. Employer is required to bring the policy and any revision in it to the notice of all his employees.

In the case of contravention to the above provisions, a person, on conviction, is liable to a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding two years or both.

Source: §15-19 of the Occupational Safety and Health Act 1994 (Act 514)

Free Protection

The following legislation has provisions on personal protective equipment for protection against hazardous substances: Factories & Machinery Act 1967 and its regulations; Occupational Safety & Health Act 1994 and the Occupational Safety & Health (Use & Standards of Exposure of Chemicals Hazardous to Health) Regulations 2000.

Personal protective equipment (PPE) including goggles, gloves, leggings, caps, footwear and protective ointment or lotion is first required under the Factories & Machinery Act 1967. The cost for the provision of PPE cannot be shifted to the worker since the Occupational Safety & Health Act 1994 states that “No employer shall levy or permit to

be levied on any employee of his any charge in respect of anything done or provided in pursuance of this Act or any regulation made there under”.

It is the duty of a worker to wear (or use) the PPE provided by the employer for the purpose of preventing risks to the safety and health and comply with instructions on OSH provided by the employer or any other person under the OSH Act.

Occupational Safety & Health (Use & Standards of Exposure of Chemical Hazardous to Health) Regulations 2000 considers provision of approved personal protective equipment as a control measure (for controlling chemicals hazardous to health).

Sources: §24 of the Factories & Machinery Act 1967; §24 & 26 of the Occupational Safety & Health Act 1994; Regulation 15(1) of the Occupational Safety & Health (Use & Standards of Exposure of Chemical Hazardous to Health) Regulations 2000

Training

In accordance with the OSHA 1994 (Act 514), it is general duty of an employer to provide instruction and training to its workers.

In accordance with Factories and Machinery Act 1967, no person may be employed at any machine or in any process, being a machine or process liable to cause bodily injury, unless he has been fully instructed as to the dangers likely to arise and the precautions to be observed, and has either received sufficient instruction in work at the machine or process or is under adequate supervision by a person who has knowledge and experience of the machine or process.

Occupational Safety and Health (Use and Standards of Exposure of Chemicals Hazardous to Health) Regulations 2000 also has provisions on training and instruction for workers and requires the employer to provide such information, instruction and training as may be necessary to enable them to know the risk to health created by such exposure; and the precautions which should be taken.

Employer is required to review and conduct the training programme - (a) at least once in two years; (b) whenever there is a change in the hazard information on the chemicals hazardous to health, safe work practices or control measures; or (c) each time employees are assigned to new tasks or new work areas where they are exposed or likely to be exposed to chemicals hazardous to health.

A training program must also be documented and kept for inspection by any occupational safety and health officer.

Sources: §26 of the Factories & Machinery Act 1967; §15 of the Occupational Safety & Health Act 1994; Regulation 22 of the Occupational Safety & Health (Use & Standards of Exposure of Chemical Hazardous to Health) Regulations 2000

Labour Inspection System

There is no one specific law on labour inspection system in the country. Occupational Safety and Health Act 1994 talks about the powers of entry, inspection, examination, seizure and etc. and §43 is on further provisions in relation to inspection. These §are only applicable to inspections done by the occupational and safety health officer. Meanwhile, the Part XIV of the Employment Act 1955 talks about inspection that can be done by the Director General.

The labour inspection system depends on the power and authorities given by the written law. Referring back to the relevant legislations, the OSHA 1994 and EA 1955, the authorities' powers are different. Besides the fact that it is carried out by different person in charge; health officer or Director General, the power to inspect is slightly different. For the Director General, he or she shall have power to enter without previous notice at all times any place of employment where he has reasonable grounds for believing that employees are employed and to inspect any building occupied or used for any purpose connected with such employment and to make any inquiry which he considers necessary in relation to any matter within the EA 1995. On the other hand, the occupational safety and health officer shall inspect and examine a place of work other than residential purposes if he received consent from the owner of if he has reasonable cause to believe that there has been an act contradictory to the OSHA 1994. The Director General can enter without giving any notice but the officer has to produce the certificate of authorization enter. These are based on §39(1) of OSHA 1994 and §65 of EA 1995 respectively.

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

Malaysia has not ratified the Conventions 102, 121 & 130.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

- Employment Act 1955 (Act 265)
- Employees' Social Security Act 1969 (Act 4)
- Workmen's Compensation Act 1952
- Workmen's Compensation (Foreign Workers' Compensation Scheme) (Insurance) Order 2005

Income

Paid sick leave is provided under the Employment Act 1955. An employee is entitled to sick leave after examination and recommendation by a registered medical practitioner appointed by the employer or by any other registered medical practitioner or medical officer. The examination is done at the expense of employer. The length of fully paid sick leave (paid at the ordinary rate of pay for every day of sick leave) depends on the length of employment and the need for hospitalization.

If hospitalization is not necessary, the sick leave in aggregate is as follows:

- 14 calendar days if length of employment is less than two years;
- 18 calendar days if employee has worked for two or more years but less than five years;
- 22 calendar days if the length of employment is five years or more;

If hospitalization is required (or employee is deemed ill enough to be hospitalized), as certified by such registered medical practitioner or medical officer, the paid sick leave in aggregate is 60 days. The total aggregate leave (hospitalization and non-hospitalization) is 60 days. Employee is required to get the certificate from the registered medical practitioner or medical officer (as required) and inform the employer of such leave within 48 hours of its commencement. A contravention to this is deemed absence from work without permission of employer and without reasonable excuse.

Source: §60F of the Employment Act 1955 (Act 265)

Medical Care

Employees' Social Security Act 1969 has provisions on medical benefits to workers requiring medical care.

An insured person whose condition requires (as a result of employment injury) medical treatment and attendance is entitled to medical benefit. The medical benefit can be provided in the form of outpatient treatment and attendance in a hospital, visits to the home of insured person or treatment as inpatient in a hospital. Government hospitals and physicians under contract with the Social Security Organization provide care. The scale of medical benefits is determined by the Social Security Organization (SOC SO).

Source: §37-39 of the Employees' Social Security Act 1969 (Act 4)

Job Security

Employment of a worker is secure during the term of sick leave since employer pays the benefit (at the ordinary rate of pay) for the duration of sick leave.

Source: §60F of the Employment Act 1955 (Act 265)

Disability / Work Injury Benefit

Work injury benefits are provided under the Employees' Social Security Act 1969 and managed by the Social Security Organization (SOCSO). Employees earning up to 3,000 ringgits per month are covered including those covered previously but now earning more than the minimum amount mentioned above. There can be voluntary coverage of employees earning more than 3,000 ringgits per month if there is an agreement between the worker and employer. Both the worker and employer contribute towards the scheme. There are two categories of employment injury and invalidity schemes. The first category is for those employees who are under 60 years of age except for those who have reached 55 years and have made no prior contribution. In this case, the contribution rates are 1.75% and 0.5% of employee's monthly wage for employer and worker respectively. The second category is for employees who are 60 years old and are still working. In this case, the contribution is paid solely by the employer and is 1.25% of the monthly wage. Accidents must arise out of and in the course of employment. Accidents while commuting to and from work are also covered after a police report.

A worker is entitled to temporary disability benefit if he/she is certified by a medical doctor to be unfit for work for at least four days.

80% of the insured person's average daily wage in the six months before the disability began is paid during the employee's medical leave. The minimum daily benefit is 30 ringgits while maximum benefit is 105.33 ringgit.

In the event of permanent partial disability, a percentage of full pension is paid according to the assessed degree of disability (proportionate to the loss of earning capacity). If the disability is assessed as less than 20%, the benefit can be paid as a lump sum. If the disability is at least 20%, a monthly benefit and may request up to 20% benefit as lump sum. In the case of permanent total disability, 90% of the insured person's average daily wage is paid as the benefit. The minimum daily benefit is 30 ringgits while the maximum daily benefit is 118.50 ringgit. There is a provision for constant attendance allowance (at the rate of 40% of an insured person's pension with a maximum amount of 500 ringgits per month) if a person is so severely incapacitated that he/she requires the constant attendance of others to perform daily functions.

In the case of fatal employment injury, the benefits are payable to dependents which include widow, widower and child (under the age of 21 except those who are disabled). If there are no immediate dependents, i.e., no widow, widower or child(ren), the benefit

can be provided to siblings (brothers and sisters), parents as well as grandparents (if the insured person's parents are deceased). 60% of the full daily benefit is paid to the widow (paid to widower only if he was already dependent) and 40% to unmarried children under 21 (until completion of graduate degree, no limit in the case of disabled). 60% of the daily benefit is paid in the case of full orphans. The full daily benefit is 90% of the insured person's daily average wage in the six months before death. The minimum daily benefit is 30 ringgits while the maximum daily benefit is 118.50 ringgit. Spousal benefit continues in the case of remarriage. If there is no widow, widower or children, 40% of the daily benefit is paid to parents (to grandparents if parents are deceased) and 30% to unmarried brothers and sisters under the age of 21 years.

There is also provision for funeral grant up to the 1500 ringgits and is paid to the person who paid for the funeral. The funeral benefit is paid (in order of priority) to surviving spouse(s), orphans or parents.

While the Employees' Social Security Act 1969 covers local workers, the foreign workers are covered under the Workmen's Compensation Act 1952. With effect from 1993, provisions of 1952 are applicable only on foreign workers. All foreign employees (not covered under SOCSO) whose earnings are less than 500 ringgits per month as well as all manual workers irrespective of their age are covered under the Workmen's Compensation Act. In accordance with this Act, it is mandatory for all employer to insure all foreign workers engaged by them through Foreign Workers Compensation Scheme (FWCS). The terms of the policy must have been approved by the Director-General of Labour, as required by Paragraph 7 of the Workmen's Compensation (Foreign Workers' Compensation Scheme) (Insurance) Order 2005 ("Workmen's Compensation Order 2005").

The following benefits are available through the insurance company:

- i. 18,000 ringgits or 60 times monthly salary whichever is less in the case of death from occupational accident / disease;
- ii. 23,000 ringgits or 60 or 84 times monthly salary (depending on the age of worker) whichever is less in the case of permanent total disablement;
- iii. 165 ringgits or one-third of the monthly salary (up to 60 months) whichever is lower for temporary disablement; and
- iv. 1,000 ringgits of the deceased worker has no dependents

Sources: §15-30 of the Employees' Social Security Act 1969; §8 of the Workmen's Compensation Act 1952; Workmen's Compensation (Foreign Workers' Compensation Scheme) (Insurance) Order 2005

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

Malaysia has not ratified any of the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give "due regard to the working ability of elderly persons" and "demographic, economic and social criteria, which shall be demonstrated statistically". Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

Regulations on social security:

- Minimum Retirement Age Act 2012
- Employees' Social Security 1969 (Act 4)
- Employees Provident Fund (EPF) Act 1991

Pension Rights

Under the Minimum Retirement Age Act 2012, effective from 1 July 2013, the retirement age for all private sector employees is 60 years. A higher retirement age may also be set by the Minister.

An employer who prematurely retires his employee before he attains the minimum retirement age is liable to a fine not exceeding 10,000 ringgits. A premature retirement however does not include an optional retirement (where the retirement age is agreed in the contract of service or collective agreement) or termination of contract of service for any other reason other than age.

Any retirement age in the contract of service or collective agreement which is less than the minimum retirement age as provided by the Act is deemed void and substituted with the minimum retirement age as provided by the Act, i.e., 60 years.

The old age benefits are provided under the Employees Provident Fund (EPF) Act which covers all employees with certain exceptions. EPF membership is compulsory for all private sector employees as well non-pensionable public sector employees. Voluntary coverage is available for domestic workers, out workers, self-employed persons, and foreign workers. The total maximum contribution is 24% of the individual's monthly salary (employer contribution: 13%; employee contribution: 11%). Employer contribution depending on the age of the worker and workers' wages ranges between 6% to 13%. Employee contribution, depending on the age of workers, ranges between 5.5% and 11%.

EPF contributions may be withdrawn in the following cases: at age 55 years; in the case of permanent disability; in the case of death; on leaving Malaysia permanently. The EPF account is divided into two parts: Account 1 (70% of the monthly contributions) and Account 2 (30% of the monthly contributions). Withdrawals from Account 1 are possible for retirement, at the age of 55 years, where the balance of both accounts is withdrawn under following conditions: as a lump sum; as periodic payments; as a combination of lump sum and periodic payments. Withdrawals from Account 2 are possible once the insured person has attained the age of 50 years, for financing the education or medical expenses of the insured person or that of children.

Sources: Minimum Retirement Age Act 2012; Employees Provident Fund (EPF) Act 1991

Dependents' / Survivors' Benefit

The dependents or survivors' benefits are provided through Social Security Organization (SOCSO) established under Employees' Social Security Act of 1969. Employees initially earning 3,000 ringgits per month are covered and remain members throughout their working life. Voluntary coverage of employees earning more than 3,000 ringgits per months is possible on agreement between the worker and employer.

The contribution rates are 1.75% and 0.5% of employee's monthly wage for employer and worker respectively. The survivors or dependents' benefits are payable to eligible dependents of an insured person who dies irrespective of the cause of death (not related to employment). It is paid to the eligible dependents of an insured person who dies before attaining the age of 60 years and fulfils the qualifying conditions for full or reduced pension.

The deceased person is deemed to have completed full qualifying period (and thus eligible for full pension) if he had at least 24 months of contributions in the last 40 months before death or had contributions in at least two-thirds (66.7%) of the months since first becoming insured, with a total of at least 24 months of contributions.

In order to qualify for a reduced survivors' pension, the deceased must have paid contributions for at least one-third (33%) of the months since first becoming insured, with a total of at least 24 months of contributions.

The survivors' benefits are payable to dependents which include widow, widower and child (under the age of 21 except those who are disabled). If there are no immediate dependents, i.e., no widow, widower or child(ren), the benefit can be provided to siblings (brothers and sisters), parents as well as grandparents (if the insured person's parents are deceased). 60% of the full daily benefit is paid to the widow (paid to widower only if he was already dependent) and 40% to unmarried children under 21 (until completion of graduate degree, no limit in the case of disabled). If there is no widow, widower or children, 40% of the daily benefit is paid to parents (to grandparents if parents are deceased) and 30% to unmarried brothers and sisters under the age of 21 years.

If the deceased was a disability pensioner, 100% of the disability pension is paid. If the deceased was employed at the time of death, 50% to 65% of the insured person's average monthly earnings in the 24 months before death is paid, depending on the number of contributions. The initial percentage is 50% which rises by 1% for every 12-month contributions paid in excess of the first 24 months however it does not exceed 65. The minimum survivors' pension is 475 ringgits. The rate for reduced survivors' pension is 50% of the average monthly wage subject to the condition that minimum pension is 475 ringgits.

There is also provision for funeral grant up to the 1500 ringgits and is paid to the person who paid for the funeral. The funeral benefit is paid (in order of priority) to surviving spouse(s), orphans or parents.

Source: §20A of the Employees' Social Security Act 1969

Unemployment Benefits

Currently, there is no provision for unemployment benefits in the labour and social security laws of Malaysia.

Invalidity Benefits

Invalidity is defined as permanent morbid condition that is unlikely to be cured and which results in an employee losing at least one-third (33%) of his or her capability compared to a normal individual, which ultimately causes a loss of income for the employee. Invalidity must be caused by reasons or circumstances not related to work.

In order to be eligible for invalidity benefit, a person must be younger than 60, with at least a 66.7% assessed loss of earning capacity, have at least 24 months of contributions in the last 40 months; or have contributions in at least 66.7% of the months since first becoming insured, with a total of at least 24 months of contributions. An invalidity grant is paid if the insured person is ineligible for a disability pension but has at least 12 months of contributions.

50% to 65% of the insured person's average monthly earnings in the 24 months before death is paid, depending on the number of contributions. The initial percentage is 50% which rises by 1% for every 12-month contributions paid in excess of the first 24 months however it does not exceed 65. The minimum survivors' pension is 475 ringgits. There is a provision for constant attendance allowance (at the rate of 40% of an insured person's pension with a maximum amount of 500 ringgits per month) if a person is so severely incapacitated that he/she requires the constant attendance of others to perform daily function

Source: §16-20 & 21 of the Employees' Social Security Act 1969

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Malaysia has ratified the Convention 100 only.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Not clearly provided in ILO Conventions. However, sexual intimidation/harassment is gender discrimination.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Federal Constitution of Malaysia 1957
- Employment Act 1955 (Act 265)
- Penal Code 1936 (Act 574)
- 1999 Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace

Equal Pay

The Federal Constitution in its article 8 prohibits *discrimination against citizens on the ground only of religion, race, descent, place of birth or gender* however this provision is applicable to the legislature, government authorities and the Parliament and the protection afforded under this Article does not apply to the private sector.

There is no separate provision on equal pay for equal work or work of equal value in labour laws of Malaysia.

Source: §8 of the Federal Constitution of Malaysia 1957

Sexual Harassment

Sexual harassment has been defined under the Employment Act 1955 through an amendment in the Act in 2012. Prior to this, Malaysia had no law governing sexual harassment and the victims of sexual harassment could only use provisions of the 1999 Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace. The Code acted only as a guideline for the employers and was not legally binding.

With the amendment in Employment Act, sexual harassment is defined as “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”.

A worker can file a complaint of sexual harassment against another employer or employer. An employer can also file a complaint of sexual harassment against an employee. On receipt of a complaint, an employer is required to inquire into the complaint in a prescribed manner. An employer however may refuse to inquire into a complaint if the complaint of sexual harassment by the complainant was previously inquired into and no sexual harassment was proven or if the employer is of the opinion that the complaint is frivolous, vexatious or is not made in good faith. A complainant dissatisfied with the refusal of the employer to inquire into his/her complaint of sexual harassment may refer the case to Director General. The Director General may decide to inquire into the complaint and direct the employer to conduct such inquiry. The director General may also agree with the decision of the employer not to conduct any inquiry. If the complaint of sexual harassment is filed against employer, the Director General may inquire into the complaint in a prescribed manner.

As a result of the inquiry on complaint of sexual harassment against an employee, an employer may take following action:

- a) Dismiss the employee without notice;
- b) Downgrade the employee;
- c) Impose any other punishment as deemed fit (where punishment of suspension without wages is imposed, it must exceed a period of two weeks)

As a result of inquiry (conducted by the Director General) on complaint of sexual harassment against the employer where harassment is proven, the complainant may terminate his/her contract of service without notice. However, in such case, the worker/complainant is entitled to termination notice pay, termination benefits and indemnity.

An employer who fails to inquire into the complaints of sexual harassment commits an offence and on conviction is liable to a fine not exceeding 10,000 Malaysian Ringgit.

The provisions of Penal Code are also relevant here. §509 of the Code states that “Whoever, intending to insult the modesty of any person, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such person, or intrudes upon the privacy of such person, shall be punished with imprisonment for a term which may extend to five years or with fine or with both”.

A draft amendment in the Employment Act, to be tabled in the Parliament in 2019, prohibits employers from refusing to inquire into any complaint of sexual harassment. The current legislation allows employers to refuse to inquire into sexual harassment complaints if the sexual harassment was previously inquired into and it was not proven or where employer considers the complaint to be frivolous, vexatious or is not made in good faith. The draft amendment further requires employers to have a written code of conduct on prevention of sexual harassment and have it displayed in a conspicuous place at the workplace.

Source: §02 & 81A-G of the Employment Act 1955 (Act 265); §509 of the Penal Code 1936 (Act 574); 1999 Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace

Non-Discrimination

Right to equality and non-discrimination is provided and protected under article 8 of the Federal Constitution of Malaysia. First part of the article states that “all persons are equal before the law and entitled to the equal protection of the law”. The second part states that:

“There shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment”.

Article 153 of the Federal Constitution requires the King of Malaysia to “safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the legitimate interests of other communities”. He is also required to reserve for these groups such proportion that he deems reasonable of:

- (iv) positions in the public service (other than the public service of a State);*
- (v) scholarships, exhibitions and other similar educational or training privileges or special facilities given or accorded by the Federal Government; and*
- (vi) any permit or license for the operation of any trade or business as required by federal law, subject to the provisions of that law.*

The provisions in the Malaysian legislation on anti-discrimination can be found mainly in Industrial Relations Act 1967 and Employment Act 1955. The 1967 law prohibits employers from discrimination against a person in regard to employment, promotion, any condition of employment or working conditions on the ground that he is or is not a member or officer of a trade union. Similarly, the Employment Act stipulates that an employee may file a complaint to the Director General that he/she is being discriminated against in relation to another (local or foreign) employee in respect of employment conditions. Thus, the explicit provisions on non-discrimination are found only for trade union membership or a worker’s nationality.

A draft amendment in the Employment Act, to be tabled in the Parliament in 2019, plans to expressly prohibit employers from discriminating employment seekers and workers on the grounds of gender, religion, race, disability, language, marital status and pregnancy in employment related matters.

Source: Article 8 & 153 of the Federal Constitution of Malaysia 1957; Section 5(1)(c) of the Industrial Relations Act 1967; Section 60(L)(1) of the Employment Act 1955

Equal Choice of Profession

No provisions could be located in the Constitution or laws promoting equal choice of profession for men and women. Provisions of article 8 of the Federal Constitution can be used to a certain extent which states that *“There shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any lawor in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment”*.

While the current Employment Act prohibits employment of women in underground work as well as during night hours (10pm to 5am), a draft amendment in the Employment Act, to be tabled in the Parliament in 2019, plans to repeal all such discriminatory and so-called protective provisions.

Source: §8 of the Federal Constitution of Malaysia 1957; Section 34-36 of the Employment Act 1955

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

Malaysia has ratified both Conventions 138 & 182.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Children and Young Persons (Employment) Act 1966
- Education Act 1996

Minimum Age for Employment

Employment of children and young persons is regulated under the Children and Young Persons (Employment) Act 1966. The Act defines child as “any person who has not completed his fifteenth year of age” and young person as “any person who, not being a child, has not completed his eighteenth year of age”.

Minimum age for employment is thus 15 years. The same age has been declared by Malaysia while ratifying the ILO Minimum Age Convention, 1973 (No. 138). Under the Education Act 1996, only six years of primary education is compulsory.

Sources: §01 of the Children and Young Persons (Employment) Act 1966; §29A of the Education Act 1996

Minimum Age for Hazardous Work

The minimum age for hazardous work is 18 years since the Children and Young Persons Employment Act 1966 states that “No child or young person shall be, or be required or permitted to be, engaged in any hazardous work, or any employment other than those specified in this §”. Hazardous work means “any work that has been classified as hazardous work based on the risk assessment conducted by a competent authority on safety and health determined by the Minister”. The Act further specifies that “No child or young person shall be, or be required or permitted to be, engaged in any employment contrary to the provisions of the Factories and Machinery Act 1967 [Act 139], the Occupational Safety and Health Act 1994 [Act 514] or the Electricity Supply Act 1990 [Act 447] or in any employment requiring him to work underground”.

Children under the age of 15 years are not allowed to:

- i. work between 8 p.m. and 7 a.m.;
- ii. work for for more 3 consecutive hours without a period of rest (at least 30 minutes);
- iii. work more than 6 hours a day; if a child is attending school, total working and schooling hours cannot exceed 7 hours a day; and
- iv. commence work without having a period of rest of at least 14 consecutive hours

The types of employment approved for children include:

- a. employment involving light work suitable to his capacity in any undertaking carried on by his family;
- b. employment in public entertainment as prescribed under a license;
- c. employment requiring a child to performs work in a school, training institution or training vessel;
- d. employment as an apprentice

Young persons between the age of 15 and 18 years are not allowed to:

- i. work between 8 p.m. and 6 a.m.;
- ii. work for more than 4 consecutive hours without a period of rest (at least 30 minutes);
- iii. work for more than 7 hours a day; if attending school, total working and schooling hours cannot exceed 8 hours a day; and
- iv. commence work without having a period of rest of at least 12 consecutive hours

The types of employment approved for young persons include:

- a. all employment approved for children as quoted above;
- b. any employment suitable to young person's capacity whether or not the undertaking is carried out by his family;
- c. employment as a domestic servant;
- d. employment in an industrial undertaking (suitable to his capacity);
- e. employment in any office, shop (including hotels, bars, restaurants and stalls), godown, factory, workshop, store, boarding house, theatre, cinema, club or association; ^[1]_{SEP}

A female young person may be engaged in any employment in hotels, bars, restaurants, boarding houses or clubs if such establishment are under the management or control of her parent or guardian however, she may be employed in a club (not managed by her parent or guardian) with the approval of Director General.

The Minister may, by Order, prohibit any child or young person from engaging or from being engaged in any of the employments (allowed under the Act) if he is satisfied such employment would be detrimental to the interests of the child or young person, as the case may be.

Sources: Children and Young Persons (Employment) Act 1966

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

Malaysia has ratified both Conventions 29 & 105.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- Federal Constitution of Malaysia 1957
- Penal Code 1936 (Act 574)
- Employment Act 1955 (Act 265)

Prohibition on Forced and Compulsory Labour

Forced and compulsory labour is prohibited under the Federal Constitution and Penal Code. In accordance with article 6 of the Constitution, no person can be held in slavery. It prohibits all forms of forced labour however allows Parliament to enact law requiring compulsory service for national purposes. However, work or service required from a person as a consequence of conviction or finding guilty in a court of law is not considered forced labour provided that such work or service is carried out under the supervision and control of a public authority.

Compulsory labour is also prohibited under Penal Code which states that “whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both”.

Source: §6 of the Federal Constitution of Malaysia 1957; §374 of the Penal Code 1936 (Act 574)

Freedom to Change Jobs and Right to Quit

Workers have total freedom to change jobs and have the right to quit after serving agreed notice. The minimum term of notice period (as provided under Employment Act), is as follows:

- i. Four weeks if length of employment is less than two years;
- ii. Six weeks if employee has worked for two or more years but less than five years; and
- iii. Eight weeks if the length of employment is five years or more

Source: §12 of the Employment Act 1955 (Act 265)

Inhumane Working Conditions

The general weekly working hours, as stated in the Employment Act 1955, are eight (8) hours a day and forty-eight (48) hours a week. The maximum overtime hours are 104 hours a month as stated under Employment Act and Employment (Limitation of Overtime Work) Regulations 1980.

Similar provisions are found in the Employment Act which requires that, except under certain circumstances prescribed in article 60A(2), no employer shall require any employee under any circumstances to work for more than twelve hours in any one day.

Source: §60A of the Employment Act 1955 (Act 265)

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize:
Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

Malaysia has ratified the Convention 98 only.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

Regulations on trade unions:

- Federal Constitution of Malaysia 1957
- Trade Union Act 1959
- Industrial Relations Act 1967

Freedom to Join and Form a Union

In accordance with the Federal Constitution of Malaysia, all citizens have the right to form associations however it allows restrictions as deemed necessary or expedient in the interest of the security of the Federation or any part thereof, public order or morality. The right to association and to form and join unions are regulated under the Industrial Relation Act 1967 (Act 177) and Trade Union Act 1959 (Act 262).

Trade union is defined as any association or combination of workmen or employers, being workmen, whose place of work is in Peninsular Malaysia, Sabah or Sarawak, as the case may be, or employers employing workmen in Peninsular Malaysia, Sabah or Sarawak, as the case may be within any particular establishment, trade, occupation or industry or within any similar trades, occupations or industries. Both temporary and permanent workers are allowed to form and join unions.

In accordance with Industrial Relation Act 1967, workers in Malaysia have the right to form and join trade union. Employers are prohibited to prevent a worker from joining a union by putting a condition in contract of service. Moreover, no employer may refuse to employ a worker on the grounds that he is a trade union member or officer. In addition, no employer may discriminate against a worker on the grounds that he is a trade union member or officer and. No worker may be threatened with dismissal or is dismissed if he proposes to join a trade union or if he participates in union activities. The Act further requires that no person may interfere with, restrain or coerce a workman or an employer in the exercise of his rights to form and assist in the formation of and join a trade union and to participate in its lawful activities. It also prohibits the trade union of employers and workers to interfere in each other's establishment, functioning and administration.

Every trade union must be registered with the Director General of Trade Unions (DGTU). A trade union is required to submit an application for registration, signed by at least seven members. Once the DGTU accepts the application for registration, it issues a certificate of registration to the union which is the conclusive evidence that trade union is duly registered. Registration of a trade union can be cancelled by the DGTU for many reasons. Some of these include:

- a) If the certificate of registration was obtained or issued by fraud or mistake;
- b) If the object(s), rules or constitution of the trade union are unlawful;
- c) If the trade union is being used for unlawful purpose or its funds have been expended in an unlawful manner

A trade union enjoys rights, immunities and privileges only once it is registered.

Source: §10 of the Federal Constitution of Malaysia 1957; Part III and IV of the Trade Union Act 1959; §4-5 of the Industrial Relations Act 1967

Freedom of Collective Bargaining

In order to engage in collective bargaining, a trade union must be registered with the DGTU and granted recognition by the employer. The Industrial Relations Act 1967 stipulates the mechanism and requirements for trade union recognition. A trade union may obtain recognition by serving a notice to the employer with a claim for recognition. Within 21 days, employer is required to either accord recognition or inform the trade union of the grounds for not granting recognition. If the employer does not respond in the 21-day period or decides not to grant recognition, trade union may report this matter to the Director General of Industrial Relations (DGIR) within 14 days. DGIR may ascertain the competence of the trade union to represent workmen and determine the percentage of workmen (who are members of the claimant trade union) through secret ballot. Once this information is available, DGIR notified the Minister of Human Resources who gives final decision on the recognition claim.

Once a trade union is accorded recognition, either party may invite the other to commence collective bargaining. This invitation for bargaining is in writing and may include one or more of the following proposals: provision for training to enhance skills and knowledge of the workmen; provision for an annual review of the wage system; and provision for a performance-based remuneration system.

If an invitation to collective bargaining has been refused or is not accepted within 14 days or where collective bargaining has not commenced within 30 days from the date of receipt of reply, the party making the invitation may notify the DGIR in writing who may take such necessary steps to bringing the parties for commencing collective bargaining without any delay. If the collective bargaining still does not start, a trade dispute is deemed to exist.

A collective agreement is in writing and is signed by all the parties to the agreement. A collective agreement sets out the terms of the agreement including the names of the parties; duration of the agreement (cannot be less than three years); procedure for its modification and termination; and procedure for adjustment of any question that may arise with regard to its implementation or interpretation. Terms or conditions in a collective agreement which are less favourable than those provided under the law are null and provisions of law are substituted in their place. A signed copy of the collective agreement must jointly be deposited by the parties to Registrar within one month of its entry into force.

Source: §9 & 13-17 of the Industrial Relations Act 1967

Right to Strike

A “strike” is broadly defined under the Trade Union Act and IR Act as:

“the cessation of work by a body of workers acting in combination, or a concerted refusal or a refusal under a common understanding of a number of workers to continue to work or to accept employment, and includes any act or omission by a body of workers acting in

combination or under a common understanding, which is intended to or does result in any limitation, restriction, reduction or cessation of or dilatoriness in the performance or execution of the whole or any part of the duties connected with their employment.”

Industrial action including strikes, lockouts and pickets are governed by laws. The Trade Union Act proves that a trade union may call for a strike only if:

- a. it obtains the consent of at least two-thirds of its total members (by secret ballot);
- b. it has allowed for at least 7 seven days to pass after submitting the results of secret ballot to the DGTU;
- c. it proposed strike in compliance with trade union rules and other applicable legislation

The Industrial Relations Act has further provisions on strikes and lockouts. A strike or lockout is deemed illegal if it is declared or commenced in contravention of the provisions of IR Act (strikes in essential services and other conditions/situations as specified under §43-44 of the Act); or has any other objective than the furtherance of a trade dispute between the workmen on strike and their employer or between the employer who declared a lockout and his workmen. A lockout declared by the employer as a result of an illegal strike (or a strike declared in consequence of an illegal lockout) is not considered illegal. Longer notice duration are required for declaring a strike in essential services (21-day notice). List of essential services is provided under first schedule of the IR Act.

A worker who commences, continues or acts in furtherance of an illegal strike is, on conviction, liable to imprisonment for a term not exceeding one year or to a fine not exceeding one thousand ringgit or to both and a further fine of fifty ringgits for everyday during which such offense continues. Similar penalty is found for employers for commencing, continuing or acting in furtherance of illegal lockouts.

Peaceful picketing for the purpose of obtaining or communicating information, or persuading or inducing an employee to work or abstain from working is permissible. However, picketing should not be done by many employees so as to intimidate any person, obstruct the approach thereto or egress therefrom of the employer’s premises or workplace, or lead to a breach of the peace. This penalty is also stipulated for those who instigate or incite others to take part in or act in furtherance of an illegal strike or lockout. A person who knowingly provides financial support in aid of illegal strike or lockout is, on conviction, liable to imprisonment for a term not exceeding 6 months or a fine not exceeding five hundred ringgit or both. It is interesting to note that all these offenses are seizable (cognizable where arrest without warrant is possible) and non bailable.

Source: 25A of the Trade Union Act 1959; §38-50 of the Industrial Relations Act 1967



DECENT WORK QUESTIONNAIRE

DECENTWORKCHECK.ORG

Check

DecentWorkCheck Malaysia is a product of WageIndicator.org and
www.gajimu.my/utama



National Regulation exists



National Regulation does not exist

01/13 Work & Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

03/13 Annual Leave & Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

04/13 Employment Security

10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>





05/13 Family Responsibilities

15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>





06/13 Maternity & Work

18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>





* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy
<i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |





07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |









08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |













09/13 Social Security

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |



10/13 Fair Treatment

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |




* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
Age		<input type="checkbox"/>	<input type="checkbox"/>
Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
Language		<input type="checkbox"/>	<input type="checkbox"/>
Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40 I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





11/13 Minors & Youth

41. In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42. In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

12/13 Forced Labour

43. I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44. My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45. My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

13/13 Trade Union Rights

46. I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47. I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48. My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49. I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

DECENTWORKCHECK.ORG

Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Malaysia scored 36 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.