

Employment (Amendment) Bill 2021: Key amendments to the Employment Act 1955

In brief

Amendments to the Employment Act 1955 ("**Act**") have been long overdue. On 30 March 2022, the Employment (Amendment) Bill 2021 ("**Bill**") was passed in Dewan Negara (Senate). The amendments have not come into force and there is currently no indication as to when this might happen. In this alert, we summarise the key amendments introduced by the Bill.

In depth

The amendments introduced under the Bill are driven by Malaysia's commitment to comply with international labour law standards and practices required under the Trans-Pacific Partnership Agreement, the Malaysia-United States Labour Consistency Plan and the International Labour Organisation.

Some of the key amendments to the Act are summarised below.

1. Extension of Maternity Leave

The Bill increases maternity leave from 60 days to 98 days

2. Restriction on termination of pregnant employees

The Bill restricts employers from terminating a pregnant employee or an employee if suffering from an illness arising out of pregnancy except on grounds of misconduct, wilful breach of a condition of the employment contract or closure of the employer's business.

3. Introduction of Paternity Leave

Married male employees are entitled to 7 consecutive days of paternity leave.

4. Notice on sexual harassment

Employers are required to conspicuously exhibit a notice to raise awareness of sexual harassment at the workplace.

5. Employment of foreign employees

Employers must obtain prior approval from the Director General of Labour ("**Director General**") to hire foreign Employment Act employees. Failure to do so is an offence and on conviction, the employer shall be liable to a fine not exceeding RM 100,000 and/or to imprisonment for a term not exceeding 5 years.

6. Presumption of employment

The Bill provides that, unless proven otherwise, an individual shall be presumed to be an employee if:

- i. his manner or hours of work are subject to control by another person;
- ii. he is provided with tools, materials or equipment by another person to execute his work;
- iii. his work constitutes an integral part of another person's business;
- iv. his work is performed solely for the benefit of another person; or
- v. payment is made to him for work done at regular intervals and it constitutes the majority of his income.



7. Reduction in limit on regular working hours

The weekly limit on regular working hours has been reduced from 48 hours to 45 hours.

8. Discrimination

The Director General has the power to inquire and decide on any dispute relating to discrimination in employment, and make an order where necessary. The extent of the powers of the Director General is not clear nor are the types of orders the Director General may make.

Scope of employees covered under the Bill

Although the intention of the Bill is to provide enhanced employment benefits such as maternity protection and protection against discrimination, the Bill has not expanded the scope of individuals to whom the Act will be afforded protection to. Additionally, the Bill also deletes sections under the Act which provides maternity protection to all employees regardless of salary, thereby diminishing the scope of individuals who would have benefited from this provision. This means, that the new maternity protections under the Bill will now clearly apply only to those who fall within the Employment Act's ambit (i.e., those earning less than RM 2,000 in monthly wages, or are engaged in specified occupations ("**EA Employees**")).

The Minister of Human Resources had proposed that the Employment Act will, in future, be expanded through a ministerial order to cover other types of employees regardless of their wage amount (i.e. not just EA Employees). However, the details of this proposal remain unclear at this time.

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