PERSOL HR DATA BANK in APAC

MALAYSIA

Labor Laws

August 2020
introduction

While the legal systems of Malaysia and Singapore, which are both based on British laws, are quite similar, their labor laws are fairly different. For instance, when a company wishes to dismiss an employee in Malaysia, while the permission of authorities and the consent of the trade union are not required, unlike Singapore, due cause is required, and careful procedures up to dismissal are important. Furthermore, while Malaysia does not have minimum wage laws, Malaysia has guidelines related to minimum wage (Minimum Wages Order 2020), and is adopting a labor policy that is more advantageous to employees in comparison to Singapore.

Meanwhile, Malaysia’s Employment Act, which is the basic law that sets forth matters regarding the protection of employees, does not cover all employees; and there are certain provisions that are similar to those of Singapore, including that the working conditions of the employees who are not covered by the Employment Act are in principle determined pursuant to the agreement between the parties.

*Overview of Common Law and Civil Law*

Common Law is a legal system mainly in use in the UK and in nations formerly part of the British Empire (the US, Canada, Australia, New Zealand, etc.), which emphasizes decisions based upon traditions, customs, and precedent.

On the other hand, civil law developed on the European continent in nations such as France and Germany, and as a legal system compared to common law, civil law places emphasis on statutes. Japan uses a civil law legal system.
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1. Points to consider regarding labor management in Malaysia, characteristics of labor practices in Malaysia, and status of recent labor policy

1-1. Common law and East Malaysia autonomies

Unlike Japan, which adopts the civil law legal system, due to its historical background, Malaysia adopts the common law legal system based on influence from the United Kingdom, its former colonial power. Consequently, companies should have knowledge regarding judicial precedents of unwritten laws, in addition to knowledge regarding the Federal Constitution, statutes, and their subordinate regulations established by the Congress and constitutions, laws, and regulations that are prescribed in each state.

Furthermore, the States of Sabah and Sarawak in East Malaysia have numerous autonomies in light of their historical background, and in addition to having separate laws, legal qualifications are also different. Because each state has its own unique labor laws, for issues regarding this region, it is essential to consult with an attorney who is qualified in that state.

1-2. Protection of low-income workers and manual laborers

Malaysia has enacted various laws and regulations for workers who correspond to an "employee" under the Employment Act. The term "employee" under the Employment Act generally refers to low-income workers and manual laborers; a company is often required to follow careful procedures upon dismissing a worker, and it is not easy for companies to dismiss its workers. Moreover, as the government has taken measures to hold companies responsible for the management of foreign workers in recent years, companies need to take caution at every stage of employment from hiring to termination. Particularly, when a company is to treat a worker disadvantageously, such as when dismissing a worker, the company may be required to conduct an internal inspection that includes the collection of evidence and the holding of interviews, and consideration must also be given to the implementation of proper procedures. While an employment contract may be revised based on the mutual agreement between the parties, in order to prevent future disputes between the companies and the employee, companies should ensure to document the agreement between the parties pertaining to any revision of the employment contract.
1-3. Implied rights of workers, collective bargaining

In Malaysia, as a matter of custom, workers are given certain implied rights that are not pursuant to contracts or laws. For instance, companies and workers must mutually trust and respect each other, and workers are protected from wrongful dismissal. Among the above, unlike Japan, negotiations with trade unions need to be applied to and registered with the Director General of Trade Unions (DGTU), and only trade unions that are acknowledged by the company are permitted to engage in collective bargaining. Furthermore, since legal restrictions are also applicable in the course of collective bargaining, companies are advised to confirm such restrictions when engaging in negotiations with trade unions.

1-4. Status of recent labor policies

Based on the Economic Transformation Programme announced in 2010, the Malaysian government has set various numerical targets. Starting with the liberalization of service sectors, including IT, welfare, and tourism aiming at attracting foreign capital and competent foreign workers, it is anticipated that the government continues to enact legislation for various sectors, including labor laws, toward 2020; in some cases, the enacted legislations may be revised. Furthermore, as the opposition party won the general election in 2018, continuing observation on the development of government’s policies will be necessary.

In the field of labor laws, new regulations to tighten the management and responsibilities of companies for foreign workers working in Malaysia were established on January 1, 2017. Furthermore, from January 1, 2018, payment of an annual levy for foreign workers has been borne by employers instead of employees, and a company must give overtime pay and sick leave to its employees and shall not cause any employee to work without consent.

In addition to the above, the Minimum Wages Order 2020 has been attracting attention recently. In Malaysia, much discussion has been held between the public and trade unions, which have been demanding the introduction of a minimum wage system, and the companies (business owners) who have been opposing the introduction of such minimum wage system out of concern that it may lead to increased costs. However, minimum wage regulations have been established and were enforced from July 2016. Subsequently, Minimum Wages Order was issued in January 2019 and February 2020, and minimum wages were increased to RM 1,200 monthly or RM 5.77 hourly in major cities that include Kuala Lumpur and RM 1,100 monthly or RM 5.29 hourly in areas other than the major cities, respectively. Recently, penal provisions based on the Minimum Wages Order have been applied, and there was a case where the magistrate’s court ordered the payment of approximately RM 30,000 to a cleaning company that paid wages to 17 of its employees in an amount that was lower than the minimum wage.
2. Overview of basic labor laws of Malaysia

2-1. Labor laws under common law system

In the field of labor laws, precedents of labor courts, high courts, appellate courts, and federal courts are important, in addition to the laws enacted by the Congress and the State Council. When there are no corresponding provisions or examples in a specific case, precedents in the United Kingdom and other countries adopting the common law system can be used as a reference.

On a practical level, in cases where a contract has been created, companies should note that the effect of any description that differs from the provisions of the contract or any agreement outside of the contract is not easily acknowledged, and that the fair and equitable principle is not easily adopted as a general doctrine. For instance, with regard to the former (description that differs from the contract), because an employment contract for a period of one month or longer needs to be created in writing (Employment Act, Article 2, Paragraph 1 and Article 10, Paragraph 1), even if a verbal agreement that differs from the contract is reached, the description in the contract will prevail, and there is a possibility that the verbal agreement will not be acknowledged. Thus, it would be desirable to clearly specify any agreement between labor and management in a written contract in advance.

2-2. Employment Act

The Employment Act 1955 is a law that provides certain security for certain workers. This Act stipulates that workers are guaranteed to receive the payment of wages when taking annual paid leave, sick leave, or maternity leave. It should be noted that a company that violates the Employment Act may be subject to penalties.

(1) Applicability

It should be noted that the Employment Act does not apply to all workers. What is unique about the Malaysian Employment Act is that it applies to workers of specific job descriptions, including low-income workers and manual laborers, and persons corresponding to any one of the following are protected as an "employee" under the Employment Act (clause 2(1), First Schedule). For those who are not considered an "employee" under the Employment Act, the terms of employment are set based on the Employment Act and the agreement between the parties, such as employment agreements.
(i) Any person, irrespective of occupation, who has entered into an employment contract with an employer under which such person's wages do not exceed RM 2,000 a month

(ii) Any person who is engaged in manual labor (*) including such labor as an artisan or apprentice, who supervises or oversees other employees engaged in manual labor employed by the same employer in and throughout the performance of their work, who is engaged in any capacity in any vessel registered in Malaysia, or who is engaged as a domestic servant (also corresponds to cases where the monthly wage exceeds RM 2,000)

*Provided that where a person is employed by one employer partly in manual labor and partly in some other capacity, then such person shall not be deemed to be performing manual labor unless the time during which he/she is required to perform manual labor in any one wage period exceeds one-half of the total time during which he/she is required to work in such wage period.

While the foregoing Employment Act does not apply in the States of Sabah and Sarawak, similar provisions are prescribed in the labor ordinances of these states.

(2) Various types of security

The Employment Act prescribes, and guarantees, the minimum standards of labor conditions. With regard to the basic provisions of an employment contract, such as payment of wages, work hours, rest break, maternity leave, employment of women, employment related to children and juveniles, termination of employment, dismissal, and retirement allowance, those that fall below the standards are deemed invalid, and those which are advantageous to workers beyond the standards are deemed to be valid as is (Article 7 of the Employment Act). For workers not covered by the Employment Act, it is often the case that they are offered better working conditions than those prescribed by the Employment Act as it would make it difficult for employers to secure talent if they offer lower conditions to prospective employees compared with competitors.

Cf. Main types of guarantee under the Employment Act *

<table>
<thead>
<tr>
<th>Overview</th>
<th>Description of Guarantee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Working hours (Article 60A)</td>
<td>No more than 8 hours per day, 48 hours per week *</td>
</tr>
<tr>
<td>Overtime</td>
<td>No more than 104 hours per month (Employment limitation of overtime work) Reg 1980</td>
</tr>
<tr>
<td>Overtime Allowance (Monthly Wages) (Article 60, 60A, 60D)</td>
<td>On normal working day/over time: 1.5 times the hourly rate of pay</td>
</tr>
<tr>
<td></td>
<td>On rest day/within normal working hours (half day or less): 1 day rate of pay</td>
</tr>
<tr>
<td></td>
<td>On rest day/within normal working hours (exceeding half day): 2 days rate of pay</td>
</tr>
<tr>
<td></td>
<td>On rest day/over time: 2 times the hourly rate of pay</td>
</tr>
<tr>
<td></td>
<td>On public holiday/within normal working hours: 2 times the hourly rate of pay (if overtime, 3 times the hourly rate of pay)</td>
</tr>
<tr>
<td>Public Holidays (Article 60D)</td>
<td>In any calendar year, at least 11 gazetted public holidays (inclusive of 5 compulsory public holidays) and other holidays set out in the Holidays Act 1951 as public holidays</td>
</tr>
<tr>
<td>Annual Leave (may differ depending on the number of years of service) (Article 60E)</td>
<td>Less than 2 years: 8 days 2 years or longer and less than 5 years: 12 days 5 years or longer: 16 days</td>
</tr>
<tr>
<td>Sick Leave (may differ depending on the number of years of service) (Article 60F)</td>
<td>Less than 2 years: 14 days 2 years or longer and less than 5 years: 18 days 5 years or longer: 22 days If hospitalization is required: up to 60 days including the number of sick of days stated above</td>
</tr>
<tr>
<td>Maternity Leave (Article 37)</td>
<td>60 consecutive days (may take from the day 30 days immediately prior to the confinement)</td>
</tr>
</tbody>
</table>
*1 For part-time workers, separate conditions are stipulated (Employment (Part-time Employee) Regulations 2010).

*2 Flextime system / exceptions for young persons (Article 60C, Children and Young Persons (Employment) Act) are stipulated.

*3 For female workers, restrictions for night shift (10:00 p.m. to 5:00 a.m.) (Article 34 (1)) etc. are provided.

### (3) Guarantee that applies to all workers

Among specific provisions that were recently added to the Employment Act, there are those that apply irrespective of the amount of wages under the Employment Act (e.g. maternity leave, provisions related to sexual harassment). Companies need to note that the parties may not be able to agree to conditions lower than the standard stipulated in the Employment Act based on court precedents.

### 2-3. Other laws

#### (1) Trade Unions Act

(i) **Trade Unions Act 1959**

This law prescribes matters related to the activities and establishment of trade unions.

(ii) **Industrial Relations Act 1967**

This law prescribes the relation of companies and workers/trade unions and sets forth the means for resolving labor disputes between labor and management.

#### (2) Social security

(i) **Employees Provident Fund Act 1991**

This law prescribes matters related to the employee's provident fund, which is a pension plan run by the government. Both companies and workers are obligated to participate in the plan.

(ii) **Employee's Social Security Act 1969**

This law aims to establish an insurance plan for offering compensation and financial support to workers who were injured or became ill during their years of service or work hours.

(iii) **Workmen's Compensation Act 1952**

This law aims to establish an insurance plan for offering compensation and financial support to workers who were injured or became ill while engaging in their job duties.

#### (3) Security of workers

(i) **Factories and Machinery Act 1967**
This law prescribes matters related to the management of factories and the registration and inspection of machinery related to the safety, sanitation, and welfare of factory workers. This law protects the safety and health of workers (regardless of gender) who work in factories, and applies to all manufacturers.

(ii) **Occupational Safety and Health Act 1994**

This law was enacted to grant legal protection in order to protect the safety, health, and welfare of workers in conducting their job duties. This law obligates companies to conduct safety inspections/maintenance of their facilities and systems, as well as offer information, guidance, training, and supervision to their workers, and create safety/health rules and revise the same as appropriate. Consideration must be given so that measures are implemented in accordance with the Safety and Health Policy.

(4) **Employment of non-residents**

(i) **Immigration Act 1959/1963**

This law prescribes matters related to immigration, visas, and their procedures, as well as matters related to immigrants and foreign workers.

(ii) **Employment (Restriction) Act 1968**

This law prescribes matters that specifically apply to foreign workers.

(5) **Human Resource Development Act 2001**

This law prescribes matters related to the promotion of training of workers, matters related to the Human Resource Development Fund and the establishment and management of the said fund and then obligates companies to make contributions to the fund.

(6) **Minimum Retirement Age Act 2012**

The mandatory minimum retirement age in a private company is 60 years of age, and if a company requests that employees resign/retire before reaching the age of 60, the company is responsible for reinstatement or compensation and a fine not exceeding RM 10,000. Meanwhile, if early retirement is approved under the employment contract or the labor agreement, the worker may choose to retire early. This law was enforced in July 2013, and contributions to the employee’s provident fund were also consequently revised to be continued up to the age of 60.

(7) **Children and Young Persons (Employment) Act 1966**

This law prevents exploitation based on child labor. It imposes restrictions on children under the age of 15: they are permitted to work six hours per day but prohibited from working during the time from 8 p.m. to 7 a.m., and children between the ages of 15 and 18 are permitted to work seven hours per day but prohibited from working during the time...
(8) Key guidelines other than laws

(i) Minimum Wages Order 2020
This order prescribes the minimum wages; the term "wages" refers to the basic wages and does not include bonuses and other compensation (for details, see Section 4 "Wages").

(ii) The Code of Conduct for Industrial Harmony 1975 and Guidelines on Retrenchment Management
This code prescribes the guidelines in building a labor-management relationship and sets forth the procedures for retrenchment to be implemented by companies.

(iii) The Code of Practice for the Eradication and Prevention of Sexual Harassment in the Workplace 1999
This code prescribes guidelines for preventing sexual harassment.

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1. On February 2019, the amendments to the Act came into force. The key changes include (i) a child or young person with a minimum age of 13 may perform any light work, (ii) list of hazardous work in which a child or young person is not permitted to engage in has been specified and (iii) penalties or fines for contravening any of the provisions under this Act have been enhanced.

3. Duty to prepare internal work regulations in Malaysia, and contents of such internal work regulations

3-1. Legal duty to prepare internal work regulations

The creation of work rules is not legally required, and there are no laws that define or prescribe work rules. Nevertheless, in order to further deepen the employees’ understanding of the company’s business operations, improve the company’s productivity, and prevent disputes, many companies prescribe their own internal rules, such as company’s rules. If a company wishes their employees to understand the company’s protocols and policies, the company should distribute a copy of its internal rules to all workers and have the person in charge offer a verbal explanation regarding the internal rules to have the workers understand the contents thereof, and it would also be useful for the company to obtain a signed document from its workers to the effect that they fully understand the internal rules from the perspective of preventing subsequent disputes.

When a company establishes work rules, in addition to updating the work rules as appropriate according to the working environment, it is also important for the company to familiarize its employees with the updated work rules of the workplace. The posting of work rules will demonstrate the company’s transparency in its business operation; that is, the fact that the company is not treating its workers unfairly, and this is considered to lead to obtaining the trust of its workers.

3-2. Details

Not only is the comprehensive inclusion of all possible provisions in the work rules unrealistic, it may also cause confusion for workers. Thus, it would be desirable to specifically and clearly prescribe the issues that will become particularly important to both the employer and the employee; for instance, acts that would be subject to disciplinary action in business areas that may require disciplinary procedures, so that the workers can recognize the acts that would result in disciplinary action.

3-3. Examples of entries

Provisions that are generally prescribed in the work rules of Malaysia are as follows.
### Overview of company
- Vision, mission statement
- Corporate history
- Organization chart
- Introduction of core products and services

### Employment conditions
- Work hours
- Wage, bonus, pay raise (evaluation standards/method)
- Various allowances (overtime, holiday work, etc.)
- Various insurances (contributions made by company for health insurance, pension, etc.)
- Rest days, national holidays
- Confidentiality
- Probation period (including dismissal)
- Prior notice period required for dismissal
- Retirement allowance
- Change in employment/transfer
- Medical examination
- Use of facilities

### Company policy
- Training
- Dress code
- Giving and receiving of gifts to and from customers and business partners
- Promotion
- Working environment (sexual harassment, smoking, safety, etc.)

### Various procedures
- Disciplinary punishment
- Reporting of absence/lateness
- Acquisition of leaves
- Transfer request
- Reporting and notification of accidents
- Evacuation procedures in cases of emergency
- Security/guarantee
- Proposals to company (suggestion box), etc.

4. Overview of wage system (bonus, retirement benefit, overtime payment) and other legal systems in Malaysia

4-1. Definition of wages

The term "wages" means basic wages and all other payments in cash payable to an employee for work done in respect of his/her employment contract but does not include the following (Employment Act, Article 2(1)):

- any allowances for housing, meals, fuel, utilities, medical treatment, or of any other approved welfare expenditures;
- any contribution voluntarily paid by the employer to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement allowance, thrift scheme, or any other fund or scheme established for the benefit or welfare of the employee;
- any travelling allowance or special allowance for business trips;
- any sum payable to the employee to defray special expenses entailed by the nature of the work;
- any gratuity payable on discharge or retirement; or
- any annual bonus or any part of any annual bonus.

While overtime pay corresponds to wages, bonus, retirement allowance, and other payments that are not for work done and payments that are not based on the employment contract do not correspond to wages. Note that, if a provision regarding bonuses is not prescribed in the employment contract or the work rules, the company is not obligated to pay any bonus to its workers under the Employment Act.

4-2. Payment method, frequency, amount to be paid

A wage period shall not exceed one month, so the companies must pay the salary at least once a month (Employment Act, Article 18, Paragraph 1) in cash, upon obtaining the written consent of the worker, the company may also pay wages by way of transfer to the worker's bank account or by way of check (Employment Act, Article 25A). Payment in kind is not allowed.

The amount of overtime allowance to be paid is also regulated under the Employment Act (see the chart in 2-2).

1. Wage period means the period in respect of which wages earned by an employee are payable (Employment Act, Article 2, Paragraph 1)
4-3. Time of payment

As a general rule, wages must be paid within seven days from the last day of the wage period (if the seventh day is a rest day, then before the seventh day) (Employment Act, Article 19).

When the employment contract is terminated, the date of payment will differ as follows depending on the cause of termination.
(A) When a definite term employment contract expires, an employment contract is terminated based on prior notice, and an employment contract is terminated by a company without prior notice, the company must pay the entire amount of wages to the employee not later than the day on which such employment contract is terminated (Employment Act, Article 20 and Article 21, Paragraph 1).
(B) Where an employee terminates his/her employment contract without notice, the company must pay the wages to the employee within three days after the date of such termination (Employment Act, Article 21, Paragraph 2) (see Section 5 below).

4-4. Minimum Wages Order 2020

Minimum Wages Order 2020 came into force on February 1, 2020. The minimum wages were increased to RM 1,200 monthly or RM 5.77 hourly in major cities that include Kuala Lumpur and RM 1,100 monthly or RM 5.29 hourly in areas other than the major cities, respectively. This order does not apply to domestic workers such as maids.

<table>
<thead>
<tr>
<th>Minimum wages in the major cities including Kuala Lumpur</th>
</tr>
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<tbody>
<tr>
<td>Monthly</td>
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<tr>
<td>---------</td>
</tr>
<tr>
<td>RM1,200</td>
</tr>
<tr>
<td>6</td>
</tr>
<tr>
<td>5</td>
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<tr>
<td>4</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Minimum wages in the areas other than the major cities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly</td>
</tr>
<tr>
<td>---------</td>
</tr>
<tr>
<td>RM1,100</td>
</tr>
<tr>
<td>6</td>
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<tr>
<td>5</td>
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<td>4</td>
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</tbody>
</table>

When wages are to be paid in accordance with a piece rate, tonnage, task, trip, or commission and not as basic pay, the wages must not fall below RM 1,200 or RM 1,100 monthly.
4-5. Advance payment of wages

(1) Amount

While a company may make an advance payment of wages, the company may not earn interest (Employment Act, Article 22 and Article 24, Paragraph 1, Item c). As a general rule, the amount of advances of wages must not exceed the amount of wages earned in the preceding month, but the company may make an advance in a greater amount if such advance is made to the employee:

(A) to enable the employee to purchase a house or to build or improve a house;
(B) to enable the employee to purchase land;
(C) to enable the employee to purchase a motorcar, a motorcycle, or a bicycle;
(D) to enable the employee to purchase shares of the employer’s business offered for sale by the employer;
(E) to enable the employee to purchase a computer;
(F) to enable the employee to pay for medical expenses for himself/herself or his/her immediate family members;
(G) to enable the employee to pay for daily expenses pending receipt of any periodical payments for temporary disablement under the Employees’ Social Security Act 1969;
(H) to enable the employee to pay for educational expenses for himself/herself or his/her immediate family members; or
(I) any other case in which the approval of the Director General of the Labor Department is obtained.

(2) Repayment

While the advance payment may be deducted from subsequent wages for repayment, as a general rule, the amount of deduction may not exceed 50% of the wages earned by the employee in that month (Employment Act, Article 24, Paragraph 8).

4-6. Deduction from wages

The following may be deducted from wages:

(A) overpayment of wages made during the immediately preceding three months because of the employer’s mistake;
(B) compensation due to breach of the employment contract;
(C) recovery of advances of wages; and
(D) authorized by any other written law (contribution to employee’s provident fund, worker’s social security fund, etc.)

As a general rule, the amount of deduction may not exceed 50% of the wages to be paid during the wage period, but this does not apply to cases where the worker terminates the employment contract without any advance notice or when the worker
is obligated to repay the company (Employment Act, Article 24, Paragraph 8, Article 24, Paragraph 9, Items a, b). When an employee is to repay a new housing loan, subject to the prior permission in writing of the Director General of the Labor Department, up to 75% may be subject to deduction (Employment Act, Article 24, Paragraph 9, Item c).

4-7. 13th Month Allowance

Similar to the AWS (Annual Wage Supplement) of Singapore, it is also customary in Malaysia to pay the salary of the 13th month under the name of "13th Month Salary (Bonus)" or the like, and many companies are actually paying this allowance. In addition, certain companies pay bonuses according to the performance of individual workers or a bonus of one month’s worth of pay as Contractual Bonus. If a company explicitly set out in its employment contract that annual bonuses will be paid to employees, it will have an obligation to pay such bonuses to employees, therefore, in many cases companies state "based on performance” only in its employment contract.
5. Method and points to consider regarding ordinary dismissal, punitive dismissal, and retrenchment in Malaysia

5-1. Dismissal

As a dismissal deprives an employee of income, it often causes disputes; therefore, it is important for an employer to follow careful procedures. It is often difficult to dismiss an employee, thus, in order to avoid problems, such as subsequent disputes regarding wrongful dismissal, it is important to preserve objective evidence in advance. Depending on the cause, dismissals are mainly broken down into the following categories: (1) ordinary dismissal, (2) punitive dismissal, and (3) dismissal for reorganization. In principle, a company needs a just cause or excuse\(^1\) to dismiss an employee, which may vary depending on the cause of dismissal and specific situation.

(1) Prior notice

While both the worker and the company can terminate the employment contract by providing prior notice to the other party, when the company is to dismiss its worker, the company should be careful because, as a general rule, just cause or an excuse, such as employee’s misconduct and poor performance, is required.

The period of prior notice shall be pursuant to the termination notice period if such period is prescribed in the employment contract. If such termination notice period is not prescribed in the employment contract, the notice period shall be pursuant to the following periods set out in Article 12, Paragraph 2 of the Employment Act for employees who are covered by the Employment Act. The parties of the contract may determine a notice period different from what are set out in the table below, however, the required notice period must be the same for both the worker and the company (Employment Act, Article 12, Paragraph 2).

<table>
<thead>
<tr>
<th>Years of service</th>
<th>Required notice period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 2 years</td>
<td>At least 4 weeks in advance</td>
</tr>
<tr>
<td>2 years or longer and less than 5 years</td>
<td>At least 6 weeks in advance</td>
</tr>
<tr>
<td>5 years or longer</td>
<td>At least 8 weeks in advance</td>
</tr>
</tbody>
</table>

\(^1\) Industrial Relations Act, Article 20
(2) Exceptions

Nevertheless, as exceptions, the following cases do not require a prior notice (Employment Act, Article 13):

- When either party pays to the other party a sum equal to the amount of wages that would have accrued to the employee during the notice period (Employment Act, Article 13, Paragraph 1).
- In the event of any willful breach by the other party of the employment contract (Employment Act, Article 13, Paragraph 2).
- When an employee is dismissed on the grounds of misconduct inconsistent with the fulfillment of the express or implied conditions of his/her service, after due inquiry (Employment Act, Article 14, Paragraph 1, Item a).
- When an employee or his/her dependents are immediately threatened by danger by a third party in the form of death, violence, or disease (including cases where the employment contract prescribes that an advance notice is not required) (Employment Act, Article 14, Paragraph 3).

5-2. Ordinary dismissal

Ordinary dismissal refers to dismissal other than punitive dismissal and dismissal for reorganization, and includes dismissal with cause on the side of employee such as lack of ability or poor work attitude.

(1) Flow up to ordinary dismissal

A dismissal for poor performance can also be a reasonable cause. However, as with other dismissal procedures, it is understood that just cause is required, and proper procedures must be followed for each individual case. In terms of proper procedures, it is important for a company to do its best to cause the employee to demonstrate his/her abilities until dismissal and to ensure sufficient communication between the company and the employee through written documents, etc. As there are many possible causes for poor performance, the company is expected to investigate the causes and make efforts to avoid dismissal by internal transfer, etc.

On a practical level, the following procedures may be taken for dismissal due to poor performance.

1. Presentation of warning letter describing the following points to the worker

   - List of specific job-related issues of the worker (causes and reasons)
   - Possibility of dismissal if his/her performance is not improved
   - Specific period for improving his/her performance

2. Implementation of evaluation period (period provided as an opportunity to improve one’s performance)

   - Monitoring of improvement of performance during the evaluation period
3. Re-evaluation of worker, extension of evaluation period, or determination of appropriateness of dismissal

(2) Precautions regarding ordinary dismissal

As there are many possible reasons that prevent workers from achieving favorable business results, in addition to investigating the cause, the company is expected to give consideration to the worker's aptitude and, if an internal transfer is able to avoid the dismissal of the worker, exert efforts to realize such internal transfer. Furthermore, in cases where a company has established an evaluation system, it would be desirable for the company to present the details and standards of such evaluation system to the worker prior to entering the evaluation period and have the worker recognize thereof before causing the worker to carry out his/her duties once again. When a worker mentions that he/she understands the evaluation system as well as the details thereof, it would be useful to obtain the signature of the worker to such effect.

5-3. Punitive dismissal

Punitive dismissal means that the company dismisses an employee as a means of discipline. It often causes disputes, including as to whether or not the grounds for disciplinary punishment exist or the appropriateness of choosing dismissal over other means. In Malaysia where workers are generously protected and decisions by labor courts regarding dismissal are strict, after a worker's misconduct is discovered, the company must collect relevant evidence and carefully implement measures up to the dismissal of the worker in preparation for the possibility of subsequent disputes.

(1) Applicability

Any misconduct by a worker constitutes grounds for punitive dismissal. It is understood that the term "misconduct" includes inappropriate behavior, intentional misconduct, intentional breach of rules, and any acts that contradict the worker’s obligations (including implied obligation under the employment contract prescribing that the worker must perform one's duties carefully and sincerely). Although there are events of minor misconduct and major misconduct, as a general rule, punitive dismissal requires major misconduct. The following acts may correspond to major misconduct: being absent from work for more than two consecutive working days\(^2\) (Employment Act, Article 15, Paragraph 2); noncompliance with a supervisor’s instructions; sexual harassment; criminal acts of theft, violence, and fraud; and work under the influence of alcohol and/or drugs.

\(^2\)This does not apply when there is due cause for the absence and the worker notified (or attempted to notify) the company in advance.
(2) Flow up to punitive dismissal

(i) Appropriate internal investigation of misconduct

When misconduct by an employee has been discovered and the company considers punitive dismissal of the employee, it is considered to be useful to prepare a document that describes the misconduct in detail. In performing an internal investigation, in general, it is considered necessary for the company to confirm the following matters, including whether the company had sufficiently implemented measures for preventing the misconduct.

(A) Details of the regulation that was breached (express or implied)
(B) Circumstances that the misconduct occurred (date and time, place, situation)
(C) Existence of eyewitness or witnesses (if applicable, such eyewitness or witnesses should be interviewed for details)
(D) Existence of relevant witnesses or relevant information
(E) Existence of physical evidence of the misconduct (document, physical evidence, etc.)

During the investigation, many companies often send a Show Cause Letter to the wrongdoer and request the person to defend the conduct or actions.

(ii) Due Inquiry

In order to dismiss a worker based on the results of the investigation of misconduct obtained as in (i) above, the company is required to take the measures of "Due Inquiry" - which is an internal questioning process under Article 14 of the Employment Act. This procedure is carried out based on the following rules for realizing fair inquiry and eliminating any unpredictability and to be verified by an internal third party organization.

(A) The worker is able to know, in writing, the reasons why he/she is being subject to disciplinary procedures (date, place and time of the misconduct have been specified)
(B) The worker is provided with an opportunity of a hearing and rebuttal
(C) The worker is entitled to retain an agent (union, colleague or other company personnel)
(D) The procedure is implemented by a third party with no prejudice or bias

(iii) decision on whether to take disciplinary action

After above processes have been taken, the company decides which of the following disciplinary actions to take: (a) verbal warning, (b) warning in writing, (c) lighter measures such as suspension of work for the maximum period of 2 weeks, etc. (Employment Act, Article 14(1) (c)), (d) downgrading (Employment Act, Article 14(1) (b)), or (e) dismissal (Employment Act, Article 14(1) (a)). In general, it is construed that a fine is not permitted under the Employment Act.

(3) suspension of work

For employees covered by the Employment Act, a company may order suspension of work for a maximum period of

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3. While the non-implementation of this procedure will not immediately result in the loss of "just cause or excuse" of dismissal, the implementation of this procedure is required for protecting workers from wrongful dismissal without any evidence or grounds.
4. Attendance of attorneys and other outside personnel as an agent is not allowed.
two weeks in lieu of the payment of half salary (Employment Act, Article 14 (2)); however, if no evidence of misconduct has been identified, the company must pay full salary to the employee (Employment Act, Article 14 (2)). For employees not covered by the Employment Act, it is construed that the company may not order suspension of work for the employee if such provision has not been stipulated in the employment contract. Note that, on a practical level, one of the following items must be satisfied for the company to order suspension of work to an employee.

<table>
<thead>
<tr>
<th>Causes of suspension of work</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Existence of the worker has an adverse effect on the working environment</td>
</tr>
<tr>
<td>(B) Necessity of a period for the worker to calm down (e.g.: violence in the workplace)</td>
</tr>
<tr>
<td>(C) Necessity to prevent the continuous misconduct by the worker (e.g.: embezzlement)</td>
</tr>
<tr>
<td>(D) Possibility of destruction of evidence or threatening of witness by the worker</td>
</tr>
</tbody>
</table>

5-4. Retrenchment

(1) Definition

While the term "retrenchment" is not defined under laws, the Guidelines on Retrenchment Management define retrenchment as termination of employment as a result of a surplus of employees for various reasons, such as closure of a company, restructuring, decrease in production, merger, change in technology, acquisition, and economic downturn.

(2) Validity of Retrenchment

Retrenchment is considered effective if it is done pursuant to the Code of Conduct for Industrial Harmony 1975 ("Code"). Although this rule is a guideline, it is commonly referred to as a fair and reasonable means in courts. The Guidelines on Retrenchment Management prescribe the steps to be taken in relation to retrenchment. As this guideline refers to the Code, the following information is provided in accordance with the Code and the Guidelines on Retrenchment Management.

a) First, it is advisable to consider and perform the followings in consultation with a representative of employees, labor union, and the Ministry of Human Resources (the Code, Article 20):

1. Freezing new employment of employees
2. Restricting overtime work
3. Restricting working on holidays and public holidays
4. Reduction in the number of working days
5. Reduction in working hours
6. Retraining of employees

Also, according to the Guidelines on Retrenchment Management, the following items have been added.

7. Internal transfer of an employee and change in duty
8. In case of temporary layoff, providing appropriate salary and assistance for an employee to find temporary work until the work can be resumed (in case of temporary layoff, an employee should notify the authorities of the period of the layoff so that the authorities know whether the employee is reemployed, Voluntary Separation Scheme is offered, or the employee is permanently laid off).
9. Reduction in employees’ salary should be the last option after conducting all other cost reduction
10. Checking any vacant position in the company that can be offered to an employee to be dismissed

b) Even if a company has decided that dismissal on the grounds of reorganization is necessary, it is still advisable to follow the procedures below (the Code, Article 22 (a)):

1. Give advance notice to employees as soon as possible
2. Establish an early retirement scheme
3. Notify the dismissal to the Manpower Department
4. Provide rehiring support in cooperation with the Ministry of Human Resources
5. Implement organized dismissal over the period
6. Notify a representative of employees and unions first

Also, according to the Guidelines on Retrenchment Management, the following items have been added.

7. Offer a voluntary separation scheme with adequate compensation
8. Terminate employment of an employee who has reached retirement age

Also, according to the Employment Act, the minimum termination benefits are as below subject to the terms of Employment Agreement.

(i) 10 days’ wages for every year of service if the length of service is one year or more but less than two years
(ii) 15 days’ wages for every year of service if the length of service is two years or more but less than five years
(iii) 20 days’ wages for every year of service if the length of service is five years or more

10. Termination notice or payment in lieu of notice (for employees covered under the Employment Act, the minimum notice periods are as below subject to the terms of Employment Agreement).

(i) Four-week notice if the length of service is less than two years
(ii) Six-week notice if the length of service is less than five years
(iii) Eight-week notice if the length of service is five years or more

c) When choosing employees who will be subject to the dismissal, it is stipulated to dismiss foreign employee first in Article 60N of the Employment Act (Principles of Foreign Workers First Out). When choosing employees who will be subject to dismissal out of the remaining employees after foreign employees have been dismissed, it is advisable to dismiss the person most recently employed first (Last In First Out Principles (LIFO Principles). Also, the following matters should be taken into consideration upon deciding the person to dismiss (the Code, Article 22 (b)):

1. Necessity to increase the operational efficiency
2. Ability, experience, skills, and qualifications of each employee for improving operational efficiency  
3. Number of years of service and position (foreigner/regular employee/ temporary staff)  
4. Age  
5. Family situation  
6. Other standards stipulated by the government  

d) According to the Guidelines on Retrenchment Management, an employer is required to submit a form designated by the Ministry of Human Resources (PK Form) to the nearest Labor Office at least 30 days before retrenchment, voluntary retirement, layoff, and salary reduction.

5-5. Dismissal allowance

(1) Principle

When a company is to terminate the employment contract of a worker who had been continuously employed for 12 months or longer, as a general rule, the company is required to pay dismissal allowance according to the years of service (Employment (Termination and Lay-off Benefit) Regulations 1980, Article 3 (1)).

A company is required to pay the dismissal allowance in accordance the years of service of the employee (Employment (Termination and Lay-off Benefit) Regulations 1980, Article 6), as set forth in the table below.

<table>
<thead>
<tr>
<th>Years of service</th>
<th>Number of days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 2 years</td>
<td>10 days</td>
</tr>
<tr>
<td>2 years or longer and less than 5 years</td>
<td>15 days</td>
</tr>
<tr>
<td>5 years or longer</td>
<td>20 days</td>
</tr>
</tbody>
</table>

If there is any period that is less than one year regarding the number of days of service, a dismissal allowance will be paid in proportion up to the month that is closest to the date that the employment contract was terminated.

(2) Exceptions

When an employment contract is terminated for the following reasons, the company is not required to pay any dismissal allowance:

5. Even if the employment period is divided into multiple periods under the same company, in cases where the gap between the respective employment periods is not more than 30 days and the total period of such multiple employment periods is 12 months or longer, as a general rule, the employee is entitled to receive a dismissal allowance (Employment (Termination and Lay-off Benefit) Regulations 1980, Article 3 (2)).
allowance (Employment (Termination and Lay-off Benefit) Regulations 1980, Article 4 and Article 8):

- The employee reaches the age of retirement stipulated in the employment contract.
- The company terminates the employment contract on the grounds of misconduct inconsistent with the fulfillment of the express or implied condition of his/her service, after due inquiry.
- The employee voluntarily resigns.
- The same company renews the employment contract re-employs the employee on terms and conditions that are not less favorable than the conventional employment contract.
- The renewal or re-engagement takes effect immediately on the ending of employment.
- The conditions of the employment contract to be renewed or the conditions of an employment contract to be newly executed (including conditions related to the job description and workplace of the employee and other conditions) are more favorable than the conditions of the previous employment contract, and the company offers the same to the employee at least seven days before the termination of the previous employment contract, but the employee has unreasonably refused that offer.
- After a proper notice concerning the termination of the employment contract is given to the company, the employee resigns without the prior consent of the company prior to the expiration of the foregoing notice, or resigns without having made proper payment to the company in lieu of said notice in accordance with Article 13 of the Employment Act.
- There is a change in the ownership of all or a part of the business that the employee is engaged in, and the new owner offers to continue to employ the employee under conditions that are not less favorable than the conditions of the previous employment contract within seven days after the change in ownership, but the employee unreasonably refuses the offer.6

(3) Time of payment

The company must pay the foregoing dismissal allowance to the worker within seven days from the termination of the employment contract (Employment (Termination and Lay-off Benefit) Regulations 1980, Article 4 and Article 11, Paragraph 1).

5-6. Remedies against wrongful dismissal

When a worker7 wishes to contest a wrongful dismissal, the worker may make representations in writing to the Director General of the Labor Department to be reinstated in the former employment within 60 days of the dismissal (Industrial Relations Act, Article 20). The Director General of the Labor Department shall take such steps as may be considered necessary to settle the dispute, or upon determining that there is no likelihood of settlement, ask the Minister of Human Resources to additionally hear the case in a labor court. While the labor court may order the company to reinstate the worker as a result of the hearing, in cases where the worker is already working for another employer or the worker’s reinstatement is difficult because the confidential relation with the company has been lost, the labor court often orders the company to pay damages.

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6. When the change of an employer is due to the death of the employer, the provision does not apply (Employment (Termination and Layoff Benefit) Regulations 1980, Article 9)
7. The term "workman" referred to in Article 20 of the Industrial Relations Act is broader than the term "employee" under the Employment Act such as persons who are employed by the company and persons who were dismissed, discharged, or subject to retrenchment in relation to, or as a result of, the dispute.
rather than reinstate the worker.\textsuperscript{8}

\textsuperscript{8}The amount of damages is, in the case of wrongful dismissal, the total amount of backwages calculated from the date of dismissal to the date of closing of the hearing at the labor court based on the last-drawn salary of the person who has been dismissed and is up to two years' worth of wages (up to one years' worth of wages for probationary workers) (Industrial Relations Act, Second Schedule). A decrease in the amount of damages may be acknowledged depending on the unemployment period or the amount of wages to be paid by the new employer. Amount of damages does not include future lost profits, and may be set off in cases where the dismissal is a result of the worker's misconduct.
6. Types of foreigner visas (passes) and acquisition requirements

6-1. Various visas related to immigration and residency

There are three types of stay visas in Malaysia: ① single, ② multiple and ③ transit.
① Single entry visa is issued primarily for social visitors and is valid only once for three months from normal issue.
② Multiple Entry Visa is issued to visitors for business / diplomatic purposes and is normally valid between 3 to 12 months after issuance, and multiple trips within the valid period and staying is permitted as a maximum of 30 days per entry (no extension).
③ Transit Entry Visa will be issued to those traveling to a third country via Malaysia. However, it is not necessary to apply when you are going to the next destination on the same flight without leaving the airport.

6-2. Main types of passes

A person who is not a citizen of Malaysia is required to obtain a valid employment pass in Malaysia (the Employment (Restriction) Act 1968, Article 5, Paragraph 1). Various passes are separately required for the States of Sabah and Sarawak of East Malaysia, the applicant needs to confirm with the State Immigration Office upon entering these states. Main work-related passes and visas are explained below.

Employment Pass

Since a foreigner is not allowed to work in Malaysia with a Visitor’s Pass, in general, the foreigner needs to acquire an Employment Pass (EP) in order to legally work and reside in Malaysia. EP is classified into three categories: (i) Expatriate Category 1, (ii) Expatriate Category 2, and (iii) Knowledge/Skilled Worker, Category 3; an EP holder may work in Malaysia during the approved period (Approved periods are maximum 5 years for category (i), maximum 2 years for category (ii) and maximum 12 months for category (iii)).

The following capital requirements are stipulated for obtaining EP.
Professional Visit Pass (PVP)

This is one of the types of employment passes that allows professionals to stay in Malaysia for a period of no longer than 12 months. This pass is eligible for volunteers and students who participate in an internship, researchers, and professionals in different industries.

Dependent Pass

EP holders, excluding Knowledge/Skilled Workers, are eligible to apply for a Dependent Pass. A Dependent Pass may be acquired for an EP holder’s spouse, child under the age of 18, adopted child, and child with a (physical) disability. An EP holder’s parents, common-law wife (certification of Embassy is required), child over the age of 18, and stepchild are eligible to apply for a Social Visit Pass. If any family member of EP holder wishes to work in Malaysia, it is necessary to obtain a separate EP, and a spouse or child who wishes to go to school in Malaysia is required to obtain Study Approval.

Working permit for Spouse of Malaysian Citizen

A spouse of a Malaysian citizen who has previously obtained a work permit from the Immigration Office is allowed to work in Malaysia without having to re-acquire an Employment Pass (EP).

Student Pass

All students, regardless of the level of education, are required to acquire a Student Pass. Applicants need to contact their school because procedures are taken through the respective schools. Students to study in Malaysia for their master’s degree or doctoral course are eligible to apply for a Dependent Pass for their child, spouse, and parents.

<table>
<thead>
<tr>
<th>Equity structure</th>
<th>Paid-up capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% local capital (Malaysia)</td>
<td>RM250,000</td>
</tr>
<tr>
<td>Joint Venture between local and foreign</td>
<td>RM350,000</td>
</tr>
<tr>
<td>100% foreign capital</td>
<td>RM500,000</td>
</tr>
<tr>
<td>Companies engaged in distribution or service transactions, such as restaurant, such as restaurants, whose foreign capital is not less than 51%</td>
<td>RM1,000,000</td>
</tr>
</tbody>
</table>
### Type of passes, overview and acquisition requirements

<table>
<thead>
<tr>
<th>Type of pass</th>
<th>Overview</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment Pass (EP)</td>
<td>- For long-term stays/work and is classified into the three categories.</td>
<td>Category I:</td>
</tr>
<tr>
<td></td>
<td>- Multiple visa</td>
<td>- Minimum RM10,000 monthly salary</td>
</tr>
<tr>
<td></td>
<td>- Online application by the company and a guarantor are required in applying for this pass</td>
<td>- Employment contract of 5 years or less</td>
</tr>
<tr>
<td></td>
<td>- Holders of a Category III pass may not obtain a Dependent Pass</td>
<td>Category II:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Minimum RM5,000 - RM9,999 monthly salary</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Employment contract of 2 years or less</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Category III:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Minimum RM3,000 - RM4,999 monthly salary</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Employment contract less than 12 months</td>
</tr>
<tr>
<td>Visit Pass / Professional Visit Pass (PVP)</td>
<td>- Short-term work pass for professionals E.g.: Special projects and technical cooperation. The company should apply for the pass to ESD online (in principle)</td>
<td>Employment by companies outside Malaysia</td>
</tr>
<tr>
<td></td>
<td>- Student Visa. This pass is required when a student will study in Malaysia for more than 3 months. Maximum duration is 1 year (may be extended)</td>
<td>- Maximum duration is 1 year (however, for corporate trainees, less than 6 months)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Family member may not accompany the worker</td>
</tr>
<tr>
<td>Student Pass</td>
<td></td>
<td>Student registration with approved education institution</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- With a part-time employment pass, a holder is able to working within 20 hours a week. The school needs to apply for the visa after submitting all the required documents. It usually takes approximately 2 months to obtain.</td>
</tr>
<tr>
<td>MM2H Visa (Malaysia My Second Home Visa)</td>
<td>- Up to 10 years (renewable with permission from the Immigration Department). Part time employment may be allowed depending on the conditions.</td>
<td>- For 50 years of age and older; revenue certificate of RM10,000 or more per month and asset verification of RM500,000 or more</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Less than 50 years of age; revenue certificate of RM10,000 or more per month and asset verification of RM500,000 or more</td>
</tr>
<tr>
<td>Resident Pass-Talent (RP-T)</td>
<td>To attract and secure foreign talent in an important economic field. Holders may work and stay up to 10 years (able to change employer)</td>
<td>Worker’s spouse and children under 18 years of age are also eligible for this pass. Children over 18 years of age, parents, and spouse’s parents are eligible for the Social Visit Pass (maximum duration is 5 years). Upon acquiring the pass, the spouse is not required to acquire an EP to work in Malaysia.</td>
</tr>
<tr>
<td>Visitor Visa</td>
<td>For short term-visits</td>
<td>Sightseeing, business (meetings, etc.) foreign diplomacy, etc. within 90 days. This visa may not be used for working in Malaysia.</td>
</tr>
<tr>
<td>Dependent Pass</td>
<td>For dependents to accompany the worker. Validity is the same as the validity of the representative’s EP.</td>
<td>Subject to the holder having permitted the acquisition of Dependent Pass for the spouse.</td>
</tr>
</tbody>
</table>

In addition to the visa listed in the above table, there are other visas for Malaysian spouses, Permanent Residency, etc.

During the renewal process of a pass, if the validity of that pass expires due to procedural delays or other reasons, it should be noted that, while it will not constitute illegal residency, the pass holder is no longer allowed to work or study.

When corresponding to an overstay or activities outside the permitted scope, the pass holder may be subject to imprisonment, fines, deportation, or prohibition of re-entry.
About this document

About the information compiled in this document

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