

The history of employment act 1955 law employment essay

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The Employment Act 1955 is the principal legislation that governed the employment practice and employer-employee relationship in Malaysia. The enactment of the Employment Act 1955 has to be traced back to the period during British Colonial Administration.[1] During British administration, the primary policy to stimulate the growth of economy was to encourage alien immigration into Malaya. This was due to the urgent need of labour force and willingness of the foreigners to work at low rates. Therefore, Indian labourers were imported from India to work in rubber plantations while Chinese labourers who were from China worked in mines. The alien labourers were to pay their own passage from their motherland to Malaysia and the passage fees were advanced or deducted from their meagre wages. Therefore, the British had thus introduced legislations to regulate the importation of foreign labourers into our land including the Labour Contracts Ordinance and Chinese Agricultural Labourers' Protection Ordinance.[2] While during British administration in Malay States, the Labour Code 1933 was enacted to consolidate all the existing legislations pertaining to labour law. The enactment of Labour Code 1933 had provided a benchmark for the terms and conditions in employment contract. After independence, the Labour Code 1933 was amended and repealed by Employment Ordinance 1955 which then laid the foundation for the enactment of Employment Act 1955. The Improvements Pertinent to Amendments of Employment Act The bill of amendment of Employment Act 1955 was introduced in 2011. The bill was later passed and the Employment (Amendment) Act 1955 was introduced and came into force in April 2012. The amendment that had raised greatest controversy was the increment if the threshold of wages for an employee to

be covered under the Employment Act 1955. The threshold for wage for a person to be defined as an employee under this act had been increased from RM 1, 500 to RM2, 000 after amendments.[3]The amendment made will thus provide protections for more employees whose wages are within the threshold under the Employment Act. Therefore, more employees will enjoy the safeguards propounded such as the overtime payment,[4]work on rest days and public holidays,[5]limit hours of work[6]and termination benefits. [7]According to Ministry of Human Resources, the amendment made was expected to increase the percentage of EA[8]protected employees from 50% to 70%.[9]In Malaysia's employment field, women contributed as an important workforce in development of our nations. Therefore, the Employment Act 1955 provided for the maternity protections in Part IX. Following the amendments made, the maternity leave for every female employee could commence starting from 22nd week of pregnancy instead of 28th week as stipulated before the amendment.[10]Therefore, female employees are more protected by avoiding them to continue their work while they are not far from labor which would put them or their children in potential harm. Besides, under the new amendment, the female employees are protected from termination by their employers even though they failed to give notice of commencement of maternity leave to their employers. Somehow, their maternity allowance may be suspended in account of the failure to give notice.[11]However, in the mean time, the employers are being protected as the maternity allowances need not to be paid to those female employees who resigned on her own volition, the employers were on closure of their business or the employees retire.[12]In addition, in new

amendments, the maternity benefits in this act were extended to all female employees employed under a contract of service notwithstanding the wages threshold in paragraph 1 of the First Schedule.[13]Sexual harassment is defined as unwelcome, verbal, visual or physical conduct of a sexual nature that is severe or pervasive and affects working conditions or creates a hostile working environment.[14]Prior to Employment (Amendment) Act 1955, there were no provisions stipulated on sexual harassment. The amendments made inserted Part XVA established procedures to deal with complaints of sexual harassment and inquiry into such complaints. Before the enactment of The Code of Practice in Prevention and Eradication on the Sexual Harassment in the Workplace, the only law which is pertinent to issue of sexual harassment is section 509 of Penal Code.[15]Therefore, sexual harassment was regarded as a criminal issue to be handled by the policemen. This made the employers played no part in investigating sexual harassment in workplace. Thus, the amendment made laying down the necessary procedures for inquiry into complaints of sexual harassment to be conducted by the employer provides extra protections and safeguards to employees to work in a decent workplace. The procedures laid down were firstly, the employer must establish a complaint procedure for the employee;[16]the employer has to conduct inquiry upon any complaints made by the employee and the result of investigation has to be given within 30days in writing;[17]upon the refusal of the employer to conduct investigation, the employee can bring the complaint to the Director General;[18]the Director General can direct the employer to conduct such investigation;[19]if the allegation was proven, the complainant may terminate his contract of service without notice.[20]The

provisions regarding sexual harassment that had been inserted were applicable to all employees irrespective of wages enumerated in paragraph of the First Schedule of Employment Act 1955.[21]Prior to the amendments, the minimum gazetted public holidays that an employee was entitled to was 10 days. It was extended to 11 days after the amendments and the 5 mandatory public holidays are National Day, Birthday of Yang Di-Pertuan Agong, Birthday of the State Ruler, Labour Day and Malaysian Day.[22]