The benefit to employees wages law employment essay

Law

Parliament has made certain amendment provision in the act in order to protect the employee's right. The amendment also is to ensure not only the right of worker to be protect but also to ensure the employers can run their business smoothly. One factor become an issues which cause the problem is regarding the salary of the employee. Hence, in contract of service, the wages must be paid to employees according to the contract that both parties has agreed.[1]If the employee do any work which is not in the contract, the employers has a right not to pay any wages to them. Then, the employee itself can reject any order from the employer if they ask the worker to do something which is not in the contract.[2]Under section 25 in this act[3], the wording of the act is the payment of wages through bank. The important of the amendment is because to ensure the safety of the worker and also the employer. Before the amendment was made to this provision, the mode of payment by the employer to pay the wages to their worker is by cash. At that time there is no fix system for the employer to pay the salary to the worker. Hence, when the employer pay the wages by cash, it can raise any problem to employer and employer such as theft and robbery. As an example, at the end of the month when the employer hold money in their office to be pay to the worker, the robber will rob the employer to take the money. The employees also will face a same problem after they receive the wages, they might be rob by any person who want to take the money. Another reason why the payment must made through the bank is because it is more secure than pay by cash. As we know when the pay through bank there will be evidence on our account to prove to the court if there is a problem arise between employer and employee about the wages. As an

example if the employer intentionally only pay half from the full amount of the wages, the employee may use the bank statement to bring to the court to prove that the employer fail to pay full amount if wages. So this amendment makes it easier for the employer to make payment of wages and also in the same time it will give protection to the employee if there is dispute arise between employer and employee. Next amendment can be seen in the section 25A[4]in the same act, where it stated that the payment of wages can be made other than bank. The reason to this amendment is to give opportunity for the employee to choose other method of payment other than through bank. As we can see in section 25A (1) of the act[5]there is two way which by legal tender or by cheque. Even though the law allowed the wages paid other than through a bank, the employee must make a written request to the employer if they wanted to be pay through cheque or legal tender.[6]Under section 24 of Employment Act 1955, the amendment is made in order to protect the employer itself. Under this section, the deduction of wages is lawful. Under the act[7], deduction can be made if there is overpayment of wages even though it is the employer's mistake. If the employer allowed the advance money to the employee, in return the employer can deduct the wages from the actual amount[8]. As an example, if a person earned RM 1200. 00 per month and he ask for advanced from the employer for RM 500. 00, at the end of the month the employer may deduct RM 500. 00 when the payment of wages been made. The deduction also can be made upon request by the employee in respect any loan of any sum money due to trade union or deduction made because of any share of employer's business offered by the employer.[9]Another amendment we can

see in the section 31 of Employment Act 1955. The provision clearly stated that the wages of the employee is more important than other debt. It clear shows that the right of the employee is protected and the employer cannot run away from their responsibilities. We may refer in the case of Weng Neng Medical & Liquor (KL) SDN BHD v Fountain Industries SDN BHD[10], where in this case the argument was whether the employees is qualify for the priority payment. In this the court held that the employees was not a worker when the auction happen. Hence when we apply our situation, if an employees is the worker at that time, the employees has the right to get the wages under section 31 of Employment Act 1955.

Hours Of Work

The purpose amend the section 60A (1) of Employment Act 1955 is to remove the ambiguity which arise the words five consecutive hours which is stated in section 60A (1)(a). It is because when we interpret the wording of five consecutive hours we may get confuse and it can cause trouble to the employee. As an ordinary person it is hard for them to read the intention of the parliament when they pass this act. Then under section 60A (1A) it clearly shows the amendment is to protect the employer. In this section the employer may prove that there is certain special circumstances that they need the employee to work in excess the limit time by getting the approval from Director General. Even though section 60A (1A) more favour on the employer, to ensure fairness to the employee, under subsection (1B)[11], the employee who not satisfy with Director General's decision may appeal in writing to Minister within 30 days. So the employee still has a solution to solve if they think that the decision by the Director General abuse their right.

Rest Day

The amendment under section 59 (1) of Employment Act 1955 is to ensure the employees to get rest one whole day every week. The amendment make the last of the rest day for a week. After the amendment, if there is public holidays fall on the rest day, the next after the rest day is the rest day for the employees. We may refer in the case of Hotel Perdana Sdn Bhd v National Union of Hotel Bar & Restaurant Workers, Peninsular Malaysia[12], the union wanted to know if the public holiday fall on the rest day, is whether the subsequent day consider as paid rest day. It was held that the subsequent day must be paid as a rest day because it is unfair and against the law if the rest day is not replace by the employer. If the employer still did not follow the law they may commit an offence under the act.[13]Under section 59 (1B) of Employment Act 1955, the main reason this subsection was amended is because to enabling the employee to accumulate his rest day for a month and to enjoy the longer period of break. The employer before grant the employee his rest day, the employer must make written application to Director General to approve such application. If the Director General approve, the employer may grant such a rest day to the employee. Even though the law clearly fixed the rest day on the last day of the week, if the employer with bona fide order the employee to work on the rest day, the employee must follow the order. We may refer in the case of Kesatuan Pekerja- pekerja Perusahaan Dunlop Malaysia v DMIB BHD[14], where there is dispute between the employer and also the employee. The employer rotate the shift of the employee which in result abolish the rest day which stated in section 59 (1) of Employment act 1955. The court held that the

employer is not liable because the rotation system is with a good intention and not mean to abused the employee's right. Practically even though the employer has the right to do the rotation system, they must paid the rest day in another day.

Maternity

As we can see, the new amendment under section 37 (1) (aa) of Employment Act 1955, is for the female employee who is not eligible for the maternity allowance to resume work when she has been certified fit to resume work by a registered medical practitioner. It is because if the female worker who not receive the allowance not to give chance to resume work, they may suffer a problem. As we know that the female employee has a family and need to support them. Even though the amendment give opportunity for the female employee to continue to work early from the period that stated by law which is sixty day[15], the female employee need to get confirmation from the registered medical practitioner to ensure she is fit to continue to work. The reason she need to get certification from the medical officer is in order to protect the right of the employer to avoid liability from being blame by others if something happen to that employee. Then under section 37 (4) of Employment Act 1955, it clearly shows that right of the female employee is protected. It is because during the maternity leave the employer cannot simply dismiss the employee without reason. The employer must know that if they dismiss or terminate without just cause or excuse, it is not fair and can cause problem to the employee. There is certain exception which cause the employer is not liable. We may refer in the case of Sistem Penerbangan Malaysia v Noor Azlina Ariffin[16], where the Malaysia Airlines has a right to

dismiss pregnant stewardess when the employee did not want to resign according to the agreement. The court chairman held that the termination was valid and not against any provision of the Employment Act 1955. As we know the policy of the airliner is that the stewardess cannot pregnant during employment. As we can see even though the airliner company did not stop from any stewardess to get married but the prohibition to pregnant may be an issues arise that we can argue.

Sexual Harassment

The word " harass" may be understood as to create an unpleasant or hostile situation for especially by uninvited and unwelcome verbal or physical conduct. Sexual harassment can be seen as actions which were persistent and unwanted sexual advances, typically in the workplace, where the consequences of refusing are potentially very disadvantageous to the victim. In a workplace, sexual harassment becomes a form of sexual discrimination, which is contrary to the principles of equal rights for men and women. In legal definition, section 2(1) of the Employment Act 1955[17]defines the term " sexual harassment" as:" means any unwanted conduct of a sexual nature, whether verbal, non-verbal, 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." Before the amendment by the Parliament on the Employment Act 1955 which being in action in April 2012, there was no specific provision under the Employment Act 1955 that governs this issue. Other law that specifically deals with sexual harassment before the amendment of the act would be section 509 of the Penal Code of Malaysia[18], which state:" Whoever intending to insult the modesty of any

women utters any words, makes any sound or gesture or exhibit any object, intending that such word or sound shall be heard, or such gesture or object shall be seen by such women, shall be punished with imprisonment for a term which may be extend to 5 years or with fine, or with both." Section 509 of the act[19]deals more with physical aspects. Sexual harassment cases are handled by the police and claims are made under that particular provision. There were enormous concerns on the problem of sexual harassment at the workplace, as well as NGO movement such as All Women's Action Society AWAM, Women's Development Collective (WDC), Women's Centre for Change Penang (WCC), Women's Aid Organisation (WAO), Malaysian Trades Union Congress (MTUC) Women's Committee and Sisters In Islam. The seriousness of the problem has prompted the Minister of Human Resource to introduce the Code of Practice to Prevent and Eradicate Sexual Harassment[20]at the workplace. The code includes guidelines to be followed in order to handle any situation regarding the problem of sexual harassment. It also provides practical guide to employees, employer, trade unions and other parties which interested with the problem, on how to contain, also to eradicate this problem as a whole. Sexual harassment can result to dismissal, as it is in the category of misconduct, as illustrated in the case of Mohd Nasir Deraman v Sistem Televisyen Malaysia Berhad (TV3) [21]where the claimant was dismissed after being alleged of sexual harassment to one of the female employee. Another case to looked at is Vasuthevan v Freescale Semiconductor (M) Sdn Bhd[22]After the amendment of the Employment Act 1955, there were insertions of provision that specifically for sexual harassment in Part XV A[23]. It introduces the

criminalization aspect of workplace sexual harassment. This provision applies to all employees. In this new amendment, sexual harassment complaints been defined broadly to encompass complaints by: an employee against another employee[24]by an employee against any employer[25]by an employer against an employee[26]From the provisions, it can be understood that the system is restricted to the employer-employee relationship. Complaints by or against an independent contractor is most probably to be excluded from this provision. This provision imposes an obligation to the employer to investigate into any sexual harassment complaints within prescribed manner[27]unless the stipulated grounds of refusal are satisfied. Any parties who dissatisfied with the refusal may refer the matter to the Director General[28]. If the employer is satisfied that sexual harassment is proven while conducting an investigation, disciplinary action may be taken against the party who commit that type of offence[29]. That disciplinary action may include dismissal or downgrading[30]. Instead, if the investigation of the complaint is done by the Director General and the Director General is satisfied that sexual harassment is proven; the complainant may terminate employment without having to comply with termination notice-related requirements. If any of the employers fails to comply with the new provision, as for example any employers who fails to inquire into complaints of sexual harassment under section 81B(1)[31]; any employers who fails to inform the complainant of the refusal and the reasons for the refusal under section 81B(2)[32]; any employers who fails to inquire into complaints of sexual harassment when directed to do so by the Director General under section 81B(5)(a) or section 81D(2)[33]; and any employers

who fails to submit a report inquiry into sexual harassment to the Director General under section 81D(2)[34], it can be said that they have commit an offence and shall be liable to a fine not exceeding RM 10, 000[35]. With this new amendment, the employer will not require to have a written workplace sexual harassment policy. The employers should refer to the nonbinding Sexual Harassment Code, and create their own written policy, before a complete guideline will be issued by the Ministry of Human Resource. There would also be no immunity whatsoever from an unfair dismissal claimed by the offender if the party had been terminated from employment, in spite of the employer might have acted promptly with the procedures in handling sexual harassment complaint.

Foreign Domestic Servant

Under the new amendment of the act[36], there were new insertions of new provisions under Part XI of the Employment Act 1955[37]. Part XI of the act governs the area of domestic servant. These new provisions govern two aspects, which are: Employment of foreign domestic servant[38]Duty to inform Director General of termination of service of foreign domestic servant.[39]Under the employment of foreign domestic servant, an employer who hires a foreign domestic servant must inform the Director General of such employment within 30 days. The manner to inform may be determined by the Director General himself[40]. Moreover, it is also state under the new provision that any employer who fails to comply with the requirement, or the procedure contain under the provision, is said to commit an offence under the law. If the offence can be proven, the employer will be liable to a fine not exceeding RM 10, 000[41]. Another aspect would be the duty of the

employer to inform to the Director General the termination of service of their foreign domestic workers. Under the new provision, the employer has been obliged to inform to the Director General, the termination of service of the foreign domestic servant within 30 days. The manner to inform may be determined by the Director General[42]. The service is said to be terminated if: The servant is terminated by the employer[43]; The service is terminated by the foreign domestic servant himself[44]; The service is terminated upon the expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign domestic servant[45]; The service is terminated by the repatriation of deportation of the foreign domestic servant.[46]The termination of service by the foreign domestic servant also includes the act of the foreign domestic servant to run away, or leave from his place of employment[47]. Moreover, it is also stated in the new provision that if any of the employers who fail to inform the Director General within specified time and specified manner, the employer can be alleged to an offence and will be liable to a fine not exceeding RM 10, 000[48]. These new amendments were being inserting by the Parliament by the fact that there’s a ruckus in the matter pertaining with foreign domestic servant that being hired by the employer in Malaysia. Those foreign countries like Indonesia and other claimed that Malaysia’s authority did not protect their countrymen who comes work as the domestic foreign servant in Malaysia. This new amendment will make sure that the number of domestic foreign servant that hired by the employer in Malaysia can be monitored by the authority. They can track down the foreign domestic servant if there’s a dispute regarding visa and everything. Furthermore, this new amendment by the Parliament

given penalty for any employer who fails to comply with the requirement states under the Employment Act 1955 itself. That would make the employer to be more responsible in their action while hiring foreign domestic servant.

Problem with certain provision in new amendment

Wages

As we know the amendment in the section 25A(1) of Employment Act 1955, the law allowed the employee to be paid their wages by the legal tender or through cheque. After the amendment, the new problem may arise. As an example, the employee may commit an offence. In Malaysia someone who is bankrupt cannot work with the government and also private sector. So the employee's bank account will be deactivate since they become bankrupt. When this section[49]was amended, the parliament fail to see the problem may arise. A person may convince the employer that they cannot be pay their wages through bank account. They will give a reasonable reason to cover their status from being discover by their employer. So if the employer appoint someone who is bankrupt, the employer may be liable because our law does not allow someone who bankrupt can work in any private or government sector. Furthermore, if the employee caught work in anyplace without giving any notice to the employer they may be liable because they intentionally cheat their employer. The new amendment can cause problem to employer and this amendment can be contradict with the implementation of section 25 of Employment Act 1955. The issues of termination for special reason under section 14 of the Employment Act 1955[50], show that the suspension without wages not exceed than two weeks under subsection (c) of the same section has been amend to show the lesser punishment. If we

look at the negative effect to the employee, the Employment Act 1955, only protected a person who wages RM 2000. 00 and below.[51]So it is too much to deduct even one week wages. The amendment should contain exception or list down type of misconduct that really can be punish with suspension without wages. The reason not to punish them with suspension without wages is because we must know that they have a family to support. As we concern, with the wages below than RM 2000. 00 is hard to survive in this modern day.

Maternity

The new problem may arise in the new amendment under section 37(1)(aa) of Employment Act 1955, where it clearly stated that the female employee who already have five children[52]cannot receive maternity allowance during the eligible period leave.[53]As we mentioned above that the Employment Act only cover wages RM 2000. 00 and below. So it is too cruel for us to deny their right to received such allowance. The amendment should not put any limitation because pregnancy is something not against the society and law. So the employee will feel that the right to pregnant is limited if they think that they will suffer not to be pay their wages during their leave.

Hours of Work

The amendment in the section 60A (1A) of the Employment Act 1955, clearly stated that the employer can make a written application to the Director General in order to enter agreement with the employee to work in excess of the limit hours.[54]The problem may arise if the employee does not consent

to it. There is no provision in the act which give opportunity for the employee to reject if the employer need them to work beyond the limit of the time. Even though the employee can make an appeal if they dissatisfied with the decision of the Director General[55], but the employee will feel fear if they will lost the job. It is common if the employer know that the employee against the employer's decision, the employer will not take the employee as their worker. Furthermore in the act in the same section, the Director General may reject the application of the employer. The main reason they reject if they find there is no valid reason for the employee to work excess of the limit hours. So it is hard to show that there is no valid reason because the employer will prove with a good intention or bona fide that there really need the employee to work in excess of the limit time. Then if the employee is given opportunity to appeal, if they fail to prove that the employer and Director General make a wrong a decision to ask them to work in excess limit of time, and Minister not satisfy with the reason given by the employee, the employee still need to follow the order of the Director General.[56]

Sexual Harassment

There’s a problem in the provision. There’s no protection for the witness. Protection for witnesses could be an integral part if it is state in the provision itself, as for the benefit of the victim, to provide for a better claim for their complainant. Who would be acting against the employer, if the offender is the employer itself, if it would result to risking their livelihood? Also, the interpretation of the term of " sexual harassment" must be define more thoroughly as in Malaysia, there’s a situation where in particular situation, the parties will only treat it as a humour or maybe it’s a dispute between the

specific parties with specific reason. The environment of work may also make the definition of " sexual harassment" would be ambiguous. The employer itself must take responsibility in educate their employee on their rights in this particular matter.

Comparison our Employment Act 1955 with other country's act

Malaysia and UK’s employment law were design to give and protect the rights of the employer and employee. Perhaps all nations's designed their employment law based on the purpose stated. There are some provisions in both Malaysia and UK’s employment law that have the same rights for the employee. As for example, in section 60A of the Employment Act 1955[57]provide for the working hours for an employee to compel. Similarly, section 4 of the Working Time Regulation 1998[58]provides the same. Both provisions provide that the employee must not be required, under his contract to work for more than 48 hours in each week. Also, both provisions gives the rights to the employer to enter into written agreement with their employee, to exclude them from the 48 hours per week work hour, as seen in section 5 of the Working Time Regulation 1998, and section 60A(1A) of the Employment Act 1955. However, in Malaysia’s context, the Director General may at any time revoke the approval given under the provision, if he has reason to believe that it is expedient to do so[59]. It’s different with UK’s provision, where the termination of the earlier agreement shall be terminable by the worker by giving not less than seven days' notice to his employer in writing[60]. The major difference between Malaysia’s labour law and UK’s labour is that, UK’s labour law recognize and governs specifically

wider in discriminations of the worker or employee. Discrimination in the UK was dealt with by a various types of anti discrimination authority, or legislation. Those anti discrimination regulation would be: Sex Discrimination Act 1975Race Relation Act 1976Disability Discrimination Acts 1995Employment Equality (Age) Regulations 2006All these authority prohibited discrimination on the grounds of sex, race, disability and age within the working environment. Equal Pay Act 1970, enabled an employee to claim for equal pay with a comparable employee of the opposite sex. Additionally, there’s a regulations introduced in order to prevent discrimination on the grounds of religion or belief[61], and sexual orientation[62]. However, those regulations seem too difficult to interpret and to be compelled to, which result to replace by the Equality Act 2010[63], which enforced on October 2010. There are other regulations introduced to prohibit discrimination against part time workers[64], also to prohibit discrimination against employees employed on fixed term contracts. [65]However, these regulations are unaffected by the Equality Act 2010. Under India Labour Law, they do not have a specific law govern the employee like in our Employment Law Act 1955. Their law has a separate act which related to the employment law. We can refer in our act which stated regarding the wages which is included in our Employment Act 1955. Then, it is different with the India's law, where there is two act govern only for the wages.[66]As in Minimum Wages Act 1948, the act is govern about the wages for all employee in India. The function of this act is to limit the minimum wages of the employee. So when the employer appoint an employee the wages cannot be less from the minimum wages. In terms

payment of bonus, there is an act which stated the bonus to be pay to the employee.[67]The purpose of the act is to ensure the employer follow the law and pay a bonus to the employee with certain limits. It is unfair if the employer misuse the power to pay the bonus if the employee look not only at the employee's work but only looking at their strong relationship. So with the existing of this act, the employer cannot against the law how they made a payment of bonus to their employee. So in our Employment Law 1955, there is no specific provision regarding the payment of bonus. Lastly, the law of India provide another act which is not included in our Employment Act 1955, the payment of gratuity.[68]It is the scheme where the employer pay the payment of gratuity to the employee for each completed year of service.