

# The employment act on wages law employment essay

Law



Employment Law [Part A] Employment Act 1955 is an act that provides for minimum terms and conditions of employment standards for private sector employees, whether the employee is a union member or not. In other words, this act together with the legislation contained with it, provides a legal framework for a thorough job of controlling matters of wages, rest days, working hours, holidays, annual leave, sick leave, the employment of women and maternity protection, and termination of contracts. Act as a whole sets the rules to be observing by the employer and employees. Wages are the payment given to an employee in consideration for the services he provides under his contract of employment. In law, there is no difference between the terminology " wage" and " salary". If at all there is any difference in these terms, it would be the historical practice in the United Kingdom of referring to remuneration provided to non-executive level staff as wages and salary being the term given to payment to executives and managers. Minimum Wages Generally, the quantum of wages to be paid is at the discretion of the employer and is a matter to be agreed between the employer and employee and stated in the contract of employment or in a collective agreement where the workers belong to a trade union. However, in certain jobs and industries a minimum wage does apply. The Wages Councils Act of 1947 authorizes the Ministry of Human Resources to gazette minimum wages for jobs where it is deemed appropriate. Currently there are minimum wages for the following: Cinema workers Shop assistants Hotel and catering workers Penang stevedores The Government prefers market forces to determine wage levels, and is not likely, therefore, in the near future to extend or amend the provisions for minimum wages. The Employment Act on Wages One of the

most difficult aspects of wages in relation to the Employment Act is that for different purposes wages are defined differently. Furthermore, different laws define wages differently. Thus, "wages" is not a fixed concept. The following definitions will help clarify this matter.

**Scope of the Employment Act:** The scope of the Employment Act is laid down in the First Schedule to the Act. One group of workers who are covered by the Act are those earning wages not exceeding RM 1500 per month. "Wages" here is defined as: "Basic wages and all other payments in cash payable to an employee for work done in respect of his service but does not include: the value of any house accommodation or the supply of any food, fuel, light or water or medical attendance, or of any approved amenity or approved service; any contribution paid by the employer on his own account to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement scheme, thrift scheme or any other fund or scheme established for the benefit or welfare of the employee; any travelling allowance or the value of any travelling concession; any sum payable to the employee to defray special expenses entailed on him by the nature of his employment; any gratuity payable on discharge or retirement; or any annual bonus or any part of any annual bonus"

**Frequency and Timing of Payment of Wages**

The wage period, i. e. the period for which wages are payable, must be no longer than one month. Employers are free to pay more frequently and it is becoming a common trend to pay wages twice a month. The wage period is set by the employer and does not have to follow the calendar month. Wages must be paid not later than seven days after the end of the wage period. Failure to pay within this period is a breach of the contract of employment by

the employer. When the contract is terminated either because a fixed-term contract comes to an end, or because the employee resigns and gives the required notice or employer terminates the employee's contract, wages must be paid out to the employee on his last day of work. If the employee resigns without giving notice, any wages owing (after the indemnity for failure to give notice has been deducted) must be paid not later than the third day after the contract is terminated. Advances on Wages Employees are not entitled to advances on wages. It is up to the employer whether or not to give advances. It is certainly common to give festival advances, but on the whole in times of high turnover of staff it is risky venture to give advances. If the employee leaves before fully repaying an advance it will be lengthy legal process to recover the money owing. If, as a form of benefit, the employer agrees to give advances on wages, there are certain restrictions stated in section 22 of the Employment Act. The maximum the employee to buy a house or piece of land, or to renovate a house; or To enable the employee to buy livestock; or To enable the employee to buy a car, motorcycle, or bicycle; or To enable the employee to buy shares in the employer's business offered for the sale by the employer. If the advance is for any other purpose and is more than one month's wages, the employer will have to get written permission from the Director-General of Labour. Such approval is given if the Director-General believes that the advance is to the benefit of the employee. The Director-General has the right to impose any conditions, which he thinks necessary. Wage Statements All employees within the scope of the Employees Provident Fund Act are entitled, by virtue of section 42, to a wage statement upon payment of wages which includes certain information.

Further, the Employment Act also requires a wage statement to be given to the employee. In combination, therefore, the information which must be included in a wage statement is as follows: full name of employee, employee's EPF number, employee's gender, employee's identity card number and colour, duration period of the wage payment, wages for the period, other remuneration for the period including wages paid in lieu of annual leave, allowances paid, amount deducted for EPF contributions and all other deductions, full name of employer and date of issue of statement

## **Working Hours**

The Employment Act includes a number of provisions relating to working hours. Employers have more freedom to organize the working hours of those not within the scope of the Act. The Employment Act and Working Hours Section 60 of the Employment Act sets limit on the normal working hours for employees as agreed in the contract of employment as follows: The maximum working hours per day are 8; The maximum working hours per week are 48; After 5 hours continuous work, an employee is entitled to break off at least 30 minutes. There are a number of exceptions to the above general rules. The maximum daily working hours can be extended to nine if the employee is working a 5-day or 5 ½ -day week. Furthermore, for the purpose of calculating working hours, any extended break whereby the employee is free to use the time as he pleases, is not considered working hours. This break is outside working hours. Any work done in excess of the normal hours is considered overtime and is to be paid at special rates.

## Rest Day

The Employment Act on Rest Day Employees within the scope of the Employment Act are entitled to one rest day per week. It is for the employer to decide which day of the week will be the rest day for each of his employees. This decision will depend on the nature of the employer's business. In some industries, a 6-day workweek, with one rest day is the norm. In others a 5 ½-day workweek always been common, as in the government service and commercial banks. However, there are employers, in order to attract and retain staff, who offer a 5-day week. It should be made clear in this situation that only the second day of the " weekend" qualifies as a rest day under the Employment Act. The other day may be termed an " off-day". This is important for the purpose of calculating pay rates should an employee be requested to work in this off day. The Employment Act makes it clear in section 59 that employees are not entitled to rest days when they are on maternity leave, or on sick leave, or if they are receiving temporary disablement benefits under the Employees Social Security Act (SOCSO) or Workmen's Compensation Act. For a shift worker the definition of day for the purpose of his rest day is not the normal 24 hours but is extended to a minimum of 30 hours. Roster of Rest Day Employees are entitled to know at least one month in advance when their rest days will fall. This information will be particularly important for shift workers whose rest day may vary each week. The roster showing the rest days of the workers must kept for up to six years and be available for inspection by the Labour Department. Work on Rest Day Employees within the scope of the Employment Act cannot be required to work on their rest days unless: the worker works on a job that

requires shift workthere is an accident, actual or threatened at workthe worker performs work essential to the life of the communitythe worker performs work essential for the defence or security of Malaysiathere is urgent work to be done to machinery or plantthere is an interruption of work which it was impossible to foresee the employee is employed in one of the essential servicesPayment for Work Done on Rest DayWhere an employee works on a rest day, he is entitled to special rates of pay. A monthly rated worker is entitled to pay as follows when he works on a rest day: If the employee works up to half of his normal hours of work, he is entitled to half a day's wages; If the employee works more than half but not exceeding his normal hours of work, he is entitled to one day's wages. Wages for calculating rest day payments are based on the Ordinary Rate of Pay (ORP). If any overtime is worked in a rest day, i. e. after completing his normal hours of work the employee continues to work, the rate of pay is two times the hourly rate of pay. Rest Day for Employees Not Covered by Employment ActFor those employees who are not within the scope of the Employment Act, their rights in relation to rest days will depend upon the terms agreed in their contract of employment.

## **Public Holidays**

The Employment Act requires employers to grant employees within the scope of the Act minimum of 10 public holidays per year. The number of public holidays for employees not covered by the Act will depend upon what has been agreed between them and their employer. In certain industries, for example in banking, finance and insurance, it has long been the norm for the employer to close his business on all the public holidays. The public holidays

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for the year are announced in the government gazette. As public holidays can apply at either federal or state level, different states have a different number of holidays per year. Most states have 16 or 17 public holidays. From this employer can pick the holidays for this employees. However, four holidays are mandatory, i. e. National Day, Yang di-Pertuan Agong's Birthday, State Ruler's Birthday and Labour Day. Payment for Work on a Public Holiday

The law recognizes that in certain industries it may not be possible to allow employees a holiday on public holidays at these could well be the busiest days of the year, especially in the retail business. Thus, an employer may require an employee to work on any of his public holidays, in which case the employee will be entitled to a special rate of pay, i. e. as well as the pay for the public holiday he will be entitled to two days' wages for the day. If under his contract of employment the employee is entitled to a travelling allowance, when he can works on a public holiday he will be entitled to the allowance for that day. Overtime on a Public Holiday

If the employee is further requested to work overtime on a public holiday he is to be paid at three times his hourly rate of pay. Employee Not within Scope of Employment Act

For employees not within the scope of the Employment Act, the number of public holidays granted and all other conditions will be entirely up to the employer. The right of the employee will, therefore, depend upon what is stated in the contract of employment.

## **Annual Leave**

An employer must be decide how much annual leave his employees are to be entitled to and a clause on this matter should be included in the employee's written terms and conditions of employment. The Employment



Act on Annual Leave For employees within the scope of the Employment Act, the minimum annual leave is as follows: 8 days for employees with less than 2 years' service; 12 days for employees with between 2-5 years' service; and 16 days for employees with more than 5 years' service. In relation to annual leave, the Employment Act not only established the minimum entitlement of employees; it also lays down certain procedures and rules. According to the Act, employees are only entitled to annual leave after completing one year's service with the employer. Clearly, the Act envisages that employees should have to work first before they are permitted to take the leave.

## **Sick Leave**

Employees who are within the scope of the Employment Act are entitled to the following minimum paid sick leave per year:

Legal Entitlement to Sick Leave

Employees with less than 2 years' service : 14 days

Employees with between 2-5 years' service : 18 days

Employees with more than 5 years' service : 22 days

To receive paid sick leave, the employee must fulfill certain conditions imposed by the Act, i. e. The employee must be certified unfit for work by a registered medical practitioner, including a registered dentist, appointed by the employer; and The employee must inform the employer of his sickness within 48 hours of commencing the sick leave.

## **Female Workers and Maternity Protection**

At this point of time, Malaysia has no laws stopping an employer discriminating against female employees. Fortunately, as most employers are caring and enlightened, such discrimination is rare. Special Protection for

Female Employees The law does, however, provide special protection for female workers. The Employment Act has three sections which deal specifically with female employees. These are: Section 35 Underground Working Section 34 Working at night Section 37-44 Maternity leave and allowance No female employee within the scope of the Employment Act may be permitted to work in an underground mine. This section of little significance as underground mining is uncommon in Malaysia at the present time. Sexual Harassment Currently, there is no special legislation outlawing gender discrimination, neither do any of the country's laws relate to sexual harassment at the workplace. The only remedy available to an employer who is sexually harassed at work and whose employer takes no steps to stop such behavior is to walk off the job and claim constructive dismissal. The onus of proof in such situations will be on the employee to show that sexual harassment had taken place and that therefore the employer had breached the contractual requirement to provide a safe place of work. Maternity Leave and Allowances The Employment Act provides for maternity leave and allowances to be paid to female employees within its scope. Most employers provide the same benefits to all female employees whether or not there are covered by the Act. However, for employees not covered under the Act it is up to the employer to decide on the length of the leave and whether or not the employee is to be paid, and to insert a clause to this effect in the employee's contract of employment. Without such a clause it may be implied by a court that benefit provided for under the Employment Act will apply to all employees.

## **Termination of Employment**

Termination of the employment contract whereby the contract is brought to an end can come about in a number of ways. When would it be legitimate for an employer to terminate the contract of employment of an employee? when the employee is redundant; when the employee commits misconduct; when the employee's performance of his duties is not satisfactory; or when the employee is unable to perform the work for which he was employed. An employee's contract of employment will also end when: a total closure of the business takes place; a fixed-term contract expires; frustration of contract occurs; the employee resigns; the employee reaches the retirement age as stated in his contract.

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

The Children and Young Persons (Employment) Act 1966 is an Act that provides the protection for the children and young persons who are employed, in relation to the type of employment that they may be employed in, their hours and conditions of work. This Act does not make it illegal for children and young persons to be employed, but it does establish certain restrictions on their hours of work and the nature of work for which they may be employed. A "child" is defined as a person under the age of 14 years old. A "young person" is defined as a person aged between 14-16 years of age. Once a young person reaches his /her 16th birthday, he/she will be treated as an adult for the purpose of employment law. But, during the Conference Hall of the People, 11 October 2011, the council has approved the Bill Children and Young Persons Employment (Amendment) Act 2010 which came into force on 1st March 2011 which was amongst others alter the interpretation of the

above to: -" Child" is a person who has not attained the age of 15 years; and" Young people" is a person who has not attained the age of 18.

## **Working Hours**

For a child and young person respectively, there need to fulfill the requirement provided. No child in employment shall be permitted: to work between 8. 00 p. m. and 7. 00 a. m.; to work for more than 3 consecutive hours without a 30-minutes break; to work more than 6 hours a day; to commence work on any day without having had a minimum of 14 hours free from work. No young person in employment shall be permitted: to work between 8. 00 p. m. and 6. 00 a. m. (except in public entertainment); to work for more than 4 consecutive hours without a 30-minutes break; to work more than 7 hours a day; to commence work on any day without having had a minimum of 12 hours free from work.

## **Type of Work**

A child may only be employed in: a light work in a family undertaking public entertainment for which a license has been granted by the Labour Department a government-sponsored training scheme an apprentice scheme approved by the Director-General of Labour. A young person may be employed in any establishment in work " suitable to his capacity". Note, however, that the Factories and Machinery Act, 1967 section 28 prohibits children and young persons from any employment that involves the use of machinery. As the children and Young Persons (Employment) Act is enforced by the Labour Department, they have the power to decide whether a child's employment contravenes the law or not. For example, they may have to

determine whether a particular task is " suitable to the capacity" of a particular child or young person.