

The labour ordinance of sabah law employment essay

Law



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Basically in the United Kingdom their labour law is governing by three main sources such as the Common Law, Statute and European Law. Under the Common Law, since all employees in the UK works under a contract of employment with their employer, the common law (particularly the law of contract) forms the legal basis of the employer/employee relationship. A contract of employment is not compulsory in writing. The parties are free to stipulate which law will be the governing law of the contract. However, certain mandatory statutory employment protection rights will apply regardless of the law of contract, provided that the employee is in UK. Furthermore, the law of Tort will also govern matters such as an employer's liability for acts of their employees and liability for workplace accidents[1]. As for the position under Statute, since the early 1970's, there has been a growth in the amount of employment protection legislation in the UK which has significantly supplemented the Common Law rules. some examples such as, Health & Safety Work etc Act 1974, Trade Union and Labour Relations(Consolidation) Act 1992, Employment Tribunals Act 1996, Employment Rights Act 1996, Public Interest Disclosure Act 1998, Employment Relations Act, Employment Act 2002, Employment Relation Act 2004 and Equality Act 2010[2]. Whereas under the European Law, if UK domestic law has failed to implement EC Treaty obligations properly, individuals may rely on the EC Treaty in the UK courts. EC legislation has been particularly important in the areas of equal pay, discrimination and employees right on business transfer, In addition, since the European Court of Justice is the final arbiter in matters of interpretation of European legislation, its judgment are important when it comes to question relating to

interpretation of obligations derived from European employers[3]. Generally in UK there are traditionally got 3 main categories of work. Namely independent contractors also known as self employed, agency workers or temps and the employees. In recent years a new term called 'workers' has also establish, primarily from European law developments. However, this new category overlaps with others[4]. The Self employed or independent means, someone who is self employed or an independent contractor is someone who is in business on their own account and who is responsible for making their own decision on how job is performed. There are pros for both the employer and the individual in having a relationship of this nature such as the employer is freed from most statutory employment protection legislation, and the individual enjoys good tax position. For agency worker/temps they are employed or engaged by an employment agency which then supplies their services to the hirer, although the hirer will owe certain statutory duties but it will not owe the agency worker many of the employment protection rights enjoyed by employees agency workers are generally used for temporary engagements although it is not uncommon for engagements to last for several months or even years. While maybe an agency worker not be an employee of either the employment business or the hirer, some case law has establish that in few circumstances, an employment relationship could not be found to exist between an agency worker and the hirer where it is necessary to give effect to the reality of the relationship such as the way the contract is performed is inconsistent with agency arrangements[5]. Lastly is the new category of worker, in which the idea of separate legal category of 'worker; is quite new in UK. This concept

derives from the EU law. Generally a worker is someone who works under an employment contract, to which they agreed to provide services personally. In addition, to qualify as a worker, the organisation to which the individual is providing their services must not be a client/customer of their profession or business. So, for example, some independent contractor may qualify as workers. These workers enjoy less right than employees, but still benefit some rights relating to the number of hours they will work, the amount of leave they can take annually, and the amount they are paid[6]. Now we shall examine some basic info of employment for any assignees that are going to be working in the UK, as we know the labour law in UK, is very flexible, there are small limitations by the law for employers. As we know there must be a contract of work for all employees that entitles to employment. This is the basis of the employment relationships[7]. The following standards must be there in the written statements, info's such as the employers and employees name, job title or job descriptions, the date of the employment began, address of the employer, amount of pay and interval between payments, hour of work, holiday pay an sick pay entitlements, pension arrangements, notice period, grievance and appeal arrangements, disciplinary rules or dismissal procedures[8]. In recent times, employees also get to entitled a wide range of statutory rights, derived from parliamentary acts and state regulations that affect the employment relationship. In general they cannot be reduce or set aside, some of these rights including Working Hours, the employer contract will stated the number of hours a day he is expected to work and how many holiday he is entitled. There are also regulations that set out the maximum number of hours that a person will work each week.

Generally for young person to age 18, the maximum working hours are 40 hours a week or 8 hours a day. Whereas a person age more than 18 years old the figure is 48 hours /week. There is also the Minimum wages; the minimum wages in UK is 993. 20 pounds sterling /month. Also there is also Ending employment for both parties, the contract can be terminated in various ways, such as by expiry of the agreed term, by way of notice by the employer or employee, termination by mutual agreement, setting aside of the contract by the national court and by death of the employee. Lastly is Holiday, all worker have rights a least 4 weeks of paid of annual leave[9]. In Malaysia, there are number of labour laws to govern the employment relationship. The 3 majors ones such as the Employment Act1955 (EA 1955), Industrial Relation Act1967 and Trade Unions Act 1959. The EA 1955 stipulates the minimum terms and a condition to certain category of workers, the Industrial Relations Act provides the ways for settlements of disputes between employers and employees whereas the Trade union Act regulates trade union registration and the uses of trade union funds[10]. Under the Employments Act 1955 it only applies to the Peninsular of Malaysia, whereas the Labour Ordinance of Sabah and Labour Ordinance of Sarawak in which these labour ordinances regulate the administration of labour law in their respective stated. There are 2 types of employees covered by EA1955 with salary below RM 2000, manual and non manual. For manual workers such as labourers, machine operators and all those doing manual work, they are protected under this act. For non manual such as executives, clerk and etc, their terms and conditions are usually stated in their employment contract. So if employer fails to fulfil the contract, the employee can complain to

labour office under S69B if his salary is not more than RM5000[11]. The provisions of labour ordinance, Sabah and the labour ordinance Sarawak are similar to the situation in the EA 1955. But, still there are some provisions which are different and pertinent to note, such as Special provisions Relating to the Employment of Children and Young Persons. in Sabah an employer cannot hire a child less than 14 years old to work in construction, manufacturing, transportation, mining sector or other places such as restaurants, coffee shops and etc. In Sarawak, no young person under the age of 16 years old shall be employees on underground work in any time Whereas in Peninsular Malaysia, under the Children and Young Persons Act 1966, the children under the age of 14 years only allowed to work between 7 am to 8 pm, also they are not allowed to work for 3 long hours without rest and the rest must be at least 30 minutes. For Employment of Non Resident Employees, it is mandatory for any employer wishing to employ any ' non resident employee' must first obtain a license to employ ' non resident employee' from the director of labour Sabah/Sarawak. A ' non resident employee' is defined as person not belongs to Sabah/Sarawak as provided under S71 Immigration Act 1963[12]. Now we shall examine the standards of employment that are applicable in Malaysia. Under contract of employment, the contract can be in writing and be set out the details of the probation period and the manner in which a contract may be terminated by either party. There is working hours, it must not exceed 8 hours /day or 48 hours /week, unless both parties agree to different limits in the contract[13]. Furthermore, employees may not work more than 5 long hours without a break of at least 30 minutes. For Paid leave, the employees are entitled to

annual leave based on the amount of time the been working for the employer. The entitlements are as follow, 8 days for less than 2 years of services, 12 days for between 2 and 5 years of services. 16 days for 5 years or more of services. under maternity leave, female employees are entitled to maternity leave for 60 days. Maternity leave must commence before the employee is admitted into hospital, and must not begin earlier than 30 days before this date. The employment act also prescribed that the employee will receive maternity allowance for each day of leave period[14]. Next is the termination of employment, employees can be dismissed for reasons that can be objectively defined as for ' just cause'. Lastly is notice, period of notice, this is applicable to all dismissals except for misconduct, are as follow, 4 weeks for less than 2 years of services, 6 weeks for 2 -5 years of services, and 8 weeks for more than 5 years of services. These are minimum provisions outline in the EA 1955. Employers and employee can agree to greater notice periods, which must be recorded in writing in the employment contract. However, employers or employees may make a payment in lieu if notice[15]. Based on the above information, the comparison of labour law in UK and Malaysia, there are not much different, this is because both country the employment are govern by employments acts especially in Malaysia which is the EA 1955 there are also common law sources and cases based on Industrial Court, this is the same un UK where there is also such acts , common laws particularly contract law and tort law and EU laws. Therefore there are currently good balance between employers prerogative to dismiss staff and employees security if tenure, this is because although both employees in Malaysia and UK can dismissed their employees but can do so

with just cause. Anyone dismissed without just cause can file a complaint with the Industrial Relations Department and will conduct a dispute resolution. But in UK their system places the entire evaluation and mediation system under the courts, hence simplifying the complain procedure.

Moreover the terminations in UK must be justified and follow certain rules, this include a required period of notice. Failure to follow to the due process may result in unfair dismissal or discrimination claims by the employee[16].

The position is similar in Malaysia, where period of notice are applicable to all dismissals except for misconduct, these is stated in S12 EA 1955[17].

Furthermore, in term of back ground checks regulations, in which companies today are advised to do a background check of person they want to employ.

This is to avoid being cheated. In UK the law allow these checks, but they are only allowed them when relevant to the job to be performed. Even the data collection providers must meet certain minimum requirements and be

registers with the government before being permitted to conduct checks. In Malaysia loose regulation would not give employers incentives to train staff.

This is because the employers want to plug and play, most companies don't do check because they want save money, but this lack of care could prove to be costly, they want workers who can do the job without to invest in training, usually this can cost between RM1250 - RM 4000, nevertheless this

investment can give employer info as whether a prospective employee had been convicted in cheating or been sacked from job previously or this can prevent fraudster, let say that an employee who stayed at the office until late night not to work but to steal important info to sell to rival

companies[18]. Both country in UK and Malaysia also provided the worker

benefits to their employee, for example in Malaysia there are EPF and SOCSO. Under the EPF it was founded under the Employees Provident Fund Act 1991, which grants employees retirement benefits via a body that is intended to manage their savings, whereas for SOCSO, it is established in 1971, to provide protection to workers in situation of injury, invalidity, or death. To be in the program is a must for all workers earning less than RM2000 /month. Whereas in UK, employee benefits are under 3 terms, such as Flexible Benefits, and Flexible benefits Packages, Voluntary Benefits and Core Benefits. The Core Benefits is term given to benefits which all staff enjoy such as pension, life insurance, income protection and holidays. The Flexible Benefit, often called a ' flex scheme', is where employees are allowed to choose how a proportion of their remuneration is paid or they are given a benefits budget by their employer to spend and lastly the Voluntary Benefits is the name given to a collection of benefits that employees choose to pay personally[19]. Although as with flex plans, many employers make use of salary sacrifice schemes where the employee reduce their salary in exchange for the employer paying for the perk, but these tend to include benefits such as government back and therefore tax efficient, such as cycle to work , pension contribution and childcare voucher and also specially arrange discount on retail and leisure vouchers, gym membership and discount at local shops and dining restaurants[20]. Lastly is the right to Trade Union which is a fundamental right in both UK and Malaysia. the view is that in Malaysia, the right to form labour union is not fundamental may be doubted if one adverts his mind to an observation made by Raja Azlan Shah FJ (as he then was) in the case of Non- Metallic Mineral Products

Manufacturing employees Union V South East Asia fire Bricks[21]. According to the learned Federal Judge, 'Workers organizations cannot exist, if workers are not free to join them, to work for them and to remain in them. This is a fundamental right which is enshrined in our constitution and which expresses the aspirations of workmen. But then the learned judge made no specific reference to any relevant constitutional provision probably because he was making the statement just by the way[22]. This is similar in UK, that the principle of common law enforces a union own rules, and that union were free to arrange their affairs is reflected in the ILO freedom of Association Convention, and article 11 of EU convention on Human Rights, which stated that 'everyone had right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests'. Subject to the requirements that regulations 'necessary in a democratic society' may be imposed. Furthermore the unions also must establish their own executive body and that executive must, under TULCRA 1991 S46 to 56, be elected at least every 5 years, this must be in conduct in secret and equal postal vote of union members, and if irregularities are alleged, complaints can be taken straight to trade union certification officer[23].