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**LABOUR &  
EMPLOYMENT**

Malaysia



LEXOLOGY

# Labour & Employment

Contributing Editor

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## LEGISLATION AND AGENCIES

### Primary and secondary legislation

#### What are the main statutes and regulations relating to employment?

The main statutes and regulations relating to employment are as follows.

##### Employment Act 1955

The Employment Act 1955 (EA) applies only in Peninsular Malaysia. The Employment (Amendment) Act 2022 and the Employment (Amendment of First Schedule) Order 2022 came into effect on 1 January 2023, amending existing provisions of the EA (including by increasing maternity leave and separating hospitalisation from non-hospitalisation sick leave), introducing new provisions (including on flexible working and the introduction of paternity leave) and importantly, expanding its application to all employees employed in Peninsular Malaysia.

However, specific provisions in the newly amended EA, including on overtime pay, additional rates of pay for working on a rest day and on a public holiday, shift allowances and statutory termination benefits, are applicable only to select employees ('covered employees'), namely employees who earn a monthly wage not exceeding RM4,000 per month or those, regardless of salary, who are employed:

- as manual labourers or supervisors of manual labourers;
- to operate or maintain any mechanically propelled vehicle for the purpose of transporting passengers or goods or for reward or commercial purposes;
- as domestic employees; or
- in certain positions on seagoing vessels.

The states of Sabah and Sarawak in East Malaysia, in which the Sabah Labour Ordinance and Sarawak Labour Ordinance apply respectively, have not made corresponding amendments to their respective local legislation, which closely resemble provisions under the EA.

##### Industrial Relations Act 1967

The Industrial Relations Act 1967 (IRA), which is applicable to all employees throughout Malaysia, aims to promote and maintain industrial harmony and to regulate of the relations between employers and workmen and their trade unions and generally to deal with trade dispute.

##### Trade Unions Act 1959

The Trade Unions Act 1959 (TUA) regulates the registration and constitution of trade unions as well as their rights and liabilities. Its amendments were recently gazetted in January 2024 but has yet to come into force.

### Employees Provident Fund Act 1991

The Employees Provident Fund Act 1991 (EPFA) is applicable to all employees in Malaysia and provides for the law relating to a scheme of savings for employees' retirement and the management of the savings for retirement purposes. Generally, the EPFA mandates that employers and local employees make monthly contributions to the Employees Provident Fund at a minimum rate specified under the EPFA.

### Employees' Social Security Act 1969

The Employees' Social Security Act 1969 (ESSA) requires contributions by employers and employees to be made at a minimum rate as specified under the Act to ensure social security coverage for employees in situations like work-related injuries and death.

### Employment Insurance System Act 2017

The Employment Insurance System Act 2017 (EIS) aims to provide certain benefits and a re-employment placement programme for insured persons in the event of loss of employment. Under the EIS, employers and employees are required to make mandatory minimum contributions at a rate as specified under the EIS.

### Occupational Safety and Health Act 1994

The Occupational Safety and Health Act 1994 (OSHA) places overarching responsibilities on employers to ensure the safety, health and welfare of individuals in the workplace.

### Minimum Wages Order 2022 under the National Wages Consultative Council Act 1991

The Minimum Wages Order 2022 stipulates the minimum wage rate applicable to employees in Malaysia.

### Minimum Retirement Age Act 2012

The Minimum Retirement Age Act 2012 (MRAA) establishes the minimum (non-compulsory) retirement age as 60. Employers are prohibited from retiring an employee before they reach this age. Any pre-existing contractual provision specifying an earlier retirement age is automatically amended by law to align with the statutory retirement age of 60 years. However, voluntary early retirement is permitted based on the terms outlined in the employee's contract of service or any relevant collective agreement.

### Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990

This Act establishes the minimum standards for housing and nurseries for employees, with a particular focus on foreign employees. The standards include centralised accommodation, designed to meet the specific requirements outlined in the Act.

Other employment-related legislations include the Personal Data Protection Act 2010 (PDPA), the Employment (Restriction) Act 1968 (ERA) and the Immigration Act 1959/63 (IA).

**Law stated - 14 February 2024**

### **Protected employee categories**

**Is there any law prohibiting discrimination or harassment in employment?**

**If so, what categories are regulated under the law?**

The Federal Constitution provides that all individuals are equal before the law and discrimination against citizens based on religion, race, descent, place of birth or gender is prohibited in various context, including in:

- any law;
- the appointment to any office or employment under a public authority;
- the administration of any law relating to the acquisition, holding or disposition of property; or
- the establishing or carrying on of any trade, business, profession, vocation or employment.

Nevertheless, the safeguard against discrimination, as outlined in the Federal Constitution in the context of the workplace, has been interpreted by the courts to be applicable to public-sector employment only, thus excluding private sector employers.

However, under the newly amended EA, the Director General may inquire into and decide any dispute between an employee and his employer in respect of any matter relating to discrimination in employment and may also, pursuant to such decision, make an order. An employer who fails to comply with any order of the Director General commits an offence, and shall, on conviction, be liable to a fine not exceeding RM50,000. In the case of continuing offence, the employer shall be liable to a daily fine not exceeding RM1,000 for each day the offence continues after conviction.

However, 'discrimination' is neither defined nor made an offence under the EA. The amendments also do not provide any specific remedy that the Director General may afford if the Director General finds that a dispute between employer and employee relates to discrimination in employment. It is pertinent to note that the amendments only extend to discrimination once the employment relationship is entered into and do not address discrimination as a basis for refusal of employment or non-employment.

The EA also contains provisions aimed at curbing sexual harassment at the workplace. Under the EA, an employer has an obligation to investigate complaints of sexual harassment. The EA also enables aggrieved employees to bring their disputes regarding employment discrimination to the Director General of Labour. Employers also have an obligation to exhibit conspicuously at the place of employment, a notice to raise awareness on sexual harassment.

Malaysia has also enacted the Anti-Sexual Harassment Act 2022 (ASHA), which has not yet been implemented in full. The ASHA does not specifically apply to workplace sexual harassment or employment-related sexual exclusively and does not specifically impose any obligation on employers in respect of sexual harassment, but may serve to provide additional redress for sexual harassment experienced during employment.

**Law stated - 14 February 2024**

### **Enforcement agencies**

#### **What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?**

The Director General of Labour, appointed under the EA, possesses the authority to investigate complaints related to discrimination, sexual harassment and specific breaches of employment terms and conditions. Additionally, the Director General of Labour holds enforcement powers under the Employees' Minimum Standards of Housing Accommodation and Amenities Act 1990.

The Employees Provident Fund Board and the Social Security Organisation Board have the authority to scrutinise, conduct inquiries and prosecute offences under the EPFA and the ESSA, respectively. Employment services officers, designated under the EIS, are empowered to inspect, examine and investigate and enforce the provisions of the EIS.

Officers appointed under the OSHA have the prerogative to enter, inspect and examine workplaces. They possess the authority to issue directives and examine witnesses as deemed necessary during the course of their inspections, in accordance with their responsibility to conduct thorough assessments.

The Personal Data Protection Commissioner is vested with the authority to inspect, provide recommendations, investigate complaints and issue enforcement notices as part of their regulatory role in investigations related to data protections under the PDPA.

**Law stated - 14 February 2024**

## **WORKER REPRESENTATION**

### **Legal basis**

#### **Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?**

Work councils do not exist in Malaysia. However, workers' trade unions are allowed and permissible. Under the Industrial Relations Act 1967 (IRA), there are express provisions that prohibit any person from interfering with or restraining an employee from forming, assisting in the formation of or joining a trade union.

**Law stated - 14 February 2024**

## **Powers of representatives**

### **What are their powers?**

Trade unions in Malaysia have a statutory right to engage in collective bargaining to negotiate a collective agreement on behalf of their members and employees falling within its scope of application. Typically, they are granted the authority to represent their members in disciplinary proceedings, subject to the terms stipulated in the collective agreement. Additionally, a trade union has the ability to call for a strike or picket, provided that specific conditions specified in both the IRA and the Trade Union Act 1959 are met.

**Law stated - 14 February 2024**

## **BACKGROUND INFORMATION ON APPLICANTS**

### **Background checks**

#### **Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?**

In Malaysia, there is no specific prohibition or restriction on background checks on applicants, provided that the legal requirements set out in the Personal Data Protection Act 2010 (PDPA), where applicable, are adhered to.

**Law stated - 14 February 2024**

### **Medical examinations**

#### **Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?**

In Malaysia, there are generally no restrictions or prohibitions against requiring a medical examination as a condition of employment. However, it is crucial for employers to ensure that the processing of medical or health data during such examinations complies with the PDPA especially given that data on health are sensitive personal data requiring the explicit consent of the data subject to be processed. There are no specific legal restrictions on an employer refusing to hire an applicant who declines to undergo a medical examination. Employers should, however, be mindful of the potential for discrimination issues to arise.

**Law stated - 14 February 2024**

### **Drug and alcohol testing**

#### **Are there any restrictions or prohibitions against drug and alcohol testing of applicants?**

In Malaysia, there are generally no specific legal restrictions or prohibitions against drug and alcohol testing of job applicants.

**Law stated - 14 February 2024**

## HIRING OF EMPLOYEES

### **Preference and discrimination**

**Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?**

The Persons with Disabilities Act 2008 in Malaysia enshrines the right of persons with disabilities to access employment on an equal basis with individuals without disabilities.

**Law stated - 14 February 2024**

### **Written contracts**

**Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?**

The Employment Act 1955 (EA) requires that all employment contracts with a term exceeding one month must be in writing and must include a clause setting out the manner in which such contract may be terminated by either party as a minimum. However, the absence of a written contract does not automatically mean that a employment relationship does not exist. Employment contracts which contain terms and conditions which are less favourable than the provisions of the EA shall be to that extent, void and of no effect, and the more favourable provisions of the EA shall be substituted therefor.

**Law stated - 14 February 2024**

### **Fixed-term contracts**

**To what extent are fixed-term employment contracts permissible?**

Fixed-term employment contracts are permissible in Malaysia and there are no specified minimum or maximum durations. However, the courts in Malaysia, including the Industrial Court may find that a fixed-term contract is not genuinely so but is a de facto permanent employment contract depending on the specific circumstances of the matter at hand. Pertinently, the perpetual renewal of a fixed-term contract without any significant breaks in between two consecutive terms and without material change in the terms and conditions of employment as well as nature of the role performed (whether a fixed-term need or a permanent one) may influence the decision of the court.

**Law stated - 14 February 2024**

### **Probationary period**

**What is the maximum probationary period permitted by law?**

In Malaysia, there is legal requirement to provide a probationary period. Accordingly, there is no minimum or maximum probation period required under law. Employers are free to decide the length of the probation period and may extend the same at its discretion. However,

employers are advised to afford the entirety of the probationary period to the employee in the assessment of the employee's performance for suitability for permanent employment.

**Law stated - 14 February 2024**

### **Classification as contractor or employee**

#### **What are the primary factors that distinguish an independent contractor from an employee?**

There is no single satisfactory test distinguishing an employee from an independent contractor. However, common law has laid down several factors as follows:-

- control over the manner of work performed;
- whether personal service is an integral part of the contract or whether substitution is permitted;
- whether the role or nature of tasks is integral to the business or merely ancillary to it;
- the exclusivity of the relationship;
- the nature and manner of remuneration, including whether fixed remuneration is provided regardless of numbers of days or hours worked;
- whether remuneration was subject to statutory contributions and deduction of income tax;
- whether the worker enjoyed employment-like benefits such as overtime payments, annual leave, maximum working hours, sick leave, public holidays and rest days;
- whether the worker is subject to disciplinary and performance management;
- participation of the worker in employer programmes, including mandatory training; and
- how the relationship may be terminated.

Among these, the most significant factor is the level of control. This has been codified under the EA.

**Law stated - 14 February 2024**

### **Temporary agency staffing**

#### **Is there any legislation governing temporary staffing through recruitment agencies?**

Recruitment agencies are required to comply with the provisions outlined in the Private Employment Agencies Act 1981.

Under the EA, a contractor for labour planning to supply or already supplying employees is required to register with the Director General of Labour within 14 days before supplying the employees. The contractor must maintain registers containing information about each employee supplied and make them available for inspection.

Additionally, a contractor for labour supplying employees to a principal, contractor or subcontractor is mandated to enter into a written contract. This contract or any related document should be made accessible for inspection.

**Law stated - 14 February 2024**

## FOREIGN WORKERS

### Visas

**Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?**

There are no specific restrictions on the quantity of work passes permitted at a specific workplace. However, the issuance of visas is completely at the discretion of the immigration authorities and may be contingent upon the employer meeting specific requirements. There are not specific visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction.

**Law stated - 14 February 2024**

### Spouses

**Are spouses of authorised workers entitled to work?**

Foreign spouses of Malaysian citizens with a long-term social visit pass (colloquially referred to as 'spouse visa') and permission to work are allowed to work in Malaysia.

However, foreign spouses of expatriate employees (employed under an employment pass) are required to apply for individual employment passes through their employer if they wish to work in Malaysia. This means they need to go through the formal process of obtaining the necessary employment documentation facilitated by their employer.

**Law stated - 14 February 2024**

### General rules

**What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker who does not have a right to work in the jurisdiction?**

Since 1 January 2023, under the Employment Act 1955, it is mandatory for prospective employers to get approval from the Director General of Labour for employing foreign workers, including expatriates.

Different types of passes are issued by the Malaysian government for expatriate employees and low-level employees.

Generally, the following passes are applicable to expatriate employees.

## Professional visit pass

Foreign citizens with acceptable professional qualifications can obtain professional visit passes for short-term professional work in Malaysia for a Malaysian entity which is carried out by way of secondment. These passes are issued for a duration not exceeding 12 months, and application for such passes must be submitted by the Malaysian entity.

## Employment pass

Employment passes are provided to foreign citizens, referred to as expatriates, entering Malaysia for paid employment under a contract of service with an employer. The duration of the employment pass varies based on the nature of the employment and employer requirements. Typically, these passes are issued for a maximum period of five years, with the standard duration falling between two and three years. Application for such passes must be submitted by the Malaysian entity.

## Residence pass – talent

The residence pass – talent may be applied for by foreign citizens recognised as high achieving individuals capable of making significant contributions to business outcomes in key economic areas. Applicants must have worked in Malaysia under an employment pass for a specific duration of time before applying for the resident pass – talent.

## PLS@XPATS

The PLS@XPATS permits eligible foreign visitors to engage in professional work for critical and emergency tasks in specific permitted sectors for a maximum of 30 days.

For low-level foreign workers, a visit pass is issued.

## Visit pass (temporary employment)

These passes are granted for the employment of foreign nationals in specific sectors of the Malaysian economy, including agriculture, construction, manufacturing, plantation, and various service industries. The passes are applicable to semi-skilled, unskilled or domestic helper roles and are sourced from specific countries.

Generally, employers are required to submit a quota application to hire low-level foreign workers to the Ministry of Home Affairs. Employers may only hire from permitted source countries depending on the industry.

Employing foreign nationals without a valid pass or visa is considered an offence under the Immigration Act 1959/63 and the Employment (Restriction) Act 1968 and may invite fines, an imprisonment term for up to 12 months and whipping of not more than six strokes.

**Law stated - 14 February 2024**

## Resident labour market test

### Is a labour market test required as a precursor to a short or long-term visa?

Since 1 January 2021, the Malaysian government has mandated that companies planning to hire new expatriates through an employee pass must first advertise the job vacancy intended to be filled by the expatriate to local employees. However, there are exemptions to this advertising requirement, including in relation to:

- intended new employment pass holders who hold important positions (C-suite and key posts) or who receive a basic monthly income of not less than RM15,000;
- representative offices and regional offices;
- companies whose investors or shareholders are directly involved in the company's operations;
- companies that receive expatriate employees from a parent company for the purposes of training, knowledge and experience sharing between companies;
- international organisations subject to the International Organisations (Privileges and Immunities) Act 1992 that appoint foreign-recruited staff; and
- recruitment of athletes or professionals to join any sports organisation or club.

The requirement to advertise job vacancies does not apply to the renewal of an existing employment pass.

**Law stated - 14 February 2024**

## TERMS OF EMPLOYMENT

### Working hours

#### Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

Under the Employment Act 1955 (EA), the limitations on working hours are as follows:

- generally, employees may not be required to work more than eight hours per day or 45 hours per week, or work more than five consecutive hours without a break of at least 30 minutes; and
- employees are entitled to one whole day of rest each week (rest day).

Under certain circumstances, an employee may be required work in excess of his normal working hours but is entitled to additional rates of pay for doing so. Different rates of pay apply for working overtime on a normal working day, on a rest day or on a public holiday. However, these additional rates of pay are only applicable to covered employees.

The EA permits employees to submit a written application to their employer for a flexible working arrangement, including to vary their working hours, days, or place of work. The employer is required to inform the employee of the approval or refusal within 60 days of receiving the application. In the event of a refusal, the employer must provide the grounds

for the decision. Notably, there is no provision for challenging an employer's refusal or the grounds upon which the decision is based. The employer holds full discretion to decide whether or not to permit flexible working.

Law stated - 14 February 2024

### **Overtime pay – entitlement and calculation**

#### **What categories of workers are entitled to overtime pay and how is it calculated?**

Only covered employees are entitled by law to overtime pay. Overtime pay for a covered employee who is paid monthly is calculated as follows:

- for any overtime work carried out in excess of normal hours of work: not less than one-and-a-half times the hourly rate of pay;
- for work on a rest day:
  - for any period of work that does not exceed half the normal hours of work: half the ordinary rate of pay for work done on that day;
  - for any period of work that is more than half but that does not exceed the normal hours of work: one day's wages at the ordinary rate of pay for work done on that day; and
  - for any work carried out in excess of the normal hours of work: not less than twice the hourly rate of pay; and
- for work on a public holiday: in addition to the day's wages, two days' wages at the ordinary rate of pay, regardless of whether the period of work done on that day is less than the normal hours of work, and, for work in excess of the normal hours of work, at a rate that is not less than three times the hourly rate of pay.

No employee should be compelled to work more than 12 hours per day or exceed 104 hours of overtime in any given month.

Law stated - 14 February 2024

### **Overtime pay – contractual waiver**

#### **Can employees contractually waive the right to overtime pay?**

Non-covered employees may do so.

Law stated - 14 February 2024

### **Vacation and holidays**

#### **Is there any legislation establishing the right to annual vacation and holidays?**

The EA stipulates the minimum requirements for paid annual leave and public holiday entitlements as follows.

An employee is entitled to paid annual leave of:

- eight days for every 12 months of continuous service if they have been in employment for a period of less than two years;
- 12 days for every 12 months of continuous service if they have been in employment for a period of two years or more but less than five years; and
- 16 days for every 12 months of continuous service if they have been in employment for a period of five years or more.

An employee is entitled to 11 paid gazetted holidays, five of which must be:

- National Day (31 August);
- the birthday of Malaysia's monarch and head of state (the first Saturday of every June);
- the birthday of the ruler of the state (which differs from state to state) in which the employee wholly or mainly works, or Federal Territory Day (1 February) if the employee works in the Federal Territories;
- Labour Day (1 May); and
- Malaysia Day (16 September).

**Law stated - 14 February 2024**

## **Sick leave and sick pay**

### **Is there any legislation establishing the right to sick leave or sick pay?**

The EA stipulates the minimum paid sick leave entitlements.

In cases where hospitalisation is not necessary, an employee is entitled to paid sick leave of:

- 14 days in each calendar year if they have been in employment for a period of less than two years;
- 18 days in each calendar year if they have been in employment for a period of two years or more but less than five years; and
- 22 days in each calendar year if they have been in employment for a period of five years or more.

In cases where hospitalisation is necessary, an employee is entitled to 60 days of sick leave in each calendar year.

**Law stated - 14 February 2024**

## **Leave of absence**

## In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

Under the EA, a female employee is entitled to 98 days' paid maternity leave for up to five births, provided that the female employee has been continuously employed for a period not less than 90 days within the nine-month period immediately preceding childbirth, including employment in the four months leading up to childbirth. This applies to female employees whose childbirth occurs after at least 22 weeks of pregnancy, resulting in the birth of a child or children (whether living or stillborn).

A female employee is not eligible for paid maternity leave if she has five or more surviving children.

A married male employee is entitled to seven consecutive days of paid paternity leave for each child born, with this entitlement applicable up to five births, regardless of the number of spouses (Muslim men are allowed to have four wives).

All other periods of leave of absence are subject to contract and applicable employment policy at the workplace.

**Law stated - 14 February 2024**

## Mandatory employee benefits

### What employee benefits are prescribed by law?

Employees have the right to receive minimum contributions made for their benefit under the Employees Provident Fund Act 1991, Employees' Social Security Act 1969 and the Employment Insurance System Act 2017, respectively, at the rates prescribed therein.

The EA also provides for minimum benefits including the following:

- paid annual leave/holiday pay;
- paid sick leave (not requiring hospitalisation and requiring hospitalisation);
- public holidays;
- overtime payments; and
- rest days.

**Law stated - 14 February 2024**

## Part-time and fixed-term employees

### Are there any special rules relating to part-time or fixed-term employees?

The Employment (Part-Time Employees) Regulations 2010 states that the regular working hours for a part-time employee should be 70 per cent of the normal hours for a full-time employee. In cases where the standard hours for a full-time employee cannot be determined, they are presumed to be eight hours in a day or 48 hours in a week.

If a part-time employee is required to work beyond their normal hours, they are entitled to overtime pay as follows:

- not less than their hourly rate of pay for each hour or part thereof that exceeds their normal hours of work but does not exceed the normal hours of work of a full-time employee employed in a similar capacity in the same enterprise; and
- not less than one-and-a-half times the hourly rate of pay of the part-time employee for each hour or part thereof that exceeds the normal hours of work of a full-time employee employed in a similar capacity in the same enterprise.

A part-time employee is entitled to a weekly rest day if they work five days or more, accumulating a total of at least 20 hours of work per week.

A part-time employee who is required to work their normal hours of work on a rest day is entitled to overtime pay as follows:

- not less than two days' wages at the ordinary rate of pay to which they are entitled for that day;
- for work beyond their normal hours of work; not less than one-and-a-half times their hourly rate of pay for each hour or part thereof; and
- for work beyond the normal hours of work of a full-time employee employed in a similar capacity in the same enterprise; not less than twice their hourly rate of pay for each hour or part thereof.

A part-time employee is entitled to a paid holiday of no fewer than seven gazetted holidays in a calendar year, four of which shall be:

- National Day (31 August);
- the birthday of Malaysia's monarch and head of state (the first Saturday of every June);
- the birthday of the ruler of the state (which differs from state to state) or the federal territory (1 February) in which the employee wholly or mainly works; and
- Labour Day (1 May).

If a part-time employee is required to work on any paid holiday, they shall be paid overtime as follows:

- for their normal hours of work: not less than two days' wages in addition to the holiday pay to which they are entitled for that day;
- for work beyond their normal hours of work: not less than two times the hourly rate of pay for each hour or part thereof; and
- for work beyond the normal hours of work of a full-time employee employed in a similar capacity in the same enterprise: not less than three times the hourly rate of pay for each hour or part thereof.

A part-time employee is entitled to paid annual leave of:

- six days for every 12 months of continuous service if they have been in employment for a period of less than two years;
- eight days for every 12 months of continuous service if they have been in employment for a period of two years or more but less than five years; and
- 11 days for every 12 months of continuous service if they have been in employment for a period of five years or more.

A part-time employee is entitled to paid sick leave of:

- 10 days in each calendar year if they have been in employment for a period of less than two years;
- 13 days in each calendar year if they have been in employment for a period of two years or more but less than five years; and
- 15 days in each calendar year if they have been in employment for a period of five years or more.

A part-time employee does not have the right to paid sick leave on their non-working day.

Separately, fixed-term employees are not subject to any specific rules or regulations.

**Law stated - 14 February 2024**

### **Public disclosures**

**Must employers publish information on pay or other details about employees or the general workforce?**

No.

**Law stated - 14 February 2024**

## **POST-EMPLOYMENT RESTRICTIVE COVENANTS**

### **Validity and enforceability**

**To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?**

Section 28 of the Contracts Act 1950 prohibits non-competition clauses. Non-solicitation clauses may generally be enforced.

**Law stated - 14 February 2024**

### **Post-employment payments**

**Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?**

No.

Law stated - 14 February 2024

## LIABILITY FOR ACTS OF EMPLOYEES

### Extent of liability

In which circumstances may an employer be held liable for the acts or conduct of its employees?

An employer may be held liable for the actions and behaviour of employees conducted during employment duties or as per the employer's instructions.

Law stated - 14 February 2024

## TAXATION OF EMPLOYEES

### Applicable taxes

What employment-related taxes are prescribed by law?

Income tax is chargeable on all income earned from an employment relationship. Income includes:

- wages, salary, remuneration, leave pay, fees, commissions, bonuses, gratuities, perquisite and allowances (whether in money or otherwise) in respect of having or exercising the employment;
- an amount equal to the value of a benefit or amenity provided by the employer (subject to certain exclusions);
- monies received from a pension or provident fund, scheme or society not approved for the purpose of the Income Tax Act 1967; and
- monies received as compensation for loss of employment.

Employers are required to deduct monthly income tax, as specified in the Schedule to the Income Tax (Deduction from Remuneration) Rules 1994, from the remuneration of every employee on a monthly basis, unless otherwise directed in writing by the Director General of Inland Revenue.

Law stated - 14 February 2024

## EMPLOYEE-CREATED IP AND CONFIDENTIAL BUSINESS INFORMATION

### Ownership rights

Is there any legislation addressing the parties' rights with respect to employee inventions?

The Copyright Act 1987 stipulates that when an invention occurs during employment, the copyright is automatically transferred to the employer, unless there is an agreement between the parties that excludes or limits such transfer.

Under the Patents Act 1983, the rights to a patent for an invention made within the scope of employment or work execution are granted to the employer. However, if the invention's economic value far exceeds what the parties could reasonably have anticipated at the time of employment contract conclusion, the inventor is entitled to fair compensation, which the court may determine in the absence of an agreement between the parties.

If an employee, who is not required to engage in inventive activities as per their employment contract, creates an invention within their employer's realm using data or means provided by the employer, the employer is deemed to have the patent rights. In this situation, the employee is entitled to fair compensation, which the court may determine in the absence of an agreement, considering factors like the employee's earnings, the invention's economic value, and any benefits gained by the employer.

It is noteworthy that contractual agreements cannot circumvent the employees' entitlement to fair compensation in the aforementioned scenarios.

**Law stated - 14 February 2024**

### **Trade secrets and confidential information**

**Is there any legislation protecting trade secrets and other confidential business information?**

None, besides the Copyright Act 1987 and the Patents Act 1983.

**Law stated - 14 February 2024**

## **DATA PROTECTION**

### **Rules and employer obligations**

**Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?**

The Personal Data Protection Act 2010 (PDPA) places responsibilities on employers involved in processing personal data to adhere to the principles outlined in the Act. One such obligation is to inform the data subject (ie, the employee) about the processing of their personal information, and in many instances, consent from the data subject is necessary when collecting, processing or disclosing data. Employees also possess the right to access and rectify their data.

**Law stated - 14 February 2024**

### **Privacy notices**

## Do employers need to provide privacy notices or similar information notices to employees and candidates?

Yes. The PDPA requires the data user to inform the data subject of certain information, such as:

- that personal data of the data subject is being processed by or on behalf of the data user, and a description of the said personal data;
- the purposes for which the personal data is being or is to be collected and further processed for;
- any information available to the data user regarding the source of the personal data;
- the data subject's right to request access to, and correction of, the personal data and how to contact the data user with any inquiries or complaints in respect of the personal data;
- the class of third parties to whom the data user discloses or may disclose the personal data;
- the choices and means the data user offers the data subject for limiting the processing of personal data, including personal data relating to other persons who may be identified from that personal data;
- whether it is obligatory or voluntary for the data subject to supply the personal data; and
- where it is obligatory for the data subject to supply the personal data, the consequences for the data subject if they fail to supply the personal data.

The notice must be presented in both English and Malay.

**Law stated - 14 February 2024**

## Employee data privacy rights

### What data privacy rights can employees exercise against employers?

An employee has, against their employer, the right to:

- be informed;
- access their personal data;
- correct their personal data where it is inaccurate, incomplete, misleading or not up to date;
- withdraw consent to the processing of personal data in respect of which they are the data subject;
- prevent processing that is unlikely to result in distress; and
- prevent processing for direct marketing purposes.

**Law stated - 14 February 2024**

## BUSINESS TRANSFERS

### Employee protections

Is there any legislation to protect employees in the event of a business transfer?

In the event of a business transfer, employees do not automatically move to the new owner. Regulation 8 of the Employment (Termination and Lay-Off Benefits) Regulations 1980 outlines a process for the transfer of the vendor's employees if the buyer proposes to retain them under terms and conditions that are at least as favourable as their previous employment terms.

Law stated - 14 February 2024

## TERMINATION OF EMPLOYMENT

### Grounds for termination

May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

Termination of an employee's employment is permissible only on grounds of just cause or excuse, with the specific definition not outlined in legislation. Typically, misconduct, poor performance, and redundancy are recognised as just causes for termination.

Law stated - 14 February 2024

### Notice requirements

Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

If termination is not as a result of employee misconduct, poor performance or breach of contract, a notice of termination must be provided. Alternatively, salary in lieu of notice may be offered.

Law stated - 14 February 2024

### Dismissal without notice

In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

An employer is allowed to terminate an employee's employment without providing notice or making a payment in lieu of notice in cases of employee misconduct, poor performance or breach of contract.

Law stated - 14 February 2024

## Severance pay

### Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Under the Employment Act 1955, severance pay is applicable only to employees whose monthly wages do not exceed RM4,000 or individuals engaged as manual labourers, supervisors of manual labourers, operators of vehicles for transporting passengers or goods for commercial purposes, domestic employees, and certain positions on seagoing vessels (referred to as covered employees). Severance pay becomes payable in situations of retrenchment or business closure for these eligible employees. The statutory minimum severance pay is as follows:

- 10 days' wages for every year of employment if they have been employed for a period of less than two years;
- 15 days' wages for every year of employment if they have been employed for a period of two years or more but less than five years; and
- 20 days' wages for every year of employment if they have been employed for a period of five years or more.

If the employment contract stipulates a more favourable severance pay arrangement, the employer is obligated to adhere to the terms set out in the contract instead of the statutory minimum.

For all other employees, severance pay is not required under law. However, case law has stated that if the employer's financial situation allows and particularly when a retrenchment aims at enhancing efficiency and profits, fair and reasonable benefits should be provided. At present, one month's salary for each year of service is deemed fair and reasonable.

Should the employee's employment contract stipulate a more favourable severance pay arrangement, the employer is obligated to adhere to the terms set out in the contract.

**Law stated - 14 February 2024**

## Procedure

### Are there any procedural requirements for dismissing an employee?

Government agency approval is not a prerequisite for dismissal. However, specific procedural requirements exist depending on the grounds for dismissal. In the case of termination due to retrenchment, the Labour Department must be notified by submitting a PK Form.

**Law stated - 14 February 2024**

## Employee protections

### In what circumstances are employees protected from dismissal?

All employees are effectively protected from unjust dismissal.

Law stated - 14 February 2024

### **Mass terminations and collective dismissals**

**Are there special rules for mass terminations or collective dismissals?**

Mass or collective dismissals are governed by the same regulations as individual dismissals. Additionally, in cases of redundancy or business closure, advance notice must be provided to the Labour Department at least 30 days before the termination date.

Law stated - 14 February 2024

### **Class and collective actions**

**Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?**

Employees are allowed to file claims for unjust dismissal only on an individual basis. However, the courts have the discretion to consolidate and hear multiple cases together if necessary.

Law stated - 14 February 2024

### **Mandatory retirement age**

**Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?**

A mandatory contractual retirement age is acceptable as long as it is not lower than the minimum retirement age of 60.

Law stated - 14 February 2024

## **DISPUTE RESOLUTION**

### **Arbitration**

**May the parties agree to private arbitration of employment disputes?**

Yes but this is uncommon.

Law stated - 14 February 2024

### **Employee waiver of rights**

**May an employee agree to waive statutory and contractual rights to potential employment claims?**

Generally, an employee cannot enforce a waiver of statutory rights, even if provided with consideration. However, contractual rights can be waived in exchange for consideration, which may be of an economic or non-economic nature.

Law stated - 14 February 2024

### **Limitation period**

#### **What are the limitation periods for bringing employment claims?**

For an unjust dismissal claim under the Industrial Relations Act 1967, a claim for reinstatement must be initiated within 60 days from the date of dismissal. In contrast, most other employment claims are typically subject to a limitation period of six years.

Law stated - 14 February 2024

## **UPDATE AND TRENDS**

### **Key developments and emerging trends**

Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

No.

Law stated - 14 February 2024