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A GUIDE TO MALAYSIAN LABOUR LAWS

(Part One of Two)

Industrial Relations Act 1967

Employment (Termination and Lay-off Benefits Regulations) 1980

Employment Provident Fund Act 1991

Mediation And Law Awareness Campaign

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This two-part pamphlet gives a guide to the relevant Malaysian Labour Laws as regards employment, security of employment, unlawful dismissal, termination and lay-off benefits, EPF, SOCSO and workmen's compensation.

A. EMPLOYMENT ACT 1955 (ACT 265)

The Act covers "employees" employed by an employer under a contract of service.

SOME USEFUL GUIDES

Outlined are some useful guides and explanations of some of the important definitions under this Act.

1. **"Employee"** under the Act means:-

   a) any person whose wages does not exceed RM1,500.00 per month under a contract of service with an employer.

   b) any person who irrespective of the wages he earns in a month has entered into a contract of service with an employer and disengaged in:-

      (i) manual labour.

      (ii) engaged in the operation of mechanically propelled vehicles.

   c) one who supervises and oversees employees in manual labour.

   d) any person engaged in any capacity, in any vessel registered in Malaysia with certain exceptions.

   e) any person engaged as a domestic servant.

2. **"Wages"** means basic wages and all other payments in cash payable to an employee for work done in respect of his contract of service but does not include any payment by way of commission, subsistence and other overtime payment.

*Note: The Industrial Court has interpreted **"Wages"** to include all allowances including contractual bonus received by an employee for normal hours of work including travel allowances.*

3. **"Contract of service"** means any agreement whether oral or in writing where the employer agrees to employ and the employee agrees to be employed and includes an apprenticeship contract.

Essentials Of Letter Of Appointment/Employment Agreement

Here are some of the essential elements required.

1. The Agreement must be in writing if the employment is to exceed 1 month.

2. It must contain the terms and conditions as regards:-

   (i) category of employment

   (ii) the commencement salary including other allowances and bonus, if any.

   (iii) probation period.

   (iv) working hours.

   (v) overtime payment/leave in lieu.

   (vi) annual leave/public holidays.

   (vii) sick leave/medical bills.

   (viii) EPF, Socso.

   (ix) notice of termination.

PROBATION

What happens during probation period?

1. The probation period is normally spelt out in the letter of appointment/agreement.

2. During the probation period the employer monitors the workman's performance.

3. Probationary period can be extended if employer deems it necessary.

4. Employer has the right to terminate the service during the probationary period for poor performance, misconduct, etc.

5. Upon confirmation of employment the employee must be informed in writing by the employer stating revised wages and other terms and conditions where applicable.

ENTITLEMENT OF ANNUAL LEAVE

What is an employee's entitlement?

An employee shall be entitled to paid annual leave as follows:-

1. 8 days for every 12 months of continuous service if he has been employed by the same employer for a period of less than 2 years.

2. 12 days for every 12 months of continuous service if he has been employed by the same employer for a period of 2 years or more but less than 5 years.

3. 16 days for every 12 months of continuous service if he has been employed by the same employer for a period of 5 years or more.

4. where an employee has not completed 12 months of continuous service with the same employer, his entitlement to paid annual leave shall be proportioned to the number of completed months of service.

ENTITLEMENT OF SICK LEAVE

What is an employee's entitlement?

An employee is entitled to paid sick leave (where no hospitalisation is necessary):-

1. of a total of 14 days per year where employee has been employed for less than 2 years.

2. of 18 days in a year if the employee has been employed for 2 years or more but less than 5 years.

3. of 22 days in a year if the employee has been employed for 5 years or more.

4. of 60 days in each calendar year if hospitalisation is necessary as certified by a registered medical practitioner.

MATERNITY LEAVE

What is a female employee's entitlement?

1. Every female employee shall be entitled to maternity leave for a period of not less than 60 consecutive days in respect of each confinement.

2. Maternity leave shall not commence earlier than 30 days immediately preceding the confinement or later than the day immediately following the confinement.

3. The female employee shall also be eligible for maternity allowance upon prescribed rates and qualifications under the Employment Act.

4. Maternity allowance is payable to a female employee by the employer for each day of the eligible period at her ordinary rate of pay for one day or at the rate prescribed by the Minister. A female employee employed on a monthly rate shall be deemed to have received her maternity allowance if she continues to receive her monthly wages during her absentation from work during the eligible period.

5. Maternity allowance is payable to a female employee if she has been employed by the employer at any time in the 4 months preceding her confinement and was employed for a period of not less than 90 days during the 9 months immediately before her confinement.

WORK ON REST DAY/OVERTIME

What is an employee's entitlement?

No employee shall be compelled to work on a rest day unless the employee is engaged to work in shifts.

1. If the employee works on a rest day and is employed on a daily, hourly or other similar rate of pay he shall be paid for the period of work -

   (i) if the work does not exceed half his normal hours of work, he shall be paid one day's wages at the ordinary rate of pay.

   (ii) if he works more than half but does not exceed his normal hours of work, 2 days' wages at the ordinary rate of pay.

2. In the case of employee employed on a monthly rate of pay who works on a rest day, he shall be paid for work -

   (i) if it does not exceed half his normal hours of work, wages equivalent to half the ordinary rate of pay for work done on that day.

   (ii) if it is more than half but does not exceed his normal hours of work, one day wages at the ordinary rate of pay for work done on that day.

3. For any work carried out in excess of normal hours of work, the employee shall be paid at a rate which is not less than 2 times his hourly rate of pay.

4. In the case of any employee employed on piece rates who work on a rest day, he shall be paid twice his ordinary rate per piece.

HOURS OF WORK

What are the hours of work under the law?

An employee shall not be required under his contract of service to work -

1. more than 5 consecutive hours without a period of leisure of not less than 30 minutes' duration.

2. more than 8 hours in one day.

3. in excess of a spread over a period of 10 hours in one day.

4. more than 48 hours in one week with certain provisos.

FURTHER USEFUL GUIDES

Outlined are some further guides.

"Overtime" means the number of hours of work carried out in excess of the normal hours of work per day.

"Normal hours of work" means the number of hours work as agreed between the employer and employee in the contract of service.

"Ordinary rate of pay" means wages as defined which an employee is entitled to receive under his contract of service for the normal hours of work but does not include overtime payment on a rest day or a public holiday.

"Contractual Bonus" means the amount of bonus fixed by the employer under a contract of service irrespective whether the company makes an annual profit or loss.

"Hourly rate of pay" means the ordinary rate of pay divided by the normal hours of work provided in the case of an employee employed at a monthly rate of pay the ordinary rate of pay shall be calculated by the monthly rate of pay divided by 26.

A similar formula is available for those employed on a daily rate.

TERMINATION OF CONTRACT OF SERVICE

What is the notice period required?

The employer and the employee to a contract of service may at any time give to the other notice of termination of such contract of service.

The length of notice shall be the same for both employer and employee pursuant to the contract of employment. In the absence of the notice the period of notice under the Employment Act as follows:-

	Length of Employment	Period of Notice Required
*	less than 2 years at least	4 weeks
*	2 years or more but less than 5 years	at least 6 weeks
*	5 years or more	at least 8 weeks

Some of the reasons for termination by the employer:-

1. Wilful breach by the employee as regards the terms and the conditions of the contract of employment.

2. An employer may terminate the contract of employment where there has been "misconduct" on the part of the employee.

3. Where the employee has been continuously absent from work for more than 2 consecutive working days either -

   a) without prior leave from his employer or

   b) without informing or attempting to inform his employer of such an excuse prior to or at the earliest opportunity during such absence.

4. Where an employee is employed for a specific piece of work for a specific period under a contract of service, his services can be terminated upon expiry of the specific period or when the specified piece of work is completed.

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