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Highlights Of The Recent Amendments To The Employment Act 1955

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Recently, the Employment (Amendment) Act 2022 (Amendment Act) was passed by Parliament. This alert highlights the key amendments to the Employment Act 1955 (Act) through the Amendment Act.

1. Extension Of Maternity Leave

The maternity leave entitlement is extended from the existing 60 days to 98 days. This is in line with the entitlement of the employees in the public sector who have been entitled to 90 days paid maternity leave for several years now.

The Amendment Act removed Section 44A of the Act which provides that the maternity protection provisions in the Act are applicable to all female employees, regardless of whether they fall within the ambit of the Act.¹

2. Restriction On Termination Of Pregnant Female Employee

Employers are prohibited from terminating the employment of a pregnant employee or a person suffering from an illness arising out of her pregnancy unless the termination is made on the following grounds:

- Wilful violation of a condition of the employment contract.
- Engaged in misconduct.
- The employer has ceased operations.

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¹ Employees who fall within the ambit of the Act are employees employed in Peninsular Malaysia whose maximum monthly salary does not exceed RM2,000; or regardless of their salary, are employed: (a) as manual labourers or supervisors of manual labourers; (b) to operate or maintain any mechanically propelled vehicle for the purpose of transporting passengers or goods or for reward or commercial purposes; (c) as a domestic servant; and (d) in certain positions on seagoing vessels.

3. Paternity Leave

Married male employees are entitled to 7 days paid paternity leave for each confinement, subject to a maximum of 5 confinements. Such entitlement is also conditional upon the married male employee:

- Being employed least 12 months immediately before the commencement of such paternity leave.
- Having notified his employer of the pregnancy of his spouse at least 30 days from the expected confinement or as early as possible after the birth.

4. Sexual Harassment Notice

Employers are obligated to prominently display a notice to raise awareness of sexual harassment in the workplace.

The Amended Act also increased the fine payable by employers for, among others, failure to investigate complaints of sexual harassment from RM10,000 to RM50,000.

5. Presumption Of Employer-Employee Relationship

The Amended Act introduced a presumption as to who is an employee and employer in the absence of a written contract of service. However, such presumption is only applicable to the employees covered under the First Schedule to the Act. The factors that may trigger the presumption include:

- The amount of control over the manner or hours of work.
- Provision of the tools, materials or equipment necessary to execute the work.
- Whether the work done forms an integral part of the business.
- Whether the work performed is solely for the benefit of another person.

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- Whether payment is made in return of the work done which constitutes most of the employee's income.

6. Flexible Working Arrangement (FWA)

An employee who wishes to make an application for FWA to vary his working hours, working days and place of work must do so in writing to the employer. Upon receiving the application, the employer is obliged, within 60 days, to approve or reject such application. Where the application is rejected, the employer must provide reasons for such rejection. It is important to note that such amendment does not place an obligation on employers to approve FWA but merely requires employers to consider all applications and respond with the grounds of refusal.

7. Readjusting The Maximum Weekly Hours Of Work

The maximum number of working hours per week will be reduced from 48 hours to 45 hours. Failure of the employers to adhere to the provisions on working hours would subject the employers to a penalty of up to RM50,000.

8. Discrimination

The Director General of Labour may inquire into and decide any dispute between an employee and employer in respect of any matter relating to discrimination in employment and thereafter make an order. Failure to comply with any such order will render the employer liable, upon conviction, to a fine not exceeding RM50,000 and in the case of a continuing offence, a daily fine not exceeding RM1,000 per day.

9. Employment Of Foreign Employee

Employers will now require approval of the Director General of Labour for employment of foreign employees. Further, under the newly inserted Section 60KA, the employers are required to notify the Director General of Labour of the termination of employment of the foreign employee within 30 days from the date of

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termination. If the foreign employee terminates his/her service or absconds, the employer is required to notify the Director General of Labour within 14 days.

10. Prohibition Of Forced Labour

An employer is said to have committed an offence of forced labour where he/she threatens, deceives or forces an employee to do any activity, service or work and prevents that employee from proceeding beyond the place or area where such activity, service or work is done and shall, on conviction, be liable to a fine not exceeding RM100,000 or to imprisonment for a term not exceeding 2 years or to both.

11. Penalties

The penalties under the Act were amended as follows:-

- General penalty from RM10,000 to RM50,000.
- Penalty for failure to comply with the order or decision of the Director General of Labour made pursuant to an inquiry from RM10,000 to RM50,000 and the daily fine for continuing offence from RM100 to RM1,000 respectively.

Authored by Ivy Tee Sook Peng, a pupil with the firm's Capital Markets and M&A practice.

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