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The Minister of Human Resources, Datuk Seri M Saravanan, on 26 Aug 2022 announced that the enforcement of the amendments to the Employment Act 1955 will be deferred to 1 Jan 2023. We will update Members of any further developments.

Circular No 263/2022
Dated 25 Aug 2022

To Members of the Malaysian Bar

Employment (Amendment) Act 2022 and
Employment (Amendment of First Schedule) Order 2022

Please be informed that the Employment (Amendment) Act 2022 will come into operation on **1 Sept 2022** as gazetted via P.U. (B) 368 dated 15 Aug 2022.

The Employment (Amendment of First Schedule) Order 2022 ("Order"), which clarifies the scope of employees covered by the Employment Act 1955 ("EA"), will also come into operation on **1 Sept 2022**.

Pursuant to the Order and the amendments to the EA, effective 1 Sept 2022, the EA will apply to all employees irrespective of wages, with some sections not applying to employees earning more than RM4,000 a month.

Members of the Bar are advised to comply with the amended EA.

The Order and the Employment (Amendment) Act 2022 are available here (see page 2 onwards) for your reference.

Thank you.

Jaspal Singh Gill and Jayasingam Poopalasingam
Co-Chairpersons
Industrial and Employment Law Committee

15 Ogos 2022
15 August 2022
P.U. (A) 262

WARTA KERAJAAN PERSEKUTUAN

FEDERAL GOVERNMENT GAZETTE

PERINTAH KERJA (PINDAAN JADUAL PERTAMA) 2022

EMPLOYMENT (AMENDMENT OF FIRST SCHEDULE) ORDER 2022

DISIARKAN OLEH/
PUBLISHED BY
JABATAN PEGUAM NEGARA/
ATTORNEY GENERAL'S CHAMBERS

AKTA KERJA 1955

PERINTAH KERJA (PINDAAN JADUAL PERTAMA) 2022

PADA menjalankan kuasa yang diberikan oleh subseksyen 2(2) Akta Kerja 1955 [*Akta 265*], Menteri membuat perintah yang berikut:

Nama dan permulaan kuat kuasa

1. (1) Perintah ini bolehlah dinamakan **Perintah Kerja (Pindaan Jadual Pertama) 2022**.

(2) Perintah ini mula berkuat kuasa pada 1 September 2022.

Pindaan Jadual Pertama

2. Akta Kerja 1955 dipinda dalam Jadual Pertama—

(a) dengan menggantikan perenggan 1 dengan perenggan yang berikut:

Employee	Provision of the Act not applicable
"1. Any person who has entered into a contract of service.";	

(b) dengan memasukkan selepas perenggan 1 perenggan yang berikut:

Employee	Provision of the Act not applicable
"1A. Notwithstanding paragraph 1, the person whose wages exceeds four thousand ringgit a month.	Subsections 60(3), 60A(3), 60C(2A), 60D(3) and 60D(4) and section 60J"; dan

(c) dalam subperenggan 2(5)—

(i) di bawah kepala "Employee", dengan menggantikan perkataan "servant" dengan perkataan "employee"; dan

(ii) di bawah kepala "Provision of the Act not applicable", dengan menggantikan perkataan "Sections 12, 14, 16, 22, 61 and 64, and Parts IX, XII and XIIA" dengan perkataan "Sections 12, 14, 16, 22, 58A, 60, 60A, 60B, 60C, 60D, 60E, 60F, 60FA, 60I, 61 and 64, and Parts IX and XIIA".

Dibuat 12 Ogos 2022
[KSM/PUU/(S)/600-1/2/1/4(1); PN(PU2)192/XI]

DATUK SERI SARAVANAN A/L MURUGAN
Menteri Sumber Manusia

EMPLOYMENT ACT 1955

EMPLOYMENT (AMENDMENT OF FIRST SCHEDULE) ORDER 2022

IN exercise of the powers conferred by subsection 2(2) of the Employment Act 1955 [*Act 265*], the Minister makes the following order:

Citation and commencement

1. (1) This order may be cited as the **Employment (Amendment of First Schedule) Order 2022**.

(2) This Order comes into operation on 1 September 2022.

Amendment of First Schedule

2. The Employment Act 1955 is amended in the First Schedule—

(a) by substituting for paragraph 1 the following paragraph:

Employee	Provision of the Act not applicable
"1. Any person who has entered into a contract of service.";	

(b) by inserting after paragraph 1 the following paragraph:

Employee	Provision of the Act not applicable
"1A. Notwithstanding paragraph 1, the person whose wages exceeds four thousand ringgit a month.	Subsections 60(3), 60A(3), 60C(2A), 60D(3) and 60D(4) and section 60J"; and

(c) in subparagraph 2(5)—

(i) under the heading "Employee", by substituting for the word "servant" the word "employee"; and

(ii) under the heading "Provision of the Act not applicable", by substituting for the words "Sections 12, 14, 16, 22, 61 and 64, and Parts IX, XII and XIIA" the words "Sections 12, 14, 16, 22, 58A, 60, 60A, 60B, 60C, 60D, 60E, 60F, 60FA, 60I, 61 and 64, and Parts IX and XIIA".

Made 12 August 2022
[KSM/PUU/(S)/600-1/2/1/4(1); PN(PU2)192/XI]

DATUK SERI SARAVANAN A/L MURUGAN
Minister of Human Resources

LAWS OF MALAYSIA

Act A1651

EMPLOYMENT (AMENDMENT) ACT 2022

Date of Royal Assent ... ... 26 April 2022

Date of publication in the *Gazette* ... ... 10 May 2022

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LAWS OF MALAYSIA

Act A1651

EMPLOYMENT (AMENDMENT) ACT 2022

An Act to amend the Employment Act 1955.

[ ]

ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Employment (Amendment) Act 2022.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Amendment of section 2

2. The Employment Act 1955 [*Act 265*], which is referred to as the "principal Act" in this Act, is amended in subsection 2(1)—

(a) by inserting after the definition of "agricultural undertaking" the following definition:

' "apprentice" means any person who has entered into an apprenticeship contract;';

(b) in the definition of "apprenticeship contract", by substituting for the words "shall not be less than two years" the words "shall be for a minimum period of six months and a maximum period of twenty four months";

(c) in the definition of "domestic servant", by substituting for the words "domestic servant" the words "domestic employee"; and

(d) in the definition of "foreign domestic servant", by substituting for the word "servant" wherever appearing the word "employee".

Amendment of section 4

3. Section 4 of the principal Act is amended—

(a) by substituting for the words ", 69B, 69C," the word "or"; and

(b) by substituting for the word "fourteen" the word "twenty-one".

New section 18A

4. The principal Act is amended by inserting after section 18 the following section:

"**Calculation of wages for incomplete month's work**

18A. Notwithstanding section 60I, an employee who is employed on a monthly rate of pay and has not completed a whole month of service—

(a) where he commenced employment after the first day of the month;

(b) where his employment was terminated before the end of the month;

(c) where he took leave of absence without pay for one or more days of the month; or

(d) where he took leave of absence by reason of having been called up for national service under the National Service Act 1952 [*Act 425*], to present himself for national service training as required under the National Service Training Act 2003 [*Act 628*] or to comply with any other written law relating to national service,

shall be paid wages due to him for that month calculated according to the following formula:

$$\frac{\text{Monthly wages}}{\text{Number of days of the particular wage period}} \times \text{Number of days eligible in the wage period.”.}$$

Amendment of section 22

5. Subsection 22(2) of the principal Act is amended by inserting after the words “parents,” the words “spouse,”.

Amendment of section 25

6. Section 25 of the principal Act is amended—

(a) in the shoulder note, by substituting for the word “**bank**” the words “**financial institution**”;

(b) in subsection (1), by substituting for the words “at a bank, finance company, financial institution or other institutions licensed or established under the Banking and Financial Institutions Act 1989 [*Act 372*] or any other written law, in any part of Malaysia” the words “opened by a financial institution,”; and

(c) by inserting after subsection (2) the following subsections:

“(3) For the purposes of this Part, “financial institution” includes—

(a) a licensed bank and an approved issuer of a designated payment instrument under the Financial Services Act 2013 [*Act 758*];

(b) a licensed Islamic bank and an approved issuer of a designated Islamic payment instrument under the Islamic Financial Services Act 2013 [*Act 759*]; and

(c) a prescribed institution under the Development Financial Institutions Act 2002 [*Act 618*].

(4) The Minister may, by order, specify any approved issuer of a designated payment instrument or any approved issuer of a designated Islamic payment instrument under paragraphs 3*(a)* and *(b)* to be a recognized approved issuer of a designated payment instrument or approved issuer of a designated Islamic payment instrument for the purpose of payment of wages under this Part.".

Amendment of section 25A

7. Section 25A of the principal Act is amended—

(a) in the shoulder note, by substituting for the word "**bank**" the words "**financial institution**";

(b) in subsection (1), by substituting for the words ", other than a domestic servant" the words "and subject to subsection (2)";

(c) by substituting for subsection (2) the following subsection:

"(2) The employer shall, upon the written request of his employee under subsection (1), obtain approval from the Director General for the payment of wages to be paid in legal tender or by cheque.";

(d) by inserting after subsection (2) the following subsection:

"(2A) The Director General may impose any condition as he may deem fit on the approval granted under subsection (2).";

(e) in subsections (3), (5) and (6), by substituting for the words "subsections (1) and (2)" wherever appearing the words "subsection (1)"; and

(f) in subsection (5), by inserting after the word "employer" the words "upon obtaining the approval under subsection (2)".

Amendment of Part VII

8. Part VII of the principal Act is amended in the heading by substituting for the words "CONTRACTORS, PRINCIPALS AND CONTRACTORS FOR LABOUR" the words "PRINCIPALS, CONTRACTORS, SUB-CONTRACTORS AND CONTRACTORS FOR LABOUR".

Amendment of section 33A

9. Section 33A of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

"(1A) A contractor for labour referred to in subsection (1) who supplies any employee to a principal, contractor or sub-contractor shall enter into a contract in writing and shall make such contract or any other document relating to such contract available for inspection."; and

(b) in subsection (3)—

(i) by deleting the word "or" at the end of paragraph *(a)*;

(ii) by inserting after paragraph *(a)* the following paragraph:

"*(aa)* fails to make such contract or any other document relating to such contract available for inspection as required under subsection (1A); or"; and

(iii) by substituting for the word "ten" the word "fifty".

Deletion of Part VIII

10. The principal Act is amended by deleting Part VIII.

Amendment of Part IX

11. Part IX of the principal Act is amended in the heading by substituting for the words "MATERNITY PROTECTION" the words "PREGNANCY AND MATERNITY".

Amendment of section 37

12. Subsection 37(1) of the principal Act is amended—

(a) by substituting for paragraph *(aa)* the following paragraph:

"*(aa)* Where a female employee is entitled to maternity leave under subparagraph *(a)*(i), whether or not she is entitled to receive maternity allowance from her employer for the eligible period under paragraph *(c)*, or whether or not she has fulfilled the conditions set out in paragraph (2)*(a)*, she may, with the consent of her employer, commence work at any time during the eligible period if she has been certified fit to resume work by a registered medical practitioner."; and

(b) in subparagraph *(d)*(ii), by substituting for the word "sixty" the word "ninety-eight".

New section 41A

13. The principal Act is amended by inserting after section 41 the following section:

"**Restriction on termination of pregnant female employee**

41A. (1) Where a female employee is pregnant or is suffering from an illness arising out of her pregnancy, it shall be

an offence for her employer to terminate her services or give her notice of termination of service, except on the grounds of—

(a) wilful breach of a condition of the contract of service under subsection 13(2);

(b) misconduct under subsection 14(1); or

(c) closure of the employer's business.

(2) Where the service of a female employee under subsection (1) is terminated, the burden of proving that such termination is not on the ground of her pregnancy or on the ground of illness arising out of her pregnancy, shall rest on the employer.".

Amendment of section 42

14. Section 42 of the principal Act is amended in the shoulder note by substituting for the word "**dismissal**" the word "**termination**".

Deletion of section 44A

15. The principal Act is amended by deleting section 44A.

Amendment of Part XI

16. Part XI of the principal Act is amended in the heading by substituting for the word "SERVANTS" the word "EMPLOYEES".

Amendment of section 57

17. Section 57 of the principal Act is amended by substituting for the word "servant" wherever appearing the word "employee".

Amendment of section 57A

18. Section 57A of the principal Act is amended—

(a) in the shoulder note and subsection (1), by substituting for the word "servant" the word "employee"; and

(b) in subsection (2), by substituting for the words "ten thousand ringgit" the words "fifty thousand ringgit".

Amendment of section 57B

19. Section 57B of the principal Act is amended—

(a) in the shoulder note and subsections (1) and (2), by substituting for the word "servant" wherever appearing the word "employee"; and

(b) in subsection (3), by substituting for the words "ten thousand ringgit" the words "fifty thousand ringgit".

Amendment of section 60A

20. Section 60A of the principal Act is amended—

(a) in the shoulder note, by inserting after the word "**work**" the words "**and working at night**";

(b) in subsection (1), by substituting for the word "forty-eight" wherever appearing the word "forty-five"; and

(c) in subsection (6), by inserting after the word "rates" the words "and prescribing matters relating to working at night".

Amendment of section 60C

21. Section 60C of the principal Act is amended—

(a) in subsection (1), by substituting for the word "forty-eight" wherever appearing the word "forty-five"; and

(b) by inserting after subsection (2) the following subsection:

"(2A) The Minister may make regulations relating to the entitlement of allowance during shift work.".

Amendment of section 60F

22. Subsection 60F(1) of the principal Act is amended—

(a) by deleting the first proviso; and

(b) in the further proviso, by substituting for the words "And provided further" the word "Provided".

New section 60FA

23. The principal Act is amended by inserting after section 60F the following section:

"**Paternity leave**

60FA. (1) Subject to subsection (3), a married male employee shall be entitled to a paid paternity leave at his ordinary rate of pay for a period of seven consecutive days in respect of each confinement.

(2) The paternity leave under subsection (1) shall be restricted to five confinements irrespective of the number of spouses.

(3) A married male employee shall be entitled to paternity leave from his employer if—

(a) he has been employed by the same employer at least twelve months immediately before the commencement of such paternity leave; and

(b) he has notified his employer of the pregnancy of his spouse at least thirty days from the expected confinement or as early as possible after the birth.".

Substitution of section 60K

24. The principal Act is amended by substituting for section 60K the following section:

"**Employment of foreign employee**

60K. (1) No employer shall employ a foreign employee unless prior approval has been obtained from the Director General.

(2) An application for the approval under subsection (1) shall be made in the form and manner as may be determined by the Director General.

(3) Upon approval of the Director General under this section, an employer shall, within fourteen days from the date of the employment of a foreign employee, furnish the Director General with the particulars relating to the foreign employee in such manner as the Director General may direct.

(4) The Director General may, subject to any written law, approve an application under this section if the employer complies with the following conditions:

(a) the employer satisfies the Director General that on the date on which he makes the application—

(i) he has no outstanding matter relating to any decision, order or directive issued under this Act; or

(ii) he has no outstanding matter or case relating to any conviction for any offence under this Act, the Employees' Social Security Act 1969 [*Act 4*], the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 [*Act 446*] or the National Wages Consultative Council Act 2011 [*Act 732*]; or

(b) the employer has not been convicted of any offence under any written law in relation to anti-trafficking in persons and forced labour.

(5) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.".

New section 60KA

25. The principal Act is amended by inserting after section 60K the following section:

"**Termination of employment of foreign employee, etc.**

60KA. (1) If the service of a foreign employee is terminated—

(a) by his employer;

(b) by reason of the expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign employee; or

(c) by reason of the repatriation or deportation of the foreign employee,

the employer shall, within thirty days of the termination of service, inform the Director General of the termination in the manner as may be determined by the Director General.

(2) If a foreign employee terminates his service or absconds from his place of employment, the employer shall, within fourteen days of the termination of service or after the foreign employee's absence, inform the Director General in the manner as may be determined by the Director General.".

Deletion of section 60L

26. The principal Act is amended by deleting section 60L.

New Part XIIc

27. The principal Act is amended by inserting after Part XIIb the following part:

"Part XIIc

FLEXIBLE WORKING ARRANGEMENT

Flexible working arrangement

60p. (1) Subject to Part XII or anything contained in the contract of service, an employee may apply to an employer for a flexible working arrangement to vary the hours of work, days of work or place of work in relation to his employment.

(2) Where there is a collective agreement, any application made by the employee under subsection (1) shall be consistent with the terms and conditions in the collective agreement.

Application for flexible working arrangement

60q. (1) The employee shall make an application for flexible working arrangement under section 60p in writing and in the form and manner as may be determined by the Director General.

(2) Upon the application made under subsection (1), an employer shall, within sixty days from the date such application is received, approve or refuse the application.

(3) The employer shall inform the employee in writing of the employer's approval or refusal of the application under subsection (1) and in the case of a refusal, the employer shall state the ground of such refusal.".

Amendment of section 69

28. Section 69 of the principal Act is amended—

(a) in paragraph (2)(ii), by inserting after the words "against a" the words "principal,";

(b) in subsection (4)—

(i) by substituting for the words "ten thousand ringgit" the words "fifty thousand ringgit"; and

(ii) by substituting for the words "one hundred ringgit" the words "one thousand ringgit".

Deletion of sections 69B, 69C, 69D and 69E

29. The principal Act is amended by deleting sections 69B, 69C, 69D and 69E.

New section 69F

30. The principal Act is amended by inserting after section 69E the following section:

"**Discrimination in employment**

69F. (1) 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 the Director General may, pursuant to such decision, make an order.

(2) An employer who fails to comply with any order of the Director General issued under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit; and shall also, in the case of a continuing offence, be liable to a daily fine not exceeding one thousand ringgit for each day the offence continues after conviction.".

Amendment of section 70

31. Section 70 of the principal Act is amended by substituting for the words ", 69B and 69C" the words "and 69F".

Amendment of section 73

32. Subsection 73(1) of the principal Act is amended by substituting for the words ", 69B or 69C" the words "or 69F".

Amendment of section 77

33. Subsection 77(1) of the principal Act is amended by substituting for the words "69B, 69C, 73" the words "69F or 73,".

Amendment of section 81F

34. Section 81F of the principal Act is amended by substituting for the words "ten thousand ringgit" the words "fifty thousand ringgit".

Deletion of section 81G

35. The principal Act is amended by deleting section 81G.

New section 81H

36. The principal Act is amended by inserting after section 81G the following section:

"**Notice on sexual harassment**

81H. An employer shall, at all times, exhibit conspicuously at the place of employment, a notice to raise awareness on sexual harassment.".

Amendment of section 82

37. Section 82 of the principal Act is amended—

(a) in the shoulder note, by deleting the words "**issued under Part XV**"; and

(b) in subsection (1)—

(i) by deleting the words "under Part XV"; and

(ii) in paragraph *(b)* of the proviso, by substituting for the word "servant" the word "employee".

Amendment of section 84

38. Section 84 of the principal Act is amended—

(a) by renumbering the existing section as subsection (1); and

(b) by inserting after subsection (1) as renumbered the following subsection:

"(2) Notwithstanding the provisions of any written law to the contrary, the court of a First Class Magistrate shall have jurisdiction to try any offence under this Act and to award the full punishment for any such offence.".

Amendment of section 86

39. Section 86 of the principal Act is amended by substituting for the words ", 69B, 69C" the words "or 69F,".

New section 87A

40. The principal Act is amended by inserting after section 87 the following section:

"**Court order for payments due to employee**

87A. (1) Where an employer has been convicted of an offence relating to the payment of wages or any other payments payable to an employee under this Act, the court before which he is convicted may order the employer to pay any payment due to the employee in relation to that offence.

(2) Where an employer fails to comply with an order made under subsection (1), the court shall, on the application of the employee, issue a warrant to levy the employer's property for any payments due under that subsection in the following manner:

(a) by way of distress and sale of employer's property in accordance with the same procedure of execution under the Rules of Court 2012 [*P.U. (A) 205/2012*] and this execution shall apply *mutatis mutandis* notwithstanding the amount in the order; or

(b) in the same manner as a fine as provided under section 283 of the Criminal Procedure Code [*Act 593*].".

New section 90B

41. The principal Act is amended in Part XVII by inserting before section 91 the following section:

"**Forced labour**

90B. Any employer who 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, commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.".

Deletion of section 93

42. The principal Act is amended by deleting section 93.

Amendment of section 99A

43. Section 99A of the principal Act is amended by substituting for the words "ten thousand ringgit" the words "fifty thousand ringgit".

New section 101C

44. The principal Act is amended by inserting after section 101B the following section:

"**Presumption as to who is an employee and employer**

101C. (1) In any proceeding for an offence under this Act, in the absence of a written contract of service relating to any category of employee under the First Schedule, it shall be presumed until the contrary is proved that a person is an employee—

(a) where his manner of work is subject to the control or direction of another person;

(b) where his hours of work are subject to the control or direction of another person;

(c) where he is provided with tools, materials or equipments by another person to execute work;

(d) where his work constitutes an integral part of another person's business;

(e) where his work is performed solely for the benefit of another person; or

(f) where payment is made to him in return for work done by him at regular intervals and such payment constitutes the majority of his income.

(2) For the purpose of subsection (1), it shall be presumed until the contrary is proved that a person is an employer—

(a) where he controls or directs the manner of work of another person;

(b) where he controls or directs the hours of work of another person;

(c) where he provides tools, materials or equipments to another person to execute work;

(d) where the work of another person constitutes an integral part of his business;

(e) where another person performs work solely for his benefit; or

(f) whether or not payment is made by him in return for work done for him by another person.

(3) The first-mentioned person in subsection (2) includes the agent, manager or factor of such first-mentioned person.".

Amendment of section 102

45. Subsection 102(2) of the principal Act is amended—

(a) by deleting paragraph *(b)*;

(b) by inserting after paragraph *(f)* the following paragraphs:

"*(fa)* prescribing matters relating to rest day;

(fb) prescribing matters relating to flexible working arrangement;";

(c) in paragraph *(i)*, by substituting for the words "under section 69, 69B or 69C" the words ", and proceedings under section 69 and 69F,";

(d) by deleting paragraph *(k)*; and

(e) in paragraph *(m)*, by substituting for the word "servant" the word "employee".

Saving and transitional

46. (1) Any complaint, investigation, inquiry, trial, prosecution, proceedings or appeal done, taken or commenced under the principal Act immediately before the date of coming into operation of this Act, shall be dealt with, continued and concluded under and in accordance with the provisions of the principal Act as if the principal Act had not been amended by this Act.

(2) Any application for approval made under subsection 25A(2) of the principal Act which is pending before the date of coming into operation of this Act shall, on the date of coming into operation of this Act, be dealt with in accordance with the provision of the principal Act as amended by this Act.

(3) Any employer who, before the date of coming into operation of this Act, has employed any foreign employee but who has not fulfilled any of the requirements under section 60K of the principal Act shall, on the date of coming into operation of this Act, be dealt with in accordance with the provision of the principal Act as if the principal Act had not been amended by this Act.