

CIRCULAR NO. 129/2021

DATE: 18 NOVEMBER 2021

EMPLOYMENT (AMENDMENT BILL) 2021

Reference is made to the [**EMPLOYMENT \(AMENDMENT BILL\) 2021**](#) ("the Bill") which was tabled for the first reading by Human Resources Minister, YB Datuk Seri M Saravanan in Parliament on 25 October 2021.

The key changes proposed to the Employment Act 1955 ("the Act") through the Bill include the following:

1. Apprenticeship

The Bill proposes to limit the duration of an apprentice contract to 24 months and imposes a minimum duration of six months.

2. Calculation of Wages for Incomplete Month's Work

The Bill proposes a new Section 18A, which introduces a formula for calculating wages where an employee has not worked a full month (that is, where he commenced employment after the first day of the month, or where his employment was terminated before the end of the month, or where he took unpaid leave or leave to comply with written law relating to national service). The formula proposed is:

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

3. Pregnancy and Maternity

- i) Maternity leave has been extended to 90 days from 60 days.
- ii) A female employee may, with the consent of her employer, commence work at any time during the maternity leave if she has been certified fit to resume work by a registered medical practitioner.
- iii) The Bill introduces a new Section 41A in the EA which will prohibit an employer from dismissing an employee who "is pregnant or is suffering from an illness arising out of her pregnancy" except on the grounds of — (a) wilful breach of contract; (b) misconduct; or (c) business closure.

4. Reduction in Maximum Weekly Working Hours

The Bill proposes to reduce the maximum working hours from 48 hours to 45 hours in a week.

5. Paternity Leave

- i) The Bill proposes that a married male employee shall be entitled to three consecutive days of paid paternity leave for each confinement, up to five confinements (irrespective of the number of spouses).
- ii) The entitlement is subject to the male employee being employed by the same employer for at least a 12-month period immediately before the commencement of paternity leave, and having notified his employer of his spouse's pregnancy at least 30 days from the expected confinement or as early as possible after the birth.

6. Employment of Foreign Employee

The Bill proposes that prior approval from the Director-General must be obtained for an employer to employ a foreign employee. Failure to do so would be an offence and on conviction, the employer shall be liable to a fine not exceeding RM 100,000 or to imprisonment for a term not exceeding five years, or to both. Currently, the Act only requires employers to furnish the Director-General with particulars of the foreign employee within 14 days of his employment.

7. Flexible Working Arrangement

Pursuant to the Bill, employees will be able to submit a written application to their employer “for a flexible working arrangement to vary the hours of work, days of work or place of work”. An employer who receives such an application will be required to approve or refuse the application within 60 days, and if it is refused, the employer must “state the ground of such refusal”.

8. Discrimination

The Bill seeks to introduce a new Section 69F, which gives the Director-General the power to “inquire into and decide any dispute between an employee and his employer in respect of any matter relating to discrimination in employment [and] make an order”. Non-compliance by an employer with such an order would be an offence.

9. Notice on Sexual Harassment

The Bill introduces a new Section 81H, which requires employers to “exhibit conspicuously at the place of employment, a notice to raise awareness on sexual harassment”.

10. Court order for payments due to employee

The Bill proposes that where an employer has been convicted of an offence relating to the payment of wages or any other payments payable to an employee under the 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.

Failure to comply with such order empowers the court, on the application of the employee, to issue a warrant to levy the employer’s property for such payment due by way of distress and sale of property, or by way of a fine provided under the Criminal Procedure Code.

11. Forced labour

The Bill proposes to outlaw forced or bonded labour by providing that it would be an offence for an employer to threaten, deceive or force an employee to do any activity, service or work and prevent that employee from proceeding beyond the place or area where such activity, service or work is done. Upon conviction, the employer shall be liable to a fine not exceeding RM100,000 or to imprisonment for a term not exceeding 2 years, or to both.

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