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New Unemployment Safety Net for Employees?

Employment Insurance System Act 2017 [*Act 800*]

Employment Insurance System (Registration and Contribution) Regulations 2017 [*PU(A) 452*]

The Employment Insurance System Act 2017 (the Act), accompanied by the Employment Insurance System (Registration and Contribution) Regulations 2017 which came into force on 1 January 2018, introduces an Employment Insurance System (EIS) administered by the Social Security Organisation.

The EIS provides financial assistance for eligible employees who have lost their employment. Categories of loss of employment are:

- (a) voluntary resignation by the employee;
- (b) expiry of the contract of service of the employee;
- (c) termination of the contract of service by mutual consent of the employer and the employee without terms and conditions;
- (d) completion of the work in accordance with the terms of the contract of service;
- (e) retirement of the employee; and
- (f) termination of the contract of service of the employee due to misconduct.^[1]

The EIS involves contribution from both employer and employee towards what is called the Employment Insurance Fund. Rates of contribution are dependent on wages, ranging from RM0.05 for wages up to RM30 per month to RM7.90 for wages exceeding RM4,000.^[2] This contribution is in addition to what is currently required under the Employees' Social Security Act 1969 (SOCSSO),^[3] which covers indirect loss of employment caused by, among others, death and personal injury. The Act specifies certain qualifying conditions^[4] that would have to be met in order to make a claim for benefits based on the number of claims made by the employee and the length of contribution under the Act.

In tandem with compensation, the Act empowers the Director General to conduct training programmes and provide assistance for employees to re-enter the work force. These include:

- (a) job searches;

- (b) job counselling;
- (c) job matching;
- (d) job placement;
- (e) career advising; and
- (f) vocational training.^[5]

Employees undergoing training will be paid an allowance of RM10 to RM20 per day. Further benefits such as a job search allowance and a reduced income allowance are paid at the following rates:

- (a) 80% of the assumed monthly wages for the first month;
- (b) 50% of the assumed monthly wages for the second month;
- (c) 40% of the assumed monthly wages for the third month;
- (d) 30% of the assumed monthly wages for the fourth month.^[6]

A claim for benefits under the Act does not operate as a bar to any claim for reinstatement under the Industrial Relations Act 1967, termination or lay-off benefits under the Employment Act 1955, or any complaint relating to premature retirement under the Minimum Retirement Age Act 2012.^[7]

The Act applies to all *industries*^[8] having one or more employees, but does not cover:

- (a) casual employees;
- (b) domestic servants and similar;
- (c) spouse of an employer;
- (d) member of the public service of the Federation or State;
- (e) employees of local authority or statutory body;
- (f) employees under the age of 18 or aged 60 and older;
- (g) employees who have attained the age of 57 before the coming into operation of the Act.

Other exceptions are:

- (h) persons employed '*outside the scope of the employer's industry*'^[9]
- (i) persons permitted to win minerals or produce of any kind from the land of another and who in consideration of such permission gives a proportion of minerals or produce so won to that other person;
- (j) any person detained in any prison, Henry Gurney School, approved school, place of detention, mental hospital or leper settlement.^[10]

The Regulations provide the mechanism for employers to register under the Act and contribute to the fund. Employers registered under SOCSO are deemed registered under the Act.^[11]

It remains to be seen what initiatives will be implemented to train and assist employees to support their return to work. Some provisions that need clarification are:

- (a) the exception for persons employed outside the scope of the employer's industry;
- (b) protection for employees who voluntarily resign or who lost their employment due to misconduct.

Currently, the total contribution under the Act is 0.4% of the

employee's wages, the lowest among other countries with a similar scheme, such as Thailand, China, Japan and South Korea.^[12] While the EIS seeks to increase productivity and industrial competitiveness, critics of the Act highlight the fact that it is an additional form of taxation and that the existing termination and lay-off benefits and payment of retrenchment benefits under collective agreements are sufficient to protect employees who have lost their employment.^[13]

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- [1] Section 30
- [2] Section 18 and the Second Schedule to the Act
- [3] Employees' Social Security Act 1969
- [4] Fourth Schedule to the Act
- [5] Section 67
- [6] See Third Schedule to the Act for all benefits
- [7] Section 43
- [8] The term 'industries' includes any business, trade, undertaking, manufacture or calling of employers, and includes any calling, services, handicraft or industrial occupation of employees: s 3
- [9] It is unclear how this is to be construed
- [10] See the First Schedule to the Act for the full definitions
- [11] Section 15
- [12] 'EIS a win-win scheme for ALL', *The Star Online* (15 August 2017) <<https://www.thestar.com.my/news/nation/2017/08/15/eis-a-winwin-scheme-for-all-the-employment-insurance-system-is-designed-to-assist-workers-who-are-la/>>
- [13] Joint industry press release: "Industry Groups Unanimously Reject the EIS" (24 March 2017) <<https://www.malaysiakini.com/letters/376886>>; <[http://www.accim.org.my/blog/topic/29/1/353/Joint+Industry+Press+Release+-+Industry+Groups+Unanimously+Reject+the+EIS+](http://www.accim.org.my/blog/topic/29/1/353/Joint+Industry+Press+Release+-+Industry+Groups+Unanimously+Reject+the+EIS+>)>