

# LHAG Insights

Employment & Industrial Relations



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### Disputes on Wages and Payments in Cash

In a recent interview, the Indonesian ambassador to Malaysia claimed that Indonesian domestic workers are subjected to “modern-day slavery” and “forced labour” in Malaysia.<sup>1</sup> As an example, he cited a case jointly handled by the Malaysian Labour Department and the Indonesian Embassy involving a domestic worker who had worked for around 10 years without being paid her salary. In an attempt to validate his action, the employer reasoned that this was justified since the domestic worker was provided food, drinks and accommodation. In such circumstances, what recourse is available to domestic workers in Malaysia?

### Status of domestic workers in Malaysia

In most countries, domestic workers are still viewed as informal “help” instead of “workers” and are thus excluded from national labour legislations. In Malaysia, the Employment Act 1955 (**EA 1955**) classifies domestic workers as “domestic servants”, defining them as:

*“... a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business, or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child’s nurse, valet, footman, gardener, washerman or washerwoman, watchman, groom and driver or cleaner of any vehicle licensed for private use”.<sup>2</sup>*

Whether a domestic worker is an employee under a contract of

<sup>1</sup> Nicholas Chung, ‘Why are maids treated well in Singapore but not in Malaysia, ponders envoy’ (*Free Malaysia Today*, 19 February 2022) <https://www.freemalaysiatoday.com/category/nation/2022/02/19/why-are-maids-treated-well-in-singapore-but-not-in-malaysia-ponders-envoy/>

<sup>2</sup> Employment Act 1955 [Act 265], s 2

service would depend on whether he or she fits into the categories set out in the First Schedule of the EA 1955. Although the EA 1955 recognises a domestic worker as an “employee” within the meaning of the Act, much is left to be desired in relation to the protections offered to such workers. This is because the Act expressly excludes domestic workers from, among others, the statutory rights of paid leave, rest days, working hours, break hours and maternity protection.<sup>3</sup>

In view of this exclusion from the statutory rights afforded to other categories of workers, women’s aid organisations started a campaign in 2021 to change laws that exempt domestic workers from protection under the EA 1955, leaving them classified as “servants” and ineligible to claim basic rights such as rest days, sick leave and maternity benefits.<sup>4</sup> Nonetheless, given that the EA 1955 recognises domestic workers as employees, they may seek recourse through the Labour Court should there be disputes on payment or non-payment of any wages or any payment due under their respective employment contracts and the provisions of the EA 1955.

### Functions of ‘Labour Court’

In respect of such disputes, the Director General of Labour (DG) is empowered under s 69 of the EA 1955 to inquire into and make an order in the prescribed form for the payment by the employer of such sum of money as he deems just without limitation of the amount.<sup>5</sup> Although such inquiries are before the DG at the Labour Department, they are often referred to as “Labour Court” proceedings.

The DG is also conferred with the power to hear claims made by an employee who falls outside the EA 1955 definition and whose salary exceeds RM2,000 but is not more than RM5,000.<sup>6</sup> At the Labour Court, the DG generally has the power to inquire into and decide on the following claims by:

- (a) an employee for wages and payments due under an employment contract,<sup>7</sup> the EA 1955<sup>8</sup> or the National Wages Consultative Act 2010;<sup>9</sup>
- (b) an employee against any person liable under s 33 of the EA 1955;<sup>10</sup>

<sup>3</sup> Employment Act 1955, First Schedule

<sup>4</sup> Keertan Ayamany, ‘Domestic workers are not servants, says NGOs calling for amendment of Employment Act 1955 to protect the vulnerable group’ (*Malay Mail*, 7 March 2021) <https://www.malaymail.com/news/malaysia/2021/03/07/domestic-workers-are-not-servants-says-ngos-calling-for-amendment-of-employ/1955720>

<sup>5</sup> Employment Act 1955, s 69(1)

<sup>6</sup> Employment Act 1955, s 69B

<sup>7</sup> Employment Act 1955, s 69(1)(a)

<sup>8</sup> Employment Act 1955, s 69(1)(b)

<sup>9</sup> Employment Act 1955, s 69(1)(c)

<sup>10</sup> Employment Act 1955, s 69(2)(i)

- (c) a contractor for labour against a contractor or sub-contractor for any sum which the contractor for labour claims to be due to him in respect of any labour provided by him under his contract with the contractor or sub-contractor;<sup>11</sup> or
- (d) an employer against his employee in respect of indemnity due under s 13(1) of the EA 1955.<sup>12</sup>

### **Labour Court procedure**

The procedure of an inquiry before the DG is set out under s 70 of the EA 1955 as follows:

- (a) The complainant shall present to the DG a statement of his complaint and of the remedy sought, either in writing or in person.
- (b) The DG shall examine the complainant on oath or affirmation and record the substance of the complainant's statement in his case book as soon as practicable.
- (c) The DG may make such inquiry as he deems necessary to satisfy himself/herself that the complaint discloses matters which warrant an inquiry.
- (d) If the DG is satisfied that the complainant warrants an inquiry, then he/she may summon the respondent, unless the respondent appears before him in person.
- (e) When issuing a summons to the respondent, the DG shall give notice to the respondent:
  - i. of the nature of the complaint made against him;
  - ii. of the name of the complainant;
  - iii. of the date, time and place of the inquiry;
  - iv. that the respondent may call any witnesses on his behalf during the inquiry; and
  - v. that the respondent may apply to the DG for summonses of the required witnesses to appear on his behalf during the inquiry.
- (f) When issuing a summons to the respondent, the DG shall also inform the complainant:
  - i. of the date, time and place mentioned in the summons;

<sup>11</sup> Employment Act 1955, s 69(2)(ii)

<sup>12</sup> Employment Act 1955, s 69(2)(iii)

- ii. that the complainant may call any witnesses on his behalf during the inquiry; and
  - iii. that the complainant may request the DG to issue summonses to the proposed witness for the complainant to appear on his behalf during the inquiry upon request of the complainant and subject to any conditions that the DG deems fit to impose.
- (g) At any time before or during an inquiry, the DG may summon any person whom he believes:
- i. has financial interests that are likely to be affected by any decision following the inquiry;
  - ii. has knowledge of the matters in issue; and
  - iii. can give evidence relevant to the matters in issue.
- (h) During the inquiry, the DG shall examine the respondent and witnesses, on oath or affirmation, whose evidence he deems material to the matters, then give his decision on such matters.
- (i) If the respondent or any person whose financial interests are likely to be affected by the decision of the inquiry fails to attend the inquiry despite being summoned, the DG may hear and decide the complaint in their absence, notwithstanding that their interests may be prejudiced by the decision.

### **Labour Court order**

An order made by the DG for payment of money under s 69 of the EA 1955 shall carry interest at the rate of 8% per annum, or at such other rate not exceeding 8% as the DG may direct, the interest to be calculated commencing on the 31st day from the date of the making of the order until the day the order is satisfied.<sup>13</sup> The DG shall embody his decision in an order in such form as may be prescribed so as to enable enforcement of the decision by a court.<sup>14</sup>

Section 75 of the EA 1955 provides that when an order by the DG has not been complied with, he may send a certified copy of the order to the Sessions Court or the Magistrates' Court, which will then be enforceable as a judgment of the Sessions Court or the Magistrates' Court.<sup>15</sup>

A person who fails to comply with any decision or order of the DG commits an offence and shall be liable, on conviction, to a

<sup>13</sup> Employment Act 1955, s 69(3A)

<sup>14</sup> Employment Act 1955, s 70(i)

<sup>15</sup> Employment Act 1955, s 75

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fine not exceeding RM10,000 and shall also, in the case of a continuing offence, be liable to a daily fine not exceeding RM100,000 for each day the offence continues after conviction.

**Conclusion**

The abuse domestic workers are subjected to comes in various forms, for instance, they are forced to work for excessively long hours without breaks, off days or holidays. Apart from that, physical and sexual violence, psychological abuse, debt bondage, non-payment of wages as well as abusive living and working conditions are also commonly reported all over the world. On a positive note, the National Action Plan on Anti-Trafficking in Persons 2021-2025 is a show of commitment by the government of Malaysia in eradicating forced labour.

While there are legal gaps in the protection of the rights of domestic workers in Malaysia, the powers of the Labour Court expressly provided under the EA 1955 demonstrate the Act's nature as a piece of beneficent social legislation to protect employees in Malaysia from oppression. It is therefore imperative that the terms of an employment contract, especially on payment of wages and monetary benefits, are clear and that employers comply with such terms in order to prevent any disputes on this issue.

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