

LHAG Insights

 **Special Alert!**

Employment & Industrial Relations



ABOUT THE AUTHORS



Amardeep Singh Toor
Partner
**Employment &
Industrial Relations**
E: ast@lh-ag.com



Ashreyna Kaur Bhatia
Associate
**Employment &
Industrial Relations**
E: akb@lh-ag.com

06 JANUARY 2023

Amendments to the Employment Act 1955 - What Employers Need to Know

The amendments to the Employment Act 1955 (**EA 1955**) came into force effective 1.1.2023. A summary of the amendments and practical tips for employers, is seen below:

Entitlement/ Protection	Pre-Amendment	Post-Amendment
Applicability of the Act	<p>The Act was only applicable to two categories of employees:</p> <p>(a) regardless of occupation, employees not earning more than RM2,000 a month; and</p> <p>(b) regardless of wages, employees carrying on certain occupation such as manual workers, supervisors of</p>	<p>The Act shall apply to any person who has entered a contract of service / employment contract. Provisions in the EA 1955 which shall now apply to all employees include, among others:</p> <p>(a) Requirement to furnish to every employee a certified copy of the details of their terms and conditions of employment, including but not limited to: occupation, wage rates,</p>

	<p>manual workers, employees operating mechanically propelled vehicles, etc.</p>	<p>allowances, overtime rate, other benefits, agreed normal hours of work, notice period, entitlement to public holidays and annual leave and duration of wage period;</p> <p>(b) Requirements on the issuance of monthly payslips to all employees, and the contents of the said payslips;</p> <p>(c) Provisions on minimum entitlement(s) to annual, sick and hospitalization leave including carry forward and encashment of annual leave;</p> <p>(d) Restrictions on the type of deductions which can be made from an employee's wages. All other deductions not within the list of lawful deductions under the EA 1955 would require the Director General of Labour's (Director General) approval, such as reimbursement for loss of or damage to the company's asset(s),</p>
--	--	---

		<p>deductions for benefits provided by an employer, etc;</p> <p>(e) Restrictions on advances which can be made to employees, such as company loans;</p> <p>(f) Requirement to display a list of public holidays and collective agreements (if applicable) on notice boards before the commencement of the calendar year;</p> <p>(g) Restrictions on dismissing local employees over foreign employees;</p> <p>(h) Provisions on wage period, time of payment of wages and system of payment of wages; and</p> <p>(i) Maintenance of employee registers and preparation of annual returns.</p> <p>Certain provisions, however, shall only apply to a select group of employees earning RM4,000 and below, such as payment for work done on rest days and public holidays, overtime</p>
--	--	---

		<p>payments, and termination/ lay-off benefits.</p> <p>Manual workers, supervisors of manual workers, employees operating mechanically propelled vehicles, etc. shall continue to be entitled to payment for work done on rest days and public holidays, overtime payments and termination/ lay-off benefits.</p>
Normal hours of work per week	48 hours a week.	45 hours a week.
Presumption of employment relationship	None.	Introduces a set of presumptions whereby an employment relationship shall be presumed until the contrary is proven by the employer. Companies engaging the services of independent contractors should thus review their engagement terms and documentation, such as the contracts for services, to remove any indicia of an employer-employee relationship.
Hospitalisation leave (sick leave where hospitalisation is necessary)	60 days minus any sick leave taken.	60 days irrespective of any sick leave taken.
Maternity leave	60 days.	Increased to 98 days.

Early return to work during maternity leave	Yes, if the employee is not entitled to maternity allowance, has the employer's consent, and is certified fit to return by a medical practitioner.	Yes, if the employee has the employer's consent and is certified fit to return by a medical practitioner, regardless of whether she is entitled to maternity allowance.
Protection of pregnant employees or if they are suffering illness arising from pregnancy	Limited to protection from dismissal while on maternity leave.	Introduces additional protection against the dismissal of any pregnant employee, or an employee suffering from an illness arising out of her pregnancy, except in certain situations such as misconduct, wilful breach of condition of the employment contract, or closure of business.
Restrictions on employment of women	Prohibition of female employees to perform night work and underground work.	These restrictions have been removed.
Paternity leave	No statutory entitlement.	7 consecutive days of paid leave.
Flexible working arrangements	None.	Employees may apply for flexible working arrangements to vary the hours of work, days of work or place of work. This must be responded by the employer within 60 days. Reasons must be provided in writing if the application is rejected. According to the Minister of Human Resources, there is no compulsion on the employer to implement such flexible working arrangements.

Requirement to exhibit a notice to raise awareness on sexual harassment	None.	Employers are required to exhibit conspicuously a notice to raise awareness on sexual harassment at the place of employment. A physical copy must be exhibited on a notice board.
Apprenticeship	An apprenticeship contract referred to a written contract to train a person for a minimum period of 2 or more years.	An “apprenticeship contract” now refers to a written contract to train a person for a minimum period of six months and a maximum period of 2 years. Apprentices are usually defined as those trained in blue-collar industries for a fixed period to acquire a specific skill. However, if a liberal interpretation is applied, interns may fall within this category, depending on the kind of work they are engaged in.
Approval for hiring foreign employees	Only required to notify the Director-General of hiring of foreign employees.	Approval of the Director General is required which is subject to certain conditions. According to the Minister of Human Resources, this will apply to both expatriates and foreign workers.
Prohibition of forced labour	None.	Forced labour is a defined offence punishable by a fine and/or imprisonment. Employers, particularly those in sectors engaging blue-collar workers, must keep a check on practices at factories,

Head Office

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia
Tel: +603 6208 5888
Fax: +603 6201 0122

Johor Office

Suite 21.01
21st Floor, Public Bank Tower
No.19, Jalan Wong Ah Fook
80000 Johor Bahru, Johor
Tel: +607 278 3833
Fax: +607 278 2833

Penang Office

18-33-A3 Gurney Tower
Persiaran Gurney
10250 Georgetown
Pulau Pinang
Tel: +604 299 9668
Fax: +604 299 9628

Email

enquiry@lh-ag.com

Website

www.lh-ag.com

		estates etc, to ensure compliance.
Discrimination in employment	Limited to a complaint from a local employee that he is discriminated against in relation to a foreign employee and vice versa in respect of terms and conditions of employment.	Introduces a new provision which allows the Director General to inquire into and decide any dispute between an employee and his employer in respect of any matter relating to discrimination in employment. Employers should keep a check on potentially discriminatory practices during appraisal, employment medical check-ups, and termination.
Increase of penalty	The general penalty for an offence under the Act and penalty for failure to comply with a decision or order of the Director General was RM10,000.	The penalty has been increased to RM50,000.

If you have any queries, please contact associate **Ashreyna Kaur Bhatia** (akb@lh-ag.com), or her team partner, **Amardeep Singh Toor** (ast@lh-ag.com).