GLOBAL LEGAL INSIGHTS

Employment & Labour Law

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Malaysia

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Malaysia's Employment & Labour laws are shaped by statutes and case law. For the last three years, this area of the law has seen greater activism from Parliament with amendments made to the Employment Act 1955[1] and the Industrial Relations Act 1967[2] as well as the enactment of the National Wages Consultative Council Act 2011[3]. These measures were followed by the passing of the Minimum Retirement Age Bill 2012 on 28 June 2012. When in force, this piece of legislation will fix the retirement age of private sector employees at 60 years of age when hitherto there was no prescribed retirement age with it being left to contract.

These developments are to do with the private sector employees and not government employees, the latter being under the purview of the Public Service Commission established by Article 139 of the Constitution of Malaysia. For government employees, amendments have been made to the Pensions Act 1980, the Pensions Adjustment Act 1980 and the Statutory and Local Authorities Pensions Act 1980 to improve their civil service pension scheme.

In respect of case law, the word "life" in Article 5(1)[4] of the Federal Constitution has been liberally interpreted to include "right to livelihood". Thus, one cannot be deprived of his employment save in accordance with the law.

Statutory Framework and Adjudication System

The principal Acts of Parliament[5] regulating employment relations for the private sector are the Employment Act 1955 (applicable to Peninsular Malaysia and Federal Territory of Labuan[6]) and Industrial Relations Act 1967.

The Labour Court

The Employment Act 1955 is generally applicable to employees whose wages do not exceed RM2,000 a month and those falling within the First Schedule of the Act. The First Schedule defines an employee as:

1. *Any person, irrespective of his occupation, who has entered into a contract of service with an employer under which such person's wages do not exceed RM2,000 a month.*
2. *Any person who, irrespective of the amount of wages he earns in a month, has entered into a contract of service with an employer in pursuance of which –*
   - *(1) he is engaged in manual labour including such labour as an artisan or apprentice:*

     Provided that where a person is employed by one employer partly in manual labour and partly in some other capacity such person shall not be deemed to be performing manual labour unless the time during which he is required to perform manual labour in any one wage period exceeds one-half of the total time during which he is required to work in such wage period;
   - *(2) he is engaged in the operation or maintenance of any mechanically propelled vehicle operated for the transport of passengers or goods or for reward or for commercial purposes;*
   - *(3) he supervises or oversees other employees engaged in manual labour employed by the same employer in and throughout the performance of their work;*

(4) he is engaged in any capacity in any vessel registered in Malaysia and who –

(a) is not an officer…;

(b) is not the holder of a local certificate as defined in Part VII of the Merchant Shipping Ordinance 1952…; or

(c) has not entered into an agreement under Part III of the Merchant Shipping Ordinance 1952; or

(5) he is engaged as a domestic servant.

3. For the purpose of this Schedule, "wages" means wages as defined in Section 2, but shall not include any payment by way of commission, subsistence allowance and overtime payment.

However, certain provisions, for example the new provisions on sexual harassment, are applicable to all irrespective of their wages.

This Act prescribes the basic terms of a contract of service, e.g. payment of wages, hours of work and rest days, maternity protection, employment of women, children and young persons, termination, lay-off and retirement benefits; and any term which is less favourable than those prescribed under Act is void. However, any term which is more favourable is to prevail.

Pursuant to Section 69 of this Act, the Director General of Labour is empowered to inquire into and decide disputes in respect of wages and any other payments in cash due to an employee (those within the categories in the First Schedule of the Act). The access to this adjudication system is also extended to employees whose wages exceed RM2,000 a month but does not exceed RM5,000 a month[7].

When carrying out this function, the Director General of Labour acts as the "Labour Court". Arising therefrom, an appeal to the High Court may be undertaken by any person affected financially by the decision of the Labour Court. Nevertheless, if a dispute falls within the Industrial Relations Act 1967 or is pending before the Industrial Court, the Labour Court would cease to have jurisdiction over the dispute[8].

The Industrial Court

The Industrial Court is empowered to deal with cases for recognition of collective agreements, and if referred to the court by the Minister of Human Resources – unjust dismissal cases, trade union complaints and trade disputes. For these latter three types of cases, employees do not have direct access to the Industrial Court. The complaint will have to be lodged with the Director General of Industrial Relations who will conduct a conciliation process and report to the Minister of Human Resources. If the conciliation process fails, the Minister will decide on whether to refer the dispute to the Industrial Court[9]. The Industrial Court will only be seized with jurisdiction upon a reference by the Minister.

No. of Cases Referred to the Industrial Court (2005 – 2011)

	Year						
	2005	2006	2007	2008	2009	2010	2011
Total cases carried forward	4143	3723	4566	4612	3342	2627	2552
Total cases referred	1859	2990	2346	665	647	1437	1346
Total awards handed down	2403	2332	2599	2170	1485	1640	1838
Total cases pending	3723	4566	4612	3342	2627	2552	2251
Total cases disposed	2209	2233	2367	1980	1390	1528	1670

Statistics from the Industrial Court of Malaysia at http://www.mp.gov.my

In this regard, the Minister exercises a referral discretion and his decision (be it a reference or a non-reference) is susceptible to judicial review by the High Court. From the High Court, a litigant may then pursue an appeal to the Court of Appeal. Thereafter, subject to obtaining the leave of the Federal

Court (the apex court), an appeal to the Federal Court. Often, this process results in significant delay in the resolution of the dispute.

In respect of unjust dismissal cases (referred by the Minister to the Industrial Court), the Industrial Relations Act 1967 provides for the relief of reinstatement. This is the statutory exception to the common law rule that a contract of service will not be specifically enforced by compelling its performance. In this regard, it must be noted that the use of a contractual termination clause (with notice or otherwise) to terminate the service of an employee would not exculpate an employer as the Industrial Court acts *"according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form"*[10] and will enquire into any termination case as a dismissal case.

In respect of relief, if a dismissal is found to be without just cause and excuse, the Industrial Court may make an award for reinstatement of the employee or compensation *in lieu* of reinstatement to be paid to the employee, both with award of backwages to the employee.

However, the relief of reinstatement is often illusory because of the significant amount of time taken for the Minister's decision to refer the dispute to the Industrial Court, the possible judicial review of the Minister's decision and finally the hearing at the Industrial Court. Meanwhile, the law has not come to recognise interim reinstatement or interim injunction issued to preserve the employment and to allow the employee concerned to continue working while the dispute undergoes the adjudication process.[11]

Arising from an Industrial Court's award (whether for the employee or the employer), there is no appeal process. But the Industrial Court's award is subject to judicial review by the High Court. Thereafter, an appeal to the Court of Appeal and subject to obtaining leave from the Federal Court, an appeal to the Federal Court. If the entire appellate procees is undertaken there would be a significant delay in the final resolution of the matter.

Employee (Workman) vs Independent Contractor

The question of whether one is an employee or an independent contractor persists in the adjudication system, as protection and reliefs are statutorily provided only to employees (workmen), and not independent contractors. Furthermore, the Industrial Court in adjudicating a dispute has the power to create new rights and obligations[12] in the employer-employee relationship. Thus, the question of employee-or-independent-contractor becomes the primary (if not preliminary) issue in many cases[13].

The Statutory Definitions

As remarked by the Federal Court[14], the statutory definitions of "workman", "employee", "contract of employment" and "contract of service" are circuitous and far from clarity.

Under the Industrial Relations Act 1967, a "contract of employment" means an agreement to employ one as a workman, and a "workman" means any person who is employed under a contract of employment. Similarly, the Employment Act 1967 provides that a "contract of service" means an agreement to employ one as an employee and "employee" means any person who is employed under a contract of service. Hence, in many cases, the Labour Court and the Industrial Court have to deal with this pertinent mixed question of fact and law[15] – whether one is an employee or an independent contractor. The law continues to be premised upon the common law divert of employee and independent contractor, and has not recognised any hybrid category as in other jurisdictions.

The Legal Test

"There is not a single satisfactory test that is available for the determination of the issue"[16], and the control test is said to be *"based on the simpler socio-economic conditions of the by-gone days"* and it *"must be modified if it is to be valid"*[17].

Towards this end, the courts in Malaysia look at both the traditional control test and the integration test to determine this issue[18]. Under the latter test, where a man is employed as part of the business and his work is done as an integral part of the business, there is an employment and the work is done under a contract of service. Where his work, although done for the business, is not integrated into the business but is only accessory to it, there is no employment and the work is done under a contract for services.

Analysis of Industrial Court Awards of Dismissal Cases (2005 – 2011)

Types of dismissal	Year						
	2005	2006	2007	2008	2009	2010	2011
Constructive	22	42	97	126	140	135	91
Misconduct	2144	2051	1200	878	613	608	639
Retrenchment	16	32	422	155	114	67	90
Others	0	0	402	573	328	479	640
TOTAL	2182	2125	2121	1732	1195	1289	1460

Statistics from the Industrial Court of Malaysia at http://www.mp.gov.my

Analysis of Industrial Court Awards of Non-Dismissal Cases (2005 – 2011)

Subject	Year						
	2005	2006	2007	2008	2009	2010	2011
Non-compliance of Award	60	136	109	124	113	131	107
Non-compliance of Collective Agreement	60	66	30	40	34	27	27
Interpretation of Award/ Collective Agreement	16	10	6	4	5	8	4
Variation of Award/ Collective Agreement	7	1	7	2	3	3	5
Amendment to Collective Agreement (by Court Order)	1	1	0	0	0	0	0
Collective Agreement (Terms and Conditions)	46	37	61	39	37	47	36
Victimisation	0	0	1	0	0	20	4
Trade Disputes	0	0	38	15	13	21	27
TOTAL	202	259	228	232	195	239	210

Statistics from the Industrial Court of Malaysia at http://www.mp.gov.my

The courts, however, are not concerned with nomenclature[19]. The focus is on the person's duties and functions and the conduct of the parties in order to ascertain what is the true nature of the relationship of the parties, and labels do not change the nature. In this connection, the fact that statutory contributions have not been made to the Employees' Provident Fund[20] and the Social Security Organisation[21] (commonly known as Socso) is not decisive in the resolution of the question of whether there was an employer-employee relationship[22]. Similarly, the fact that schedular tax deductions[23] have not been remitted to the Inland Revenue Board is not decisive. In this connection, the Industrial Court acts *"according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form"*[24].

Fixed Term Contract

A related matter is the popular use of fixed term contracts, particularly in the employment of expatriates and also in the construction industry where employees are commonly engaged on a project basis.

The main issue that presents itself is whether there is a genuine fixed term contract or there is an employment on a permanent basis dressed up as several fixed term contracts. A permanent employment would entail security of tenure in that the person is employed until he retires. More often than not, in such cases, statutory contributions to the Employees' Provident Fund and Socso as well as schedular tax deduction would have been made. That, however, as mentioned above is not decisive.

There is no clear legal test on this issue, and nor has legislation addressed this issue. The question the courts will enquire into is whether there was an "ulterior motive" behind the fixed term contract. This makes each case fact-sensitive and the courts are to deal with each case on its own facts[25].

Non-Citizen Employees

In respect of employment of non-citizens, there are several restrictions. Section 5 of the Employment (Restriction) Act 1968 stipulates the requirement of a valid employment permit. A fine not exceeding RM5,000, or a prison term not exceeding 1 year, or both, may be imposed on the employer and the employee respectively for a breach of this section.

Further, on the part of the employer, it is an offence under Section 55B of the Immigration Act 1959/1963 to employ *"1 or more persons, other than a citizen or a holder of an entry permit, who is not in possession of a valid pass"*. A heavier penalty of a fine of not less than RM10,000, up to a maximum of RM50,000, or a prison term not exceeding 1 year, or both, is imposed under this section. Also, Section 60M of the Employment Act 1955 prohibits the termination of a local employee for the purpose of employing a foreign employee.

In respect of an application for an employment permit, the procedure varies depending on whether the person concerned is a professional or unskilled, and the industry/sector as well as the state/area (Peninsular Malaysia or Sabah or Sarawak) in which the person concerned will be engaged. The Malaysian Industry Development Authority has laid down the following guidelines on the employment of expatriates as as follows:

(1) Manufacturing companies with foreign paid-up capital of US$2 million and above:
   (a) Automatic approval is given for up to 10 expatriate posts, including five key posts.
   (b) Expatriates can be employed for up to a maximum of 10 years for executive posts, and five years for non-executive posts.

(2) Manufacturing companies with foreign paid-up capital of more than US$200,000 but less than US$2 million:
   (a) Automatic approval is given for up to five expatriate posts, including at least one key post.
   (b) Expatriates can be employed for a maximum 10 years for executive posts, and five years for non-executive posts.

(3) Manufacturing companies with foreign paid-up capital of less than US$200,000 will be considered for both key posts and time posts based on current guidelines which are:
   (a) Key posts can be considered where the foreign paid-up capital is at least RM500,000. This amount, however, is only a guideline and the number of key posts to be allowed depends on the merits of each case.
   (b) Time posts can be considered for up to 10 years for executive posts that require professional qualifications and practical experience, and five years for non-executive posts that require technical skills and experience. For these posts, Malaysians must be trained to eventually take over the posts.
   (c) The number of key posts and time posts to be allowed depends on the merits of each case.

(4) For Malaysian-owned manufacturing companies, approval for the employment of expatriates for technical posts, including R&D posts, will be given as requested.

Apart from the Malaysian Industry Development Authority, there are also several approving authorities for the employment of expatriates in the relevant industry/sector. These are:

1. Multimedia Development Corporation	Expatriate Post and skilled foreign workers in Information Technology-based companies which have been granted "Multimedia Super Corridor" (MSC) status.
2. Public Service Department	Doctors and nurses working in government hospitals or clinics. Lecturers and tutors employed in Government Institutes of Higher Education. Contract Posts in Public Services. Recruitment process jobs offered by the Public Service Commission or government-related agencies.
3. Central Bank of Malaysia	Expatriate posts in the following sectors: • Banking • Finance • Insurance
4. Securities Commission	Expatriate posts in Securities and Share market.
5. Expatriate Committee	Expatriate posts in private and public sectors other than those under the jurisdiction of the above agencies/authorities.

There is also the Residence Pass-Talent introduced in April 2011 by the government to attract and retain talent in the country[26]. This Residence Pass-Talent is valid for 10 years as opposed to the two or three years in the usual Employment Pass. The spouse of the Residence Pass-Talent holder is also eligible to work in Malaysia.

Application for this pass is made to Talent Corporation Malaysia Berhad established under the Prime Minister's Department. Its primary function is to formulate and facilitate initiatives to attract, retain and nurture talents in support of the country's economic programme.

Recent Developments

Award of Backwages in the Industrial Court

Prior to 28 February 2008, the Industrial Relations Act 1967 does not stipulate the maximum amount in backwages the Industrial Court may award.

The basic approach had been that the employee is awarded a sum of backwages arrived at by multiplying his monthly remuneration with the number of months between the date of his dismissal and the date of the award. Although the Industrial Court Practice Note No 1 of 1987 ('Practice Note') stipulates a maximum of 24 months' backwages, the Industrial Court had always retained discretion to award more than the said 24 months' backwages.

The Industrial Relations Act 1967, since the amendments which came into effect on 28 February 2008, now contains a Second Schedule: Factors for Consideration in making an Award in relation to a Reference under subsection 20(3). In essence, this limits the award of backwages to a maximum of 24 months. In the case of a probationer who has been dismissed, the maximum is 12 months' backwages.

Further, a percentage of any post-dismissal earnings (i.e. income from elsewhere after the dismissal) shall be deducted from the backwages, and the Industrial Court is to decide on the percentage. Compensation for loss of future earnings is also excluded, while contributory misconduct of the employee will be considered.

Maternity Leave

Prior to the amendments in 2012, the maternity provisions under the Employment Act 1955 were applicable only to female employees earning RM1,500 per month and below and those falling within the First Schedule of the Act. By virtue of Section 44A (added *vide* the amendments), this protection is now extended to all female employees irrespective of the amount of wages.

The maternity provisions in essence stipulate the maternity leave of 60 days and the entitlement to payment of maternity allowance. It also provides that an employer who terminates the service of a female employee during the period in which she is entitled to maternity leave commits an offence.

Sexual Harrassment

In 1999, the Minister of Human Resources acknowledged that "the problem does exist at least in certain workplaces especially those with very large female workforce", and that "the situation already warrants due attention and remedial action so that it does not get worse"[27].

There was, however, no specific employment legislation on sexual harassment in the workplace. In respect of civil service, this area was regulated by the Public Services Department's circular dated 10 September 2005 known as Guidelines for Handling Sexual Harassment in the Workplace Among the Civil Servant No. 22 of 2005. As for private sector employees, the Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace 1999 served as guidelines.

By virtue of the new Part XVA of the Employment Act 1955 (inserted *vide* the amendments in 2012), employers now have a duty to act. An employer is liable to a fine not exceeding RM10,000 if he fails to conduct an inquiry into a complaint of sexual harassment, or inform the complainant why he refuses to conduct an inquiry, or conduct any inquiry when directed to do so by the Director General of Labour, or submit a report of inquiry to the Director General.

Briefly, a complaint of sexual harassment includes that made by an employee against another employee, an employee against any employer, and an employer against an employee[28]. Sexual harassment has been defined as "any unwanted conduct of a sexual nature, whether verbal, non-verbal, visual, gestural or physical, directed at a person which is offensive or humiliating or is a threat to his well-being, arising out of and in the course of his employment"[29]. By virtue of Section 81G, the provisions on sexual harassment extend to every employee irrespective of their wages.

On receiving a complaint, an employer has to conduct an inquiry unless the complaint has previously been inquired into and no sexual harassment has been proven, or the employer is of the opinion that the complaint of sexual harassment is frivolous, vexatious or is not made in good faith[30]. If the employer refuses to hold an inquiry, he must inform the complainant of the refusal and the reasons for the refusal within 30 days of the complaint[31]. The complainant may then refer the matter to the Director General who may direct the employer to conduct an inquiry if he thinks the matter should be inquired into, or inform the complainant no further action will be taken if he agrees with the employer's decision not to hold an inquiry[32].

In respect of the action which may be taken by an employer, the amendments provide that where the employer has conducted an inquiry and is satisfied that sexual harassment is proven, the employer shall:

(a) in the case where the person against whom the complaint is made is an employee, take disciplinary action which may include dismissing the employee without notice, downgrading the employee, or imposing any other lesser punishment as he deems just and fit, and where the punishment of suspension without wages is imposed, it shall not exceed a period of two weeks; and

(b) in the case where the person against whom the complaint is made is a person other than an employee, recommend that the person be brought before an appropriate disciplinary authority to which the person is subject.

Quite apart from the above, a complainant may lodge a complaint directly with the Director General[33]. The Director General will then assess the complaint and may direct an employer to inquire into such complaint and submit a report to the Director General within 30 days[34].

If the complaint is made against the employer who is a sole proprietor, the Director General would conduct the inquiry[35], unless the complaint of sexual harassment has previously been inquired into by the Director General and no sexual harassment has been proven, or the Director General is of the opinion that the complaint of sexual harassment is frivolous, vexatious or is not made in good faith[36]. The Director General has to inform the complainant within 30 days[37] if he refuses to conduct an inquiry.

If the Director General decides that sexual harassment is proven against the employer who is a sole proprietor, the complainant may terminate his contract of service without notice and be entitled to termination benefits and wages as if the complainant has given the notice of the termination of contract of service.

These provisions however do not create a cause of action for sexual harassment, nor provide any monetary relief to the complainant for having suffered the sexual harassment. The Director General

is also not empowered to award any relief to the complainant. Therefore, the complainant would have to resort to civil suit for damages.

Children and Young Persons (Employment) (Amendment) Act 2010

The Children and Young Persons (Employment) Act 1966 regulates the employment of children and young persons by restricting the type of work in which they may be engaged as well as limiting their hours of work and number of days of work.

Prior to the Children and Young Persons (Employment) (Amendment) Act 2010, "child" was defined as any person who has not completed his 14th year of age and "young person" as any person who, not being a child, has not completed his 16th year of age. Now, "child" is defined as any person who has not completed his 15th year of age, and "young person" as any person who, not being a child, has not completed his 18th year of age. The specific protection of child and young persons has thus been been extended.

National Wages Consultative Council Act 2011 and Minimum Wages

This Act repealed the Wages Council Act 1947 and dissolved all wages councils previously formed. The National Wages Consultative Council established under this Act is charged with the responsibility of studying minimum wages and making recommendations to the government on matters of minimum wages.

Pursuant to Section 23, where the government agrees with the recommendations of the council, the Minister of Human Resources will issue a minimum wages order stipulating the minimum wages rates, the coverage of the rates according to sectors, types of employment and regional areas, the non-application to any sectors, types of employment and regional areas or to any person or class of persons, and the commencement of the minimum wages order. Pursuant to Section 24, the rates stipulated in a minimum wages order will replace any lower rates of wages agreed in a contract of service between an employer and an employee.

Nevertheless, under Section 25, the council has the duty to review the minimum wages order at least once in every two years, and may on its own accord or upon the direction of the government, review the minimum wages order.

On 16 July 2012, the Minister of Human Resources issued the Minimum Wages Order 2012 fixing the minimum wages rates payable to an employee (except a domestic servant) as follows:

Regional Areas	Minimum wage rates	
	Hourly	Hourly
Peninsular Malaysia	RM900	RM4.33
Sabah, Sarawak and the Federal Territory of Labuan	RM800	RM3.85

In respect of probationary employees, the Order provides that the minimum wages rates may be reduced not more than 30% of the minimum wages rate and that the reduction is allowed only for the first 6 months of the probationary contract.

The Order will come into operation on 1 January 2013 in relation to an employer who employs more than five employees and an employer who carries out a professional activity[38] classified under the Malaysia Standard Classification of Occupations (MASCO) regardless of the number of employees employed. As for all other employers with five employees or less, the operational date is on 1 July 2013.

In this connection, an employer who fails to pay the basic wages *as per* the minimum wages order is liable to a fine of not more than RM10,000 for each employee[39]. The Court may further order the employer to pay the difference between the minimum wages rate and the basic wages paid by the employer to the employee[40].

Private Retirement Scheme

In Malaysia, it is a mandatory requirement that both employer and employee contribute to the Employees' Provident Fund[41], a government operated scheme of savings for employees' retirement.

Following the amendments to the Capital Markets and Services Act 2007, which came into operation on 3 October 2011, private retirement schemes are now permissible. It is part of the government's effort to develop the private pension industry. In contrast to the Employees' Provident Fund, this scheme is a voluntary retirement savings scheme structured and managed by private sector fund providers. Licensing and approval from the Securities Commission, however, is required.

Towards this end, the Securities Commission has issued the Capital Markets and Services (Private Retirement Scheme Industry) Regulations 2012 and the Guidelines on Private Retirement Schemes. On 6 April 2012, the Securities Commission announced the approval for eight Private Retirement Scheme Providers. And on 18 July 2012, the Private Retirement Administrator was established[42].

Private Sector Retirement Age

In the private sector, the retirement age has always been a matter of contract. That has changed with the Minimum Retirement Age Bill 2012 which was passed in Parliament on 28 June 2012. When in force[43], this piece of legislation will fix the retirement age of private sector employees at 60 years of age and an employer who *"prematurely retires an employee before the employee attains the minimum retirement age"*[44] is liable to a fine not exceeding RM10,000.

The minimum retirement age is not applicable to probationary employees, apprentices, non-citizen employees, domestic servants, part-time employees, students employed on a temporary term, employees on a 24-month fixed term contract of service and *"a person who, before the date of coming into operation of this Act, has retired at the age of 55 years or above and subsequently is re-employed after he has retired"*.[45]

Conclusion

The government's Economic Transformation Programme is expected to create more than three million jobs by 2020. Coupled with the coming liberalisation of services sectors, Malaysia will see more statutory reforms to Employment & Labour laws.

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Endnotes

1. Employment (Amendment) 2012 came into operation on 1 April 2012.
2. Industrial Relations (Amendment) Act 2007 came into operation on 28 February 2008.
3. National Wages Consultative Council Act 2011 came into operation on 15 September 2011 and repealed the Wages Council Act 1947.
4. "No person shall be deprived of his life or personal liberty save in accordance with law"; and the Federal Court's decision in Sivarasa Rasiah v Badan Peguam Malaysia & anor [2010] 2 MLJ 333; also the Court of Appeal's decisions in Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & anor [1996] 1 MLJ 261 and Hong Leong Equipment Sdn Bhd v Liew Fook Chuan and another appeal [1996] 1 MLJ 481, and the Federal Court's decision in R Rama Chandran v The Industrial Court Of Malaysia & anor [1997] 1 MLJ 145.
5. Other Acts of Parliament which relate to employment are *inter alia* Employees Provident Fund Act 1991, Employees Social Security Act 1969, Workmen's Compensation Act 1952, Factories and Machinery Act 1967, Occupational Safety and Health Act 1994, Employment (Restriction) Act 1968, and Children and Young Persons (Employment) Act 1966.
6. Employment Act 1955 is applicable to West Malaysia and Federal Territory of Labuan. In East Malaysia, Labour Ordinance 1950 is applicable to the state of Sabah and Labour Ordinance 1952 to the state of Sarawak.
7. Section 69B of the Employment Act 1955.
8. Section 69A of the Employment Act 1955.
9. Section 20 of the Industrial Relations Act 1967.

10. Section 30(5) of the Industrial Relations Act 1967.
11. Dr David Vanniasingham Ramanathan v Subang Jaya Medical Centre Sdn Bhd [2007] 1 MLJ 713, Court of Appeal.
12. Viking Askim Sdn Bhd v National Union of Employees in Companies Manufacturing Rubber Products [1991] 2 MLJ 115 and Section 30 of the Industrial Relations Act 1967.
13. Subang Jaya Medical Centre Sdn Bhd v Dr David Vanniasingham Ramanathan [2012] Unreported.
14. Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia [1995] 3 MLJ 369.
15. Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia [1995] 3 MLJ 369, Assunta Hospital v Dr A Dutt [1981] MLJ 115, Dr A Dutt v Assunta Hospital [1981] MLJ 304 and Menteri Sumber Manusia v John Hancock Life Insurance (M) Bhd [2007] 1 CLJ 366.
16. Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia [1995] 3 MLJ 369.
17. EPF Board v MS Ally & Co Ltd [1975] 2 MLJ 89, Federal Court.
18. Mary Colete John v South East Asia Insurance Bhd [2010] 2 MLJ 222, Court of Appeal affirmed in Mary Colete John v South East Asia Insurance Berhad [2010] 6 MLJ 773, Federal Court. This is a personal injury insurance case where the issue of employee or independent contractor arose.
19. Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia [1995] 3 MLJ 369 and Mary Colete John v South East Asia Insurance Bhd [2010] 6 MLJ 733.
20. The fund established under the Employees' Provident Fund Act 1991.
21. The Social Security Organisation, commonly known as SOCSO, is the body established to enforce the Employees Social Security Act 1969. It operates the Employment Injury Insurance Scheme and Invalidity Pension Scheme.
22. Kuala Lumpur Mutual Fund Berhad v J Bastian Leo & Anor [1988] 2 MLJ 526 and Great Eastern Mills Bhd v Ng Yuen Ching & Ors [1998] 6 MLJ 214.
23. Income Tax (Deduction from Remuneration) Rules 1994 made under the Income Tax Act 1967 applicable to employment income.
24. Section 30(5) of the Industrial Relations Act 1967.
25. M. Vasagam Muthusamy v Kesatuan Pekerja-Pekerja Resorts World, Pahang & Anor [2005] 4 CLJ 93.
26. http://www.talentcorp.com.my; see also http://www.expats.com.my.
27. The preface to code of practice on the Prevention and eradication of Sexual harassment in the Workplace, Ministry of Human Resources.
28. Section 81A of the Employment Act 1955.
29. Section 2.
30. Section 81B(3).
31. Section 81B(1) and (2).
32. Section 81B(4) and (5).
33. Section 81D(1).
34. Section 81D(2).
35. Section 81D(3).
36. Section 81D(4) and (5).
37. Section 81D(6).
38. Science And Engineering Professionals, Health Professionals, Teaching Professionals, Business And Administration Professionals, Information And Communications Technology Professionals, Legal, Social And Cultural Professionals, Hospitality, and Retail And Services Professionals (see http://www.mohr.gov.my/MAJOR_GROUP_2.pdf).
39. Section 43 of the National Wages Consultative Council Act 2011.
40. Section 44.
41. The fund established under the Employees' Provident Fund Act 1991.
42. News articles of 18 July 2012 and 19 July 2012 at thestar.com.my.
43. This legislation will come into force on a date appointed by the Minister of Human Resources.
44. Clause 5 of the Minimum Retirement Age Bill 2012.
45. Schedule to the Minimum Retirement Age Bill 2012.

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