



# Impactful Changes: Analyzing the Employment (Amendment) Act 2022 on Employers and Employees in Malaysia

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## Abstract.

The Employment (Amendment) Act 2022 has recently been passed, bringing significant changes to the Employment Act 1955 in Malaysia. This article provides an overview of the key amendments and their impact on employers and employees. Through an analysis of relevant laws and decided cases, it examines the implications of these amendments. The amendments aim to strengthen employee protection and improve working conditions. They address areas such as working hours, annual leave, maternity leave, and termination of employment. For employers, these changes require adjustments to their policies and practices to ensure compliance with the amended provisions. They also introduce greater responsibilities in managing employment relationships and avoiding unfair dismissal claims. Overall, the Employment (Amendment) Act 2022 brings significant changes to employment practices in Malaysia. This article highlights the effects on employers and employees, providing valuable information for stakeholders to adapt to the amended provisions and ensure a fair and conducive working environment.

**Keywords:** Employment (Amendment) Act 2022, Employment Act 1955, amendments, impact, employer, employee

# 1 INTRODUCTION

## 1.1 Introduction

The dynamic economy of Malaysia and its welcoming business environment draw in foreign organisations and investors. Malaysia, on the one hand, offers access to the enormous and wide Asia-Pacific market. On the other hand, the nation's top-notch infrastructure, communication capabilities, skilled workforce, and rich cultural diversity make it a prime location for development and innovation. However, in order to establish a company entity there, you must abide by the rules of Malaysia's employment legislation and labour law.

As employers and employees, one should be aware of their rights and on how the system works. Therefore, in Malaysia, the **Employment Act 1955 (hereinafter as EA)** was first introduced in making sure the working or also known as corporate world would recognise their rights and benefits for both the employers and employees. However, the Act was not sufficient as there was a need to make amendments. Moving on, the **Employment Act 2022 (Amendment Act)** was introduced which came into effect on 1 January 2023. In Malaysia, legislation governing working hours, minimum benefits, leaves of absence, and other employee rights are governed by employment and labour regulations. The main law establishing the minimal terms and conditions of employment in Malaysia is the **Employment Act, 1955**.

Therefore, we will discuss matters in regard to the Employment Act, as in the impact and effects on both the employers and employees; the amendments made to the Employment Act; the differences between the

old and new act after the amendment. We have also included the questionnaires that we have prepared to capture other's opinion on this matter and to further assist us for this assignment purpose.

## **2 Literature Review**

In this paper there have been various types of sources that were referred to where the sources were analysed and came to a conclusion. We have also given our own opinion. The sources vary from primary and secondary sources such as Legal Legislations, Case Laws, Books, Online articles, Online Journals.

According to Halim, Hong and Quek, the Employment (Amendment) Act 2022 ("Amendment Act") and the Employment (Amendment of First Schedule) Order 2022 ("Amendment Order") which will be in force from 1 September 2022 to amend the Employment Act 1955 ("Employment Act"). There are many differences between the old act and the new act. Adding on to that According to New Straits Time, the key amendments include the extension of maternity leave allocations from 60 days to 98 days, reduced weekly working hours from 48 to 45 hours, and a seven-day paternity leave for married male employees. Besides that, Based on Shaari, S. C., & Amirul, S. R. (2023, May), To enhance and support an optimal work-life balance, flexible working arrangements (FWAs), particularly working from home, are crucial and Employers are required to exhibit conspicuously a notice to raise awareness on sexual harassment at the place of employment. Here, it is argued that although the FWAs were included in the Employment Act of 1955, legislators

would also need to have incorporated the Right to Disconnect (RTD). The workers' ability to balance work and life is in jeopardy otherwise. Moreover, looking at on the website Malaysiakini, the recent amendments relating to labour law are employee working hours like flexible working arrangements and change in the employee maximum working hours. Employee working scheduling is also another recent amendment. The third amendment is employee leaves entitlement which has increased paid maternity leave, introduction of paid paternity leave and separation of hospitalisation leave from sick leave. Lastly, the Employment Act 1955 was also referred to, this was to identify the provisions that governs the said part of topic. Besides that the Hours of Work (Industry) Convention 1919 was also referred, here was to identify the needed working hours a week. According to an article by (ILO) it mentioned that a flexible working hour is accepted as long as the required number of hours are fulfilled. Besides that according to SQL (10th June 2023) it spoke about overtime pay and overtime schedule of an employee is entitled to claim for. According to The Star (1 January 2023) it mentioned that an employee who earns a high amount of wage is still entitled to go for overtime pay. In an article by Khoo Gek San (13 March 2023) it was explaining the rights of a female employee claiming for her maternity leave and allowance but this could dodge back by not giving job opportunities.

### **3 IMPACT AND EFFECT ON EMPLOYEES**

Now since the EA has been amended it has brought a lot of changes to the lives of an employee, therefore these are the effects that have been

there since the amendments were made. Therefore, now that part of the topic will be discussed.

Starting off with the working arrangements, it has been said that an employee is allowed to have flexible working arrangements, according to their job scope. This is to vary the hours of work; this is to vary the days of their work and also place for those who do not have a fixed location of working. Now by allowing a flexible working arrangement it was said by the Minister of Human Resource that this will boost the level of productivity. But this proviso is fully dependent on the employer to whether they want to be applied or not. So how does this method work? It allows an employee to work anytime as long as they complete their stipulated time frame. For example, if the employee is compelled to work for 8 hours as long as he completes 8 hours of work that will be sufficient.<sup>1</sup> But in order for an employee to work flexibly he will have to give his valid reasoning to the employer and the process shall be done within 60 days which is to be done in writing and this can be allowed or rejected based on the discretion of the employer.<sup>2</sup>

Moreover, as mentioned in **Section 60P (1) of the EA**, an employee may request a flexible work arrangement from his employer in order to change the hours he works, the day he works or the location of his employment.<sup>3</sup> This was previously never heard, where modification can be

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<sup>1</sup> FMT Reporters “No compulsion on flexible working hours, up to employers, says minister *Free Malaysia Today* (Malaysia 18 December 2022) [No compulsion on flexible working hours, up to employers, says minister | Free Malaysia Today \(FMT\)](#) accessed on 9 June 2023.

<sup>2</sup> Employment Act 1955, s 60P.

<sup>3</sup> Ibid.

made to their place of work and time. Therefore, now they are given a choice to choose their working arrangement. It was further stated under **Section 60Q (1) of the EA**, where an application can be made for the flexible working arrangement that is made by the employee under **Section 60P (1) EA**, this has to be in a written form that has to be given to the Director General to decide.<sup>4</sup> Hence, it can be deduced that written applications can be made by employees now to their employers in order to change the hours, days or place of work in relation to their employment.

Moreover, stipulated under **Section 60Q (2) of the EA** after the application had been made in accordance with **Section 60Q (1) of the EA**, the approval or rejection shall be made within sixty days by the employer after such application is received. The decision of the employer on whether approving or refusing the application shall be made known to the employee in writing as well as provisioned under **Section 60Q (3) of the EA**. Finally in an event where the application has been refused by the employer, a valid reasoning has to be given on why the employer has refused to give the flexible working hours approval.<sup>5</sup>

Moving onto the next aspect which would be the working hours that has been stipulated for an employee to comply with. According to **Section 60A of the EA**, it mentions that an employee is stipulated for working 8 hours a day and if anything, more than that it will be considered as overtime which will be discussed below.<sup>6</sup> Adding on an employee cannot

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<sup>4</sup> Employment Act 1955, s 60Q.

<sup>5</sup> Ibid.

<sup>6</sup> Employment Act 1955, s 60A.

work for more than 45 hours a week. Now since the amendments has been made the weekly amount of time to work has been cut down, one of the reasons would be, in complying with the International Labor Organization Convention, with regards to **Article 2 of the Hours of Work (Industry) Convention 1919** it mentions, working hours of an employee shall be 8 hours a day and not more than 48 hours a week. Irrespective of their sector private or public.<sup>7</sup>This shows that the Malaysian Government is still in compliance with international standards.

According to the article, Working time and working organisation. Here it stressed on the point some of the major challenges in this area remain those which have been important since the dawn of the industrial age excessive hours of work and the need to protect workers' health and safety by limiting working hours and providing adequate periods for rest and recuperation, including weekly rest, and paid annual leave which are enshrined in international labour standards. These various developments are reflected in a variety of flexible work arrangements that vary from the conventional full-time, "9 to 5" model, such as flexi-time arrangements, part-time work, hours averaging, working time accounts, and telework.<sup>8</sup>

In an old case of **Kesatuan Sekerja Pembuatan Barangan Galian Bukan Logam v G.B. Kuari Sdn Bhd & Anor** in this case the courts had awarded 48 hours to be done by the employee and standardised the

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<sup>7</sup> Hours of Work (Industry) Convention 1919, Article 2.

<sup>8</sup> 'Working Time and Working Organisation- Introduction, (9 September 2014) [https://www.ilo.org/global/topics/working-time/WCMS\\_305938/lang--en/index.htm](https://www.ilo.org/global/topics/working-time/WCMS_305938/lang--en/index.htm) Accessed on 9 June 2023

working hours of all the Applicant's employees to 48 hours per week.<sup>9</sup> So if this case was decided now with the new amendments the courts will not be able to award such hours per week because the timeline per week has been changed.

Now moving on to overtime rates, since an employee is said to be working for 8 hours a day they cannot be working for more than these many hours. anything beyond that will be considered as overtime. But that is also subjected to certain hours and the rate will be different depending on the days and time. According to **Section 60A EA** it allows an employee their right to share on when they work in excess or when they work on their holiday days. The rate of such overtime pay is specified based on how much work is done and what days they work. If the employee works on a public holiday, works for normal working hours they will be given 2 times but if they work in excess of hours, they will earn 3 times.<sup>10</sup> But the exception here would be that an employee is only allowed to work for 4 hours per 5 working days for those who work for 8 hours consecutively for 5 days. So, this means employees have to also keep an eye on how many hours they do their overtime.<sup>11</sup> This fact has also been stipulated under **Section 60(3) of the EA** and **Section 60D (3) of the EA** where it stipulates that an employee is allowed to get their overtime pay if they work during public holidays. According to an article it mentioned that an employee who is earning above Rm 4000 is now

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<sup>9</sup> [2002] MLJU 760.

<sup>10</sup> Employment Act 1955, s 60A.

<sup>11</sup> SQL, 'Reduced Maximum Working Hours For Non-Shift And Shift Employees' [Malaysia 45 working hours | Shift or non-shift employees \(sql.com.my\)](https://www.sql.com.my/malaysia-45-working-hours-shift-or-non-shift-employees) accessed on 10<sup>th</sup> June 2023.



entitled to work for overtime pay as they have also been included into the category.<sup>12</sup>

The final part would be the Maternity Protection, according to **Section 37(1)(a) EA** it says that a female employee is entitled to get a maternity leave for an eligible period in respect of each confinement and the employee can get an allowance for maternity allowance during the confinement period.<sup>13</sup> Moreover **Section 37(1) (aa) EA mentions** that a person is eligible for maternity leave. But in order for them to get their maternity allowance they will have to be eligible under **paragraph (C)** which is she must not have more than 5 surviving children. Besides that, under **Section 37(1)(d)(ii) EA** it says that the eligible period is allowed for 98 days consecutively which is given to the female employee that is eligible to be within the eligibility grounds.<sup>14</sup>

According to the news it was raised an issue regarding the additional 38 days given to female workers who want to apply for their maternity leave. Here it says that 42% of businesses have been hiring male workers recently due to the new amendment that allows the female employees to get 98 days maternity leave. So, they want to get a higher male to female ratio this way is to mitigate the impact against the higher maternity leave rate. Therefore, the Associated Chinese Chambers of Commerce has suggested three methods to reduce the cost that is incurred during the maternity leaves have been given. The first way would be to give a lower rate

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<sup>12</sup>The Star, “Employees who earn up to Rm 4,000 now entitled to overtime” *The Star* (1 January 2023) [Employees who earn up to RM4,000 now entitled to overtime | The Star](#) accessed on 10 June 2023.

<sup>13</sup> Employment Act 1955, s 37.

<sup>14</sup> Ibid.

to the SOCSO amount or it could be that the government can contribute half of financial burden for the additional 38 days that has now been added onto the law, because it was previously 60 days and since the law had added on another 38 days that is the additional burden that is being complained. Besides that, they could suggest the government charge a double the tax deduction for the cost incurred during the additional days of the maternity leave. This was criticised by the chambers and said that this will not bring to any equality in fact it will bring up an issue as to the gender equality issue where it will be argued that female workers are lesser compared to male therefore, this will not promote gender equality.<sup>15</sup> This can be supported by another recent article that mentions That it says the maternity leave being extended is like a double-edged sword where it allows women to get their leave but it will also reduce their chances to get employment faster, as the 98 days timeline is quite long for an employer to handle without his employees. Therefore, it was also suggested that employers should be given subsidies or tax relief to ease their burden over their female employees taking maternity leave.<sup>16</sup>

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<sup>15</sup> FMT Reporters “More men being hired” as women get longer maternity leave *Free Malaysia Today* (Malaysia 20 February 2023) [‘More men being hired’ as women get longer maternity leave | Free Malaysia Today \(FMT\)](#) accessed on 10 June 2023.

<sup>16</sup>Khoo Gek San “It’s a double- edged sword *The Star* (Malaysia 13 March 2023) [It’s a double-edged sword | The Star](#) Accessed on 10 June 2023.

#### 4 IMPACT AND EFFECT ON EMPLOYERS

Ever since the recent amendment of the **EA**, there have been several changes towards every employer. There are several effects of this amendment towards the employers. In 2020, the **EA** received significant revisions, including maternity leave-related adjustments. These changes seek to strengthen the rights and protection of pregnant women who work. We will go into detail about the exact changes made to the Employment Act's maternity leave provisions in this section. Firstly it is an extension of the duration of maternity leave for female employees. Prior to this amendment the employees were only entitled for 60 days of maternity leave but due to the amendment it was increased significantly to 90 days. The purpose behind this was to provide the mothers with enough time to properly recover from childbirth trauma. This is key as it is important for employers to show support for the wellbeing of working mothers. **Section 44A of EA** provides that maternity protection provisions apply to all female employees regardless of salary.<sup>17</sup>

Also the amendment has allowed flexibility in the usage of maternity leave. Before the amendment the leave was strict in the sense that the leave had to be taken consecutively from the day of the childbirth, nevertheless, the amended act now enables female employees to use their maternity leave anyway they see fit.<sup>18</sup> Prior to the anticipated due date, they are permitted to take up to 30 days of maternity leave; the remaining

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<sup>17</sup> Employment Act 1955, s 44A

<sup>18</sup> Oceanio VD, 'Maternity Leave and Gender Equality: Comparative Studies of Indonesia, Malaysia, and Thailand' (2022) 30 *Populasi* 15.

days must be used after delivering. Due to their improved ability to balance professional and personal obligations, pregnant employees make it simpler to plan their absence and provide a smooth transition during their leave time. This amendment also introduces a new provision in which those who are under the maternity leave will receive their entitlements and benefits from the employers. The employee's benefits, including health insurance and EPF payments, must be maintained by the employer during this period. This clause safeguards the rights of female workers and bans any interference with their job benefits during maternity leave. Lastly, there is a new significant addition to the amendment is the addition to include adoptive mothers to be entitled for maternity leave as prior to the amendment maternity leave will only be applicable to biological mothers only. The revised law does acknowledge that adoptive moms need time to form a bond with and care with their adopted child, though. Because of this, all working mothers now have access to the same maternity leave benefits as biological mothers, promoting greater inclusivity and support.

Besides this the amendment has also brought in other changes to the overtime working structure.<sup>19</sup> Usually overtime is calculated by the extra hours that are worked by an employee on top of their normal hours. But now prior to the amendment, it will be calculated Inclusive of working

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<sup>19</sup> 'Key Amendments to the Employment Act 1955 | Thomas Philip Advocates and Solicitors, Kuala Lumpur, Malaysia' ([www.thomasphilip.com.my](http://www.thomasphilip.com.my)) <<https://www.thomasphilip.com.my/articles/key-amendments-to-the-employment-act-1955/#:~:text=New%20provisions%20have%20been%20included>> accessed 20 June 2023.

and overtime hours in the calculation of compensation. This modification strives to guarantee that workers receive fair pay for the extra hours they put in. This modification requires companies to track and record employee working hours with greater accuracy, which may involve the deployment of better time and attendance systems. Besides that another major change that was brought through this amendment is the improvement of leave entitlements. The reason behind this was to improve the work life balance of employees. Through this amendment, The employees can take annual leave from 8 -10 days when u have less than 2 years experience of work and for those with more than 2 years experience are liable for 12 days of annual leave. Additionally, before the implementation of the amendment, an employee is liable to have 14-21 days of paid leave for no hospitalisation and 60 days of paid sick leave for when hospitalisation is required if the total length of paid sick days taken in a calendar year is no longer than 60 days.

Another notable change is that employees now can apply for flexible working arrangements.<sup>20</sup> Based on **Shaari, S. C., & Amirul, S. R. (2023, May)**, To enhance and support an optimal work-life balance, flexible working arrangements (FWAs), particularly working from home, are crucial. Here, it is argued that although the FWAs were included in the Employment Act of 1955, legislators would also need to have incorporated the Right to Disconnect (RTD). The workers' ability to balance

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<sup>20</sup> Shaari S and Amirul S, 'Flexible Working Arrangements (FWAs) in Malaysia: The Missing Component of the Right to Disconnect' (2023) 1181 IOP Conference Series: Earth and Environmental Science <https://iopscience.iop.org/article/10.1088/1755-1315/1181/1/012013> accessed on 20 June 2023.

work and life is in jeopardy otherwise. And now prior to the amendment, employees would be entitled to request "a flexible working arrangement to vary the hours of work, days of work, or place of work" in writing from their employer. When an employer receives such an application, they have 60 days to approve it or reject it, and if they reject it, they must "state the ground for such refusal." An employee may request "flexible working arrangements" under the Bill. The employer is not required by law to grant this request, though. The employer is only required to approve or reject the application within 60 days, and if it is rejected, the employer is required to state why.

In addition to that, the coverage of employees has been significantly amended through this amendment. According to the employment act 1955, the "employee" category initially covered: Any person who has entered into a contract of service with an employer under which their wages do not exceed MYR 2,000 per month, or Any person who has entered into a contract of service with an employer in which they are engaged in manual labour, in the operation or maintenance of any mechanically propelled vehicle, in a supervisory capacity over other employees engaged in manual labour, or in any other position that requires manual labour. Despite this, the amendment expanded the coverage to almost all employees, regardless of their wage or industry. Because a bigger portion of their workers is now subject to the act's requirements, this move has a big effect on employers. Employers are now more accountable for ensuring that laws governing employment terms and conditions are followed.

Lastly, is the notice to increase the awareness for sexual harassment and discrimination on employees. **Section 81G of EA act 1955** that provides that the sexual harassment provisions apply to all employees regardless of salary.<sup>21</sup> Employers must now exhibit conspicuously at the place of employment, a notice to raise awareness on sexual harassment.<sup>22</sup> Employers are also expected to take reasonable precautions to ensure that sexual harassment does not occur at work. Implementing policies and processes to stop and handle such situations is part of this. An individual should adhere to their employer's specified reporting guidelines if they suffer sexual harassment at work. If the employer does not sufficiently handle the complaint, the victim may seek aid from the Department of Labour or the Industrial Relations Department, among other pertinent government agencies, or file a lawsuit. The employers should also take reasonable steps to create a complaint mechanism which directly forces an investigation to ensure justice is served and to provide a safe space for their employees without sexual hindrance. For Discrimination of employees falls under the same spectrum as employers must take initiative to avoid this matter. By adding a new **Section 69F of EA**, the Director General will have the authority to "investigate and decide any dispute between an employee and his employer in respect to any matter relating to discrimination in employment and make an order."<sup>23</sup> It would be unlawful for an employer to disobey such a directive. This is a step in the

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<sup>21</sup> Employment (Amendment) Act 2022, s 81G.

<sup>22</sup> Donovan & Ho, 'How Do the New Employment Act Amendments Affect You?' (Donovan & Ho, Advocates & Solicitors 24 March 2022) <<https://dnh.com.my/how-do-the-new-employment-act-amendments-affect-you/>> accessed 20 June 2023.

<sup>23</sup> Employment (Amendment) Act 2022, s 69F.

right direction because Malaysia noticeably lacks any protection against discrimination. The new rules, nevertheless, are incredibly ambiguous. There are absolutely no specifics on the kind of "discrimination" that is being addressed, and there is no indication regarding the kinds of orders that the Director General may issue in accordance with these new authority.

The 2020 revisions to the Employment Act have an effect on Malaysian employers by extending coverage, restricting fixed-term agreements, and improving leave entitlements. Employers must modify their procedures to maintain compliance while fostering fairness and a productive workplace. They can improve relations with their workers and support the expansion and sustainability of the labour market by accepting these developments.

## **5 WHAT ARE THE AMENDMENTS THAT WERE MADE TO THE EMPLOYMENT ACT**

The Minister of Human Resources, Datuk Seri Saravanan Murugan, has recently announced that the **Employment (Amendment) Act 2022** in Malaysia will be enforced starting from January 1, 2023. This amendment brings about significant changes to the First Schedule, which outlines the categories of employees covered by the EA. There are a few



key amendments that are essential for all employees and employers alike to take note of.<sup>24</sup>

The first amendment is related to the minimum monthly wage of employees. The minimum monthly wage payable to an employee will be RM1,500 across the board for all employers, regardless of whether you employ less than five employees or more from 1 Jan 2023 onwards. This helps to ensure that all employees have a minimum salary of RM1,500.

The next amendment is regarding employee leaves entitlement. The first is maternity leave. This can be seen in **Section 37 of the Employment (Amendment) Act 2022**.<sup>25</sup> The duration of paid maternity leave has been extended from 60 consecutive days to 98 consecutive days. However, it is important to note that the leave cannot start earlier than 30 days before the female employee's expected date of childbirth, nor can it begin later than the day immediately following her childbirth. Furthermore, if a female employee has been certified fit to resume work by a registered medical practitioner, she has the option to commence work during her maternity leave with the consent of her employer. This means that if the employee is medically deemed capable of returning to work before the full duration of her maternity leave, she can do so after obtaining permission from her employer. These provisions aim to provide female employees with an extended period of paid leave to recover from childbirth and

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<sup>24</sup> Nicholas K, *Employment act 1955: Must-know 2023 amendments for HR Managers in Malaysia: AltHR blog, RSS*. Available at: <https://althr.my/resources/employment-act-1955-amendments-2022-malaysia> (Accessed: 15 June 2023).

<sup>25</sup> Employment (Amendment) Act 2022, s 37.

take care of their newborns. The flexibility to return to work earlier, subject to medical clearance and employer consent, allows employees to make decisions based on their individual circumstances and health conditions.

Paternity leave is also another amendment included in employee leaves entitlement which has been inserted as a new section, **Section 60FA of the Employment (Amendment) Act 2022**.<sup>26</sup> Previously, there was no statutory obligation for employers in Malaysia to provide paternity leave to new fathers. However, with the implementation of this act, married male employees are now entitled to seven consecutive days of paternity leave. To qualify for paternity leave, the following conditions must be met.<sup>27</sup>

The male employee must have been employed by the same employer for a minimum of twelve months immediately preceding the commencement of the paternity leave. The employee must have notified his employer of his spouse's pregnancy at least thirty days before the expected date of confinement or as early as possible after the birth.<sup>28</sup>

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<sup>26</sup> Employment (Amendment) Act 2022, s 60F.

<sup>27</sup> 'What's new with the Employment Act?' by *hakita* (no date) *JustLaw*. Available at: <https://justlaw.asia/blog/what-s-new-with-the-employment-act-by-hakita/> (Accessed: 15 June 2023).

<sup>28</sup> *Maternity & Paternity Leave in Malaysia: What the law says in 2023: Althr Blog* (no date) *RSS*. Available at: <https://althr.my/resources/maternity-paternity-leave-malaysia-law-2023> (Accessed: 15 June 2023).

These requirements ensure that male employees have a reasonable length of service with their employer and have provided sufficient notice to their employer regarding their spouse's pregnancy. This allows employers to plan for the employee's absence and make necessary arrangements during the paternity leave period. The introduction of paternity leave recognizes the importance of fathers' involvement in their child's early development and provides them with the opportunity to support their spouses and bond with their newborns during this crucial time.

Moving on, there is a new provision that emphasizes the importance of addressing and preventing sexual harassment in the workplace. This section has been inserted as a new **Section 81H of the Employment (Amendment) Act 2022**.<sup>29</sup> Employers are now mandated to prominently display a notice that raises awareness about sexual harassment. This requirement aims to promote a safe and respectful work environment for all employees. By making the notice conspicuous, it ensures that employees are informed about their rights and the procedures for reporting and addressing any incidents of sexual harassment that may occur. Employers should take proactive steps to comply with this provision by displaying the notice in a visible and accessible location within the workplace. The notice should contain relevant information about sexual harassment, including definitions, reporting channels, and the consequences for engaging in such behaviour. By implementing this requirement, the

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<sup>29</sup> Employment (Amendment) Act 2022, s 81H.

**Employment (Amendment) Act 2022** aims to foster a workplace culture that actively prevents and addresses sexual harassment, ensuring the well-being and dignity of all employees.

The next amendment is the weekly limit. This amendment is under **Section 60A of the Employment (Amendment) Act 2022**.<sup>30</sup> Previously set at 48 hours per week, the limit has now been reduced to 45 hours per week. This change aims to ensure better work-life balance and improved employee welfare by promoting reasonable working hours for individuals. It's important for employers and employees to familiarise themselves with the updated regulations to ensure compliance with the law

The last amendment is flexible work arrangements. This amendment has also been added as a new **Section 60P of the Employment (Amendment) Act 2022**.<sup>31</sup> Employees in Malaysia now have the right to submit a written application to their employer requesting a flexible working arrangement. This arrangement allows employees to propose changes to their hours of work, days of work, or even the place of work. Upon receiving such applications, employers are required to respond within 60 days by either approving or refusing the application. The employer must communicate their decision in writing to the employee. In the event of refusal, the employer must provide valid and reasonable grounds for the rejection of the application. This amendment grants employees the opportunity to adapt their work arrangements to better suit their personal

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<sup>30</sup> Employment (Amendment) Act 2022, s 60A.

<sup>31</sup> Employment (Amendment) Act 2022, s 60P.

circumstances, such as family responsibilities or other needs. It emphasises the importance of fostering a healthy work-life balance and promoting flexibility in the workplace.<sup>32</sup>

## **DIFFERENCE BETWEEN OLD EMPLOYMENT ACT AND NEW EMPLOYMENT ACT AFTER THE AMENDMENT**

There are many differences between the old employment act, which is the Employment Act 1955, and the amended act, which is the **Employment (Amendment) Act 2022**.

First of all, it expands the range of workers who are protected by the Employment Act. The EA now applies to all employees, regardless of wage, and represents the single biggest change to the employment landscape in Malaysia as a result of the **Employment (Amendment of First Schedule) Order 2022**.<sup>33</sup> This is because the First Schedule has been expanded to include any person who has entered into a contract of service. Despite this, workers making more than RM4000 per month are exempt from some regulations regarding overtime pay and termination compensation.

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<sup>32</sup> Srivastava, S. (2023) *11 key amendments to the Malaysian Employment Act, 1955: Implications for 2023 and beyond*, Darwinbox Blog - HR Technology. Available at: <https://blog.darwinbox.com/malaysian-employment-amendment-act-2022> (Accessed: 15 June 2023).

<sup>33</sup> Employment (Amendment of First Schedule) Order 2022

There is a proviso to this, however, persons earning above RM4,000 per month exempted from some sections of the Act, including **Section 60(3)** for overtime rates for employees working on rest days, **Section 60A(3)** for overtime rates outside working hours and **Section 60C(2A)**<sup>34</sup> for allowance for shift-based work<sup>35</sup>.

In the past, it was believed that the Act only provided protection for workers making up to RM 2000 per month. Employers should make sure that their employment contracts adhere to the minimal criteria established under the EA as a result of the EA's expanding reach. Any terms of employment that are less advantageous to the employee may be deemed invalid and unenforceable. The statutory legislation can now be relied upon by employees who were previously exempt from it (such as those who made more than RM2,000 per month). This group of workers formerly had to depend only on the provisions of their employment contracts, which caused some confusion for both employers and employees.

The lengthening of maternity leave is the second distinction. The EA has expanded the 60-day maternity leave entitlement to 98 days<sup>36</sup>. This is a good modification to guarantee that working women have enough time

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<sup>34</sup> Employment Act 1955, s 60C(2A).

<sup>35</sup> 'Amendments to Employment Act 1955 Effective Sept 2022' (24 August 2022) <<https://mahwengkwai.com/amendments-employment-act-1955/>> accessed 17 June 2023.

<sup>36</sup> (*Amendments to employment act comes into force jan 1*) <<https://p.nst.com.my/news/nation/2022/12/863117/amendments-employment-act-comes-force-jan-1>> accessed 17 June 2023.

to recover and care for their kid while still complying with international labour norms.<sup>37</sup>

Regarding paternity leave, come third. Working dads now have access to 7 days of paid paternity leave through the EA, up to a maximum of 5 confinements. In keeping with that, a provision for paid paternity leave will now be included in the 2022 amendment. This marks a turning point in Malaysian employment law, as working dads will now be entitled to 7 days of paid paternity leave that must be taken consecutively. However, certain requirements call for the male employee to be wed to the mother in issue. He had to have worked for the same company for at least a year. He is required to inform his employer as soon as possible, but no later than 30 days before the anticipated confinement.

Flexible work arrangements are the fourth. **Part XIIC**, a vital provision of the revised Employment Act that addresses flexible work arrangements, is now a part of the law. This is crucial for the post-pandemic corporate environment, where flexible work schedules and other contemporary work patterns are becoming more prevalent. It stipulates that workers can request flexible working arrangements in writing to change their hours, days, or place of employment. Employees can now submit written requests to employers for flexible work arrangements under **Sections 60P and 60Q**.<sup>38</sup> Employers must then react with a decision within

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<sup>37</sup> 'Key Amendments to the Employment Act 1955' (*Key Amendments to the Employment Act 1955 | Thomas Philip Advocates and Solicitors, Kuala Lumpur, Malaysia*) <<https://www.thomasphilip.com.my/articles/key-amendments-to-the-employment-act-1955/>> accessed 17 June 2023.

<sup>38</sup>Employment (Amendment) Act 2022, s 60P and s 60Q

60 days, and if they reject an application, they must provide employees with a rationale. In addition to the framework's uncertainty, not every job qualifies for flexible working arrangements and requires physical presence. Undoubtedly, companies should develop and execute flexible working policies since it will increase the marketability and competitiveness of such employment.

The following part is a warning about sexual harassment. Employers must now prominently display a notification against sexual harassment at the place of employment. **Section 81H EA**<sup>39</sup> is a new provision that allegedly seeks to increase awareness of workplace sexual harassment. Employers are now forced to post a warning against sexual harassment in the workplace. This warning must be posted in a noticeable area and be visible at all times.

The lower maximum working hours have also been changed. The **EA** currently stipulates that the weekly maximum working hours for workers be decreased from 48 to 45. As a result, employees are now entitled to overtime compensation for any further hours worked beyond 45 hours. The further difference is that, prior to the change, an employee was entitled to paid sick leave that ranged from 14 to 21 days, depending on how long they had worked there. If hospitalisation is necessary, an employee is entitled to 60 days of paid sick leave as long as they don't take more than that in a calendar year. According to the new amendment, the 14 to 21 days of paid sick leave that are already provided when hospitalisation

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<sup>39</sup> Employment Act 1955, s 81H.



is not required are now in addition to the 60 days of paid sick leave for hospitalizations.

Additionally, forced labour is prohibited. Employers who threaten, lie, or force an employee to perform any work or prevent that employee from leaving a place of employment after work is completed are subject to a fine not to exceed RM100,000, a term of imprisonment not to exceed 2 years, or both. Before hiring foreign workers, employers must first receive clearance from the Director General of Labour. Such applications may be accepted with conditions, if needed, by the Director General. Additionally, modifications have been made to Section 60K, which deals with hiring foreign labour. In the past, companies that recruited foreign workers were required to notify the Director-General of any new foreign hires and provide information within 14 days of the employee's start date.

However, as of the 2022 modification, firms must now get the Director-General's prior consent before hiring foreign workers. Employers must also give the Director-General 30 days' notice if or when they fire foreign workers.

On the other hand, the Director General of Labor must be notified within 30 days if a foreign employee is fired. The employer must notify the Director General of the foreign employee's disappearance from the job within 14 days. The director-general's authority to investigate and resolve conflicts involving employment discrimination comes next. The DG has the authority to issue an order, and any employer who disobeys

such an order is breaking the law. Employers are generally recommended to check their employment conditions and procedures to make sure they are in accordance with the **EA** and to prevent sanctions. Previously, Malaysian employees could only work a maximum of 48 hours per week, or around 8 hours per day, six days per week. Nevertheless, as of January 1, 2023, the maximum number of hours worked per week has been cut to 45 (excluding lunch times). According to Deputy Human Resources Minister Datuk Awang Hashim, this would serve to protect employees' well-being in accordance with the International Labour Organization (ILO).

Last but not least, the 2022 revisions provide increased protection for female employees who are pregnant as well as for those who are unwell due to pregnancy. Employers that terminate (or provide notice of termination) to this group of employees after January 1, 2023 will be in violation of the Employment Act of 1955, with the exception of breaches of contract, misbehaviour, and company closure.

## 6 CONCLUSION

In Malaysia, the modified **EA** now provides protection to a far wider group of employees, regardless of their pay or kind of work. Employers should take note that the modified **EA**'s effective date is rapidly approaching and that they should evaluate and update their employment contracts and procedures to guarantee compliance. Additionally, employers are asked to take the required actions to abide by the amended Act and the Revised First Schedule. For instance, before the Amended

Act goes into effect, employers must prepare the necessary application forms for flexible working arrangements, post a notice about sexual harassment in plain view in the workplace, and follow certain procedures when hiring foreign workers. Employers should exercise caution during this process when assessing contracts or policies that may contain provisions that conflict with the modified EA because those provisions will be ruled invalid and of no force or effect under **Section 7 EA**.

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