

A BILL

*i n t i t u l e d*

An Act to amend the Employment Act 1955.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

**Short title and commencement**

1. (1) This Act may be cited as the Employment (Amendment) Act 2021.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

**Amendment of section 2**

2. The Employment Act 1955 [*Act 265*], which is referred to as the “principal Act” in this Act, is amended in subsection 2(1)—

(a) by inserting after the definition of “agricultural undertaking” the following definition:

‘ “apprentice” means any person who has entered into an apprenticeship contract;’;

- (b) in the definition of “apprenticeship contract”, by substituting for the words “shall not be less than two years” the words “shall be for a minimum period of six months and a maximum period of twenty four months”;
- (c) in the definition of “domestic servant”, by substituting for the words “domestic servant” the words “domestic employee”; and
- (d) in the definition of “foreign domestic servant”, by substituting for the word “servant” wherever appearing the word “employee”.

#### **Amendment of section 4**

**3.** Section 4 of the principal Act is amended—

- (a) by substituting for the words “, 69B, 69C,” the word “or”; and
- (b) by substituting for the word “fourteen” the word “twenty-one”.

#### **New section 18A**

**4.** The principal Act is amended by inserting after section 18 the following section:

##### **“Calculation of wages for incomplete month’s work**

**18A.** Notwithstanding section 60I, an employee who is employed on a monthly rate of pay and has not completed a whole month of service—

- (a) where he commenced employment after the first day of the month;
- (b) where his employment was terminated before the end of the month;
- (c) where he took leave of absence without pay for one or more days of the month; or

- (d) where he took leave of absence by reason of having been called up for national service under the National Service Act 1952 [Act 425], to present himself for national service training as required under the National Service Training Act 2003 [Act 628] or to comply with any other written law relating to national service,

shall be paid wages due to him for that month calculated according to the following formula:

$$\frac{\text{Monthly wages}}{\text{Number of days of the particular wage period}} \times \text{Number of days eligible in the wage period.}''.$$

**Amendment of section 22**

5. Subsection 22(2) of the principal Act is amended by inserting after the words “parents,” the words “spouse,”.

**Amendment of section 25**

6. Section 25 of the principal Act is amended—

- (a) in the shoulder note, by substituting for the word “**bank**” the words “**financial institution**”;
- (b) in subsection (1), by substituting for the words “at a bank, finance company, financial institution or other institutions licensed or established under the Banking and Financial Institutions Act 1989 [Act 372] or any other written law, in any part of Malaysia” the words “opened by a financial institution,”; and
- (c) by inserting after subsection (2) the following subsections:

“(3) For the purposes of this Part, “financial institution” includes—

- (a) a licensed bank and an approved issuer of a designated payment instrument under the Financial Services Act 2013 [Act 758];

(b) a licensed Islamic bank and an approved issuer of a designated Islamic payment instrument under the Islamic Financial Services Act 2013 [*Act 759*]; and

(c) a prescribed institution under the Development Financial Institutions Act 2002 [*Act 618*].

(4) The Minister may, by order, specify any approved issuer of a designated payment instrument or any approved issuer of a designated Islamic payment instrument under paragraphs 3(a) and (b) to be a recognized approved issuer of a designated payment instrument or approved issuer of a designated Islamic payment instrument for the purpose of payment of wages under this Part.”.

#### **Amendment of section 25A**

7. Section 25A of the principal Act is amended—

(a) in the shoulder note, by substituting for the word “**bank**” the words “**financial institution**”;

(b) in subsection (1), by substituting for the words “, other than a domestic servant” the words “and subject to subsection (2)”;

(c) by substituting for subsection (2) the following subsection:

“(2) The employer shall, upon the written request of his employee under subsection (1), obtain approval from the Director General for the payment of wages to be paid in legal tender or by cheque.”;

(d) by inserting after subsection (2) the following subsection:

“(2A) The Director General may impose any condition as he may deem fit on the approval granted under subsection (2).”;

- (e) in subsections (3), (5) and (6), by substituting for the words “subsections (1) and (2)” wherever appearing the words “subsection (1)”; and
- (f) in subsection (5), by inserting after the word “employer” the words “upon obtaining the approval under subsection (2)”.

### **Amendment of Part VII**

8. Part VII of the principal Act is amended in the heading by substituting for the words “CONTRACTORS, PRINCIPALS AND CONTRACTORS FOR LABOUR” the words “PRINCIPALS, CONTRACTORS, SUB-CONTRACTORS AND CONTRACTORS FOR LABOUR”.

### **Amendment of section 33A**

9. Section 33A of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

“(1A) A contractor for labour referred to in subsection (1) who supplies any employee to a principal, contractor or sub-contractor shall enter into a contract in writing and shall make such contract or any other document relating to such contract available for inspection.”; and

(b) in subsection (3)—

(i) by deleting the word “or” at the end of paragraph (a);

(ii) by inserting after paragraph (a) the following paragraph:

“(aa) fails to make such contract or any other document relating to such contract available for inspection as required under subsection (1A); or”; and

(iii) by substituting for the word “ten” the word “fifty”.

**Deletion of Part VIII**

10. The principal Act is amended by deleting Part VIII.

**Amendment of Part IX**

11. Part IX of the principal Act is amended in the heading by substituting for the words “MATERNITY PROTECTION” the words “PREGNANCY AND MATERNITY”.

**Amendment of section 37**

12. Section 37 of the principal Act is amended in subsection (1)—

(a) by substituting for paragraph (aa) the following paragraph:

“(aa) Where a female employee is entitled to maternity leave under subparagraph (a)(i), whether or not she is entitled to receive maternity allowance from her employer for the eligible period under paragraph (c), or whether or not she has fulfilled the conditions set out in paragraph (2)(a), she may, with the consent of her employer, commence work at any time during the eligible period if she has been certified fit to resume work by a registered medical practitioner.”; and

(b) in subparagraph (d)(ii), by substituting for the word “sixty” the word “ninety”.

**New section 41A**

13. The principal Act is amended by inserting after section 41 the following section:

**“Restriction on termination of pregnant female employee**

**41A.** (1) Where a female employee is pregnant or is suffering from an illness arising out of her pregnancy, it shall be

an offence for her employer to terminate her services or give her notice of termination of service, except on the grounds of—

(a) wilful breach of a condition of the contract of service under subsection 13(2);

(b) misconduct under subsection 14(1); or

(c) closure of the employer's business.

(2) Where the service of a female employee under subsection (1) is terminated, the burden of proving that such termination is not on the ground of her pregnancy or on the ground of illness arising out of her pregnancy, shall rest on the employer.”.

#### **Amendment of section 42**

**14.** Section 42 of the principal Act is amended in the shoulder note by substituting for the word “**dismissal**” the word “**termination**”.

#### **Deletion of section 44A**

**15.** The principal Act is amended by deleting section 44A.

#### **Amendment of Part XI**

**16.** Part XI of the principal Act is amended in the heading by substituting for the word “SERVANTS” the word “EMPLOYEES”.

#### **Amendment of section 57**

**17.** Section 57 of the principal Act is amended by substituting for the word “servant” wherever appearing the word “employee”.

**Amendment of section 57A**

18. Section 57A of the principal Act is amended—

- (a) in the shoulder note and subsection (1), by substituting for the word “servant” the word “employee”; and
- (b) in subsection (2), by substituting for the words “ten thousand ringgit” the words “fifty thousand ringgit”.

**Amendment of section 57B**

19. Section 57B of the principal Act is amended—

- (a) in the shoulder note and subsections (1) and (2), by substituting for the word “servant” wherever appearing the word “employee”; and
- (b) in subsection (3), by substituting for the words “ten thousand ringgit” the words “fifty thousand ringgit”.

**Amendment of section 60A**

20. Section 60A of the principal Act is amended—

- (a) in the shoulder note, by inserting after the word “**work**” the words “**and working at night**”;
- (b) in subsection (1), by substituting for the word “forty-eight” wherever appearing the word “forty-five”; and
- (c) in subsection (6), by inserting after the word “rates” the words “and prescribing matters relating to working at night”.

**Amendment of section 60c**

21. Section 60c of the principal Act is amended—

- (a) in subsection (1), by substituting for the word “forty-eight” wherever appearing the word “forty-five”; and



(b) by inserting after subsection (2) the following subsection:

“(2A) The Minister may make regulations relating to the entitlement of allowance during shift work.”.

**Amendment of section 60F**

**22.** Subsection 60F(1) of the principal Act is amended—

(a) by deleting the first proviso; and

(b) in the further proviso, by substituting for the words “And provided further” the word “Provided”.

**New section 60FA**

**23.** The principal Act is amended by inserting after section 60F the following section:

**“Paternity leave**

**60FA.** (1) Subject to subsection (3), a married male employee shall be entitled to a paid paternity leave at his ordinary rate of pay for a period of three consecutive days in respect of each confinement.

(2) The paternity leave under subsection (1) shall be restricted to five confinements irrespective of the number of spouses.

(3) A married male employee shall be entitled to paternity leave from his employer if—

(a) he has been employed by the same employer at least twelve months immediately before the commencement of such paternity leave; and

(b) he has notified his employer of the pregnancy of his spouse at least thirty days from the expected confinement or as early as possible after the birth.”.

**Substitution of section 60κ**

**24.** The principal Act is amended by substituting for section 60κ the following section:

**“Employment of foreign employee**

**60κ.** (1) No employer shall employ a foreign employee unless prior approval has been obtained from the Director General.

(2) An application for the approval under subsection (1) shall be made in the form and manner as may be determined by the Director General.

(3) Upon approval of the Director General under this section, an employer shall, within fourteen days from the date of the employment of a foreign employee, furnish the Director General with the particulars relating to the foreign employee in such manner as the Director General may direct.

(4) The Director General may, subject to any written law, approve an application under this section if the employer complies with the following conditions:

(a) the employer satisfies the Director General that on the date on which he makes the application—

(i) he has no outstanding matter relating to any decision, order or directive issued under this Act; or

(ii) he has no outstanding matter or case relating to any conviction for any offence under this Act, the Employees’ Social Security Act 1969 [Act 4], the Employees’ Minimum Standards of Housing, Accommodations and Amenities Act 1990 [Act 446] or the National Wages Consultative Council Act 2011 [Act 732]; or

(b) the employer has not been convicted of any offence under any written law in relation to anti-trafficking in persons and forced labour.

(5) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.”.

**New section 60KA**

**25.** The principal Act is amended by inserting after section 60K the following section:

**“Termination of employment of foreign employee, etc.**

**60KA.** (1) If the service of a foreign employee is terminated—

(a) by his employer;

(b) by reason of the expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign employee; or

(c) by reason of the repatriation or deportation of the foreign employee,

the employer shall, within thirty days of the termination of service, inform the Director General of the termination in the manner as may be determined by the Director General.

(2) If a foreign employee terminates his service or absconds from his place of employment, the employer shall, within fourteen days of the termination of service or after the foreign employee’s absence, inform the Director General in the manner as may be determined by the Director General.”.

**Deletion of section 60L**

**26.** The principal Act is amended by deleting section 60L.

**New Part XIIC**

**27.** The principal Act is amended by inserting after Part XIIB the following part:

“PART XIIC

FLEXIBLE WORKING ARRANGEMENT

**Flexible working arrangement**

**60P.** (1) Subject to Part XII or anything contained in the contract of service, an employee may apply to an employer for a flexible working arrangement to vary the hours of work, days of work or place of work in relation to his employment.

(2) Where there is a collective agreement, any application made by the employee under subsection (1) shall be consistent with the terms and conditions in the collective agreement.

**Application for flexible working arrangement**

**60Q.** (1) The employee shall make an application for flexible working arrangement under section 60P in writing and in the form and manner as may be determined by the Director General.

(2) Upon the application made under subsection (1), an employer shall, within sixty days from the date such application is received, approve or refuse the application.

(3) The employer shall inform the employee in writing of the employer’s approval or refusal of the application under subsection (1) and in the case of a refusal, the employer shall state the ground of such refusal.”.

**Amendment of section 69**

**28.** Section 69 of the principal Act is amended—

(a) in paragraph (2)(ii), by inserting after the words “against a” the words “principal,”;

(b) in subsection (4)—

(i) by substituting for the words “ten thousand ringgit” the words “fifty thousand ringgit”; and

(ii) by substituting for the words “one hundred ringgit” the words “one thousand ringgit”.

**Deletion of sections 69B, 69C, 69D and 69E**

**29.** The principal Act is amended by deleting sections 69B, 69C, 69D and 69E.

**New section 69F**

**30.** The principal Act is amended by inserting after section 69E the following section:

**“Discrimination in employment**

**69F.** (1) The Director General may inquire into and decide any dispute between an employee and his employer in respect of any matter relating to discrimination in employment, and the Director General may, pursuant to such decision, make an order.

(2) An employer who fails to comply with any order of the Director General issued under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit; and shall also, in the case of a continuing offence, be liable to a daily fine not exceeding one thousand ringgit for each day the offence continues after conviction.”.

**Amendment of section 70**

**31.** Section 70 of the principal Act is amended by substituting for the words “, 69B and 69C” the words “and 69F”.

**Amendment of section 73**

**32.** Subsection 73(1) of the principal Act is amended by substituting for the words “, 69B or 69C” the words “or 69F”.

**Amendment of section 77**

**33.** Subsection 77(1) of the principal Act is amended by substituting for the words “69B, 69C, 73” the words “69F or 73”.

**Amendment of section 81F**

**34.** Section 81F of the principal Act is amended by substituting for the words “ten thousand ringgit” the words “fifty thousand ringgit”.

**Deletion of section 81G**

**35.** The principal Act is amended by deleting section 81G.

**New section 81H**

**36.** The principal Act is amended by inserting after section 81G the following section:

**“Notice on sexual harassment**

**81H.** An employer shall, at all times, exhibit conspicuously at the place of employment, a notice to raise awareness on sexual harassment.”.

**Amendment of section 82**

**37.** Section 82 of the principal Act is amended—

(a) in the shoulder note, by deleting the words “**issued under Part XV**”; and

(b) in subsection (1)—

(i) by deleting the words “under Part XV”; and

(ii) in paragraph (b) of the proviso, by substituting for the word “servant” the word “employee”.

#### **Amendment of section 84**

**38.** Section 84 of the principal Act is amended—

(a) by renumbering the existing section as subsection (1); and

(b) by inserting after subsection (1) as renumbered the following subsection:

“(2) Notwithstanding the provisions of any written law to the contrary, the court of a First Class Magistrate shall have jurisdiction to try any offence under this Act and to award the full punishment for any such offence.”.

#### **Amendment of section 86**

**39.** Section 86 of the principal Act is amended by substituting for the words “, 69B, 69C” the words “or 69F,”.

#### **New section 87A**

**40.** The principal Act is amended by inserting after section 87 the following section:

##### **“Court order for payments due to employee**

**87A.** (1) Where an employer has been convicted of an offence relating to the payment of wages or any other payments payable to an employee under this Act, the court before which he is convicted may order the employer to pay any payment due to the employee in relation to that offence.

(2) Where an employer fails to comply with an order made under subsection (1), the court shall, on the application of the employee, issue a warrant to levy the employer's property for any payments due under that subsection in the following manner:

- (a) by way of distress and sale of employer's property in accordance with the same procedure of execution under the Rules of Court 2012 [*P.U. (A) 205/2012*] and this execution shall apply *mutatis mutandis* notwithstanding the amount in the order; or
- (b) in the same manner as a fine as provided under section 283 of the Criminal Procedure Code [*Act 593*].”.

#### **New section 90B**

41. The principal Act is amended in Part XVII by inserting before section 91 the following section:

##### **“Forced labour**

**90B.** Any employer who threatens, deceives or forces an employee to do any activity, service or work and prevents that employee from proceeding beyond the place or area where such activity, service or work is done, commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.”.

#### **Deletion of section 93**

42. The principal Act is amended by deleting section 93.

#### **Amendment of section 99A**

43. Section 99A of the principal Act is amended by substituting for the words “ten thousand ringgit” the words “fifty thousand ringgit”.



**New section 101c**

**44.** The principal Act is amended by inserting after section 101B the following section:

**“Presumption as to who is an employee and employer**

**101c.** (1) In any proceeding for an offence under this Act, in the absence of a written contract of service relating to any category of employee under the First Schedule, it shall be presumed until the contrary is proved that a person is an employee—

- (a) where his manner of work is subject to the control or direction of another person;
- (b) where his hours of work are subject to the control or direction of another person;
- (c) where he is provided with tools, materials or equipments by another person to execute work;
- (d) where his work constitutes an integral part of another person’s business;
- (e) where his work is performed solely for the benefit of another person; or
- (f) where payment is made to him in return for work done by him at regular intervals and such payment constitutes the majority of his income.

(2) For the purpose of subsection (1), it shall be presumed until the contrary is proved that a person is an employer—

- (a) where he controls or directs the manner of work of another person;
- (b) where he controls or directs the hours of work of another person;
- (c) where he provides tools, materials or equipments to another person to execute work;

- (d) where the work of another person constitutes an integral part of his business;
- (e) where another person performs work solely for his benefit; or
- (f) whether or not payment is made by him in return for work done for him by another person.

(3) The first-mentioned person in subsection (2) includes the agent, manager or factor of such first-mentioned person.”.

### **Amendment of section 102**

**45.** Subsection 102(2) of the principal Act is amended—

- (a) by deleting paragraph (b);
- (b) by inserting after paragraph (f) the following paragraphs:
  - “(fa) prescribing matters relating to rest day;
  - (fb) prescribing matters relating to flexible working arrangement;”;
- (c) in paragraph (i), by substituting for the words “under section 69, 69B or 69C” the words “, and proceedings under section 69 and 69F;”;
- (d) by deleting paragraph (k); and
- (e) in paragraph (m), by substituting for the word “servant” the word “employee”.

### **Saving and transitional**

**46.** (1) Any complaint, investigation, inquiry, trial, prosecution, proceedings or appeal done, taken or commenced under the principal Act immediately before the date of coming into operation of this Act, shall be dealt with, continued and concluded under and in accordance with the provisions of the principal Act as if the principal Act had not been amended by this Act.

(2) Any application for approval made under subsection 25A(2) of the principal Act which is pending before the date of coming into operation of this Act shall, on the date of coming into operation of this Act, be dealt with in accordance with the provision of the principal Act as amended by this Act.

(3) Any employer who, before the date of coming into operation of this Act, has employed any foreign employee but who has not fulfilled any of the requirements under section 60K of the principal Act shall, on the date of coming into operation of this Act, be dealt with in accordance with the provision of the principal Act as if the principal Act had not been amended by this Act.

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*EXPLANATORY STATEMENT*

This Bill seeks to amend the Employment Act 1955 (“Act 265”) to comply with the international standards and practices as required by the Trans-Pacific Partnership Agreement, the Malaysia-United States Labour Consistency Plan and the International Labour Organization. The purpose of this amendment among others, is to provide for the protection against discrimination and forced labour, and to provide for maternity benefits.

2. *Clause 1* contains the short title and the provision on the commencement of the proposed Act.

3. *Clause 2* seeks to amend subsection 2(1) of Act 265 to introduce new definition and to amend certain existing definitions.

4. *Clause 3* seeks to amend section 4 of Act 265 to extend the duration for an appeal to be made to the Director General.

5. *Clause 4* seeks to introduce a new section 18A into Act 265 to provide for the calculation of wages where an employee has not completed a whole month of service.

6. *Clause 5* seeks to amend subsection 22(2) of Act 265 to extend the definition of “immediate family members” to spouse.

7. *Clause 6* seeks to amend section 25 of Act 265 to be consistent with the Financial Services Act 2013 [Act 758], the Islamic Financial Services Act 2013 [Act 759] and the Development Financial Institutions Act 2002 [Act 618]. Under the new subsection 25(4), the Minister may, by order, recognize an approved issuer of designated payment instrument for the purpose of payment of wages.

8. *Clause 7* seeks to amend section 25A of Act 265 to insert new requirements for the payment of wages other than through financial institution.

9. *Clause 9* seeks to amend section 33A of Act 265 to insert additional requirements for a contractor for labour and to increase the amount of penalty imposed for failure to comply with the requirements under section 33A of Act 265 from ten thousand ringgit to fifty thousand ringgit.

10. *Clause 10* seeks to delete Part VIII of Act 265 to comply with the requirements of the International Labour Organization.

11. *Clause 12* seeks to amend section 37 of Act 265 to increase the period of maternity leave from sixty to ninety days and other matters relating to it.

12. *Clause 13* seeks to introduce a new section 41A into Act 265 to restrict the termination of pregnant female employee.

13. *Clauses 15 and 29* seek to delete sections 44A, 69B, 69C, 69D and 69E of Act 265 as a consequence of the extension of the scope of Act 265. This would allow an employee to bring any dispute before the Director General irrespective of the amount of wages he receives which under the current provisions is capped at five thousand ringgit.

14. *Clauses 16 and 17* seek to amend the heading of Part XI and section 57 of Act 265 to substitute for the word “servant” the word “employee”.

15. *Clauses 18 and 19* seek to amend sections 57A and 57B of Act 265 to substitute for the word “servant” the word “employee” and to increase the amount of penalty imposed from ten thousand ringgit to fifty thousand ringgit for failure to inform the Director General on the employment and termination of a foreign employee.

16. *Clauses 20 and 21* seek to amend sections 60A and 60C of Act 265 as a consequence of the reduction of hours of work in one week from forty-eight to forty-five hours.

17. *Clause 22* seeks to amend section 60F of Act 265 to provide for matters relating to the entitlement of paid sick leave.

18. *Clause 23* seeks to introduce a new section 60FA into Act 265 to provide for matters relating to paternity leave for a married male employee.

19. *Clause 24* seeks to substitute the existing section 60K of Act 265 to introduce new requirements for the employment of a foreign employee.

20. *Clause 25* seeks to introduce a new section 60KA into Act 265 to provide for matters relating to the termination of employment of a foreign employee.

21. *Clause 27* seeks to introduce a new Part XIIC into Act 265 relating to flexible working arrangement for an employee.

22. *Clause 28* seeks to amend section 69 of Act 265 to increase the amount of penalty imposed under that section for failure to comply with any order or decision of the Director General upon an inquiry under that section.
23. *Clause 30* seeks to introduce a new section 69F into Act 265 to empower the Director General to inquire into dispute relating to the discrimination in employment and make any order or decision.
24. *Clause 34* seeks to amend section 81F of Act 265 to increase the amount of penalty imposed from ten thousand ringgit to fifty thousand ringgit on employers for the offence of failure to inquire into complaints of sexual harassment.
25. *Clause 36* seeks to introduce a new section 81H into Act 265 relating to the duty of employers to exhibit a notice to raise awareness on sexual harassment.
26. *Clause 38* seeks to amend section 84 of Act 265 to empower the court of a First Class Magistrate to try any offence and to impose the full punishment under Act 265.
27. *Clause 40* seeks to introduce a new section 87A into Act 265 to empower the court to order an employer to pay any payment due to an employee.
28. *Clause 41* seeks to introduce a new section 90B into Act 265 to provide for the offence of forced labour.
29. *Clause 43* seeks to amend section 99A of Act 265 to increase the amount of penalty imposed from ten thousand ringgit to fifty thousand ringgit for any offence under Act 265 and regulations made under the Act for which no penalty is prescribed.
30. *Clause 44* seeks to introduce a new section 101c into Act 265 on the presumption as to who is employee and employer of such employee in the absence of a contract of service.
31. *Clause 45* seeks to amend section 102 of Act 265 to provide for additional matters for which the Minister may make regulations under Act 265.
32. *Clause 46* deals with the saving and transitional provisions.
33. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

*FINANCIAL IMPLICATIONS*

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.