

How amendments to the Employment Act 1955 affect you

LEGALLY SPEAKING

THE Employment (Amendment) Bill 2011 ("Bill") was recently tabled in Parliament and is pending the second reading at the Dewan Rakyat. The Bill seeks to amend the Employment Act 1955 ("Act"), which applies to employees who receive a basic monthly salary of less than RM1,500 and certain categories of manual labourers.

Set out below is a summary of the key changes under the Bill.

PAYMENT OF SALARIES

The Bill will require employers to pay the entire salary of employees into their bank account, unless otherwise requested by an employee. Additionally, for domestic servants, consent from the Director General of Labour ("DG") to pay their salary in cash or by cheque is required. This is arguably a faster and safer way to receive wages, and is a reverse of the current practice under the Act, where employers must pay employees' salaries in cash or by cheque unless otherwise requested by an employee.

REGISTERING EMPLOYEES

The Bill also requires a contractor for labour who intends to supply labour to a third party to register the supply of such labour with the DG 14 days beforehand. A contractor for labour is a person who supplies labour required for work to be carried out under a contract. Such contractors must maintain registers with information of each employee supplied by him and, when required, must make these available to the DG for inspection. Failure to comply with this provision will attract a fine of up to RM10,000.

FOREIGN EMPLOYEES

When terminating the service of a foreign domestic servant or a foreign employee, the Bill requires the employer to inform the DG within 30 days of such termination. Termination in this context includes situations where the employee absconds from his place of employment. Failure to comply attracts a fine of up to RM10,000. This provision gives the Government an additional means to monitor and control the numbers of foreign workers in the country.

MATERNITY LEAVE

Every female employee who has worked at least 90 days prior to going on maternity leave, irrespective of her salary, will, under the Bill also be entitled to maternity leave of not less than 60 consecutive days in respect of each child and to receive maternity allowance during this period. She will also be able to go on maternity leave from the 22nd week of pregnancy (as opposed to the 28th week at the moment). This is to cater for situations where premature births or miscarriages might occur. An employer who terminates the service of a female employee during the period she is entitled to maternity leave commits an offence under the Act. However, this will not include situations where the termination is a result of the closure of the employer's business.

SEXUAL HARASSMENT

The Bill also introduces a long awaited amendment to the Act; making sexual harassment at the workplace illegal, regardless of the wages of the employee. "Sexual harassment" is defined as any unwanted conduct of a sexual nature, whether verbal, visual, gestural or physical, which is directed at a person and is either offensive,

humiliating or a threat to his/her well-being, which occurs during or in the course of employment.

The Bill requires an employer to conduct an inquiry into any complaints of sexual harassment in the workplace. Where an employer refuses to do so, the employer must inform the employee of his reasons for refusal and the aggrieved employee may refer the matter to the DG. The individual found guilty of sexual harassment may be dismissed without notice, demoted or penalized with a lesser punishment, e.g. suspension without pay for a period of up to 2 weeks. In a situation where the complaint is lodged against an employer, the DG will conduct the inquiry into such complaints, and where the individual engaging in such conduct is not an employee, the individual may be brought before a disciplinary authority which he is subject to.

CONCLUSION

The Bill addresses several issues that will, amongst other things, assist the Government in combating the apparently insurmountable problem of illegal immigrants in the country, protect employees by reducing sexual harassment in the workplace, and recognise the importance of maternity leave for expectant mothers. While some of these changes may increase the cost of doing business for certain companies, these changes bring Malaysia up to par with labour practices in other developed nations, and are welcomed as they will go towards creating a more tolerant, professional and friendly working environment in the country.

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