

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 2010.

(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) in the definition of “confinement”, by substituting for the word “twenty-eight” the word “twenty-two”;
- (b) in the definition of “constructional contractor”, by substituting for the word “assigns” the word “assignees”;

- (c) by inserting after the definition of “contractor” the following definition:

‘ “contractor for labour” means a person who contracts with a principal, contractor or sub-contractor to supply the labour required for the execution of the whole or any part of any work which a contractor or sub-contractor has contracted to carry out for a principal or contractor, as the case may be;’;

- (d) in the definition of “employer”, by inserting after the words “first mentioned person” the words “or any person who supplies or undertakes to supply any employee engaged by him to any employer, principal, contractor or sub-contractor”;

- (e) by inserting after the definition of “medical officer” the following definition:

‘ “Minister” means the Minister charged with the responsibility for human resources;’;

- (f) by inserting after the definition of “registered medical practitioner” the following definition:

‘ “sexual harassment” means 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;’;
and

- (g) by deleting the definition of “sub-contractor for labour”.

Amendment of section 4

3. Section 4 of the principal Act is amended by substituting for the words “under section 69 or section 73” the words “or decision under section 69, 69B, 69C or 73”.

Amendment of Part V

4. Part V of the principal Act is amended by substituting for the heading “RELATING TO THE TRUCK SYSTEM” the heading “SYSTEM OF PAYMENT OF WAGES”.

Amendment of section 25A

5. Paragraph 25A(1)(a) of the principal Act is amended by inserting after the words “the Banking and Financial Institutions Act 1989 [Act 372]” the words “or any licensed financial institution or other institutions approved by Bank Negara Malaysia”.

New section 25B

6. The principal Act is amended by inserting after section 25A the following section:

“Payment of wages of domestic servant

25B. Notwithstanding sections 25 and 25A, the wages of a domestic servant shall be paid into an account in the name of the domestic servant at a bank or finance company licensed under the Banking and Financial Institutions Act 1989 or any licensed financial institution or other institutions approved by Bank Negara Malaysia:

Provided that the Director General may, on an application made to him by an employer of the domestic servant, exempt the employer in writing from the application of this section.”.

Amendment of section 31

7. Section 31 of the principal Act is amended by substituting for the words “sub-contractor for labour”, wherever they appear, the words “contractor for labour”.

Amendment of Part VII

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

New section 33A

9. The principal Act is amended by inserting after section 33 the following section:

“Information relating to supply of employees

33A. (1) A contractor for labour who intends to supply or undertakes to supply any employee shall register with the Director General in the prescribed form.

(2) If a contractor for labour referred to in subsection (1) supplies any employee, he shall keep or maintain one or more registers containing information regarding each employee supplied by him and shall make such registers available for inspection.

(3) A contractor for labour who—

- (a) fails to register with the Director General as required under subsection (1); or
- (b) fails to keep or maintain any register, or make available any register for inspection as required under subsection (2),

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.”.

Amendment of section 37

10. Section 37 of the principal Act is amended by inserting after subsection (3) the following subsection:

“(4) Any employer who terminates the service of a female employee during the period in which she is entitled to maternity leave commits an offence:

Provided that for the purposes of this section, such termination shall not include termination on the ground of retirement, resignation tendered by such employee or on the ground of closure of the employer's business.”.

Amendment of section 40

11. Section 40 of the principal Act is amended by substituting for subsection (3) the following subsection:

“(3) Notwithstanding subsections (1) and (2), any employer who terminates the service of a female employee who fails to give such notice of her maternity leave during the period in which she is entitled to maternity leave commits an offence.”.

Amendment of section 42

12. Subsection 42(2) of the principal Act is amended by substituting for the words “a female employee is dismissed from her employment” the words “the service of a female employee is terminated”.

Amendment of section 60

13. Paragraph 60(3)(b) of the principal Act is amended by inserting after the word “monthly” the words “or weekly”.

Amendment of section 60D

14. Section 60D of the principal Act is amended—

(a) in subsection (1)—

(i) by substituting for the words “a this” the words “at his”; and

(ii) in paragraph (a)—

(A) by substituting for the word “ten” the word “eleven”;

- (B) by substituting for the word “four” the word “five”;
 - (C) in subparagraph (iii), by deleting the word “and” appearing at the end of the subparagraph; and
 - (D) by inserting after subparagraph (iv) the following subparagraph:
 - “(v) Malaysia Day; and”; and
- (b) in paragraph (3)(aaa), by deleting the word “in” appearing after the word “referred”.

Amendment of section 60i

15. Section 60i of the principal Act is amended—

- (a) in subsection (1c), by inserting after the words “on a daily” the words “or an hourly”; and
- (b) in subsection (1d), by inserting after the words “on a daily” the words “or an hourly”.

Substitution of section 60k

16. The principal Act is amended by substituting for section 60k the following section:

“Notice to employ foreign employees and submission of returns

60k. (1) An employer who intends to employ a foreign employee shall give notice of his intention to do so in the prescribed form to the Director General.

(2) The Director General may, at any time after receipt of a notice under subsection (1), request the employer to furnish him within the period specified in the request or within any extended period of time, further information or particulars on the notice.

(3) Upon receipt of the notice or further information or particulars under subsection (2), the Director General may impose conditions on the employer relating to the employment of the foreign employee as he thinks fit.

(4) An employer who—

- (a) employs a foreign employee without giving a notice as required under subsection (1);
- (b) fails to furnish any further information or particulars as may be required by the Director General under subsection (2);
- (c) gives notice under subsection (1) containing any false or misleading particulars; or
- (d) gives any false or misleading further information or particulars under subsection (2),

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.

(5) An employer who employs a foreign employee shall, within fourteen days of the employment, furnish the Director General with the particulars of the foreign employee by forwarding the particulars to the nearest office of the Director General in such manner as may be determined by the Director General.

(6) An employer or any specified class of employers, whenever required to do so by the Director General, shall furnish returns of particulars relating to the employment of a foreign employee in such manner and at such intervals as the Director General may direct.

(7) An employer who contravenes subsections (5) or (6) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.”.

Amendment of section 60o

17. Section 60o of the principal Act is amended—

- (a) in the shoulder note, by inserting after the words “Permanent resident” the words “or domestic servant”; and

- (b) by inserting after the word “Malaysia” the words “or a domestic servant”.

Amendment of section 69

18. Subsection 69(2) of the principal Act is amended by substituting for the words “sub-contractor for labour” the words “contractor for labour”.

Amendment of section 73

19. Subsection 73(1) of the principal Act is amended by substituting for the words “sub-contractor for labour” and “subcontractor for labour” the words “contractor for labour”.

Amendment of section 79

20. Subsection 79(1) of the principal Act is amended by substituting for the words “Electricity Act 1949 [*Act 116*]” the words “Electricity Supply Act 1990 [*Act 447*]”.

New Part XVA

21. The principal Act is amended by inserting after Part XV the following Part:

“PART XVA

SEXUAL HARASSMENT

Interpretation

81A. For the purposes of this Part, “complaint of sexual harassment” means any complaint relating to sexual harassment made—

- (i) by an employee against another employee;
- (ii) by an employee against any employer;
- (iii) by an employer against another employer; or
- (iv) by an employer against an employee.

Establishment of procedure for dealing with complaints of sexual harassment and inquiry into such complaints

81B. (1) An employer shall establish procedure for dealing with complaints of sexual harassment.

(2) Any person may make a complaint of sexual harassment in accordance with the procedure established under subsection (1).

(3) Upon receipt of a complaint of sexual harassment under subsection (2), an employer or any class of employers shall inquire into the complaint in a manner prescribed by the Minister.

(4) Subject to subsection (5), where an employer refuses to inquire into the complaint of sexual harassment as required under subsection (3), he shall, as soon as practicable but in any case not later than thirty days after the date of the receipt of the complaint, inform the complainant of the refusal and the reasons for the refusal in writing.

(5) Notwithstanding subsection (4), an employer may refuse to inquire into any complaint of sexual harassment as required under subsection (3), if—

- (a) the complaint has previously been inquired into and no sexual harassment has been proven; or
- (b) the employer is of the opinion that the complaint of sexual harassment is frivolous, vexatious or is not made in good faith.

(6) Any person who is dissatisfied with the refusal of the employer to inquire into his complaint of sexual harassment, may refer the matter to the Director General.

(7) The Director General after reviewing the matter referred to him under subsection (6)—

- (a) if he thinks that the matter should be inquired into, direct the employer to conduct an inquiry; or
- (b) if he agrees with the decision of the employer not to conduct the inquiry, inform the person who referred the matter to him that no further action will be taken.

Findings of the inquiry by employer

81c. Where the employer conducts an inquiry into a complaint of sexual harassment received under subsection 81B(3) and the employer is satisfied that sexual harassment is proven, the employer shall—

- (a) in the case where the person against whom the complaint of sexual harassment is made is an employee, take disciplinary action which may include the following:
 - (i) dismissing the employee without notice;
 - (ii) downgrading the employee; or
 - (iii) 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 of sexual harassment 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 to.

Complaints of sexual harassment made to the Director General

81d. (1) If a complaint of sexual harassment is made to the Director General, the Director General shall assess the complaint and may direct an employer to inquire into such complaint.

(2) The employer shall inquire into the complaint of sexual harassment when directed to do so under subsection (1) and submit a report of the inquiry to the Director General within thirty days from the date of such direction.

(3) If a complaint of sexual harassment received by the Director General is made against an employer who is a sole proprietor, the Director General shall inquire into such complaint himself in a manner prescribed by the Minister.

Findings of the inquiry by the Director General

81E. (1) Where the inquiry is conducted by the Director General himself under subsection 81D(3) and the Director General is satisfied that sexual harassment is proven, the contract of service between the employer and the complainant may be deemed to be broken.

(2) If a contract of service is deemed to be broken under subsection (1), the complainant is entitled to termination benefits and indemnity provided for under the Act or contract of service, as the case may be.

Offence

81F. Any employer who fails—

- (a) to establish procedure for dealing with complaints of sexual harassment under subsection 81B(1);
- (b) to inquire into complaints of sexual harassment under subsection 81B(3);
- (c) to inform the complainant of the refusal and the reasons for the refusal as required under subsection 81B(4);
- (d) to inquire into complaints of sexual harassment when directed to do so by the Director General under paragraph 81B(7)(a) or subsection 81D(2); or
- (e) to submit a report of inquiry into sexual harassment to the Director General under subsection 81D(2),

commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.

Application of this Part irrespective of wages of employee

81G. Notwithstanding the provisions of this Act, the provisions of this Part extend to every employee employed under a contract of service irrespective of the wages of the employee.”.

Amendment of section 82

22. Subsection 82(1) of the principal Act is amended in paragraph (b) of the proviso by deleting the word “male”.

Amendment of section 86

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

New section 90A

24. The principal Act is amended by inserting after section 90 the following section:

“Protection of officers

90A. No action shall lie or be brought, instituted or maintained in any court against—

- (a) the Director General, Deputy Director General or any other officer duly appointed under this Act for or on account of or in respect of any act ordered or done for the purpose of carrying this Act into effect; and
- (b) any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Director General, Deputy Director General or any other officer duly appointed under this Act,

if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served by it.”.

Amendment of section 92

25. Paragraph 92(a) of the principal Act is amended by inserting after the words “section 25, 25A,” the words “25B,”.

Amendment of section 101A

26. Section 101A of the principal Act is amended—

- (a) in subsection (1), by substituting for the words “or a Deputy Director General appointed under paragraph 3(2)(a)” the words “, Deputy Director General or any officer authorized in writing by the Director General”;
- (b) in subsection (2), by substituting for the words “or the Deputy Director General”, wherever they may appear, the words “, Deputy Director General or any officer authorized in writing by the Director General”;
- (c) in subsection (3), by substituting for the words “or the Deputy Director General” the words “, Deputy Director General or any officer authorized in writing by the Director General”; and
- (d) in subsection (5), by substituting for the words “or a Deputy Director General” the words “, Deputy Director General or any officer authorized in writing by the Director General”.

New section 101B

27. The principal Act is amended by inserting after section 101A the following section:

“Offence by body corporate, *etc.*

101B. Where an offence under this Act has been committed by a body corporate, partnership, society or trade union—

- (a) in the case of a body corporate, any person who is a director, manager, or other similar officer of the body corporate at the time of the commission of the offence;
- (b) in the case of a partnership, every partner in the partnership at the time of the commission of the offence; and

- (c) in the case of a society or trade union, every office-bearer of the society or trade union at the time of the commission of the offence,

shall be deemed to have committed the offence and may be charged jointly or severally in the same proceedings as the body corporate, partnership, society or trade union.”.

Amendment of section 102

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

- (a) in paragraph (i), by substituting for the words “section 69” the words “section 69, 69B or 69C”;
- (b) in paragraph (j), by substituting for the full stop a semicolon; and
- (c) by inserting after paragraph (j) the following paragraphs:
 - “(k) prescribing the forms of notice and returns of particulars used under section 60K;
 - (l) prescribing the procedure for dealing with complaints of sexual harassment and the procedure to inquire into such complaints under Part XVA;
 - (m) prescribing the terms and conditions of service of a domestic servant.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Employment Act 1955 (“Act 265”). The primary purpose of this Bill is to require the payment of wages of domestic servants to be made into bank accounts of the domestic servants, to provide for the registration of information relating to the supply of employees by a contractor for labour, to require a notice and return of particulars relating to the employment of foreign employees to be submitted and to provide for the establishment of procedure for dealing with complaints of sexual harassment and inquiry into such complaints.

2. *Clause 1* contains the short title and the power of the Minister to appoint the commencement date of the proposed Act.

3. *Clause 2* seeks to amend section 2 of Act 265 to introduce new definitions and to amend certain existing definitions used in Act 265. The definition of “confinement” is amended to enable a pregnant female employee to enjoy maternity protections under Act 265 as early as at twenty-two weeks of pregnancy should the eventualities such as premature births or miscarriages occur. Amongst the new definitions inserted are the definitions of contractor for labour as the person responsible for supply of employees and the definition of sexual harassment for the purpose of the establishment of procedure for dealing with complaints of sexual harassment in the new Part XV_A of Act 265.
4. *Clause 3* seeks to amend section 4 of Act 265 to include the decisions or orders made under sections 69B and 69C as decisions or orders which cannot be appealed to the Director General by any person affected by such decisions and orders.
5. *Clause 5* seeks to amend section 25A of Act 265 to extend the application of the section. With the amendment, the wages of employees can be paid into their bank accounts in any licensed financial institution or institutions approved by Bank Negara Malaysia other than a bank or finance company licensed under the Banking and Financial Institutions Act 1989 [Act 372].
6. *Clause 6* seeks to introduce a new section 25B into Act 265 to require the employers of domestic servants to pay the wages directly into the bank accounts of their domestic servants unless exempted by the Director General in writing.
7. *Clause 9* seeks to introduce a new section 33A into Act 265 to impose a duty on the contractor for labour to register with the Director General in the prescribed form if he intends to supply or undertakes to supply any employee. It also requires a contractor for labour who supplies any employee to keep or maintain information on the employees he supplies in a register and the register shall be made available for inspection. Violations of these requirements are offences under Act 265. The purpose of the introduction of this new section is to monitor the supply of employees by the contractor for labour.
8. *Clause 10* seeks to amend section 37 to penalize employers who terminate the service of a female employee during the period in which she is entitled to maternity leave provided that the termination is not due to retirement, resignation tendered by such employee or the closure of the employer’s business.
9. *Clause 11* seeks to amend subsection 40(3) of Act 265 to clarify that no service of a female employee shall be terminated during the period in which she is entitled to maternity leave even though she fails to give notice of her maternity leave as required under subsections 40(1) and (2).
10. *Clause 12* seeks to amend section 42 of Act 265 for purpose of clarification.
11. *Clause 13* seeks to amend paragraph 60(3)(b) of Act 265 to provide for payment of wages to employees who are paid on a weekly basis for working on a rest day.

12. *Clause 14* seeks to amend section 60D of Act 265 to include Malaysia Day which falls on 16 September every year as a mandatory gazetted public holiday on which an employee shall be entitled to a paid holiday at his ordinary rate of pay.

13. *Clause 15* seeks to amend section 60I of Act 265 to extend the calculation of the ordinary rate of pay to employees employed on an hourly rate of pay.

14. *Clause 16* seeks to amend section 60K of Act 265 to impose a duty on an employer to give notice of his intention to employ foreign employees in the prescribed form to the Director General before employing the foreign employees, and also to furnish further information and particulars regarding the notice to the Director General. The Director General may require an employer to furnish returns of particulars relating to the employment of a foreign employee in such manner as the Director General may direct. Such notice and returns of particulars would assist the Government in monitoring the employment of foreign employees. The proposed amendment would also enable the Labour Department to address the concern over the employment of local job seekers.

15. *Clause 17* seeks to amend section 60O of Act 265 to redefine the term of “foreign employee” to exclude domestic servants from the provisions of Part XIIb. This would mean that the requirement for the submission of notice of intention to employ foreign employees to the Director General under section 60K shall not apply in employing domestic servants.

16. *Clause 21* seeks to introduce a new Part XVa into Act 265 which deals with complaints of sexual harassment. Section 81A clarifies the meaning of the term “complaint of sexual harassment”. Section 81B imposes upon an employer to establish procedure for dealing with complaints of sexual harassment and to inquire into complaints of sexual harassment in a manner prescribed by the Minister. Section 81C deals with findings of the inquiry into complaints of sexual harassment by the employer. Section 81D deals with complaints of sexual harassment which are made directly to the Director General and his findings of the complaints. By virtue of section 81E, if a complaint of sexual harassment is made against an employer who is a sole proprietor, the Director General shall inquire into the complaint himself in a manner prescribed by the Minister. Section 81F deals with offences under this Part whilst section 81G provides that this Part shall apply to all employees irrespective of their wages.

17. *Clause 22* seeks to amend section 82 of Act 265 to be in line with the provisions under the Criminal Procedure Code with regards to the service of summons.

18. *Clause 23* seeks to amend section 86 of Act 265 consequential upon the proposed amendment made to section 4.

19. *Clause 24* seeks to introduce a new section 90A into Act 265 to provide for the protection of officers appointed under this Act from any legal action while carrying out their duties.

20. *Clause 25* seeks to amend section 92 of Act 265 to make it an offence if an employer fails to pay the wages of his domestic servant into the domestic servant's bank account without an exemption in writing from the Director General.

21. *Clause 26* seeks to amend section 101A of Act 265 to empower officers other than the Director General and the Deputy Director General to compound any offence committed under this Act, provided that they are authorized in writing by the Director General to do so.

22. *Clause 27* seeks to introduce a new section 101B into Act 265 to make directors, managers, partners and trade union office-bearers to be jointly or severally liable for any offences committed by their establishment.

23. *Clause 28* seeks to amend section 102 of Act 265 to empower the Minister to make regulations prescribing for matters relating to the employment of foreign employees specifically under section 60K, matters relating to the establishment of procedure for dealing with complaints of sexual harassment and the procedure to inquire into such complaints, and terms and conditions of service of a domestic servant.

24. Other amendments not specifically dealt with in this Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

[PN(U²)2729]