

Highlights of the Employment (Amendment) Bill 2011



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The Employment (Amendment) Bill 2011 (Bill) was recently passed by the House of Representatives on 6 October 2011. The Bill seeks to amend the Employment Act 1955 (EA), which regulates the relations between employers and employees in the private sector.

An 'employee' under the EA means any person, irrespective of his occupation, whose wages do not exceed RM1,500 a month and any person, irrespective of the amount of wages earned in a month, who is engaged in specified work, e.g. manual labour (EA employees). The EA provisions apply to the EA employees, unless expressly provided to extend to non-EA employees.

Some of the key amendments to the EA under the Bill are as follows:

Information relating to supply of employees: The Bill provides that a contractor for labour who intends to supply or undertakes to supply any employee shall register with the Director-General of Labour (DGL) within 14 days before supplying the employee. The contractor for labour must also keep or maintain one or more registers containing information regarding each employee supplied by him. Such registers must be made available for inspection.

Maternity protection: Part IX of the EA on Maternity Protection is extended to every female employee, irrespective of her wages. The definition of 'confinement' is amended to enable a pregnant female employee to enjoy maternity protections under the EA as early as at 22 weeks of pregnancy (compared to the current 28 weeks), should the eventualities such as premature births or miscarriages occur.

The Bill also provides that any employer who terminates a female employee during her maternity leave commits an offence, except where there is a closure of the employer's business.

Sexual harassment: A complaint of sexual harassment may be made by an employee against another employee, an employee against an employer or an employer against an employee.

The Bill imposes a duty upon an employer to inquire into a complaint of sexual harassment in the prescribed manner. If an

employer refuses to do so, he must inform the complainant of the refusal and the reasons for such refusal in writing. An employer may refuse to inquire into a complaint if the complaint has previously been inquired into and no sexual harassment has been proven, or if the employer is of the opinion that the complaint is frivolous, vexatious or is not made in good faith. Any employee who is dissatisfied with such refusal may refer the matter to the DGL who will review the matter.

The employer may take disciplinary action against the individual employee who is found guilty of sexual harassment, including dismissal without notice, downgrading or imposing any other lesser punishment. If the guilty individual is other than an employee, the employer may recommend that the person be brought before an appropriate disciplinary authority to which the individual is subject to.

Any employer who breaches any of the above requirements commits an offence and shall, on conviction, be liable to a fine not exceeding RM10,000.

Feedback regarding the Bill

The Bill has received criticisms from the Malaysian Trade Union Congress (MTUC), in particular with regard to the provisions on contractor for labour and supply of employees, as it may be construed as an endorsement of the labour contracting system and in doing so, depriving workers of security of tenure. However, the Ministry of Human Resources has issued a press statement to explain that the provisions governing contractor for labour is necessary to ensure that workers employed by such contractors have protection of their rights under the law.

Despite the criticisms, the Bill should also be lauded, in particular for providing better maternity protections to female employees and protections against sexual harassment, both of which have been extended to cover every employee, irrespective of their wages.

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