

# EMPLOYMENT ACT 1955

On 21.03.2022, Parliament passed the Employment (Amendment) Bill 2021.

On 15.08.2022, the Employment (Amendment of First Schedule) Order 2022 was gazetted.

On 26.08.2022, the Malaysian Minister of Human Resources, Datuk Seri M. Saravanan, announced that the implementation of the Employment (Amendment) Act 2022 ("Amendment Act") will be deferred from 01.09.2022 to 01.01.2023.

The purpose of this infographic is to update employers on the key amendments to the Employment Act 1955 ("Previous Act") which employers must ensure compliance with from 01.01.2023 onwards.



PREVIOUS ACT	SECTION	NEW POSITION
<ul style="list-style-type: none"><li>Employees with wages not exceeding RM2,000.00 per month</li><li>Employees who, irrespective of wages, are involved in the following sectors:<ul style="list-style-type: none"><li>manual labour, including supervising</li><li>operation or maintenance of any mechanically propelled vehicle operated for transport of passengers or goods and/or reward or commercial purposes</li><li>vessel registered in Malaysia</li><li>domestic servants</li></ul></li></ul>	<b>Section 2 &amp; First Schedule - Applicability of Act</b>	<ul style="list-style-type: none"><li><u>All employees irrespective of wages</u></li><li>For employees earning more than RM4,000.00 per month, the following provisions do <u>NOT</u> apply:<ul style="list-style-type: none"><li>overtime and/or allowance for work on rest days, public holidays and holidays on half working days (Sections 60(3), 60A(3), 60C(2A), 60D(3) and, 60D(4))</li><li>termination, lay-off and retirement benefits (Section 60J)</li></ul></li></ul>
<ul style="list-style-type: none"><li>None</li></ul>	<b>Section 18A - Calculation of wages for incomplete month</b>	<ul style="list-style-type: none"><li>Provides a formula to calculate wages of an employee who has worked for an incomplete month: <math display="block">\frac{\text{Monthly wages}}{\text{Number of days of the particular wage period}} \times \text{Number of days eligible in the wage period.}.</math></li></ul>

PREVIOUS ACT	SECTION	NEW POSITION
<ul style="list-style-type: none"> <li>• 60 consecutive days</li> </ul>	<p><b>Section 37 – Paid maternity leave for female employees</b></p>	<ul style="list-style-type: none"> <li>• <u>98 consecutive days</u></li> </ul>
<ul style="list-style-type: none"> <li>• None</li> </ul>	<p><b>Section 41A - Restriction on termination of female employees on grounds of pregnancy</b></p>	<ul style="list-style-type: none"> <li>• Pregnant female employees <u>cannot be terminated because of pregnancy or any illness arising therefrom</u>, unless: <ul style="list-style-type: none"> <li>◦ there is a wilful breach of their contract of service</li> <li>◦ there is misconduct</li> <li>◦ employer's business closes</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• None</li> </ul>	<p><b>Section 81H – Notice on sexual harassment</b></p>	<ul style="list-style-type: none"> <li>• Employer is required to <u>conspicuously display a notice to raise awareness of sexual harassment</u> in the workplace</li> </ul>
<ul style="list-style-type: none"> <li>• Women in industrial and agricultural sectors are prohibited from working between 10 pm and 5 am</li> </ul>	<p><b>Section 34 – Prohibition on employment of women</b></p>	<ul style="list-style-type: none"> <li>• Removed</li> </ul>
<ul style="list-style-type: none"> <li>• Women are prohibited from underground work</li> </ul>	<p><b>Section 35 – Prohibition on employment of women</b></p>	<ul style="list-style-type: none"> <li>• Removed</li> </ul>



PREVIOUS ACT	SECTION	NEW POSITION
<ul style="list-style-type: none"> <li>• Not more than 48 hours per week</li> </ul>	<p><b>Section 60(A) - Hours of work under contract of service</b></p>	<ul style="list-style-type: none"> <li>• Not more than <u>45 hours</u> per week, <u>including working at night</u></li> </ul>
<ul style="list-style-type: none"> <li>• Employees may work more than eight (8) hours a day or more than 48 hours per week but the average number of hours worked over any period of or exceeding three (3) weeks shall not exceed 48 hours per week</li> </ul>	<p><b>Section 60C(1) - Hours of work for shift work under contract of service</b></p>	<ul style="list-style-type: none"> <li>• Employees may work more than eight (8) hours a day or more than <u>45 hours</u> per week but the average number of hours worked over any period of or exceeding three (3) weeks shall not exceed <u>45 hours</u> per week</li> </ul>
<ul style="list-style-type: none"> <li>• Total number of days of paid sick leave for both hospitalisation and non-hospitalisation in a calendar year does not exceed 60 days in the aggregate</li> </ul>	<p><b>Section 60F - Sick leave</b></p>	<ul style="list-style-type: none"> <li>• Employees are entitled to: <ul style="list-style-type: none"> <li>◦ <u>60 days</u> of paid sick leave for <u>hospitalisation</u></li> <li>◦ <u>14 to 22 days</u> of paid sick leave (depending on length of service) for <u>non-hospitalisation</u></li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• None</li> </ul>	<p><b>Section 60FA - Paternity leave</b></p>	<ul style="list-style-type: none"> <li>• Married male employees are entitled to <u>seven (7) consecutive days</u> of paid paternity leave each confinement (up to five (5) confinements), provided that: <ul style="list-style-type: none"> <li>◦ employee is <u>employed by the same employer for at least 12 months immediately before the commencement</u> of the paternity leave</li> <li>◦ employee has <u>notified employer of his spouse's pregnancy</u> at least 30 days from the expected confinement or as soon as possible after the birth</li> </ul> </li> </ul>



PREVIOUS ACT	SECTION	NEW POSITION
<ul style="list-style-type: none"> <li>Employer has duty to furnish Director General of Labour with information when employing and terminating foreign employees</li> </ul>	<p><b>Section 60K – Employment of foreign employees</b></p>	<ul style="list-style-type: none"> <li>It is now <u>mandatory to obtain approval from Director General of Labour</u> before employing foreign employees</li> </ul>
<ul style="list-style-type: none"> <li>None</li> </ul>	<p><b>Part XIIC (Sections 60P and 60Q) – Flexible working arrangement</b></p>	<ul style="list-style-type: none"> <li>Employees may apply for <u>flexible working arrangements to vary the hours of work, days of work or place of work</u> in relation to their employment</li> <li>Employer must <u>respond within 60 days from receipt of application</u> and must provide reasons if such application is refused</li> </ul>
<ul style="list-style-type: none"> <li>None</li> </ul>	<p><b>Section 69F - Discrimination in employment</b></p>	<ul style="list-style-type: none"> <li>Director General of Labour may inquire and determine dispute between employee and employer pertaining to <u>discrimination in employment</u></li> </ul>
<ul style="list-style-type: none"> <li>None</li> </ul>	<p><b>Section 90B - Forced labour</b></p>	<ul style="list-style-type: none"> <li>Any employer who is liable for forced labour will be punished to a fine not exceeding RM100,000.00 and/or imprisonment for a term not exceeding five (5) years, or both</li> <li>Forced labour arises in these scenarios: <ul style="list-style-type: none"> <li>employer <u>threatens, deceives or forces</u> employee to do any activity, service or work</li> <li>employer <u>prevents employee from leaving the area</u> where the said activity, service or work is done</li> </ul> </li> </ul>



PREVIOUS ACT	SECTION	NEW POSITION
<ul style="list-style-type: none"> <li>• None</li> </ul>	<p><b>Section 101C - Presumption of Employment</b></p>	<ul style="list-style-type: none"> <li>• Where there is no written contract of service, an individual is presumed to be an employee if: <ul style="list-style-type: none"> <li>◦ his <u>manner or hours of work are subject to control</u> by another person</li> <li>◦ he is <u>provided with tools, materials or equipment</u> by another person to execute his work</li> <li>◦ his work constitutes an <u>integral part of another person's business</u></li> <li>◦ his work is <u>performed solely for the benefit of another person</u></li> <li>◦ <u>payment is made to him for work done at regular intervals</u></li> <li>◦ the payment he receives constitutes the <u>majority of his income</u></li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Not exceeding RM10,000.00</li> </ul>	<p><b>Sections 33A, 57A, 57B, 60K, 69, 69E, 81F and 99A – Fines for various offences</b></p>	<ul style="list-style-type: none"> <li>• <u>Not exceeding RM50,000.00</u></li> </ul>
<ul style="list-style-type: none"> <li>• Not less than two (2) years</li> </ul>	<p><b>Section 2(1) - Duration of apprenticeship contract</b></p>	<ul style="list-style-type: none"> <li>• Not less than two (2) years to <u>between six (6) months and 24 months</u></li> </ul>





# WHAT MUST EMPLOYERS DO NEXT?



All employers should review their existing contract(s) of service and company policies to ensure compliance with the Amended Act

For further information, feel free to contact any of the authors of this article:



Deepak Mahadevan  
Partner  
deepak@afmslaw.com



Faeza Suraya Roselan  
Associate  
faeza@afmslaw.com



Loon Ann Ni  
Associate  
annni@afmslaw.com



Jas Lim Fang Ni  
Associate  
jaslim@afmslaw.com

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