



Amendments to Employment Act 1955 (2022)

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Amendments to the Employment Act 1955 (Gazetted 2022)

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LAWS OF MALAYSIA

Act A1651

EMPLOYMENT (AMENDMENT) ACT 2022

Note :

Revision of the First Schedule was dated 12 August 2022 and takes effect on 1 September 2022.

Amendments to the Employment Act (2022)

First Schedule

Current	New
1. Any person, irrespective of his occupation , who has entered into a contract of service with an employer under which such person's wages do not exceed two thousand ringgit a month.	Replaced with 1. Any person who has entered into a contract of service
	Added 1A. Notwithstanding paragraph 1, the person whose wages exceeds four thousand ringgit a month. Provision of the Act not applicable Subsections 60(3), 60A(3), 60C(2A), 60D(3) and 60D(4) and section 60J
Subparagraph 2(5) he is engaged as a domestic servant Provision of the Act not applicable Sections 12, 14, 16, 22, 61 and 64, and Parts IX, XII and XIIA	Subparagraph 2(5) he is engaged as a domestic employee. Provision of the Act not applicable Sections 12, 14, 16, 22, 58A, 60, 60A, 60B, 60C, 60D, 60E, 60F, 60FA, 60I, 61 and 64, and Parts IX and XIIA



Subsection 60(3)	Rest day pay
Subsection 60A(3)	Pay for work done beyond normal hours of work (normal OT)
Subsection 60C(2A)	The Minister may make regulations relating to the entitlement of allowance during shift work
Subsection 60D(3)	Pay for work done during public holidays (in addition to holiday pay)
Subsection 60D(4)	Pay for work done when a public holiday falls on a half working day
Subsection 60J	Termination, lay-off and retirement benefits

Amendments to the Employment Act (2022)

	Current	New
Apprenticeship contract	Shall not be less than two years in the course of which the apprentice is bound to work in the employer's service;	Shall be for a minimum period of six months and a maximum period of twenty-four months

Note : Apprenticeship contracts excluded from sections 10 to 16

17A. Sections 10 to 16 shall not apply to apprenticeship contracts which are in a form approved by and of which a copy has been filed with the Director General.

Note :

1. Some important provisions in the above sections is the termination provision
2. Only applies if approved by Director General.

Amendments to the Employment Act (2022)

	Current	New
Domestic Servant	Domestic servant Foreign domestic servant	domestic employee Foreign domestic employee
Appeals	Any person affected by any decision or order, other than an order or decision under section 69, 69B, 69C, 73 or subsection 81D(4), given or made by an officer appointed under subsection 3(2), may, if he is dissatisfied with such decision or order, within fourteen days of such decision or order being communicated to him appeal in writing therefrom to the Director-General.	Any person affected by any decision or order, other than an order or decision under section 69 or 73 or subsection 81D(4), given or made by an officer appointed under subsection 3(2), may, if he is dissatisfied with such decision or order, within twenty-one days of such decision or order being communicated to him appeal in writing therefrom to the Director-General.

Amendments to the Employment Act (2022)

New

New section 18a 4.

The principal Act is amended by inserting after section 18 (*section on wage period*) 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:

Amendments to the Employment Act (2022)

New

New section 18a 4.

The principal Act is amended by inserting after section 18 (*section on wage period*) the following section:

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

Amendments to the Employment Act (2022)

	Current	New
Section 22 Limitation on advances to employees	22(2) For the purposes of this section, immediate family member means the employees' parents, children, siblings or any other person under the employee's guardianship	22(2) For the purposes of this section, immediate family members means the employees' parents, spouse , children, siblings or any other person under the employee's guardianship
Wages to be paid through bank	Bank	Financial Institution
PART VII	PRINCIPALS, CONTRACTORS AND CONTRACTORS FOR LABOUR	PRINCIPALS, CONTRACTORS, SUB-CONTRACTORS AND CONTRACTORS FOR LABOUR

Amendments to the Employment Act (2022)

	Current	New
Section 33A	<p>Information relating to supply of employees</p> <p>(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 within fourteen days before supplying the employee.</p> <p>(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.</p> <p>(3) A contractor for labour who-</p> <p>(a) supplies his employee without registering with the Director-General as required under subsection (1); or</p> <p>(b) fails to keep or maintain any register, or make available any register for inspection as required under subsection (2),</p> <p>commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.</p>	<p>Information relating to supply of employees</p> <p>(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 within fourteen days before supplying the employee.</p> <p>(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.</p> <p>(3) A contractor for labour who-</p> <p>(a) supplies his employee without registering with the Director General as required under subsection (1);</p> <p>(b) “(aa) fails to make such contract or any other document relating to such contract available for inspection as required under subsection (1a); or”; and</p> <p>(c) fails to keep or maintain any register, or make available any register for inspection as required under subsection (2),</p> <p>commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.</p>

Amendments to the Employment Act (2022)

	Current	New
PART VIII	EMPLOYMENT OF WOMEN Prohibition of night work	Repealed
PART IX	MATERNITY PROTECTION	PREGNANCY AND MATERNITY
	<p>Current</p> <p>(aa) Where a female employee is entitled to maternity leave under subparagraph (a)(i) but is not entitled to receive maternity allowance from her employer for the eligible period under paragraph (c), or because she has not fulfilled the conditions set out in paragraph (2)(a), she may, with the consent of the employer, commence work at any time during the eligible period if she has been certified fit to resume work by a registered medical practitioner.</p>	<p>Substituted with</p> <p>“(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</p>
	60 days	98 days

Amendments to the Employment Act (2022)

	New
<p>New section 41a</p> <p>Payment of allowance to nominee</p>	<p>The principal Act is amended by inserting after section 41 (<i>Payment of allowance to nominee</i>) the following section:</p> <p>“Restriction on termination of pregnant female employee</p> <p>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 -</p> <ul style="list-style-type: none"> (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. <p>(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.”.</p>

Amendments to the Employment Act (2022)

	Current	New
Section 42 Restriction on dismissal of female employee after eligible period (maternity)	Restriction on dismissal of female employee after eligible period	Restriction on termination of female employee after eligible period
Section 44a Application of this Part irrespective of wages of female employees (maternity)	Deleted Application of this Part irrespective of wages of female employee 44A. Notwithstanding paragraph 1 of the First Schedule, this Part extends to every female employee who is employed under a contract of service irrespective of her wages	

Amendments to the Employment Act (2022)

	Current	New
PART XI	DOMESTIC SERVANTS	DOMESTIC EMPLOYEES
DOMESTIC SERVANTS	Employment of foreign domestic servant 57A. (1) An employer who employs a foreign domestic servant shall, within thirty days of the employment, inform the Director General of such employment in a manner as may be determined by the Director General.	Employment of foreign domestic servant 57A. (1) An employer who employs a foreign domestic servant shall, within thirty days of the employment, inform the Director General of such employment in a manner as may be determined by the Director General.
	(2) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit .	(2) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit .
	Section 57B Duty to inform Director General of termination of service of foreign domestic servant. (3) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit .	Section 57B Duty to inform Director General of termination of service of foreign domestic servant. (3) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit .

Amendments to the Employment Act (2022)

	Current	New
Section 60A Hours of Work	Hours of work	Hours of work and working at night
	Basic hours of 48 hours	Basic hours of 45 hours
	(6) The Minister may make regulations for the purpose of calculating the payment due for overtime to an employee employed on piece rates.	(6) The Minister may make regulations for the purpose of calculating the payment due for overtime to an employee employed on piece rates and prescribing matters relating to working at night.
Section 60C Shift Work	...an employee who is engaged under his contract of service in shift work may be required by his employer to work more than eight hours in any one day or more than forty-eight hours in any one week but the average number of hours worked over any period of three weeks, or over any period exceeding three weeks as may be approved by the Director General, shall not exceed forty-eight per week.	...an employee who is engaged under his contract of service in shift work may be required by his employer to work more than eight hours in any one day or more than forty-five hours in any one week but the average number of hours worked over any period of three weeks, or over any period exceeding three weeks as may be approved by the Director General, shall not exceed forty-five per week.
		“(2a) The Minister may make regulations relating to the entitlement of allowance during shift work. ”.

Amendments to the Employment Act (2022)

	Current			New
Section 60F Sick Leave	<p>Provided that the total number of days of paid sick leave in a calendar year which an employee is entitled to under this section shall be sixty days in the aggregate;</p> <p>And provided further that if an employee is certified by such registered medical practitioner or medical officer to be ill enough to need to be hospitalized but is not hospitalized for any reason whatsoever, the employee shall be deemed to be hospitalized for the purposes of this section</p>			<p>First proviso deleted</p> <p>Provided that if an employee is certified by such registered medical practitioner or medical officer to be ill enough to need to be hospitalized but is not hospitalized for any reason whatsoever, the employee shall be deemed to be hospitalized for the purposes of this section</p>
With the above :	Years of Service	Sick Leave	Hospitalisation	Total Sick Leave + Hospitalisation Leave
	Below 2 years	14 days	60 days	74 days
	2 years to 5 years	18 days	60 days	78 days
	Above 5 years	22 days	60 days	82 days

Amendments to the Employment Act (2022)

	New
New section 60fa Paternity Leave	<p>Seven (7) consecutive days in respect of each confinement.</p> <p>Restricted to five confinements irrespective of the number of spouses.</p> <p>A married male employee shall be entitled to paternity leave from his employer if—</p> <ul style="list-style-type: none">(a) 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.

Amendments to the Employment Act (2022)

	Current	New
PART XIIB EMPLOYMENT OF FOREIGN EMPLOYEES	<p>Section 60K Duty to furnish information and returns</p> <p>Substituted with ></p>	<p>(60K) Employment of foreign employee 60k.</p> <p>(1) No employer shall employ a foreign employee unless prior approval has been obtained from the DG.</p> <p>(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.</p> <p>(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.</p> <p>(4) The Director General may, subject to any written law, approve an application under this section if the employer complies with the following conditions:</p> <p>(a) the employer satisfies the Director General that on the date on which he makes the application-</p> <p>(i) he has no outstanding matter relating to any decision, order or directive issued under this Act; or</p> <p>(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</p> <p>(b) the employer has not been convicted of any offence under any written law in relation to anti-trafficking in persons and forced labour.</p> <p>(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.</p>

Amendments to the Employment Act (2022)

	New
New Section 60(KA)	<p>Termination of employment of foreign employee, etc.</p> <p>(1) If the service of a foreign employee is terminated-</p> <ul style="list-style-type: none"> (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. <p>(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."</p>

Amendments to the Employment Act (2022)

	Current
Section 60L Director General may inquire into complaint	<p>Deleted</p> <p>(1) The Director General may inquire into any complaint from a local employee that he is being discriminated against in relation to a foreign employee, or from a foreign employee that he is being discriminated against in relation to a local employee, by his employer in respect of the terms and conditions of his employment; and the Director General may issue to the employer such directives as may be necessary or expedient to resolve the matter.</p> <p>(2) An employer who fails to comply with any directive of the Director General issued under subsection (1) commits an offence</p>

Amendments to the Employment Act (2022)

	New
<p>New Part XIIc</p> <p>FLEXIBLE WORKING ARRANGEMENT</p>	<p>Section 60p.</p> <p>(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.</p> <p>(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.</p> <p>Application for flexible working arrangement 60q.</p> <p>(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.</p> <p>(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.</p> <p>(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."</p>

Amendments to the Employment Act (2022)

	Current	New
<p>PART XV</p> <p>COMPLAINTS AND INQUIRIES</p> <p>Director General's power to inquire into complaints</p>	<p>69. (2) The powers of the Director General under subsection (1) shall include the power to hear and decide, in accordance with the procedure laid down in this Part, any claim by—</p> <p>(ii) a contractor for labour against a contractor or subcontractor for any sum which the contractor for labour claims to be due to him in respect of any labour provided by him under his contract with the contractor or sub-contractor; or</p> <p>(4) Any person who fails to comply with any decision or order of the Director General made under this section commits an offence and shall be liable, on conviction, to a fine not exceeding ten thousand ringgit; and shall also, in the case of a continuing offence, be liable to a daily fine not exceeding one hundred ringgit for each day the offence continues after conviction.</p>	<p>69. (2) The powers of the Director General under subsection (1) shall include the power to hear and decide, in accordance with the procedure laid down in this Part, any claim by—</p> <p>(ii) a contractor for labour against a principal, contractor or subcontractor for any sum which the contractor for labour claims to be due to him in respect of any labour provided by him under his contract with the contractor or sub-contractor; or</p> <p>(4) Any person who fails to comply with any decision or order of the Director General made under this section commits an offence and shall be liable, on conviction, 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.</p>

Amendments to the Employment Act (2022)

	Current
Section 69B Additional powers of Director General to inquire into complaint	Section 69B, 69C, 69D, 69E (All deleted)
Section 69C Claims for indemnity for termination of contract without notice	To note: <u>69B</u> (1) Notwithstanding the provisions of this Act, the powers of the Director General under paragraph 69(1)(a) shall extend to employees whose wages per month exceed two thousand ringgit but does not exceed five thousand ringgit.
Section 69D Order of Director General may be in writing	(2) For the purposes of this section, the term wage means wages as defined in section 2 but does not include any payment by way of commission, subsistence allowance or overtime payment.
Section 69E Penalty for offence	<u>69C</u> Claims for indemnity for termination of contract without notice 69C.

Amendments to the Employment Act (2022)

	New
New section 69f	<p>Discrimination in employment</p> <p>(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.</p> <p>(1) 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.”.</p>

Amendments to the Employment Act (2022)

	Current	New
PART XVA	Fine not exceeding ten thousand ringgit	Fine not exceeding fifty thousand ringgit
SEXUAL HARASSMENT	<p>Deleted</p> <p>81G</p> <p>Application of this Part irrespective of wages of employee. Notwithstanding paragraph 1 of the First Schedule, this Part extends to every employee employed under a contract of service irrespective of the wages of the employee.</p>	<p>New</p> <p>81H - Notice on sexual harassment</p> <p>An employer shall, at all times, exhibit conspicuously at the place of employment, a notice to raise awareness on sexual harassment.</p>

Amendments to the Employment Act (2022)

	New
New section 87a	<p>Court order for payments due to employee</p> <p>(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.</p> <p>(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:</p> <p>(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</p> <p>(b) in the same manner as a fine as provided under section 283 of the Criminal Procedure Code [Act 593]</p> <p>mutatis mutandis means <i>“once the necessary changes have been made”</i></p>

Amendments to the Employment Act (2022)

	New
New section 90b	<p>Forced labour</p> <p>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.</p>
<p>Section 93 Under Part VIII (EMPLOYMENT OF WOMEN)</p>	<p>Deleted</p> <p>An employer of a female employee commits an offence if the female employee is employed contrary to section 34, 35 or 36.</p> <p>Section 34 : Prohibition of night work</p> <p>Section 35 : Prohibition of underground work</p> <p>Section 36 : Prohibition of employment by Minister</p>

Amendments to the Employment Act (2022)

	Current	New
Section 99A General penalty	Any person who commits any offence under, or contravenes any provision of, this Act, or any regulations, order, or other subsidiary legislation whatsoever made thereunder, in respect of which no penalty is provided, shall be liable, on conviction, to a fine not exceeding ten thousand ringgit	Any person who commits any offence under, or contravenes any provision of, this Act, or any regulations, order, or other subsidiary legislation whatsoever made thereunder, in respect of which no penalty is provided, shall be liable, on conviction, to a fine not exceeding fifty thousand ringgit

Amendments to the Employment Act (2022)

	New
New section 101c	<p>Presumption as to who is an employee and employer</p> <p>(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-</p> <ul style="list-style-type: none"> (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.

Amendments to the Employment Act (2022)

	New
New section 101c	<p>Presumption as to who is an employee and employer</p> <p>(2) For the purpose of subsection (1), it shall be presumed until the contrary is proved that a person is an employer—</p> <ul style="list-style-type: none"> (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. <p>(3) The first-mentioned person in subsection (2) includes the agent, manager or factor of such first-mentioned person.”.</p>

Amendments to the Employment Act (2022)

	New
Amendment of section 102	<p>Deleted (b) prescribing the conditions under which female employees may work at night;</p> <p>Existing (f) prescribing the times which employees shall be entitled to take off from work for meals and which they shall be entitled or required to take off for rest;</p> <p>And further added (fa) prescribing matters relating to rest day; (fb) prescribing matters relating to flexible working arrangement;”;</p>

Amendments to the Employment Act (2022)

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.

Frequently Asked Questions

Employment Act 1955 Amendment (2022)

FAQ

FIRST SCHEDULE

Who is defined as employees under the revised First Schedule?

The Employment (Amendment of First Schedule) Order 2022 dated 12 August that comes into effect on 1 September 2022 includes all employees irrespective of their wages.

OVERTIME

Does this mean all employees are entitled to overtime if they work beyond the normal hours of work?

Overtime provision is excluded for those whose wages exceed four thousand ringgit (RM 4,000) a month.

PROVISIONS THAT DO NOT APPLY TO THOSE WHOSE WAGES EXCEED RM 4,000 A MONTH

Subsection 60(3)	Rest day pay
Subsection 60A(3)	Pay for work done beyond normal hours of work (normal OT)
Subsection 60C(2A)	The Minister may make regulations relating to the entitlement of allowance during shift work
Subsection 60D(3)	Pay for work done during public holidays (in addition to holiday pay)
Subsection 60D(4)	Pay for work done when a public holiday falls on a half working day
Subsection 60J	Termination, lay-off and retirement benefits

Employment Act 1955 Amendment (2022)

FAQ

<i>Category of Employee</i>	1. Wages up to RM 4,000 2. Any person irrespective of wages is: (i) engaged in manual labour (ii) engaged in the operation or maintenance of any mechanically propelled vehicle (iii) he supervises or oversees other employees engaged in manual labour	Wages exceeding RM 4,000
Provisions not applicable	All provisions are applicable	Subsections 60(3), 60A(3), 60C(2A), 60D(3) and 60D(4) and section 60J
Subsection 60(3) : Rest day pay	Yes	No
Subsection 60A(3) : Pay for work done beyond normal hours of work (normal OT)	Yes	No
Subsection 60C(2A) : Regulations relating to the entitlement of allowance during shift work	Yes	No
Subsection 60D(3) : Pay for work done during public holidays (in addition to holiday pay)	Yes	No
Subsection 60D(4) : Pay for work done when a public holiday falls on a half working day	Yes	No
Subsection 60J : Termination, lay-off and retirement benefits	Yes	No

Note: 1. Please refer to the FIRST SCHEDULE for a detailed description
2. Domestic employee is not included in this comparison.

MATERNITY

Most of us are aware that this Amendment will take effect on 1 September 2022. How about those employees who deliver their child before 1 September, i.e. on 15 or 25 or 31 August 2022? Are they eligible for 98 days of maternity leave?

No, they will still follow the 60 days of maternity leave. The 98 days start on 1 September 2022. However, employers may opt to commence with the 98 days earlier to give their female employees a more favourable terms and conditions.

MATERNITY

If an employee resigns during early pregnancy but has not managed to get another job, can she claim maternity allowance from the previous employer? If yes, should it be in full or prorated as per the length of service with the previous employer?

So long as the employee fulfills the conditions to qualify for maternity allowance, the employer must provide such allowance irrespective of the employment status. The employer is obliged to provide full payment of 98 days for those who deliver after September 2022.

MATERNITY

Section 44A which extends maternity allowance to every female employee who is employed under a contract of service irrespective of her wages has been deleted. Does this mean employees who are not covered in the FIRST SCHEDULE do not qualify for maternity allowance?

The revised FIRST SCHEDULE extends the PREGNANCY AND MATERNITY provision to all female employees irrespective of their wages.

MATERNITY

Would an employee who had a miscarriage be entitled to maternity allowance?

Section 37 states that every female employee shall be entitled to receive from her employer a maternity allowance for the eligible period from her employer if

- (i) she has been employed by the employer for a period of, or periods amounting in the aggregate to, not less than ninety days during the nine months immediately before her confinement; and
- (ii) (ii) she has been employed by the employer at any time in the four months immediately before her confinement.

Confinement is defined under section 2(1) of the Employment Act 1955 as *“parturition resulting after at least twenty-two weeks of pregnancy in the issue of a child or children, whether alive or dead, and shall for the purposes of this Act commence and end on the actual day of birth and where two or more children are born at one confinement shall commence and end on the day of the birth of the last-born of such children, and the word confined shall be construed accordingly”*

MATERNITY

Are maternity leave and maternity allowance applicable for foreign female workers?

The Employment Act 1955 and the recent Amendments are applicable to both Malaysians and foreign employees.

Therefore, foreign female employees are eligible for maternity leave and maternity allowance irrespective as to whether legitimate or otherwise.

MATERNITY

Should an employer allow an employee to request to resume work earlier but has not been certified fit to work?

The Amendment stipulates the need to be certified fit to resume work by a registered medical practitioner.

Furthermore, the employee must also obtain consent from the employer.

MATERNITY

Is the company required to pay wages in addition to the maternity allowance if an employee who is eligible for maternity allowance commences work at any time during the eligible period?

The Amendment did not provide guidelines with regards to the above. In our opinion, the company could consider adopting the below options which are favourable to the employee until further guidance is provided by the authorities.

E.g. An employee decides to return to work after completing 68 days during their confinement period. The remaining eligible period of her maternity allowance is thirty (30) days.

Option 1	Pay wages and remaining allowance for the eligible period	She is paid wages (as normal) upon commencement of work and at the same time continues to receive maternity allowance for the remaining 30 days.
Option 2	Convert the remaining maternity allowance into annual leave for the employee to utilise at their discretion	She is paid wages (as normal) upon commencement of work and she is accorded additional 30 days of paid annual leave in replacement for maternity allowance.

The company when granting the consent to resume work should specify the conditions above for the employee to make a decision.

You are advised to further consult the nearest Labour Office or Labour Department or the Legal & Enforcement Division of the Labour Department Headquarters for guidance.

MATERNITY

If the female employee has already commenced her maternity leave since mid July 2022, should the company pro-rate her entitlement on 1 September 2022 to comply with the 98 days entitlement?

The employee shall complete her confinement period based on sixty (60) days. The 98 days eligibility is for those who commence their confinement effective 1 September 2022 and onwards.

You are advised to further consult the nearest Labour Office or Labour Department or the Legal & Enforcement Division of the Labour Department Headquarters for guidance.

MATERNITY

If an employee delivers twins (4th and 5th child) and is paid maternity allowance for 98 days and in the future delivers her 6th child, would she qualify for paid maternity allowance? Technically she has gone into confinement 4 times prior to the delivery of her 6th child. She has 5 surviving children.

Confinement 1	Confinement 2	Confinement 3	Confinement 4	Confinement 5
1 st living child	2 nd living child	3 rd living child	4 th & 5 th living child (twins)	6 th child
Received maternity allowance	Received maternity allowance	Received maternity allowance	Received maternity allowance	Does she qualify?

In our opinion, she is **NOT** entitled to any maternity allowance as at the said time of her confinement she has **five surviving** children. In the case of the father, he qualifies as it is the **fifth** confinement.

MATERNITY

Can a female employee be terminated during her confinement?

No, please refer to section 41A of the amended section.

MATERNITY

Would a female employee who suffers a miscarriage be eligible for maternity leave and allowance?

If the female employee suffers a miscarriage after at least twenty-two weeks, she shall be eligible for maternity leave and allowance provided subject to the conditions stipulated in the Employment Act 1955

PATERNITY

Should rest days and public holidays be included in determining the seven (7) consecutive days?

We have consulted Labour Office and it is mentioned the seven (7) consecutive days includes off day, rest day and public holiday. You are advised to further consult the nearest Labour Office or Labour Department or the Legal & Enforcement Division of the Labour Department Headquarters.

PATERNITY

Would an employee who has served the company less than 12 months be entitled to paternity leave?

No, in order to qualify, the employee must have been employed by the same employer at least twelve months immediately before the commencement of such paternity leave.

PATERNITY

If an employee whose wife delivers the sixth child and has been provided with paternity leave for the first 5 children with a previous employer, would the company be required to grant a fresh set of paternity leave?

The employee is only qualified for paternity leave for the first 5 children irrespective of the number of employers he has worked for. In addition to that, if the employee's wife delivers the fourth child after 1 September 2022, the employee shall be eligible for paternity leave for child number 4 and 5 only.

PATERNITY

Is paternity leave limited to 5 surviving children similar to maternity provision?

The Amendment is restricted to five **confinements** and does not stipulate conditions for the number of surviving children.

PATERNITY

Is paternity leave applicable for foreign male workers?

The Employment Act 1955 and the recent Amendment are applicable to both Malaysians and foreign workers. Therefore, foreign male workers are entitled to paternity leave.

PATERNITY

Would an unmarried male employee qualify for paternity leave if his 'partner' delivers a child?

The eligibility is subject to being married. It is advisable for companies to publish a paternity leave policy and state the conditions of paternity leave and advise them to update the company on their marital status.

PATERNITY

Would an employee be eligible for paternity leave if his wife has a miscarriage after

The eligibility is in respect of each confinement. Confinement is interpreted as '*parturition resulting after at least twenty-two weeks of pregnancy in the issue of a child or children, whether alive or dead. If the employee's wife suffers a miscarriage after at least twenty-two weeks, he shall be eligible for paternity leave.*'

PATERNITY

I have an employee whose wife delivers the sixth child after 1 September 2022. Is the company required to provide paternity leave?

The paternity leave shall be restricted to five (5) **confinements** irrespective of the number of spouses and number of living children. Please refer to the new section 60FA (2).

PATERNITY

Should the paternity leave commence on the day of the birth of the child or can it be taken anytime?

The Amendment is silent on such conditions. Companies when designing their policy on paternity leave should allow some exceptions in special cases such as those who are working outstation or away from home or those with some good cause.

WAGES

Are there any changes to the definition of wages?

The Amendment did not include the above.

NIGHT SHIFT PERMIT

With the repealing of Section 34 that prohibits night work for females, are companies required to apply for approval from the Director General (Labour)?

No longer required.

NIGHT SHIFT ALLOWANCE

With the repealing of Section 34 that prohibits night work for females, can the company withdraw the night shift allowance?

The night shift allowance is already an expressed term in the contract of service. It cannot be reduced or withdrawn without the consent of the employee.

SICK LEAVE & HOSPITALISATION LEAVE

Does the Amendment of sick leave and hospitalization leave apply to those employees who are outside the scope of the Employment Act 1955?

The revised FIRST SCHEDULE extends the Sick Leave and Hospitalisation Leave to all employees irrespective of their wages.

Employment Act 1955 Amendment (2022)

FAQ

SICK LEAVE & HOSPITALISATION LEAVE

Do the company require to pro-rate the hospitalization leave entitlement effective 1 September 2022?

You may refer to the illustration below. Please consult the Labour Office or Department or Legal & Enforcement Division of the Labour Department Headquarters for guidance.

Scenario 1			
	Sick Leave (SL)	Hospitalisation Leave (HL)	Total (SL + HL)
Jan'22 to Aug'22 Entitlement	14	46	60
Utilised	5	20	
Balance	9	26	
Additional entitlement for Sep'22 – Dec'22	Not applicable	14 Available: 40	

Scenario 3			
	Sick Leave (SL)	Hospitalisation Leave (HL)	Total (SL + HL)
Jan'22 to Aug'22 Entitlement	14	46	60
Utilised	5	0	
Balance	9	46	
Additional entitlement for Sep'22 – Dec'22	Not applicable	14 Available: 60	

Scenario 2			
	Sick leave (SL)	Hospitalisation leave (HL)	Total (SL + HL)
Jan'22 to Aug'22 Entitlement	14	46	60
Utilised	14	46	
Balance	0	0	
Additional entitlement for Sep'22 – Dec'22	Not applicable	14 Available: 14	

Scenario 4			
	Sick leave (SL)	Hospitalisation leave (HL)	Total (SL + HL)
Jan'22 to Aug'22 Entitlement	14	46	60
Utilised	0	0	
Balance	14	46	
Additional entitlement for Sep'22 – Dec'22	Not applicable	14 Available: 60	

FLEXIBLE WORK ARRANGEMENT (FWA)

Are there any guidelines that specify the conditions or criteria for flexible working arrangement (FWA)?

Section 60Q states that the employee shall make an application for FWA under section 60P in writing and in the form and manner as may be determined by the Director General. The form and manner has not been determined by the Director General as yet. Subsection (2) requires the employer to either approve or refuse the application within sixty days from the date such application and inform the employee in writing under subsection (3). In the event the application is refused, the employer is required to state the ground of such refusal.

FLEXIBLE WORK ARRANGEMENT (FWA)

What would be a good reason to refuse an application for FWA?

The Amendment did not provide guidelines. In our opinion, it shall be left to the company to specify the conditions or criteria and establish their FWA policy.

FLEXIBLE WORK ARRANGEMENT (FWA)

Would there be a concern of discrimination if some applications were to be approved while some others were rejected?

Employers are advised to specify the conditions or criteria and establish their FWA policy. It is also advisable to be transparent, consistent, fair and exercise reasonable judgment when approving or rejecting an application. Do note that Section 60Q requires the employer to either approve or refuse the application for FWA within sixty days from the date such application is received and inform the employee in writing. If the application is refused, the employer is required to state the ground of such refusal.

FLEXIBLE WORK ARRANGEMENT (FWA)

Can employees outside the scope of the Employment Act 1955 (as per the current FIRST SCHEDULE) be eligible to apply for FWA?

The revised FIRST SCHEDULE extends this provision to all employees irrespective of their wages.

FLEXIBLE WORK ARRANGEMENT (FWA)

If the employer is already offering/practicing a flexible working system, does the employer need to make any changes to the existing FWA policy?

The employer would need to extend the FWA coverage to those defined in the FIRST SCHEDULE of the Employment Act 1955 and ensure the provisions of Section 60Q are observed. It requires the employer to either approve or refuse the application for FWA within sixty days from the date such application is received and inform the employee in writing. If the application is refused, the employer is required to state the ground of such refusal.

FLEXIBLE WORK ARRANGEMENT (FWA)

Is there an appeal process for employees if their application is refused?

Companies are advised to provide an avenue for employees to appeal internally. The Amendment do not mention any specific appeal process to the Director General. However, employees will always have the option to seek advice from the nearest Labour Office or Labour Department of the Legal & Enforcement Division of the Labour Department HQ.

FLEXIBLE WORK ARRANGEMENT (FWA)

Section 60Q(1) states that the employee shall make an application for flexible working arrangement in writing and in the form and manner as may be determined by the Director General. Is there a form or criteria that the company needs to follow? Or companies are required to establish their own process or form?

The Amendment did mention that the form and manner will be determined by the Director General not the Human Resources Minister. However, the form and manner have not been determined by the Director General as yet. Companies are advised to seek guidance from the nearest Labour Office or Labour Department or the Legal & Enforcement Division of the Labour Department Headquarters for further clarification.

WORK HOURS

My company operates a production line that runs for 6 days from 8.00 am to 4.00 pm How can the company adjust the work hours with the reduction to 45 hours per week?

There has been numerous discussion and suggestions by members. You may find the discussion here. Furthermore, MEF has also recently issued a circular on work hours. You may want to check that out too.

<https://www.facebook.com/groups/MalaysiaHRForum/permalink/1050740408908194/>

<https://www.facebook.com/groups/MalaysiaHRForum/permalink/1036430240339211/>

<https://www.facebook.com/groups/MalaysiaHRForum/permalink/903529456962624/>

<https://www.facebook.com/groups/MalaysiaHRForum/permalink/1020067951975440/>

WORK HOURS

Do the 45 hours include breaks? Can the company exclude break time from the calculation of 45 hours?

You can exclude break time from the basic hours of work. However, please note that an employee shall not be required to work under section 60A (1):

- (a) more than five consecutive hours without a period of leisure of not less than thirty minutes duration;
- (b) more than eight hours in one day;
- (c) in excess of a spread over period of ten hours in one day;
- (d) more than forty-five hours in one week

Malaysian Employers Federation has also recently issued a circular on work hours. You may want to check that out too if you are a member of MEF.

WORK HOURS

What is the impact of 45 hours per week on the calculation of overtime for monthly and daily rated employees?

The current formula for determining ORP remains unchanged except the work hours shall be 45 instead of 48 hours as is expressly stated in section 60I(1)(b) of the Employment Act 1955 with regards to “hourly rate of pay”.

WORK HOURS

How do the 45 hours distribute equally for those working six (6) days per week or those working five (5) days?

Companies can organize their work hours to meet their operational needs provided the basic hours are limited to 45 hours. A simple illustration is shown below.

	Limitation of basic hours	6 days work	5 days work
Current	48	8 hours per day (excluding break)	9.6 hours per day* (excluding break)
Effective 1 September 2022	45	7.5 hours per day (excluding unpaid break)	9 hours per day* (excluding unpaid break)

** Please note that basic work hours cannot be in excess of a spread over period of ten hours in one day*

WORK HOURS

Our company operates a 12-hour shift in a 6 days work week pattern. How could we revise the working hours without incurring additional overtime from the current 3 hours of overtime we practice?

One option is to increase the break time ...

	Start	End	Duration
Basic hours	7.00 am	11.00 am	4 hours
Break (unpaid) - increase	11.00 am	11.45 am	45 minutes
Basic hours	11.45 am	2.45 pm	3 hours
Break (Unpaid) - increase	2.45 pm	3.30 pm	45 minutes
Basic hours	3.30 pm	4.00 pm	30 minutes
Voluntary Overtime	4.00 pm	7.00 pm	3 hours
Total basic hours			7 hours 30 minutes
Unpaid breaks			1 hour 30 minutes
Voluntary overtime			3 hours
Total hours			12 hours

Section 60A(1a) states that an employee shall not be required under his contract of service to work more than five consecutive hours without a period of leisure of not less than thirty minutes duration.

WORK HOURS

What is defined as night work? Any specific time?

There is a definition of a “day” in section 2 (1) of the Employment Act 1955. Night shift work could be deemed hours of work that commences after sunset and before sunrise. Please seek clarification from the nearest Labour Office or Labour Department or the Legal & Enforcement Division of the Labour Department Headquarters.

WORK HOURS

In a situation whereby 45 hours are fully utilised from Mondays to Fridays, are Saturday and Sunday considered rest days? As previously Saturday is recognized as an off day and in a standby mood whereby the employer can call the employee back to work without extra pay.

1. Section 59(1) states “where an employee is allowed more than one rest day in a week the last of such rest days shall be the rest day ...”.
2. Saturday, shall, in this case, remain an off day while Sunday is a rest day.
3. Work done on an off day beyond basic hours of 45 (hours) shall be paid at a rate not less than one and half times his hourly rate of pay.

OVERTIME

Can the company compel employees (non-manual workers) with wages above RM 4,000 to work beyond the normal hours of work or work on off day or rest day or on public holidays?

In our opinion companies may be able to compel employees whose wages are above RM4000 per month and are not covered by Part X11 of Act. However, the company could opt to pay overtime to those employees based on a flat rate at RM4000 if they perform overtime or provide any other form of compensation or rewards to entice them to work beyond normal hours of work that is mutually accepted by both the company and the employee.

OVERTIME

Currently, our total work hours (excluding unpaid breaks) are less than 45 hours. Do we need to make any changes to our work hours?

So long as your work hours are not more than 45, you need not make any changes.

PUBLIC HOLIDAY

Our company observes a minimum of 11 public holidays for all employees. Can we replace the non-mandatory public holiday with paid annual leave?

Five (5) of the eleven (11) public holidays are mandatory under section 60D (1)(a) of the Act that cannot be substituted for any other days. However, you may substitute the remaining six (6) days with another day or days by agreement between the company and the employee as provided for under the provisos to section 60D (1A) of the Act.

Employment Act 1955 Amendment (2022)

FAQ

OVERTIME

Who qualifies for overtime based on the Amendment?

Please see the below illustration.

	Employees engaged in: <ul style="list-style-type: none">▪ manual labour▪ the operation or maintenance of any mechanically propelled vehicle▪ supervising or overseeing other employees engaged in manual labour	All other employees
Wages up to RM 4000	Yes, overtime provision is applicable	Yes, overtime provision is applicable
Wages above RM 4000	Yes, overtime provision is applicable	No, overtime provision is not applicable

Note:

1. Please refer to the **FIRST SCHEDULE [Section 2(1)]** for a detailed description
2. Domestic employee is not included in this comparison

To learn more about manual labour, please browse

<https://dnh.com.my/what-is-manual-labour/>

<https://conventuslaw.com/report/malaysia-what-is-manual-labour/>

Employment Act 1955 Amendment (2022)

FAQ

OVERTIME

Can an employee be asked to work more than 7.5 hours per day without incurring overtime?

Please see the comparison below to have a deeper understanding.

Current Section 60A	Amended Section 60A
Hours of Work	Hours of Work and Working at Night
<p>Hours of work</p> <p>(1) Except as hereinafter provided, an employee shall not be required under his contract of service to work</p> <p>(a) more than five consecutive hours without a period of leisure of not less than thirty minutes duration;</p> <p>(b) more than eight hours in one day;</p> <p>(c) in excess of a spread over period of ten hours in one day;</p> <p>(d) more than forty-eight hours in one week:</p>	<p>Hours of work</p> <p>(1) Except as hereinafter provided, an employee shall not be required under his contract of service to work</p> <p>(a) more than five consecutive hours without a period of leisure of not less than thirty minutes duration;</p> <p>(b) more than eight hours in one day;</p> <p>(c) in excess of a spread over period of ten hours in one day;</p> <p>(d) more than forty-five hours in one week:</p>

Commentary

1. Employee can still work up to 8 basic hours per day but cannot exceed 45 hours per week if they work 6 days per week.
2. What has changed is the total basic hours per week (48 hours → 45 hours) but other aspects of section 60A remain unchanged.
3. In cases where the employee works 5 days per week or lesser, the basic work hours per day can be up 10 hours but cannot exceed 10 hours without the approval of Director General under section 60 (1A).

HOURLY RATE OF PAY (HRP) & ORDINARY RATE OF PAY (ORP)

What is ORP & HRP

Section 60(I) defines the **ordinary rate of pay (ORP)** & **hourly rate of pay (HRP)** as below;

For more info, please read section 60I for further information including calculations for other methods of pay such as weekly, hourly, daily or piece rated.

Calculations for monthly salaried employees

ORP

$$\frac{\text{Monthly rate of pay}}{26}$$

HRP

$$\frac{\text{Ordinary rate of pay}}{\text{Normal hours of work}}$$

HRP

Combined formula

$$\frac{\text{Monthly rate of pay}}{26 \times 8}$$

Assumption: Basic work hours = 8 hours

Remarks:

- Ordinary rate of pay (ORP) is one day's pay for the day worked
- Monthly rate of pay is 'wages' as defined in Section 2 of EA 1955

Employment Act 1955 Amendment (2022)

FAQ

OVERTIME

How should I calculate the Ordinary Rate of Pay (ORP) with the reduction of work hours from 48 to 45 per week?

In our opinion, the hourly rate of pay should be calculated as below. Please seek guidance from JTK.

Illustration 1	Illustration 2	Illustration 3
5 days work week	5 days work week	5 days work week
Monday – Friday : 9.00am – 6.00pm Unpaid break : 12.00m – 1.00pm	Monday – Friday : 9.00am – 6.00pm Paid break : 12.00m – 1.00pm	Monday – Friday : 9.00am – 5.30pm Unpaid break : 12.00m – 1.00pm
Total paid break : 0 Total unpaid break : 1 hour Total work hour/day : 8 hours Total work hours/week : 40 hours Total days work/week : 5 days Total days work/month : 22 days	Total paid break : 1 hour Total unpaid break : 0 Total work hour/day : 9 hours Total work hours/week : 45 hours Total days work/week : 5 days Total days work/month : 22 days	Total paid break : 0 Total unpaid break : 1 hour Total work hour/day : 7.5 hours Total work hours/week : 37.5 hours Total days work/week : 5 days Total days work/month : 22 days
Hourly Rate of Pay (HRP) Formula Wages / (26 x 8)	Hourly Rate of Pay (HRP) Formula Wages / (26 x 9)	Hourly Rate of Pay (HRP) Formula Wages / (26 x 7.5)

Remarks : Paid break shall be deemed as work hours

Employment Act 1955 Amendment (2022)

FAQ

OVERTIME

How should I calculate the Ordinary Rate of Pay (ORP) with the reduction of work hours from 48 to 45 per week?

In our opinion, the hourly rate of pay should be calculated as below. Please seek guidance from JTK.

Illustration 4	Illustration 5	Illustration 5
6 days work week	5½ days work week	5½ days work week
Monday – Friday : 8.30am – 5.00pm Unpaid break : 12.00pm – 1.00pm	Monday – Friday : 8.30am – 5.30pm Unpaid break : 12.00pm – 1.00pm	Monday – Friday : 8.30am – 4.30pm Paid break : 12.00pm – 1.00pm
Saturday (Full day) : 8.30am – 5.00pm Unpaid break : 12.00m – 1.00pm	Saturday (half day) : 8.30am – 1.30pm No break on Saturday	Saturday (half day) : 8.30am – 1.30pm No break on Saturday
Total paid break : 0 Total unpaid break : 1 hour Total work hour/day : 7.5 hours Total work hours/week : 45 hours Total days work/week : 6 days Total days work/month : 26 days	Total paid break : 0 Total unpaid break : 1 hour Total work hour/day : 8 hours (except Sat) Total work hours/week : 45 hours Total days work/week : 6 days Total days work/month : 26 days	Total paid break : 1 hour Total unpaid break : 0 Total work hour/day : 8 hours (except Sat) Total work hours/week : 45 hours Total days work/week : 6 days Total days work/month : 26 days
Hourly Rate of Pay (HRP) Formula Wages / (26 x 7.5)	Hourly Rate of Pay (HRP) Formula Wages / (26 x 8)	Hourly Rate of Pay (HRP) Formula Wages / (26 x 8)

Remarks : Paid break shall be deemed as work hours

Employment Act 1955 Amendment (2022)

FAQ

CALCULATING OVERTIME PAY

How do we calculate overtime pay for those who are entitled to overtime?

Please find the illustrations below; Please seek guidance from JTK.

	Illustration 1	Illustration 2	Illustration 3
Basic salary	2,200	2,200	2,200
Night shift allowance	120	120	120
Attendance allowance	-	-	-
Transport allowance	100	100	100
Total wages	2,420	2,420	2,420
Total work days/month	26	26	22
Total work days/week	6	6	5
Total work hours/day	7.5	8.0	9.0
Total work hours/week	45	45	45
Ordinary Rate of Pay (ORP)	93.08	93.08	110.00
Hourly Rate of Pay (HRP)	12.41	11.63	12.22
Mondays-Fridays work hours	7.5	8.0	9.0
Saturday work hours	7.5	5.0	-
Saturday work	Full Day	Half Day	-

In the above illustrations, break hours are not paid.
If break hours are paid, the total work hours shall include the break.

Selamat Sejahtera Tuan/Puan,

Formula pengiraan gaji kerja lebih masa bagi memenuhi waktu kerja 45 jam adalah seperti berikut:

1. Sekiranya majikan mengamalkan 6 hari bekerja seminggu dan mengurangkan waktu kerja sehari dari 8 jam kepada 7.5 jam, maka pengiraan Ordinary Rate Pay (ORP) =
Gaji bulanan / (26 hari X 7.5 jam)
1. Sekiranya majikan mengamalkan 6 hari bekerja seminggu dan mengekalkan waktu kerja sehari dari 8 jam (Isnin - Jumaat) dan mengurangkan waktu kerja sehari pada hari Sabtu kepada 5 jam, maka pengiraan Ordinary Rate Pay (ORP) =
Gaji bulanan / (26 hari X 8 jam)

Above is a reply by JTK shared by a member of the Malaysia HR Forum

DEFINITION OF WAGES

How do we define wages in order to determine who is qualified for overtime payment?

In order to determine the above, we first need to understand the definition of wages in **SECTION 2** and the definition of wages in the **FIRST SCHEDULE** of the Employment Act 1955.

Definition of wages in Section 2

Wages means **basic wages** and **all other payments in cash** payable to an employee **for work done** in respect of his contract of service **but does not include:**

- (a) the value of any house accommodation or the supply of any food, fuel, light or water or medical attendance, or of any approved amenity or approved service;
- (b) any contribution paid by the employer on his own account to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement scheme, thrift scheme or any other fund or scheme established for the benefit or welfare of the employee;
- (c) any **travelling allowance** or the value of any traveling concession;
- (d) any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;
- (e) any gratuity payable on discharge or retirement; or
- (f) any annual bonus or any part of any annual bonus

Wages in FIRST SCHEDULE

For the purpose of this Schedule, wages means wages as defined in section 2, **but shall not include** any payment by way of commissions, subsistence allowance and overtime payment.

Employment Act 1955 Amendment (2022)

FAQ



DEFINITION OF WAGES

How do we define wages in order to determine who is **ENTITLED to overtime payment (as stated in FIRST SCHEDULE)?**

The below will be considered as part of wages in order to determine who is entitled to overtime.

Component of Wages	What to be included?
Basic wages and all other payments in cash payable to an employee for work done	✓
Value of any house accommodation or the supply of any food, fuel, light or water or medical attendance, or of any approved amenity or approved service;	X
Any contribution paid by the employer on his own account to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement scheme, thrift scheme or any other fund or scheme established for the benefit or welfare of the employee;	X
Any travelling allowance or the value of any traveling concession;	X
Any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;	X
Any gratuity payable on discharge or retirement; or	X
Any annual bonus or any part of any annual bonus	x
Commission	X
Subsistence Allowance (money given to buy food, clothing, and pay for other necessities while awaiting the first pay.	X
Overtime	X

Employment Act 1955 Amendment (2022)

FAQ

DEFINITION OF WAGES

How do we define wages in order to determine who is qualified for overtime payment?

In our opinion, wages based on Section 2 are as below illustration. Please seek guidance from JTK.

	Illustration 1	Illustration 2	Illustration 3	Illustration 4
Basic salary	RM 4,000	RM 2,500	RM 3,800	RM 3,800
Allowances	-	RM 1,200	RM 150	RM 300
Commission	-	-	RM 200	-
Overtime	-	RM 1,000		-
Total Wages (to determine entitlement to OT)	RM 4,000	RM 3,700	RM 3,950	RM 4,100
Entitled for overtime?	Yes	Yes	Yes	No

Note : The above illustration does not include manual workers

FORCED LABOUR

With the introduction of Section 90B on forced labour, would compulsory/mandatory/schedules/planned overtime be construed as forced labour?

In our opinion, any overtime that is part of the job and has been made known to the employee prior to accepting the job becomes an expressed term of employment. Whether it is forced labour or not will require a close examination of the wording of the section and in our opinion, it may not amount to forced labour if the parties have contractually agreed to do overtime. "If the Letter of Appointment (LOA) states the employees are required to work OT and the employee had acknowledged it, he cannot later refuse to work OT. It is incumbent upon the employee to work OT. Failure to do so is misconduct as has been decided in the Industrial Court Case of Kulitkraf Sdn Bhd v National Union of Workers in Shoes Manufacturing Industry [ICA 256/90]. You can also refer to other Industrial Court Cases 43/80 and 66/82 to fortify your authority.

Read the views of members here:

<https://www.facebook.com/groups/MalaysiaHRForum/permalink/1049280489054186/>

FORCED LABOUR

Does the definition of forced labor in the Amendment follow in accordance with the International Labour Organisation's 11 Forced Labour indicators?

The Amendment did not specify the definition. However, we need to note that Malaysia ratified the Forced Labour Convention 1930 on 21 March 2022.

https://www.ilo.org/global/docs/WCMS_840054/lang--en/index.htm

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029

https://www.mef.org.my/news/pr_article.aspx?@ID=157

<https://www.thestar.com.my/opinion/letters/2022/03/22/malaysias-ratification-of-protocol-to-the-ilo-convention-29-will-better-address-issues-on-forced-labour>

FORCED LABOUR

With this new provision, will this impact the internal job transfer process?

In our opinion, moving an employee on a job transfer is an implied term of employment that is widely practiced and accepted. Companies are advised to be fair and ensure transfers are made in a *bona-fide* manner and comply with prevailing employment regulations.

FORCED LABOUR

Would an employee bond (for the purposes of training) be deemed as forced labour.

There is no specific provision on this.

FORCED LABOUR

With the introduction of Section 90b on forced labour, would a scenario where foreign workers who were promised a particular role during the interview but are placed in another role/job upon reporting to work be deemed as forced labour?

The Amendment did not elaborate further on this. In our opinion, this could be considered as 'deceive' or 'deception'.

Section 90b states that "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 ...".

For those who are keen to learn more on International Labour Organisation's (ILO) 11 Forced Labour Indicators

https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

Employment Act 1955 Amendment (2022)

FAQ

SABAH & SARAWAK

Is this Amendment applicable for Sabah and Sarawak?

The Employment Act 1955 is only applicable to Peninsular Malaysia

FOREIGN WORKERS

Is this Amendment applicable to foreign employees?

The Employment Act 1955 and the recent Amendments are applicable to both Malaysians and foreign employees.

CONTRACTS WORKERS (FIXED TERM CONTRACT)

Is this Amendment applicable to those employees engaged on a fixed-term contract?

The Employment Act 1955 and the recent Amendments are applicable to both permanent and fixed-term contracts.

PROBATIONERS

Is this Amendment applicable to employees on probation?

The Employment Act 1955 and the recent Amendments are applicable to both probationers and confirmed employees. However, the applicability of certain provisions such as paternity leave is only applicable to those who have served the company for more than twelve (12) months.

INDEMNITY FOR TERMINATION OF CONTRACT WITHOUT NOTICE

Since Section 69C which provides an avenue to seek help from Labour Department on claims for indemnity for termination of contract without notice has been repealed, what options does the company have?

Companies may rely on section 69 (2) (iii) of the Employment Act 1955 depending on the outcome of the revised First Schedule and or find alternative options to recover the indemnity from the employee via a civil claim.

COURT ORDER FOR PAYMENTS DUE TO EMPLOYEE

In the new Section 87A, would an employee be required to pay dues to the employee before they are proven guilty? (New section 87: “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.

The provision states when an employer has been convicted. The dictionary meaning of ‘convicted’ is “having been declared guilty by the court”

EMPLOYEE HANDBOOK AND COMMUNICATION ON CHANGES TO EMPLOYEES

Should an employer incorporate the recent Amendments in the employee’s handbook or company policies? And should we communicate to employees about these changes?

It is always advisable to ensure the terms and conditions of employment and legal entitlements are spelled out in the Employee Handbook and/or company policies. Notifying employees of the changes would be a noteworthy effort for educational and transparency purposes.

PRESUMPTION AS TO WHO IS AN EMPLOYEE AND EMPLOYER

Would an engagement of a Contractor/Consultant under Service Agreement for a specific period or task be deemed as an employee or an employer under the new Section 101C?

So long as the conditions stipulated in Section 101C are not present in such engagement, that relationship may not be deemed as an employer or an employee. Below are articles/awards that may help to provide some clarity.

<https://mahwengkwai.com/contract-of-service-or-contract-for-services-part2/>

<https://www.rajasegaran.com/judgement-training-modules/12-Award-no-917-2005.pdf>

<https://premlaw.com/control-test-and-the-position-of-a-director-malaysian-industrial-relation-perspective/>

INFORMATION RELATING TO SUPPLY OF EMPLOYEES

Can anyone supply foreign workers to another company with a written contract?

In 2019, the Government has stopped issuing out-source quotas/approvals. You may want to seek guidance from Labour Department/ Ministry of Home Affairs.

PUBLIC HOLIDAY

Our company observes all gazetted public holiday in the state we operate in. Can we now reduce the public holidays to 11 days for all employees?

If the current terms of employees state the company observes all public holidays, you can only reduce it with the consent of the employees.

NOTICE PERIOD

Currently, our company adopts the following notice period:

During probation period: 1 month, Upon confirmation: 3 months

Do we need to revise the notice period as stipulated in Section 12?

You do not need to revise. Section 12 (2) states that:

- i) The length of such notice shall be the same for both employer and employee, and
- ii) shall be determined by a provision made in writing for such notice in the terms of the contract of service, or,
- iii) **in the absence of such provision in writing**, shall not be less than 4 weeks / 6 weeks / 8 weeks.

Notice of termination of contract

12. (1) Either party to a contract of service may at any time give to the other party notice of his intention to terminate such contract of service.

(2) The length of such notice shall be the same for both employer and employee and shall be determined by a provision made in writing for such notice in the terms of the contract of service, or, in the absence of such provision in writing, shall not be less than—

- (a) four weeks' notice if the employee has been so employed for less than two years on the date on which the notice is given;
- (b) six weeks' notice if he has been so employed for two years or more but less than five years on such date;
- (c) eight weeks' notice if he has been so employed for five years or more on such date:



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