

# LHAG Insights

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Industrial Relations & Employment



## ABOUT THE AUTHOR



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### Amendments to the Employment Act 1955

The past year or so has heralded vast amendments to the Employment Act 1955 (**'the Act'**), the most recent development being the unveiling of the amendments to the First Schedule of the Act.

A summary of the key amendments due to come into force on 1 September 2022 are as follows –

Entitlement / Protection	Pre-amendment	Post-amendment
Applicability of the Act	<p>The Act was only applicable to two categories of employees:</p> <p>(a) regardless of occupation, employees not earning more than RM2,000 a month; and</p> <p>(b) regardless of wages, employees carrying on certain occupation such as manual workers, supervisors of manual workers, employees operating mechanically</p>	<p>The Act will apply to any person who has entered a contract of service/ employment contract.</p> <p>Certain provisions, however, would only apply to a select group of employees earning RM4,000 and below, such as payment for work done on rest days and public holidays, overtime payments and termination/ lay-off benefits. The threshold has therefore been raised</p>

	propelled vehicles, etc.	from RM2,000 to RM4,000.
Hospitalisation leave (sick leave where hospitalisation is necessary)	60 days minus any sick leave taken.	60 days irrespective of any sick leave taken.
Maternity leave	60 days.	98 days.
Early return to work during maternity leave	Yes, if the employee is not entitled to maternity allowance, has the employer's consent, and is certified fit to return by a medical practitioner.	Yes, if the employee has the employer's consent and is certified fit to return by a medical practitioner, regardless of whether she is entitled to maternity allowance.
Paternity leave	No statutory entitlement.	7 consecutive days of paid leave.
Flexible working arrangements	None.	Employees may apply for a flexible working arrangement to vary the hours of work, days of work or place of work. This must be responded by the employer within 60 days. Reasons must be provided in writing if the application is rejected.
Approval for hiring foreign employees	Only required to notify the Director General of Labour (' <b>Director General</b> ') of hiring of foreign employees.	Approval of the Director General is required, which is subject to certain conditions, such as no outstanding matter relating to any decision, order or directive issued under the Act, or has no outstanding matter / case relating to any conviction for

		any offence under the Act, the Social Security Act 1969, the Employees' Minimum Standards of Housing, Accommodations and Amenities Act 1990 or the National Wages Consultative Council Act 2011, or the employer has not been convicted of any offence in relation to anti-trafficking in persons and forced labour.
Prohibition of forced labour	None.	Forced labour is defined as any act of an 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. Forced labour is an offence punishable by a fine and/or imprisonment.
Normal hours of work per week	48 hours a week.	45 hours a week.
Discrimination in employment	Limited to a complaint from a local employee that he is discriminated against in relation to a foreign employee and vice versa in respect of terms and conditions of employment.	A new provision is introduced in lieu of the existing provision which allows the Director General to inquire into and decide any dispute between an employee and his employer in respect of any matter relating to discrimination in employment.

Requirement to exhibit a notice to raise awareness on sexual harassment	None.	Additional obligation imposed on an employer to exhibit conspicuously a notice to raise awareness on sexual harassment at the place of employment.
Protection of pregnant employees or if they are suffering illness arising from pregnancy	Limited to protection from dismissal while on maternity leave.	Extended to provide protection against the dismissal of any pregnant employee, or an employee suffering from an illness arising out of her pregnancy, except in certain situations such as misconduct, wilful breach of condition of the employment contract, or closure of business.
Restrictions on employment of women	Prohibition of female employees to perform night work and underground work.	These restrictions have been removed.
Presumption of employment relationship	None.	Introduces a set of presumptions where an employment relationship shall be presumed until the contrary is proven by the employer.
Increase of penalty	The general penalty for an offence under the Act and penalty for failure to comply with a decision or order of the Director General was RM10,000.	The penalty has been increased to RM50,000.

With the expansion to coverage provided under the Act, the Act shall now apply across the board to all employees, irrespective of wages or occupation. This would include provisions such as annual leave, sick leave, lawful deductions, wage period, time of



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payment of wages, system of payment of wages etc. The increase of the threshold from RM2,000 to RM4,000 would also result in a wider range of employees being statutorily entitled to overtime payments and payments for work done on rest days and public holidays. As such, employers should review their current terms and conditions of employment captured in the employment contracts, employee handbook and policies to ensure due compliance.

Employers should also take steps to, among others, craft and display a notice in the workplace to raise awareness on sexual harassment and possibly, prepare the necessary application forms, guidelines, and policies on flexible working arrangements in anticipation of the amendments due to come into force on 1 September 2022.

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