**LAWS OF MALAYSIA**

**PROPOSED AMENDMENT TO EMPLOYMENT ACT 1955 [ACT 265]**

**(FEEDBACK FROM)**

**THE NATIONAL COUNCIL OF WOMEN’S ORGANISATIONS, MALAYSIA (NCWO)**

**26 October 2018**

| **SECTION** | **ORIGINAL PROVISION** | **PROPOSED AMENDMENT** | **COMMENT** |
| --- | --- | --- | --- |
|  | **PART I**  **PRELIMINARY** | **PART I**  **PRELIMINARY** |  |
| 2(1) | “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; | “contractor for labour” means-   1. **a person who contracts with a principal, to supply the labour required for the execution of the whole or any part of any work; or** 2. **a person who contracts with a 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; or** 3. **a person who contracts to supply labour required for the purpose of paragraph (a) and (b).** | We have the following serious concerns with having “contractor for labour” which discriminates legitimate workers and puts them at a great disadvantage :   * An employee must be directly employed by the principal/owner of the workplace to ensure worker rights and trade union rights are protected. * All workers at a workplace must be employees, only then will the workplace owner/employer have all employer obligations to that employee. * Only employees of the workplace have a right to join trade unions at the workplace, and benefit from the advantages in a Collective Bargaining Agreement, which is an Agreement between a union of (or representing) all employees of the workplace and the owner/principal of the workplace. Workers supplied by the ‘contractor for labour’ now are not employees of the principal/owner of the owner/principal of the workplace, hence have no right to enjoy benefits of Collective Bargaining Agreement. * Workers supplied by ‘contractor for labour’ are not EMPLOYEES of the principal/owner of the workplace. Hence, they do not enjoy same rights – wages and all other rights that employees get. The workers supplied could easily lose their ‘job’ at the factory – a simple phone call to the ‘contractor for labour’ will result in a new worker supplied...so no show cause letter, no Domestic Inquiry. When the ‘dismissed’ worker goes back to the contractor for labour, who really does not have any job or work of their own – so, retrenchment? Or being sent to another workplace- with lower wages maybe even in a diferent sector? * Contractor For Labour system also weakens unions at the workplace – Employers no need to listen to union demands as they can always simply resort to supplied workers by contractor for labour. In some companies, the number of workplace employees are declining as employers choose more and more to use workers supplied – in some, it is said the workforce has less than 50% actual employees (who can be union members enjoying benefits of CBA). * Workers supplied by ‘contractor for labour’ cannot join In-House Trade Unions, which are for employees of the principal/owner of workplace. They may join National/Regional Unions...but then they would not still be able to enjoy benefits of Collective Bargaining Agreement. * Contractor For Labour enters agreement with principal/owner of workplace that need workers – and the agreement is to supply a certain number of workers...and for payment of the hours of work. The owner/principal pays the Contractor For Labour, who then pay their ‘employees’ – so for the direct work of supplied workers, the Contractor for Labour continously profits. In many cases after taking their profits, wages are paid to the workers. * A comparison is the Employment Agency – they help employers find workers, who then are employees of the principal/owner of workplace – for their service, they are paid a one off fee. Contractor for Labour on the other hand continues to earn profits from their workers...the more they work...the more Overtime...the more the profits of the Contractor For Labour. |
| 2(1) | “domestic servant” means a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business, or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child’s nurse, valet, footman, gardener, washerman or washerwoman, watchman, groom and driver or cleaner of any vehicle licensed for private use; | “domestic ~~servant~~ **employee**” means a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business, or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child’s nurse, valet, footman, gardener, washerman or washerwoman, watchman, groom and driver or cleaner of any vehicle licensed for private use; | Agreaable with the amendment as it reasserts the dignity that needs to be accorded to domestic work. In the same light to also amend “house-servant” to “housekeeper”. |
|  | **Nil** | **“forced labour” means the condition of any person who provides labour or services by the use of threat or deception, a reasonable person in the position of the victim would not consider himself to be free:**   1. **to cease providing the labour or services; or** 2. **to leave the place or area where the victim provides the labour or services.** | **OK** |
| 2(1) | “foreign domestic servant” means a domestic servant who is not a citizen or a permanent resident; | “foreign domestic ~~servant~~ **employee**” means a domestic ~~servant~~ **employee** who is not a citizen or a permanent resident; | OK - Agreaable with the amendment as it reasserts the dignity that needs to be accorded to domestic work. |
| 4 | **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. | **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. | * Propose remove the requirement of ‘writing’ as workers could also be illiterate or have no (or little) knowledge of Malay or English. * Propose that decisions are be made only after hearing both the Employer and the workers – not just after hearing one party (or on the application of one party) - both parties should have the right to be heard before a decision is made.. |
|  | **Nil** | **PART IA**  **PRE-EMPLOYMENT** |  |
|  | **Nil** | **Notification of vacancy and placement, and advertising vacancies**  **(1) The Director General may at any time require any employer to furnish him any vacancy in the manner and within the period as determined.**  **(2) Any employer who fails to comply with subsection (1) commits an offence.** |  |
|  | **Nil** | **Registration of Job Seekers**  **(1) Any person who wishes to seek a job may register as determined by the Director General.**  **(2) For the purpose of subsection (1), the Director General may-**   1. **within thirty days arrange for an interview with the job seeker;** 2. **evaluate the jobseeker on his qualification and any training requirement that is needed to secure a job;** 3. **facilitate to enhance the job seeker’s skills; and** 4. **arrange for an interview with prospective employers.**   **For the purpose of this Part, “job seeker” means any person who is seeking for employment.** |  |
|  | **Nil** | **Organising job fair or carnival**  **(1)** **No person shall organise a job fair or carnival unless he has obtained an approval as determined by the Director General.**  **For the purpose of this section, “job fair or carnival” means where any person organises a programme to recruit job seeker for more than one employer.**  **(2) Notwithstanding subsection (1), an employer may organise a job fair or carnival for filling his vacancies in his establishment.**  **(3) Any person who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.** |  |
|  | **Nil** | **Discrimination in pre-employment**  **(1) An employer shall not discriminate against a job seeker on the grounds of gender, religion, race, disability, language, marital status and pregnancy:**   1. **in determining who should be offered employment including advertisement of the vacancy; or** 2. **in the terms or conditions on which employment is offered.**   **Provided that any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.**  **(2) The Director General may inquire into any complaint that an employer practices discrimination on the grounds of gender, religion, race, disability, language, marital status and pregnancy and the Director General may issue to the employer such directives as may be necessary or expedient to resolve the matter.**  **(3) An employer who fails to comply with any directive of the Director General issued under subsection (2) commits an offence.** | To add : Definition of Discrimination itself. The UK Equality Act 2010 is a good reference.  To add : discrimination which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation  To add : …pregnancy and parental status  To add : …vacancy and including questions asked of applicant during the recruiting process.  To add : no discrimination based on ethnicity.  To add : no discrimination based on health condition (including non communicable diseases while working…like HIV,AIDS, Sexually Transmitted Diseases,…)  To add : employer must take all means of action to eliminate discrimination and achieve equality in the workplace. This will include setting in place measures to address all forms of discrimination in the workplace ie in the facilities and policies. |
|  | **PART II**  **CONTRACTS OF SERVICE** | **PART II**  **CONTRACTS OF SERVICE** |  |
| 7C | **Nil** | **Presumption as to who is employee.**  **A person who works for or renders services to any other person is presumed until the contrary is proven to be an employee, regardless of the form of the contract, if any one or more of the following factors is present-**  **(1) the manner of work is subject to the control or direction of the other person;**  **(2) the particular hours of work are subject to the control or direction of the other person;**  **(3) the person’s work constitute integral part of the other person’s business;**  **(4) the work is performed solely or mainly for the benefit of the other person;**  **(5) the person is provided with tools, raw materials or work equipment by the other person;**  **(6) payment of wages is made to the person at regular intervals of time; or**  **(7) such wages constitutes the person’s sole or principal source of income.** |  |
| 10 | **Contracts to be in writing and to include provision for termination.**   1. A contract of service for a specified period of time exceeding one month or for the performance of a specified piece of work, where the time reasonably required for the completion of the work exceeds or may exceed one month, shall be in writing. 2. In every written contract of service a clause shall be included setting out the manner in which such contract may be terminated by either party in accordance with this Part. | **Contracts to be in writing and to include provision for termination.**  (1) A contract of service ~~for a specified period of time exceeding one month or for the performance of a specified piece of work, where the time reasonably required for the completion of the work exceeds or may exceed one month,~~ shall be in writing.  Remain | * Translation of Contracts must be also provided in language of the workers(noting that not all workers in Malaysia can read English or Malay contracts) or even understand language used which could be legal/complicated terms beyond the comprehension of workers. * (2) – The law should determine clearly:- Disciplinary proceeding stages:- Show Cause Letter, Domestic Inquiry Procedure/Rights – including right to be represented by lawyer or legal representatives) * Right to refer questions to the Labour Department or Court during Disciplinary proceedings.. |
| **17B** | **Nil** | **Discrimination in employment.**   1. **No employer shall discriminate againts employees in respect of employment and occupation on the basis of gender, religion, race, or disabilities unless such treatment is not possible due to the inherent requirements of the employment.** 2. **The Director General may inquire into any complaint from an employee that an employer practices discrimination on the basis of gender, religion, race, disabilities or as may be prescribed by the Minister** **in relation to terms and conditions of employment; and the Director General may issue to the employer such directives as may be necessary or expedient to resolve the matter.**   **Provided that any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.**   1. **An employer who fails to comply with any directive of the Director General issued under subsection (2) commits an offence.** | To add :   * Definition of discrimination * Discrimination based on age, ethnicity, medical condition, marital status, pregnancy, parental status. |
| **17C** | **Nil** | **Prohibition of forced labour**  **(1) Subject to the Federal Constitution, all form of forced labour is prohibited.**  **(2) No person may for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subsection (1).**  **(3) Any person who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit.** |  |
|  | **PART III**  **PAYMENT OF WAGES** | **PART III**  **PAYMENT OF WAGES** |  |
| 22 | **Limitation of advances to employees**  (2) For the purposes of this section, “immediate family members” means the employees’ parents, children, siblings, or any other person under the employee’s guardianship. | **Limitation of advances to employees**  (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. |  |
|  | **PART V**  **SYSTEM OF PAYMENT OF WAGES** | **PART V**  **SYSTEM OF PAYMENT OF WAGES** |  |
| **25.** | **Wages to be paid through bank**  (1) The entire amount of wages earned by, or payable to, any employee in respect of any work done by him less any lawful deductions, shall be actually paid to him through payment into an account at a bank, finance company, financial institution or other institutions licensed or established under the Banking and Financial Institutions Act 1989 [*Act 372*] or any other written law, in any part of Malaysia being an account in the name of the employee or an account in the name of the employee jointly with one or more other persons as stipulated by the employee.   1. Every employee shall be entitled to recover in thecourts so much of his wages, exclusive of sums lawfully deducted under Part IV, as shall not have been actually paid to him in accordance with subsection (1). 2. Nil | **Wages to be paid through ~~bank~~ financial institution**  25. (1) The entire amount of wages earned by, or payable to, any employee in respect of any work done by him less any lawful deductions, shall be actually paid to him through payment into an account ~~at a bank, finance company, financial institution or other institutions licensed or established under the Banking and Financial Institutions Act 1989 [~~*~~Act 372~~*~~] or any other written law, in any part of Malaysia being an account~~ in the name of the employee or an account in the name of the employee jointly with one or more other persons as stipulated by the employee **which is maintained with a financial institution.**  (2) Remain  **(3) For the purposes of this Part, “financial institution” refers to-**  ***(a)* a licensed bank under the Financial Services Act 2013 [*Act 758*];**  ***(b)* an Islamic bank under the Islamic Financial Services Act 2013 [*Act 759*];**  ***(c)* a prescribed institution under the Development Financial Institutions Act 2002 [*Act 618*] or any other account maintained with an entity approved under the Act 758 and Act 759 as may be specified in an order by the Minister;**  ***(d)* an institution licensed, authorised, permitted, registered or established, pursuant to any other written law and authorized to accept deposit; and**  ***(e)* any other person prescribed by the Minister of Finance as a financial institution for purposes of this Part.** |  |
| **25A**. | **25A. Payment of wages other than through bank**  (1) Notwithstanding subsection 25(1), an employer may, upon a written request of the employee, other than a domestic servant, make payment of his employee’s wages—  (a) in legal tender; or  (b) by cheque made payable to or to the order of the employee. | **25A. Payment of wages other than through ~~bank~~ financial institution**  (1) Notwithstanding subsection 25(1), an employer may, upon a written request of the employee, ~~other than a domestic servant,~~ make payment of his employee’s wages—  (a) in legal tender; or  (b) by cheque made payable to or to the order of the employee. |  |
|  | (2) In the case of a domestic servant, the employer shall, upon the request of his domestic servant, obtain approval from the Director General for the payment of wages of the domestic servant to be paid in legal tender or by cheque.  (2A) Nil | 1. ~~In the case of a domestic servant,~~ The employer shall, upon the **written** request of his ~~domestic servant~~ **employee**, obtain approval from the Director General for the payment of wages of the ~~domestic servant~~ **employee** to be paid in legal tender or by cheque.   **(2A) The Director General may impose any condition in respect of approval granted under subsection (2).** |  |
|  | (3) The request by the employee under subsections (1) and (2) may be withdrawn by the employee at any time, by notice in writing, to the employer.  (4) The notice referred to in subsection (3) shall take effect at, but not before, the end of the period of four weeks beginning with the day on which the notice is given.  (5) The request of the employee to the mode of payment of wages under subsections (1) and (2) shall not be unreasonably withheld by the employer.  (6) Any dispute arising out of the request by the employee under subsections (1) and (2) shall be referred to the Director General whose decision on the matter shall be final.  (7) Section 69 shall not apply in respect of any dispute under subsection (6). | Remain  Remain  Remain  Remain  Remain |  |
| **25B.** | **Nil** | **25B. Power of Director General to enquire into any information in respect of payment of wages and all other payments arises from a contract of service**  **The Director General may require for disclosure of any information from any financial institution with regard to the payment of wages and all other payments entered into or caused to be entered into in respect to a contract of service.** | * Give the DG power of inspection without notice |
|  | **PART VII**  **CONTRACTORS, PRINCIPALS AND CONTRACTORS FOR LABOUR** | **PART VII**  **~~CONTRACTORS,~~ PRINCIPALS, CONTRACTORS, SUB-CONTRACTORS AND CONTRACTORS FOR LABOUR** |  |
| 33 | **Liability of principals and contractors for wages**  (1) Where a principal in the course of or for the purposes of his trade or business, contracts with a contractor for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, and any wages are due to any employee by the contractor or any sub-contractor under the contractor for work done in the course of the performance of the contract, the principal and the contractor and any such sub-contractor (not being the employer) shall be jointly and severally liable with the employer to pay such wages as if that employee had been immediately employed by the principal and by the contractor and any such sub-contractor:  Provided that-  *(a)* in the case of a contract for constructional work the principal shall not be liable for the payment of wages under this subsection unless he is also a constructional contractor or a housing developer;  *(b)* the principal, and the contractor and any sub-contractor (not being the employer), shall not be liable to any employee under this subsection for more than the wages due to him for any three consecutive months; and    *c)* the employee shall have instituted proceedings against the principal for the recovery of his wages or made a complaint to the Director General under Part XV within ninety days from the date on which such wages became due for payment by his employer in accordance with the provisions for the payment of wages contained in Part III.  **(1A) Nil.**  (2) Any person, other than the employer, who has paid wages under this section to the employee of any employer may institute civil proceedings against such employer for the recovery of the amount of wages so paid. | **Liability of principals, ~~and~~ contractors, sub-contractors and contractors for labour for wages**  Remain  Remain.  Remain.  Remain.  Remain.  **(1A) Subsection (1) shall also be applicable to contractor for labour.**  Remain. | Please see our above-mentioned concerns re contractor and sub-contractor for labour in 2 (1). |
| 33B | **Nil** | **Verification of agreement by a contractor for labour**   1. **Any agreement for supply of labour shall be in writing and may subject to verification by the Director General.** 2. **For the purpose of subsection (1), the Director General may request any document relating to the agreement.** 3. **Any person who contravenes subsection (1) commits an offence.** |  |
|  | **PART VIII**  **EMPLOYMENT OF WOMEN** | **~~PART VIII~~**  **~~EMPLOYMENT OF WOMEN~~** | Positive amendments in this section – we are in agreement. |
| 34 | **Prohibition of Night Work**  (1) Except in accordance with regulations made under this Act or any exemption granted under the proviso to this subsection no employer shall require any female employee to work in any industrial or agricultural undertaking between the hours of ten o‘clock in the evening and five o’clock in the morning nor commence work for the day without having had a period of eleven consecutive hours free from such work:  Provided that the Director General may, on application made to him in any particular case, exempt in writing any female employee or class of female employees from any restriction in this subsection,subject to any conditions he may impose.  (2) Any person-   1. who is affected by any decision made or condition imposed under the proviso to subsection (1);and 2. who is dissatisfied with such decision or condition,   may within thirty days of such decision or condition being communicated to him appeal in writing therefrom to the Minister.  (3) In deciding any appeal made to him under subsection (2), the Minister may make such decision or order thereon, including the alteration or removal of any condition imposed or the imposition of any further condition, as appears just and such decision or order shall be final. | **~~34. Prohibition of Night Work~~**  (1) ~~Except in accordance with regulations made under this Act or any exemption granted under the proviso to this subsection no employer shall require any female employee to work in any industrial or agricultural undertaking between the hours of ten o‘clock in the evening and five o’clock in the morning nor commence work for the day without having had a period of eleven consecutive hours free from such work:~~  ~~Provided that the Director General may, on application made to him in any particular case, exempt in writing any female employee or class of female employees from any restriction in this subsection,subject to any conditions he may impose.~~  (2) ~~Any person-~~   1. ~~who is affected by any decision made or condition imposed under the proviso to subsection (1);and~~ 2. ~~who is dissatisfied with such decision or condition,~~   ~~may within thirty days of such decision or condition being communicated to him appeal in writing therefrom to the Minister.~~  (3) ~~In deciding any appeal made to him under subsection (2), the Minister may make such decision or order thereon, including the alteration or removal of any condition imposed or the imposition of any further condition, as appears just and such decision or order shall be final.~~ |  |
| 35 | **Prohibition of underground work**  No female employee shall be employed in any underground working. | **~~35. Prohibition of underground work~~**  ~~No female employee shall be employed in any underground working.~~ |  |
| 36. | **Prohibition of employment by Minister**  **Notwithstanding the provisions of this Part the Minister may by order prohibit or permit the employment of female employees in such circumstances or under such conditions as may be described in such order.** | **~~36. Prohibition of employment by Minister~~**  **~~Notwithstanding the provisions of this Part the Minister may by order prohibit or permit the employment of female employees in such circumstances or under such conditions as may be described in such order.~~** |  |
|  | **PART IX**  **MATERNITY PROTECTION** | **PART IX**  **MATERNITY PROTECTION** |  |
| **37.** | **Length of eligible period and entitlement to maternity allowance.**  (1) (a) Every female employee shall be entitled-  (i) to maternity leave for an eligible period in respect of each confinement; and  (ii) subject to this Part, to receive from her employer a maternity allowance to be calculated or prescribed as provided in subsection (2) in respect of the eligible period. | **Length of eligible period and entitlement to maternity allowance**.  Remain  Remain  Remain |  |
|  | *(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. | *(aa)* Remain |  |
|  | (b) Subject to section 40, maternity leave shall not commence earlier than a period of thirty days immediately preceding the confinement of a female employee or later than the day immediately following her confinement:  Provided that where a medical officer or the registered medical practitioner appointed by the employer certifies that the female employee as a result of her advanced state of pregnancy is unable to perform her duties satisfactorily, the employee may be required to commence her maternity leave at any time during a period of fourteen days preceding the date of her confinement as determined in advance by the medical officer or the registered medical practitioner appointed by the employer.  *(bb)* Where a female employee abstains from work to commence her maternity leave on a date earlier than the period of thirty days immediately preceding her confinement, such abstention shall not be treated as maternity leave and she shall not be entitled to any maternity allowance in respect of the days during which she abstains from work in excess of the period of thirty days immediately preceding her confinement. | Remain  Remain |  |
|  | *(c)* Notwithstanding subparagraph *(a)*(ii), a female employee shall not be entitled to any maternity allowance if at the time of her confinement she has five or more surviving children. | Remain |  |
|  | *(d)* For the purposes of this Part-  (i) "children" means all natural children, irrespective of age; and | Remain |  |
|  | (ii) "eligible period" means a period of maternity leave of not less than sixty consecutive days. | (ii) “eligible period” means a period of maternity leave of not less than ~~sixty~~ **ninety eight** consecutive days. |  |
|  | (2)*(a)* A female employee shall be entitled to receive 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) she has been employed by the employer at any time in the four months immediately before her confinement; | Remain |  |
|  | *(b)* A female employee who is eligible for maternity allowance under paragraph (1)*(a)* shall be entitled to receive from the employer for each day of the eligible period a maternity allowance at her ordinary rate of pay for one day, or at the rate prescribed by the Minister under paragraph 102(2)*(c)*, whichever is the greater. | Remain |  |
|  | *(c)* A female employee employed on a monthly rate of pay shall be deemed to have received her maternity allowance if she continues to receive her monthly wages during her abstention from work during the eligible period without abatement in respect of the abstention.  *(d)* Where a female employee claims maternity allowance under this section from more than one employer, she shall not be entitled to receive a maternity allowance of an amount exceeding in the aggregate the amount which she would be entitled to receive if her claim was made against one employer only.  (3) Where there are more employers than one from whom the female employee would be entitled to claim maternity allowance in accordance with subsection (2) the employer who pays the maternity allowance shall be entitled to recover from such other employer, as a civil debt, a contribution which shall bear the same proportion to the amount of the maternity allowance paid to the female employee as the number of days on which she worked for such other employer during the period of nine months immediately preceding her confinement bears to the total number of days on which she worked during the said period:  Provided that if the female employee has failed to comply with subsection 40(1) or (2), the employer who pays the maternity allowance shall not thereby be prevented from recovering contribution calculated in accordance with this subsection. | Remain  Remain  Remain |  |
|  | (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 purpose of this section, such termination shall not include termination on the ground of closure of the employer's business. | ~~(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 purpose of this section, such termination shall not include termination on the ground of closure of the employer's business.~~ |  |
| 42. | **Restriction on dismissal of female employee after eligible period**.  42. (1) Where a female employee remains absent from her work after the expiration of the eligible period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy and confinement and to render her unfit for her work, it shall be an offence, until her absence exceeds a period of ninety days after the expiration of the eligible period, for her employer to terminate her services or give her notice of termination of service.  (2) Subject to subsection (1), where the service of a female employee is terminated with wages in lieu of notice at any time during the period of four months immediately preceding her confinement, she shall, in computing the period of her employment for the purposes of this Part, be deemed to have been employed as if she had been given due notice instead of wages in lieu thereof.  (3) Nil | Restriction on ~~dismissal~~ **termination** of female employee after eligible period **or during maternity leave and on the ground of pregnancy**  Remain    Remain  **(3) Any employer who terminates the service of a female employee on the ground of pregnancy, or during the period in which she is entitled to maternity leave commits an offence:**  **Provided that for the purpose of this section, such termination shall not include termination on the ground of closure of the employer's business.** | To add : institute remedies e.g. compensation (clearly stated in the Act) for women who have been terminated on the basis of pregnancy. |
| 44A | **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. | **~~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.~~ |  |
|  |  |  | Parents to also include adoptive parents – reference legislations in UK, New Zealand and Singapore |
|  | **Part XI**  **DOMESTIC SERVANTS** | **Part XI**  **DOMESTIC ~~SERVANTS~~ EMPLOYEE** |  |
| 57 | |  |  | | --- | --- | | **Termination of contract**   |  | | --- | | Subject to any express provision to the contrary contained therein, a contract to employ and to serve as a domestic servant may be terminated either by the person employing the domestic servant or by the domestic servant giving the other party fourteen days' notice of his intention to terminate the contract, or by the paying of an indemnity equivalent to the wages which the domestic servant would have earned in fourteen days:  Provided that any such contract may be terminated by either party without notice and without the paying of an indemnity on the ground of conduct by the other party inconsistent with the terms and conditions of the contract. | | | |  |  | | --- | --- | | **Termination of contract**   |  | | --- | | Subject to any express provision to the contrary contained therein, a contract to employ and to serve as a domestic ~~servant~~ **employee** may be terminated either by the person employing the domestic ~~servant~~ **employee** or by the domestic ~~servant~~ **employee** giving the other party  fourteen days' notice of his intention to terminate the contract, or by the paying of an indemnity equivalent to the wages which the domestic ~~servant~~ **employee** would have earned in fourteen days:  Provided that any such contract may be terminated by either party without notice and without the paying of an indemnity on the ground of conduct by the other party inconsistent with the terms and conditions of the contract. | | | Period of notice of termination of leave for domestic employees should be the same as other employees. In which case section 57 should be removed and section 12 (notice of termination of contract) should include domestic employees. |
| 57A | **Employment of foreign domestic servant**  (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. | **Employment of foreign domestic ~~servant~~ employee**  (1) An employer who employs a foreign domestic ~~servant~~ **employee** 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. |  |
| 57B | **Duty to inform Director General of termination of service of foreign domestic servant.**  (1) If the service of a foreign domestic servant is terminated-  *(a)* by the employer;  *(b)* by the foreign domestic servant;    *(c)* upon the expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign domestic servant; or  *(d)* by the repatriation or deportation of the foreign domestic servant, the employer shall, within thirty days of the termination of service, inform the Director General of the termination in a manner as may be determined by the Director General.   1. For the purpose of paragraph (1)*(b)*, the termination of service by a foreign domestic servant includes the act of the foreign domestic servant absconding from his place of employment.   (3) An employer who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit. | **Duty to inform Director General of termination of service of foreign domestic ~~servant~~ employee.**  (1) If the service of a foreign domestic ~~servant~~ **employee** is terminated-  *(a)* by the employer;  (b) by the foreign domestic ~~servant~~ **employee**;  *(c)* upon the expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign domestic ~~servant~~ **employee**; or  *(d)* by the repatriation or deportation of the foreign domestic ~~servant~~ **employee**, the employer shall, within thirty days of the termination of service, inform the Director General of the termination in a manner as may be determined by the Director General.  (2) For the purpose of paragraph (1)*(b)*, the termination of service by a foreign domestic ~~servant~~ **employee** includes the act of the foreign domestic servant absconding from his place of employment.  (3) An employer who contravenes subsection (1) commits an offence~~,.~~ ~~be liable to a fine not exceeding ten thousand ringgit.~~ | Propose :   * Part 1(c) to be deleted. Expiry of employment pass is more often as a result of failure to do so on the part of the employer. Many employers continue to wrongfully hold the passports of their domestic employee or delay renewal resulting in lapse of employment pass, leaving the employee suffer the consequenses. * In (d) to ensure policy in place for an investigation to be conducted by the Director General to determine that all complaints are addressed and outstanding wages are settled by employer prior to worker’s departure. |
|  | **PART XII**  **REST DAYS, HOURS OF WORK, HOLIDAYS AND OTHER CONDITIONS OF SERVICE** | **PART XII**  **REST DAYS, HOURS OF WORK, HOLIDAYS AND OTHER CONDITIONS OF SERVICE** |  |
| 60A. | **Hours of work**  (1) Except as hereinafter provided, an employee shall not be required under his contract of service to work—  *(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-eight hours in one week:  Provided that—  (i) for the purpose of paragraph (1)*(a)*, any break of less than thirty minutes in the five consecutive hours shall not break the continuity of that five consecutive hours;  (ii) an employee who is engaged in work which must be carried on continuously and which requires his continual attendance may be required to work for eight consecutive hours inclusive of a period or periods of not less than forty-five minutes in the aggregate during which he shall have the opportunity to have a meal; and  (iii) where, by agreement under the contract of service between the employee and the employer, the number of hours of work on one or more days of the week is less than eight, the limit of eight hours may be exceeded on the remaining days of the week, but so that no employee shall be required to work for more than nine hours in one day or forty-eight hours in one week. | **Hours of work**  Remain  Remain  Remain  Remain  *(d)* more than ~~forty-eight~~ **forty-four** hours in one week:  Provided that—  (i) for the purpose of paragraph (1)*(a)*, any break of less than thirty minutes in the five consecutive hours shall not break the continuity of that five consecutive hours;  Remain  (iii) where, by agreement under the contract of service between the employee and the employer, the number of hours of work on one or more days of the week is less than eight, the limit of eight hours may be exceeded on the remaining days of the week, but so that no employee shall be required to work for more than nine hours in one day or ~~forty-eight~~ **forty-four** hours in one week. |  |
| 60A (10) | **Nil.** | **(1) An employer who engages any employee for night work between the hours of ten o‘clock in the evening and five o’clock in the morning shall-**   * 1. **ensure the safety of the employee; and**   2. **not commence work for the day without having had a period of eleven consecutive hours free from such work;**  1. **For the purpose of subsection (1), an employer may provide transport services for the employee.** | * Employers need to provide transportation to and from home of workers. Note that public transport generally is not available in most areas after certain hours of the day(or ig generally not available in smaller towns). Taxi also charges increased rates after certain hours. |
| 60F. | **Sick leave.**    60F. (1) An employee shall, after examination at the expense of the employer—    (a) by a registered medical practitioner duly appointed by the employer; or    (b) if no such medical practitioner is appointed or, if having regard to the nature or circumstances of the illness, the services of the medical practitioner so appointed are not obtainable within a reasonable time or distance, by any other registered medical practitioner or by a medical officer, be entitled to paid sick leave,—    (aa) where no hospitalization is necessary,—    (i) of fourteen days in the aggregate in each calendar year if the employee has been employed for less than two years;    (ii) of eighteen days in the aggregate in each calendar year if the employee has been employed for two years or more but less than five years;    (iii) of twenty-two days in the aggregate in each calendar year if the employee has been employed for five years or more; or    (bb) of sixty days in the aggregate in each calendar year if hospitalization is necessary, as may be certified by such registered medical practitioner or medical officer:    Provided that the total number of days of paid sick leave in a calender year which an employee is entitled to under this section shall be sixty days in the aggregate;    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.    (1A) An employee shall also be entitled to paid sick leave under paragraphs (1)(aa) and (bb) after examination by a dental surgeon as defined in the Dental Act 1971 [Act 51]:    Provided that the entitlement for such sick leave shall be inclusive of the number of days provided for under paragraphs (1)(aa) and (bb).    (2) An employee who absents himself on sick leave—    (a) which is not certified by a registered medical practitioner or a medical officer as provided under subsection (1) or a dental surgeon as provided under subsection (1A); or    (b) which is certified by such registered medical practitioner or medical officer or dental surgeon, but without informing or attempting to inform his employer of such sick leave within forty-eight hours of the commencement thereof,    shall be deemed to absent himself from work without the permission of his employer and without reasonable excuse for the days on which he is so absent from work.    (3) The employer shall pay the employee his ordinary rate of pay for every day of such sick leave, and an employee on a monthly rate of pay shall be deemed to have received his sick leave pay if he receives from his employer his monthly wages, without abatement in respect of the days on which he was on sick leave, for the month during which he was on such sick leave.    (4) No employee shall be entitled to paid sick leave for the period during which the employee is entitled to maternity allowance under Part IX, or for any period during which he is receiving any compensation for disablement under the Workmen’s Compensation Act 1952 [Act 273], or any periodical payments for temporary disablement under the Employees Social Security Act 1969 [Act 4]. | **60F. Sick leave.**  Remain  Remain  Remain  Remain  Remain  Remain  Remain  Remain  Remain  Remain  Remain  ~~Provided that the entitlement for such sick leave shall be inclusive of the number of days provided for under paragraphs (1)(aa) and (bb).~~  Remain  Remain  Remain  Remain  Remain  Remain | * The right to be examined by a government clinic/hospital should be there as an alternative.. * Entitlement to claim(or to be reimbursed) for cost of travel in cases where access to clinic or hospital may be difficult / costly. Maybe a ratebased on distance should be provided if transportation had to be provided by some other, not a usual public transport provider who could provide a required receipt for claims.(A reality in smaller towns and rural areas) * The provision for increased entitlements is on the assumption of REGULAR employment – with short-term contract employment where usually contract term does not exceed 12 months, workers lose out. |
| **60IA** | Nil. | **60IA. Calculation of wages for incomplete month of work**     1. **Where an employee is employed on a monthly rate of pay and has not completed the whole month of service due to-** 2. **he commences employment after the first day of the month;** 3. **his employment is terminated before the end of the month;** 4. **he takes leave of absence without pay for one or more days of the months;** 5. **he takes leave of absence to perform his national service under *Akta Latihan Khidmat Negara 2003 (Akta 628)* or voluntary service under *Akta Angkatan Tentera (Pindaan) 2005 (Akta A1243)* and *Akta Polis 1967 (Akta 344)*.**   **(2) His wages shall be calculated according to the following formula:**   |  |  |  | | --- | --- | --- | | **Monthly Wages** | **X** | **Number of days eligible in the wage period** | | **Number of days of the particular wage period** | | PAID ANNUAL LEAVE –  Administration of Justice Leave   * Paid leave if worker is required to attend the Labour Department, IRD, Court, be in Labour Court/Industrial Court or any other Court/Tribunal as claimant and/or witness or as required by the said enforcement agency to assist in any investigation, etc * In this case absence is not simply because the worker wants to be absent – as such, workers must be entitled to PAID LEAVE if his/her presence is required by such government agencies/departments and/or court. |
|  | **PART XIIB**  **EMPLOYMENT OF FOREIGN EMPLOYEES** | **PART XIIB**  **EMPLOYMENT OF FOREIGN EMPLOYEES** |  |
| 60K | **Duty to furnish information and returns**   1. 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. 2. An employer or any specified class or classes 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.   (3) If the service of a foreign employee is terminated-   1. by the employer; 2. by the foreign employee; 3. upon the expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign employee; or 4. by 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 a manner as may be determined by the Director General.  (4) For the purpose of paragraph (3)(b), the termination of service by a foreign employee includes the act of the foreign employee absconding from his place of employment.  (5) An employer who contravenes subsections (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.  **(6) Nil.**  **(7) Nil.**  **(8) Nil.** | ~~Duty to furnish information and returns~~  **Employment of foreign employee**   1. ~~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.~~**No employer shall employ any foreign employee unless he has obtained certification from the Director General.** 2. ~~An employer or any specified class or classes 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.~~ **An employer who intends to employ any foreign employee shall apply for the certification under subsection (1) in the form and manner as determined by the Director General.** 3. ~~If the service of a foreign employee is terminated-~~    1. ~~by the employer;~~    2. ~~by the foreign employee;~~    3. ~~upon the expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign employee; or~~    4. ~~by 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 a manner as may be determined by the Director General.~~**The employer who has been granted the certification shall, within fourteen days of the employment of foreign employee, furnish the Director General with the particulars of the foreign employee by forwarding the particulars to the nearest office of the Director General.**  (4) ~~For the purpose of paragraph (3)(b), the termination of service by a foreign employee includes the act of the foreign employee absconding from his place of employment.~~**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 three years or to both.**  (5) ~~An employer who contravenes subsections (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit.~~ **If the service of a foreign employee is terminated-**   1. **by the employer;** 2. **upon expiry of the employment pass issued by the Immigration Department of Malaysia to the foreign employee; or** 3. **by the repatriation or deportation of the foreign employee,**   **the employer shall before thirty days of the termination of service, inform the Director General of the termination in a manner as may be determined by the Director General.**  **(6) If the service of employment is terminated by the foreign employee or the foreign employee absconds from his place of employment, the employer shall within 14 days of the termination or abscondment inform the Director General in a manner as may be determined by the Director General.**    **(7)** **Any variation or substitution to any existing contract of service which is less favourable to the employee shall be deemed invalid.**  **(8) In the case of any employer convicted of any offence of a large-scale, repeated or egregious violations of employment law maybe be denied employing foreign employees for a specified period.** | * For foreign workers, employers terminate or cancel employment’s pass(or not renew such passes), and even cause them to send back to country of origin DESPITE fact that there are outstanding claims and/or un paid wages/allowances due to the said worker. As such, before such termination, cancellation(or non-renewal) of Employment Passes or the sending home of foreign workers, it should be required that a Certificate be obtained by the Employer from the Director General confiming that there are no outstanding debts to the worker, or outstanding claims, included pending proceedings at the Labour Department/IRD Department and/or Courts. If the employer fails to do so, an HEFTY fine and prison term be provided.   There have been many cases where foreign workers have been so cheated and denied their rights.   * Further, if there are pending claims and proceedings at the Labour Department, IRD or Courts – the Employer should be made liable to PAY for the room and board of the said employee until such proceedings are completed and justice is done. * VIOLATION OF LAW – whether small or large scale, it should not matter, penalty that includes ‘black-listing’employer or related companies from further employing foreign employees should be immediate and for a determined period. It should maybe include all companies where the said employer company shareholders/Directors are part of. |
|  | **Nil** | **Part XIIC**  **FLEXIBLE WORKING ARRANGEMENT** |  |
| **60P** | **Nil** | **Flexible Working Arrangement**  **(1) Notwithstanding anything contained in the contract of service, an employee may make a request at any time.**  **(2) The request shall be in writing and contain the following:-**   * 1. **the employee’s name;**   2. **the date on which the request is made;**   3. **specify the variation of the working arrangements requested and whether the variation is permanent or for a period of time;**   4. **specify the date on which the employee proposes that the variation take effect and, if the variation is for a period of time, the date on which the variation is to end; and**   5. **explain, in the employee’s view, what changes, if any, the employer may need to make to the employer’s arrangements if the employee’s request is approved.**   **(3) An employer shall consider the request not later than 1 month from the date of such request, and shall notify the decision in writing.**  **(4) The request shall be refused if-**  **(a) the employee is bound by a collective agreement;**  **(b) the request relates to working arrangements to which the collective agreement applies; and**  **(c) the employee’s working arrangements would be inconsistent with the collective agreement if the employer were to approve the request.**  **(5) If the employer refuses the request, he shall state the ground on the refusal due to wholly or mainly to the fact that-**  ***(a)* inability to reorganise work among employees:**  ***(b)* inability to recruit additional employee:**  ***(c)* detrimental impact on quality:**  ***(d)* detrimental impact on performance:**  ***(e)* insufficiency of work during the period the employee proposes to work:**  ***(f)* planned structural changes:**  ***(g)* burden of additional costs:**  ***(h)* detrimental effect on ability to meet customer demand.**  **(6) if an employee believes that his employer has not complied with section 60P(3), the employee may refer to the Director General who may, to the extent practicable in the circumstances, facilitate the employee and employer to resolve the matter.**   1. **An employer who fails to comply with any directive of the Director General issued under subsection (6) commits an offence.**   **For the purpose of this Part, “request” means a written request made under this Part by an employee to his employer to vary the employee’s terms and conditions of employment relating to the employee’s working arrangements in relation to hours of work or days of work and place of employment.** | (5) To be stated in writing |
|  | **PART XIII**  **REGISTERS, RETURNS AND NOTICE BOARDS** | **PART XIII**  **REGISTERS, RETURNS AND NOTICE BOARDS** |  |
| 61 | (3) Notwithstanding subsections (1) and (2) the Director General, on a written application by an employer, may permit the employer to keep the information required under subsection (1) in any other manner as may be approved by the Director General subject to such conditions as he may deem fit to impose. | (3) Notwithstanding subsections (1) and (2) ~~the Director General, on a written application by an employer, may permit~~ the employer ~~to~~ **may** keep the information required under subsection (1) in **a** ~~any other~~ manner as **may be determined** ~~may be approved~~ by the Director General. ~~subject to~~ ~~such~~ **~~any~~** ~~conditions as he may deem fit to impose~~ **~~stipulated in regulations.~~** |  |
|  | **PART XV**  **COMPLAINTS AND INQUIRIES** | **PART XV**  **COMPLAINTS AND INQUIRIES** |  |
| 69 | **Director General’s power to inquire into complaints.**  (1) The Director General may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payments in cash due to such employee under-  *(a)*any term of the contract of service between such employee and his employer;  *(b)* any of the provisions of this Act or any subsidiary legislation made thereunder; or  *(c)* the provisions of the Wages Council Act, 1947 or any order made thereunder,  and, in pursuance of such decision, may make an order in the prescribed form for the payment by the employer of such sum of money as he deems just without limitation of the amount thereof.  (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-  (i) an employee against any person liable under section 33;  (ii) a contractor for labour against a contractor or sub-contractor 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  (iii) an employer against his employee in respect of indemnity due to such employer under section 13(1),  and to make such consequential orders as may be necessary to give effect to his decision.  (3) In addition to the powers conferred by subsections (1) and (2), the Director General may inquire into and confirm or set aside any decision made by an employer under subsection 14(1) and the Director General may make such consequential orders as may be necessary to give effect to his decision:  Provided that if the decision of the employer under paragraph 14(1) *(a)* is set aside, the consequential order of the Director General against such employer shall be confined to payment of indemnity in lieu of notice and other payments that the employee is entitled to as if no misconduct was committed by the employee:  Provided further that the Director General shall not set aside any decision made by an employer under paragraph 14(1)*(c)* if such decision has not resulted in any loss in wages or other payments payable to the employee under his contract of service:  And provided further that the Director General shall not exercise the power conferred by this subsection unless the employee has made a complaint to him under the provisions of this Part within sixty days from the date on which the decision under section 14 is communicated to him either orally or in writing by his employer.  (3A) An order made by the Director General for the payment of money under this section shall carry interest at the rate of eight per centum per annum, or at such other rate not exceeding eight per centum per annum as the Director General may direct, the interest to be calculated commencing on the thirty-first day from the date of the making of the order until the day the order is satisfied:  Provided that the Director General, on an application by an employer made within thirty days from the date of the making of the order, if he is satisfied that special circumstances exist, may determine any other date from which the interest is to be calculated.  (4) A 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.  Nil.  Nil. | **Director General’s power to inquire into complaints.**  Remain.  Remain.  Remain.     1. the provisions of the ~~Wages Councils Act 1947~~ **National Wages Consultative Council Act** **2011** or any order made thereunder,   and, in pursuance of such decision, may make an order in the prescribed form for the payment by the employer of such sum of money as he deems just without limitation of the amount thereof.  Remain.  Remain.  (ii) a contractor for labour against a **principal,** contractor or sub-contractor 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  Remain.  Remain.  Remain.  Remain.  Remain.  Remain.  Remain.  Remain.  (4) A 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~~ **thirty** thousand ringgit; and shall also, in the case of a continuing offence, be liable to a daily fine not exceeding ~~one~~ **two** hundred ringgit for each day the offence continues after conviction.  **(5) Where the employer has been convicted of an offence under subsection (4), the court before which he is convicted may order the employer to pay any payments due to the employee by virtue of an order made by the Director General under section 69.**  **(6) Where an employer fails to comply with an order made under subsection (5), the court shall, on the application of the employee, issue a warrant to levy the employer’s property for any payments or other differences accrued under subsection (5) in the following manner:**  **(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 and this execution shall apply *mutatis mutandis* notwithstanding the amount in the order; or**  **(b) in the same manner as a fine as provided under section 283 of the Criminal Procedure Code [Act 593].** | * The power of the DG to inquire into complaints shall extend beyond the question of ‘ in respect of wages or any other payments in cash’ but ALL matters of worker rights and employer obligations. * This should also include clarification of rights – when there is a dispute between employer and worker as to the meaning, etc.. * Matters of dispute between Employer and any other Contractor will be dealt by the Courts as it is a contractual matter between parties. * When the employer is found to be liable to pay workers monies, the DG shall be responsible to ensure that such monies are recovered from the Employer and paid to the workers/employees entitled. To put the onus of workers to recover debts(monies payable) by employers to workers is unjust as workers simply may not be able to pursue their rightful monies – this duty must rest with the DG to ensure workers get what they are rightfully entitled. |
| 69B. | **Additional powers of Director General to inquire into complaints.**   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. 2. For the purposes of this section, the term “wages” means wages as defined in section 2 but does not include any payment by way of commission, subsistence allowance or overtime payment.   (3) Save for Parts XV and XVI which shall apply with the necessary modifications, the other provisions of this Act shall not apply to the employees referred to in subsection (1). | **~~Additional powers of Director General to inquire into complaints.~~**  ~~(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~~ **~~four~~** ~~thousand ringgit but does not exceed~~ **~~five seven~~** ~~thousand~~ **~~and five hundred~~** ~~ringgit.~~   1. ~~For the purposes of this section, the term “wages” means wages as defined in section 2 but does not include any payment by way of commission, subsistence allowance or overtime payment.~~   ~~(3) Save for Parts XV and XVI which shall apply with the necessary modifications, the other provisions of this Act shall not apply to the employees referred to in subsection (1).~~ |  |
| 69C. | **Claims for indemnity for termination of contract without notice**  (1) In the exercise of his powers under subsection 69B(1), the Director General may inquire into and decide any claim concerning any indemnity due to the employer or employee where the contract of service is terminated by either party without notice, or if notice was given, without waiting for the expiry of that notice.  (2) The indemnity due to the employer or employee under subsection (1) shall be a sum equal to the amount of wages which would have accrued to the employee during the term of the notice or during the unexpired term of the notice. | **~~Claims for indemnity for termination of contract without notice~~**  ~~(1) In the exercise of his powers under subsection 69B(1), the Director General may inquire into and decide any claim concerning any indemnity due to the employer or employee where the contract of service is terminated by either party without notice, or if notice was given, without waiting for the expiry of that notice.~~  ~~(2) The indemnity due to the employer or employee under subsection (1) shall be a sum equal to the amount of wages which would have accrued to the employee during the term of the notice or during the unexpired term of the notice.~~ |  |
| 69D. | **Order of Director General may be in writing**  Notwithstanding subsection 69(1), an order of the Director General made under subsection 69B(1) or 69C(1) for the payment by or to the employer or employee of a sum of money as the Director General deems just, without any limitation of amount, may be made in writing. | **~~Order of Director General may be in writing~~**  ~~Notwithstanding subsection 69(1), an order of the Director General made under subsection 69B(1) or 69C(1) for the payment by or to the employer or employee of a sum of money as the Director General deems just, without any limitation of amount, may be made in writing.~~ |  |
| 69E. | **69E. Penalty for offence.**  A person who fails to comply with a decision or an order of the Director General made under subsection 69B(1) or 69C(1) shall be guilty of an offence and shall, on conviction, be liable 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. | **~~69E. Penalty for offence.~~**  ~~(~~**~~1)~~** ~~A person who fails to comply with a decision or an order of the Director General made under subsection 69B(1) or 69C(1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten~~ **~~fifty~~** ~~thousand ringgit; and shall also, in the case of a continuing offence, be liable to a daily fine not exceeding one~~ **~~five~~** ~~hundred ringgit for each day the offence continues after conviction.~~ |  |
| 70. | **Procedure in Director General’s inquiry**  70.The procedure for disposing of questions arising under sections 69, 69B and 69C shall be as follows:  *(a)* the person complaining shall present to the Director General a written statement of his complaint and of the remedy which he seeks or he shall in person make a statement to the Director General of his complaint and of the remedy which he seeks;  *(b)* the Director General shall as soon as practicable thereafter examine the complainant on oath or affirmation and shall record the substance of the complainant’s statement in his case book;  *(c)*the Director General may make such inquiry as he deems necessary to satisfy himself that the complaint discloses matters which in his opinion ought to be inquired into and may summon in the prescribed form the person complained against, or if it appears to him without any inquiry that the complaint discloses matters which ought to be inquired into he may forthwith summon the person complained against:  Provided that if the person complained against attends in person before the Director General it shall not be necessary to serve a summons upon him;  *(d)* when issuing a summons to a person complained against the Director General shall give such person notice of the nature of the complaint made against him and the name of the complainant and shall inform him of the date, time and place at which he is required to attend and shall inform him that he may bring with him any witnesses he may wish to call on his behalf and that he may apply to the Director General for summonses to such persons to appear as witnesses on his behalf;  *(e)*when the Director General issues a summons to a person complained against he shall inform the complainant of the date, time and place mentioned therein and shall instruct the complainant to bring with him any witnesses he may wish to call on his behalf and may, on the request of the complainant and subject to any conditions as he may deem fit to impose, issue summonses to such witnesses to appear on behalf of the complainant;  *(f)* when at any time before or during an inquiry the Director General has reason to believe that there are any persons whose financial interests are likely to be affected by such decision as he may give on completion of the inquiry or who he has reason to believe have knowledge of the matters in issue or can give any evidence relevant thereto he may summon any or all of such persons;  *(g)* the Director General shall, at the time and place appointed, examine on oath or affirmation those persons summoned or otherwise present whose evidence he deems material to the matters in issue and shall then give his decision on the matters in issue;  *(h)* if the person complained against or any person whose financial interests the Director General has reason to believe are likely to be affected and who has been duly summoned to attend at the time and place appointed in the summons shall fail so to attend the Director General may hear and decide the complaint in the absence of such person notwithstanding that the interests of such person may be prejudicially affected by his decision;  *(i)* in order to enable a court to enforce the decision of the Director General, the Director General shall embody his decision in an order in such form as may be prescribed. | **Procedure in Director General’s inquiry**  **70.** The procedure for disposing of questions arising under sections 69, ~~69B,~~ ~~and~~ 69C**,** and **81D** shall be as follows:  Remain.  Remain  Remain  Remain  Remain  Remain  Remain  Remain  Remain | * The importance of ‘Administration of Justice’ paid leave for workers is stressed. To attend such proceedings is difficult for workers who may not be able to get leave from new employers(or existing employers) – and such absence prejudices workers. * Penalty should also be imposed on persons that prevent attendance of workers for such proceedings. * LEGAL AID for workers is also needed. This should, as of right, be provided by the Ministry and/or the government – Workers need legal assistance to pursue their claims. * Right of Representation – Workers should be accorded the right to be represented by a lawyer and/or legal representative of their choice at all stages – including Domestic Inquiries. This right to be represented is only for union representatives (most workers do not have unions…and these ‘union representatives’ may not be legally qualified, and today many are requiring workers to pay such ‘union representatives’, sometimes even as high as RM10,000 for a wrongful dismissal case)   To have provisions which allow workers to be represented by lawyers …and even provide for Legal Aid or trained advocates from the Ministry to act on behalf of workers.) Many employers get away with rights violations. |
| 73. | **Prohibitory order by Director General to third party**  (1) Whenever the Director General shall have made an order under section 69, 69B or 69C against any employer or any person liable for the payment of any sum of money to any employee or contractor for labour and the Director General has reason to believe that there exists between such employer or person liable and any other person a contract in the course of the performance of which the employee or sub-contractor performed the work in respect of which the order was made, the Director General may summon such other person and, if after enquiry he is satisfied that such a contract exists, may make an order in the prescribed form prohibiting him from paying to the employer or person liable and requiring him to pay to the Director General any money (not exceeding the amount found due to such employee or contractor for labour) admitted by him to be owing to the employer or person liable in respect of such contract:  Provided that where such other person admits to the Director General in writing that money is owing by him under such contract to the employer or person liable he need not be summoned to attend before the Director General and the Director General may make such order in his absence:  Provided further that where such other person is liable as a principal under subsection 33(1) to pay any wages due by the employer or person liable and where the money admitted by him to be owing to the employer or person liable is not sufficient to pay the whole of such wages nothing in this subsection shall relieve him of his liability for the balance of such wages up to the amount for which he is liable under proviso *(b)* to the said subsection.  (2) The payment of any money in pursuance of an order under subsection (1) shall be a discharge and payment up to the amount so paid of money due to the employer or person liable under the contract. | **Prohibitory order by Director General to third party**  (1) Whenever the Director General shall have made an order under section 69 ~~, 69B or 69C~~ against any employer or any person liable for the payment of any sum of money to any employee or contractor for labour and the Director General has reason to believe that there exists between such employer or person liable and any other person a contract in the course of the performance of which the employee or sub-contractor performed the work in respect of which the order was made, the Director General may summon such other person and, if after enquiry he is satisfied that such a contract exists, may make an order in the prescribed form prohibiting him from paying to the employer or person liable and requiring him to pay to the Director General any money (not exceeding the amount found due to such employee or contractor for labour) admitted by him to be owing to the employer or person liable in respect of such contract:  Remain  Remain  Remain |  |
| 77. | **Appeal against Director General’s order to High Court**  (1) If any person whose financial interests are affected is dissatisfied with the decision or order of the Director General under section 69, 69B, 69C, 73 or subsection 81D(4) such person may appeal to the High Court.  (2) Subject to any rules made under section 4 of the Subordinate Court Rules Act 1955 [*Act 55*], the procedure in an appeal to the High Court shall be the procedure in a civil appeal from a Sessions Court with such modifications as the circumstances may require. | **Appeal against Director General’s order to High Court**  (1) If any person whose financial interests are affected is dissatisfied with the decision or order of the Director General under section 69~~, 69B, 69C,~~ 73 or subsection 81D(4) such person may appeal to the High Court.  Remain |  |
|  | **PART XVA**  **SEXUAL HARASSMENT** | **PART XVA**  **SEXUAL HARASSMENT** |  |
| 81A. | **81A. Interpretation.**  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; or  (iii) by an employer against an employee. | **81A. Interpretation.**  Remain |  |
| 81B. | **81B. Inquiry into complaints of sexual harassment.**  (1) Upon receipt of a complaint of sexual harassment, an employer or any class of employers shall inquire into the complaint in a manner prescribed by the Minister.  (2) Subject to subsection (3), where an employer refuses to inquire into the complaint of sexual harassment as required under subsection (1), 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.  (3) Notwithstanding subsection (2), an employer may refuse to inquire into any complaint of sexual harassment as required under subsection (1), if-  *(a)* the complaint of sexual harassment 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.  (4) Any complainant 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.  (5) The Director General after reviewing the matter referred to him under subsection (4)-  *(a)* if he thinks 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. | **81B. Inquiry into complaints of sexual harassment.**  (1) Upon receipt of a complaint of sexual harassment **by any person mentioned in section 81A**, an employer or any class of employers shall inquire into the complaint in ~~a manner prescribed by the Minister~~ **accordance to section 14(1) and (2).**  ~~(2) Subject to subsection (3), where an employer refuses to inquire into the complaint of sexual harassment as required under subsection (1), 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.~~  ~~(3) Notwithstanding subsection (2), an employer may refuse to inquire into any complaint of sexual harassment as required under subsection (1), if-~~  *~~(a)~~* ~~the complaint of sexual harassment 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.~~  ~~(4) Any complainant 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.~~  ~~(5) The Director General after reviewing the matter referred to him under subsection (4)-~~  *~~(a)~~* ~~if he thinks 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.~~ | This should be made more clear to ensure that an employee who makes a complaint of sexual harassment is protected. Section 14(1) states “(1) An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, after due inquiry…” which seems to leave open to the employer’s interpretation what “misconduct inconsistent with....service” means and may leave an employee complaining of sexual harassment vulnerable to measures such as that employee being dismissed/downgraded under 14(1) or suspended under 14(2).  81B seems inadequate to explain the proper measures employers need to take to investigate complaints |
| 81C. | **81C. Findings of inquiry by employer.**  Where the employer conducts an inquiry into a complaint of sexual harassment received under subsection 81B(1) 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. | **~~81C. Findings of inquiry by employer.~~**  ~~Where the employer conducts an inquiry into a complaint of sexual harassment received under subsection 81B(1) 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.~~ | It is no longer spelled out that the employer must take disciplinary action if they have found that there has been sexual harassment, so what is the result of the employer’s inquiry, and what is the redress for the complainant? |
| 81D. | **81D. Complaints of sexual harassment made to the Director General.**  (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.  (4) Upon inquiry by the Director General of the complaint of sexual harassment under subsection (3), the Director General shall decide if sexual harassment is proven or not and such decision shall be informed to the complainant as soon as practicable.  (5) Notwithstanding subsection (3), the Director General may refuse to inquire into any complaint of sexual harassment received under subsection (3), if-  *(a)* the complaint of sexual harassment has previously been inquired into by the Director General and no sexual harassment has been proven; or  *(b)* the Director General is of the opinion that the complaint of sexual harassment is frivolous, vexatious or is not made in good faith.  (6) Where the Director General refuses to inquire into the complaint of sexual harassment received 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. | **81D. Complaints of sexual harassment made to the Director General.**  (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~~ **following the procedures set in section 70** **shall be applicable with necessary modifications.**  (4) Upon inquiry by the Director General of the complaint of sexual harassment under subsection (3), the Director General shall decide if sexual harassment is proven or not.  ~~and such decision shall be informed to the complainant as soon as practicable.~~  ~~(5) Notwithstanding subsection (3), the Director General may refuse to inquire into any complaint of sexual harassment~~ ~~received under subsection (3), if-~~  *~~(a)~~* ~~the complaint of sexual harassment has previously been inquired into by the Director General and no sexual harassment has been proven; or~~  *~~(b)~~* ~~the Director General is of the opinion that the complaint of sexual harassment is frivolous, vexatious or is not made in good faith.~~  ~~(6) Where the Director General refuses to inquire into the complaint of sexual harassment received 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.~~ | With the deletion of Part (2), it seems that the employer no longer has to report back within thirty days (or at all) to the Director General, so there is no independent oversight at all over the employer’s inquiry (other than when the employer is a sole proprietor, per Part (3)  Deletion of Part (5) removes DG’s ability to refuse to inquire into complaint per sub-parts (a) and (b), which is positive since it affords victims of SH greater protection |
| 81E. | **81E. Effects of decisions of the Director General**  (1) Where the Director General decides under subsection 81D(4) that sexual harassment is proven, the complainant may terminate his contract of service without notice.  (2) If the complainant terminates the contract of service under subsection (1), the complainant is entitled to-   1. wages as if the complainant has given the notice of the termination of contract of service; and 2. termination benefits and indemnity;   as provided for under the Act or the contract of service, as the case may be. | **81E. Effects of decisions of the Director General**  Remain    Remain |  |
| 81F. | **Offence.**  Any employer who fails-   * 1. to inquire into complaints of sexual harassment under subsection 81B(1);   2. to inform the complainant of the refusal and the reasons for the refusal as required under subsection 81B(2);   3. to inquire into compalints of sexual harassment when directed to do so by the Director General under paragraph 81B(5)(a) or subsection 81D(2); or   4. 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. | **Offence.**  Any employer who fails~~-~~  **to inquire into complaints of sexual harassment under subsection 81B(1) commits an offence.**  ~~(a) to inquire into complaints of sexual harassment under subsection 81B(1);~~  ~~(b) to inform the complainant of the refusal and the reasons for the refusal as required under subsection 81B(2);~~  ~~(c) to inquire into compalints of sexual harassment when directed to do so by the Director General under paragraph 81B(5)(a) or subsection 81D(2); or~~  ~~(d) 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.~~ |  |
| 81G. | **81G. 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. | **~~81G. 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.~~ |  |
| **81H.** | **Nil** | **Written code on prevention of sexual harassment at the place of employment**  **Every employer shall have a written code on prevention of sexual harassment and placed in a conspicuous area at the place of employment.** | * Requirement that it be made available in all languages of the workers. * This obligation on the employer to have written code on sexual harassment which is disseminated is very positive. However, when most of the oversight on inquiry into complaints lies with employers, we need to ensure that employers’ codes/policies are comprehensive and include: * Clear and comprehensive definition of sexual harassment and examples of prohibited acts * Clear complaint/grievance procedure * Protective measures for complainant during investigation * Disciplinary measures and penalties * Clear remedies for complainants * Obligation for the provision of Counseling(including paying for such counselling) for all victims of sexual harassment. |
|  | **PART XVI**  **PROCEDURE** | **PART XVI**  **PROCEDURE** |  |
| 85A. | **85A. Right of audience.**  The Director General, or any officer authorized in writing by the Director General, shall have the right to appear and be heard before a Magistrate Court or a Sessions Court in any civil proceedings under or arising out of this Act, or any regulation made under this Act; and such right shall include the right to appear and represent an employee in any such proceedings. | **85A. Right of audience.**  The Director General, or any officer authorized in writing by the Director General, shall have the right to appear and be heard before a Magistrate Court or a Sessions Court **or a High Court** in any civil proceedings under or arising out of this Act, or any regulation made under this Act; and such right shall include the right to appear and represent an employee in any such proceedings. |  |
| 86 | **Saving clause as to civil jurisdiction of courts**  Nothing in this Act shall be construed as preventing any employer or employee from enforcing his civil rights and remedies for any breach or non-performance of a contract of service by any suit in court in any case in which proceedings have not been instituted before the Director General under section 69, 69B, 69C or subsection 81D(4) or, if instituted, have been withdrawn. | **Saving clause as to civil jurisdiction of courts**  Nothing in this Act shall be construed as preventing any employer or employee from enforcing his civil rights and remedies for any breach or non-performance of a contract of service by any suit in court in any case in which proceedings have not been instituted before the Director General under section 69~~, 69B, 69C~~ or subsection 81D(4) or, if instituted, have been withdrawn. | * The right to refer questions to the High Court even during proceedings before the DG must be there. * The right to appeal decisions, including not final decisions, to the High Court should be there. * If matter is appealed (or Judicial Review) to the High Court, the provision that there should be no order as to Cost must be clear. The issue of cost discriminates against workers when matters reach High Court and higher Appeal Courts…Hence, there must be no COST whatsoever be awarded against any party in labour disputes. * Consider also waiver of filing fees.(Here again the importance of Administration of Justice paid leave for workers) |
|  | **PART XVII**  **OFFENCES AND PENALTIES** | **PART XVII**  **OFFENCES AND PENALTIES** |  |
| 93. | **Under Part VIII.**  An employer of a female employee commits an offence if the female employee is employed contrary to section 34,35 or 36. | **~~Under Part VIII.~~**  ~~An employer of a female employee commits an offence if the female employee is employed contrary to section 34,35 or 36.~~ |  |
| 99A. | **General penalty**    99A. 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. | **General penalty**  99A. 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~~ **thirty** thousand ringgit. | **Rightly, the General Penalty should be increased to RM100,000 as maximum – the actual penalty imposed would then be appropriate according to case. DETERENCE is important.** |
|  | **PART XVIII**  **REGULATIONS** | **PART XVIII**  **REGULATIONS** |  |
| 102 | **Regulations**  (1) The Minister may from time to time make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act, or for the further, better or more convenient implementation of the provisions of this Act.  (2) Without prejudice to the generality of the foregoing the Minister may make regulations-  *(a)* limiting the powers of officers appointed under section 3(2);  *(b)* prescribing the conditions under which female employees may work at night;  *(c)* prescribing the rate of the maternity allowance to which female employees shall be entitled during the eligible period;  *(d)* prescribing the maximum period during which notice of dismissal given by her employer to a female employee who is absent from her work as a result of illness certified by a registered medical practitioner to arise out of her pregnancy or confinement shall not expire;  *(da) (Repealed)*  *(e) (Repealed)*  *(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;  *(g)* prescribing the form of any register, summons or order required to be kept, issued or made under this Act;  *(h)* prescribing the procedure for sending summonses, warrants and orders issued or made under this Act in Malaysia for service or execution in the Republic of Singapore, and making provisions for the service or execution in Malaysia of summonses, warrants and orders issued or made in the Republic of Singapore;  *(i)* prescribing fees to be paid for filing of claims under section 69, 69B or 69C and for copies of notes of evidence recorded under Parts XV and XVA;  *(j)* prescribing penalties for failure to comply with or contravention of any regulation made under this section;  *(k)* prescribing the forms of notice and returns of particulars used under section 60K;  *(l)* prescribing the procedure to inquire into complaints of sexual harassment under Part XVA;  *(m)* prescribing the terms and conditions of service of a domestic servant.  **(n) Nil.**  **(o) Nil.**  **(p) Nil.** | Remain.  Remain.  Remain.  *~~(b)~~*~~prescribing the conditions under which female employees may work at night;~~  Remain.  Remain  Remain.  Remain.  Remain.  Remain.  Remain.  *(i)* prescribing fees to be paid for filing of claims under section 69~~, 69B or 69C~~ and for copies of notes of evidence recorded under Parts XV and XVA;  Remain  Remain.  Remain.  *(m)*  prescribing the terms and conditions of service of a domestic ~~servant~~ **employee;**  **(n) prescribing any condition for employer to grant employee rest day for each week on any day of the month;**  **(o) prescribing any condition to keep registers required under subsection 61(1);**  **(p) prescribing matters relating to discriminatory practices or treatment.**  **(q) prescribing matters relating to flexible working arrangement.** |  |

**FIRST SCHEDULE**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **First Schedule [Subsection 2(1)]**  Employee  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.  2. Any person who, irrespective of the amount of wages he earns in a month, has entered into a contract of service with an employer in pursuance of which-  (1) he is engaged in manual labour including such labour as an artisan or apprentice;  Provided that where a person is employed by one employer partly in manual labour and partly in some other capacity such person shall not be deemed to be performing manual labour unless the time during which he is required to perform manual labour in any one wage period exceeds one half of the total time during which he is required to work in such wage period;  (2) he is engaged in the operation or maintenance of any mechanically propelled vehicle operated for the transport of passengers or goods or for reward or for commercial purposes;  (3) he supervises or oversees other employees engaged in manual labour employed by the same employer in and throughout the performance of their work;  (4) he is engaged in any capacity in any vessel registered in Malaysia and who- (provision of the Act not applicable - Part XII)   1. is not an officer certificated under the Merchant Shipping Acts of the United Kingdom as amended from time to time; 2. is not the holder of a local certificate as defined in Part VII of the Merchant Shipping Ordinance, 1952; or 3. has not entered into an agreement under Part III of the Merchant Shipping Ordinance, 1952; or   (5) he is engaged as a domestic servant.  (6) Nil  3. For the purpose of this Schedule "wages" means wages as defined in section 2, but shall not include any payment by way of commission, subsistence allowance and overtime payment. | Provision of the Act not applicable  Part XII  Sections 12, 14, 16, 22, 61 and 64, and Parts IX, XII and XIIA | Employee  1. Any person, irrespective of the amount of wages he earns, has entered into a contract of service with an employer ~~under which such person's wages do not exceed two~~ **~~four~~** ~~thousand ringgit a month~~.  2. Remain  ~~(1) he is engaged in manual labour including such labour as an artisan or apprentice;~~  ~~Provided that where a person is employed by one employer partly in manual labour and partly in some other capacity such person shall not be deemed to be performing manual labour unless the time during which he is required to perform manual labour in any one wage period exceeds one half of the total time during which he is required to work in such wage period;~~  ~~(2) he is engaged in the operation or maintenance of any mechanically propelled vehicle operated for the transport of passengers or goods or for reward or for commercial purposes;~~  ~~(3) he supervises or oversees other employees engaged in manual labour employed by the same employer in~~ ~~and throughout the performance of their work;~~  (4) Remain  (5) he is engaged as a domestic ~~servant~~ **employee.**  **(6) Any person whose wages exceeds five thousand ringgit a month.**  3. Remain | Provision of the Act not applicable  ~~Part XII~~  Sections 12, 14, 16, 22, 61 and 64, and Parts IX, XII **(except Section 59(1))** and XIIA  **Sections 60A, 60D(3), 60D(4) and 60J** | To enable domestic employee to enjoy benefit of rest day. |