# Your Global Workforce in Malaysia

Insights
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Malaysia is both exotic and magical, and we want to ensure that the management of your global workforce in Malaysia is in compliance with all employment and labor laws. The key statutory authorities governing employment and labor law in Malaysia include Employment Act of 1955 ("Employment Act") in peninsular Malaysia and territory of Labuan, the Industrial Relations Act of 1967, Labor Ordinances (in Sabah and Sarawak areas), Workmen's Compensation Act of 1952, Trade Unions Act of 1959, Employees' Social Security Act of 1969, the Factories and Machinery Act of 1967, and the Occupational Safety and Health Act of 1994. Please be mindful that several amendments to Malaysia's Employment Act came into operation and effect on April 1, 2012. We will discuss general Malaysian employment laws, best business practice for managing your workforce in Malaysia, and key changes in 2012 to the Employment Act.

The Malaysian common law recognizes that employment may take various forms: ongoing no fixed-term employment agreement, fixed-term employment agreement, full-time employment, and part-time employment. Generally, employees in Malaysia are covered by the Employment Act, which also provides remuneration structure (i.e wages, costs for housing/ accommodation, traveling allowances, contribution to pension funds, gratuity payable on retirement, annual bonuses, etc.), minimum works hours, rest periods, overtime compensation, and public holidays. Pursuant to the amendments to the Employment Act in April 2012, minimum wage standards were implemented as follows: national minimum wage will be Malaysian Ringgit (MYR) 900 per month for employees in the peninsular Malaysia, and MTR800 per month for employees in Sabah, Sarawak, and the Labuan Federal Territory. Employers must ensure that they are paying wages in compliance with the newly introduced minimum wage laws.

Further, under the Employment Act, an employer cannot require employees covered by the Act to: (1) work more than five consecutive hours without a period rest of at least 30 minutes; (2) to work more than a ten hour spread over the course of a single day; and (3) to work more than 48 hours a week. Exceptions to the hours worked requirement exist regarding a foreseeable interruption of work, urgent work to be done to machinery or plant, work that is essential for the well being of the community, or work that is essential for the defense or security of the country, or work to be performed in an industrial undertaking essential to the economy of Malaysia.

Based on the Employment Act, employees are entitled to one rest day each week, which is usually Sunday or Friday. However, employers can set the day of rest on any day of the week at its discretion.

According to the Employment Act, employees are entitled to a paid rest day on public holidays. Please be mindful that in 2012, employees covered by the Employment Act are entitled to an extra day of pay on "Malaysia Day." Malaysia Day is held on September 16 every year to commemorate the establishment of the Malaysian Federation in 1963. With respect to overtime, any work done in excess of the normal hours of work is consider overtime and must be paid: (1) at least 150% of the basic hourly rate of pay during an ordinary working day; (2) at least 200% of the basic hourly rate of pay during rest days; and (3) at least 300% of the basic hourly rate of pay during public holidays. Additionally, employers must be mindful that part-time employees covered by the Employment Act are specifically regulated by the Employment Part-Time Regulations. A part-time employee is defined as an employee whose average hours of work as agreed with their employer do not exceed 70% of the normal hours of work of a full-time employee employed in a similar capacity in the same enterprise. However, exceptions exist regarding the application of the part-time employee regulations, which include but are not limited to, casual employees who are engaged on an occasional or irregular basis, and employees who perform work at a residence irrespective of occupation.

Interestingly, there are no legal requirements in Malaysia for an employer to establish work rules. This means that an employer may choose to formulate work rules, company policies, employee handbooks, and similar documents, or an employer may choose not to do so. Despite this lack of legal requirement, many companies establish work rules for best business practice purposes. If a company establishes work rules and policies, an employer should be careful that the work rules and policies do not become a part of the employee contract of employment for the following reasons: if a company decides to allow its work rules and policies to become a part of the employee contract, then the employee's consent may be required to amend such rules and policies. Therefore, it is best business practice to establish and implement work rules, policies, procedures, employee handbooks, and other documents that expressly and specifically state that they do not form a contract of employment and are not a part of any employee contract of employment.

Further, there are no specific regulations governing probationary periods in Malaysia. However, in Malaysia, it is best business practice to utilize a three-month period for non-executive and non-management employees, and a six-month period for executive and management employees. The purpose of instituting a probationary period is to protect your company in the event an employee covered on the Employment Act brings a complaint of dismissal "without just cause or excuse." In recent years, the ability for employees to lodge a complaint of dismissal "without just cause or excuse" has led to a body of case law regarding circumstances in which termination of employment is legally justified. Examples include: termination for misconduct and termination for redundancy. However, courts will examine the genuine nature of redundancy dismissals and seriousness of misconduct (e.g. habitual neglect of duties, dishonesty, fraud) with a high degree of scrutiny. Hence, for best business practice, employers should properly document misconduct and be able to support dismissals prior to any termination decisions.

Additionally, there are also specific statutory restrictions on the termination of any employee on the basis of: (1) trade union membership or activities; (2) certain occupational health and safety activities (such as making a complaint about a safety concern); (3) disclosures to government agency in accordance with the Whistleblower Protection Act of 2010; and (4) maternity leave. Employers must be mindful that effective April 1, 2012, maternity leave entitlements and benefits are required by law and extended to all female employees regardless of the amount of salary earned. Further, dismissal of an employee on maternity leave is strictly prohibited by law and considered an offense to the Employment Act with respect to all female employees regarding of the amount of salary earned.

Regarding foreign employees, the Employment Act provides that no employer shall terminate the contract of service of a local employee for the purpose of employing a foreign employee. Therefore, for best business practice, some employers instill a standard operating procedure in which all contracts with foreign employees employed by an employer in a capacity similar to that of the local employees must first be terminated before any contracts with local employees are terminated during a restructure or situation of redundancy. However, employers with foreign employees must be mindful that effective April 2012, amendments to the Employment Act require that employers of foreign employees must notify the Employment Director General within 30 days of a foreigner's employment being terminated or a foreigner separating from the workplace.

Lastly, employers with employees in Malaysia must be cognizant of two recent major amendments to the Employment Act: (1) an amendment establishing a new administrative regime for the sole purpose of handling sexual harassment complaints and investigations in the workplace, and (2) an amendment permitting and imposing personal liability on individual directors and officers of corporate entities for offenses and violations of the Employment act, including those arising from the new sexual harassment regime.