

Employment (Amendment of First Schedule) Order 2022

Introduction

On 12 August 2022, the much-anticipated Employment (Amendment of First Schedule) Order 2022¹ (“2022 Order”) was gazetted and it will come into force with effect from 1 September 2022.

These amendments are far reaching as the scope of the **Employment Act 1955** (“EA 1955”) will now cover all employees, regardless of their monthly wages. There are, however, several exceptions that will be explained below.

Background

The EA 1955 was recently amended and was published in the Gazette on 10 May 2022². The amendments will take effect from 1 September 2022. You may read the salient amendments to the EA 1955 in our earlier newsletter [here](#).

However, one of the issues that arose was whether the parameters of the EA 1955 would be expanded to cover a larger scope of employees. Prior to the 2022 Order, the EA 1955 mainly applied to the following categories of employees:

- a. Employees earning a monthly wage of RM2,000 and below; or
- b. Employees, irrespective of their monthly wages:-
 - i. engaged in manual labour; or
 - ii. engaged to supervise manual labourers; or
 - iii. who are engaged in the operation or maintenance of any mechanically propelled vehicle operated for the transports of passengers or goods or for commercial purposes.

On 23 March 2022, the Government's intention to amend the First Schedule of the EA 1955 to encompass all employees was reported³.

Employment & Administrative Law Update

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2022 Order

With the 2022 Order, the EA 1955 will now be expanded to cover all employees irrespective of their monthly wages, as follows:

“1. Any person who has entered into a contract of service.

1A. Notwithstanding paragraph 1, the person whose wages exceeds four thousand ringgit a month.”

Below is a brief comparison of the 1st Schedule to the EA 1955, pre and post amendment.

Employment Act 1955 (Pre-amendments)	Employment Act 1955 (Post-amendments)
FIRST SCHEDULE	
<p><i>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.</i></p>	<p><i>1. Any person who has entered into a contract of service.</i></p> <p><i>1A. Notwithstanding paragraph 1, the person whose wages exceeds four thousand ringgit a month.</i></p> <hr/> <p><i>Provision(s) of the Act not applicable:-</i></p> <p><i>Subsections 60(3), 60A(3), 60C(2A), 60D(3) and 60D(4) and section 60J</i></p>
<p><i>Sub paragraph 2 (5)</i></p>	<p><i>(5) he is engaged as a domestic employee.</i></p>

<p>(5) he is engaged as a domestic servant.</p>	<p>Provision(s) of the Act not applicable:-</p> <p>Sections 12, 14, 16, 22, 58A, 60, 60A, 60B, 60C, 60D, 60E, 60F, 60FA, 60I, 61 and 64, and Parts IX and X</p>
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However, as can be seen from the said amendments, there are several provisions that will not apply to employees whose monthly wages exceed RM4,000, as follows:

No.	Sections	Brief Description
1.	Section 60 (3)	This provision governs the rates applicable to employees who are required perform work during their “rest days” including any Overtime rates during the rest days
2.	Section 60 A (3)	Section 60 A (3) prescribes the rate of Overtime payment during a normal working day
3.	Section 60 C (2A)	This is a new provision pursuant to the latest Amendments to the EA 1955, A1651, which empowers the Minister of Human Resource to make regulations in connection with allowance during the employees’ shift work
4.	Section 60 D (3)	This section discusses the rates payable to employees who are required to work during a Public Holiday

5.	Section 60 D(4)	This provision provides that any holiday that falls on a half working day, the ordinary rate of payable shall be as if it was a full working day
6.	Section 60 J	This provision provides for termination, lay-off and retirement benefits.

It is noteworthy that the 2022 Order does not impact the other categories of employees that are within paragraph 2(1), 2(2), 2(3) and 2(4) of the 1st Schedule of the EA. These categories are manual workers, supervisors of manual workers and drivers. In respect of such categories of employees, the EA 1955 continues to fully apply to them.

Conclusion

With the latest 2022 Order, the scope of the EA 1955 and the benefits prescribed thereunder now apply to **all employees, regardless of their monthly wages**, except where expressly excluded as indicated above.

Employers are reminded to remain vigilant of the latest amendments to ensure compliance with the provisions of the EA 1955, whereby employers are not allowed to provide for benefits less favourable than the ones stipulated in the EA 1955, as this would be in breach of Section 7⁴ of the EA 1955.

Endnotes:

¹ P.U. (A) 262.

² Act A1651.

³ <https://tinyurl.com/y27ja6s2>.

⁴ Subject to section 7A, any term or condition of a contract of service or of an agreement, whether such contract or agreement was entered into before or after the coming into force of this Act, which provides a term or condition of service which is less favourable to an employee than a term or condition of service prescribed by this Act or any regulations, order or other subsidiary legislation whatsoever made thereunder shall be void and of no effect to that extent and the more favourable provisions of this Act or any regulations, order or other subsidiary legislation whatsoever made thereunder shall be substituted therefor.

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