

The Parliament has passed the Industrial Relations (Amendment) Bill 2019 on 9 October 2019, making several major amendments to the **Industrial Relations Act 1967** (“the Act”).

Currently, the Act is one of the main acts governing the relationship between employers, employees and their trade unions in Malaysia. The following are some of the major amendments to the Act.

DGIR to Refer Representations of Unfair Dismissal to the Industrial Court

Currently, unfair dismissal complaints are being referred to the Industrial Court by the Minister. Under the amendment, the Minister’s power to refer representations is replaced by the Director General of Industrial Relations (“DGIR”) to expedite the process. Cases that are not resolved through conciliation at the Department of Industrial Relations are now referred directly to the Industrial Court without filtering mechanism of the Minister. This may reduce the number of judicial review challenges made against the Minister in respect of his decision to refer, or not to refer, the matter to the Industrial Court for adjudication.

Enhanced Recognition Process

The current recognition process are under the purview of the Department of Industrial Relations and the Department of Trade Union Affairs. After the amendment, the DGIR will take over the Minister’s power to decide on matters relating to capacity and recognition issues involving trade unions in order to expedite the process.

Amendments to the List of Essential Services

The First Schedule of the Act has been amended whereby services such as banking services, postal services, port, dork, harbor and airport services and undertakings, radio communication services are removed from the First Schedule, whereas services such as air traffic control and services that may become essential due to strike are added into the list.

For the Banking Industry and the industries which were removed from the list, this would mean the more stringent requirements from carrying out a strike would no longer apply.

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Amendments to the Industrial Relations Act 1967

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Trade Unions

The establishment of trade unions will no longer be confined to trade, industry or occupation after the amendments. The provision on the application for sole bargaining rights is introduced to enable the employees to choose their preferred trade union if there are more than one recognized trade union representing the employees. Only the trade union which has obtained the highest number of votes will have the sole bargaining rights to represent the employees in collective bargaining.

Industrial Court empowered to award compensation to next-of-kin

In the event the claimant passes away, the Industrial Court can now award backwages or compensation in lieu of reinstatement of both to the next-of-kin.

Appeal against Industrial Court Award to the High Court

Those who are dissatisfied with an Industrial Court award can appeal to the High Court within 14 days from the date of the receipt of the award. The procedures applicable to such an appeal shall be the procedure of an appeal from the Sessions Court.

This amendment would have far reaching consequences, as this would mean that parties would be deprived of appealing to the Federal Court. As many landmark decisions concerning industrial/employment law have been handed down by the Federal Court, this amendment may curtail the development of industrial/employment law in the country.

It is unclear on whether parties can still opt for judicial review. Nevertheless, the High Court may be reluctant to hear the judicial review application in view of the alternative express remedy.

Imposition of Interest

The Industrial Court can now impose interest at the rate of 8% per annum or lesser as the Court may direct.

Conclusion

We foresee that the amendments will bring about significant changes in the industrial relations landscape in Malaysia.

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