



### **Covid-19 Bill 2020 – An Employment Perspective**

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The Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (Covid-19) Bill 2020 (“**the Covid-19 Bill**”) was tabled for its first reading in the Dewan Rakyat of Malaysia on Wednesday, 12 August 2020.

The Covid-19 Bill, *inter alia*, seeks to provide for temporary measures to reduce the impact of the Covid-19 pandemic, primarily by modifying the provisions relating to statutory limitation periods, as well as the contractual obligations of parties who are unable to perform the same due to the Covid-19 pandemic.

The Covid-19 Bill will come into operation on a date published in the Gazette.

It is to be noted that once passed, the Covid-19 Bill will have retrospective effect and will be deemed to have come into operation on the first day of the Movement Control Order, i.e. 18 March 2020.

#### **What This Means to Employers**

Although the Covid-19 Bill contains various provisions, this article will only examine the employment-related aspects of the same.

#### **Extension of Limitation Periods under the Industrial Relations Act 1967 (“IRA 1967”)**

Part XII (Section 39 to 40) of the Covid-19 Bill seeks to extend the statutory periods set out in the IRA 1967 by excluding the period between 18 March 2020 to 9 June 2020 in the computation of the statutory limitation periods. Specifically, the relevant limitation periods which are affected are:

- a) 21-day period for employers or a trade union of employers to accord recognition or notify the trade union of workmen concerned in writing of the grounds for not according recognition, pursuant to Section 9(3);
- b) 14-day period for a trade union of workmen to make any report of non-recognition or non-compliance to the Director General for Industrial Relations (“DGIR”), pursuant to Section 9(4); and
- c) 60-day period for any aggrieved employee to file his unfair dismissal claim to the DGIR, pursuant to Section 20(1A).

#### Potential Relief from Contractual Obligations

Part II (Section 5 to 10) of the Covid-19 Bill seeks to accord parties with relief from their contractual duties due to steps taken to control or prevent the spread of Covid-19. However, only limited types of contracts fall under this Part of the Covid-19 Bill (see – Schedule of the Covid-19 Bill.) Whilst a “*professional services contract*” is included as a scheduled contract, the same is not defined by the Bill. Guidance can be had from the Income Tax (Deduction for Promotion of Export of Professional Services) Rules 2003 where “*professional services*” are defined as legal, accounting, architectural, engineering, medical and dental and services alike. In the circumstances, it is arguable that this Part of the Covid-19 Bill does not appear to extend to employment contracts, and employers will still have to honour all their contractual obligations under their employment contracts with their employees, and vice versa.

Nevertheless, the Minister charged with the responsibility for law is empowered by Section 8 the Covid-19 Bill to amend the Schedule as he deems fit. It remains to be seen whether employment contracts will eventually be included within the ambit of the Covid-19 Bill.

Due to the limited scope of the Covid-19 Bill, employers who are parties to a collective agreement will be obliged to fall back to Section 56 of the IRA 1967 to seek “*special circumstances*” relief. This was illustrated in **RIH Management Sdn Bhd v National Union of Hotel, Bar & Restaurant Workers, Peninsular Malaysia** [2000] 3 MELR 545, where the Industrial Court accepted that the financial losses of the company due to Japanese Encephalitis (“JE”) epidemic amounted to “special circumstances” justifying the company’s non-compliance with the terms of collective agreement to grant the union workers’ annual increment. This would mean that if parties are not bound by any collective agreement, there would effectively be no legislative recourse available to them.

#### Comment

As of now, the effect of the Covid-19 Bill has limited employment-related repercussions. It is hoped that further amendments will be introduced to address more employment-related issues, such as obligations of the parties in an employment contract.

In comparison with Singapore Covid-19 (Temporary Measures) Act 2020, which is drafted in stricter language to cover specific scenarios, our Covid-19 Bill seems to be vague and uncertain in its practical applications and implications, causing doubts in ensuing its effectiveness in addressing issues caused by Covid-19.

Nonetheless, it is also hoped that Parliament will gazette the Covid-19 Bill expeditiously so that it does not defeat the purpose of enacting the same, as the Covid-19 Bill also preserves the validity of actions commenced before it comes into force. It may also be prudent for the Government to consider amendments which will provide further support in respect of employer-employee obligations post the Recovery Movement Control Order.

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