

Shearn Delamore & Co.

**Significant Industrial
Relations (Amendment) Act
2020 Coming into Force On
1 January 2021**



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On 6 February 2020, the **Industrial Relations (Amendment) Act 2020** (“IRA 2020”) received the Royal Assent and was gazetted on 20 February 2020.

Earlier this month, the Minister of Human Resources in exercising his powers conferred under the IRA 2020, appointed that majority of the provisions in IRA 2020 will come into force on **1 January 2021**, save for certain amendments relating to sole bargaining rights and essential services.

We foresee that there will be major changes in the industrial relations landscape in Malaysia.

Automatic references of unfair dismissal cases to the Industrial Court

Currently, complaints relating to unfair dismissals are referred to the Industrial Court by the Minister. As of next year, the Minister’s power to refer representations is replaced by the Director General of Industrial Relations (“DGIR”). Cases that are not resolved through conciliation at the Industrial Relations Department will now be referred directly to the Industrial Court without filtering mechanism of the Minister. Whilst this may expedite the process and 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), it raises the concern of whether the Industrial Court will be swarmed by frivolous complaints in absence of the filtering mechanism of the Minister.

Appeal against Industrial Court Award to the High Court

This is arguably the most major amendment to the Industrial Relations landscape.

Presently, the Industrial Court decisions can be challenged by way of judicial review at the High Court. Parties can then take the matter to the Court of Appeal and Federal Court (with leave of court). As of next year, 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 applicable procedures would be akin to 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.

This amendment will not affect existing cases filed before 1 January 2021 and for such cases, the existing option of judicial review will continue to apply.

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.

Industrial Court empowered to continue an unfair dismissal proceedings after the Claimant's death

After the amendment, the Industrial Court can continue to conduct an unfair dismissal proceeding notwithstanding the death of the Claimant to the claim. However, the practicality of this amendment remains to be seen. This is because generally in an unfair dismissal proceeding, the workman/Claimant would be the main witness to his claim as he would likely to be the only person privy to the circumstances leading up to his dismissal. Continuing the proceeding in absence of the Claimant would effectively mean that the hearing is proceeding without the evidence of the Claimant.

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

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

Industrial Court empowered to hear unfair dismissal claims brought by employee of statutory bodies

Previously, only employees of private entities may bring unfair dismissal claims to the Industrial Court. The scope is now extended

to employees of statutory bodies, which will be prescribed by the Minister in the Gazette.

Power of the Industrial Court to impose interest

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

Further, the penalty for non-compliance of an Industrial Court award is also amended to be harsher.

Deputy President of the Industrial Court

Under the IRA 2020, a new position, the Deputy President of the Industrial Court is created.

Qualifications of an Industrial Court Chairman

Post the amendment, the qualification requirement of an Industrial Court Chairman is expanded from the requirement of being a practicing lawyer for at least 7 years, to also include someone legally qualified who has at least 15 years of experience in labour and IR in the Human Resources Ministry.

Provisions relating to illegal strikes, lock-out, picketing

Under the amendment, the Minister is now empowered to order a strike or lock-out to stop if it "*endanger[s] the life, safety, or health of the whole or part of the population*". Further, harsher penalties are imposed on offences relating to picketing, illegal strikes and lockouts.

Provisions not coming into force on 1 January 2021

As mentioned earlier, all provisions relating to sole bargaining right of Trade Unions will not be coming into force yet. Further, the amendments to the List of Essential Services under the First Schedule of the Act, will also not be coming into force as of 1 January 2021. This means that industries such as banking services, airport services and undertakings etc. will still remain on the list of essential services.

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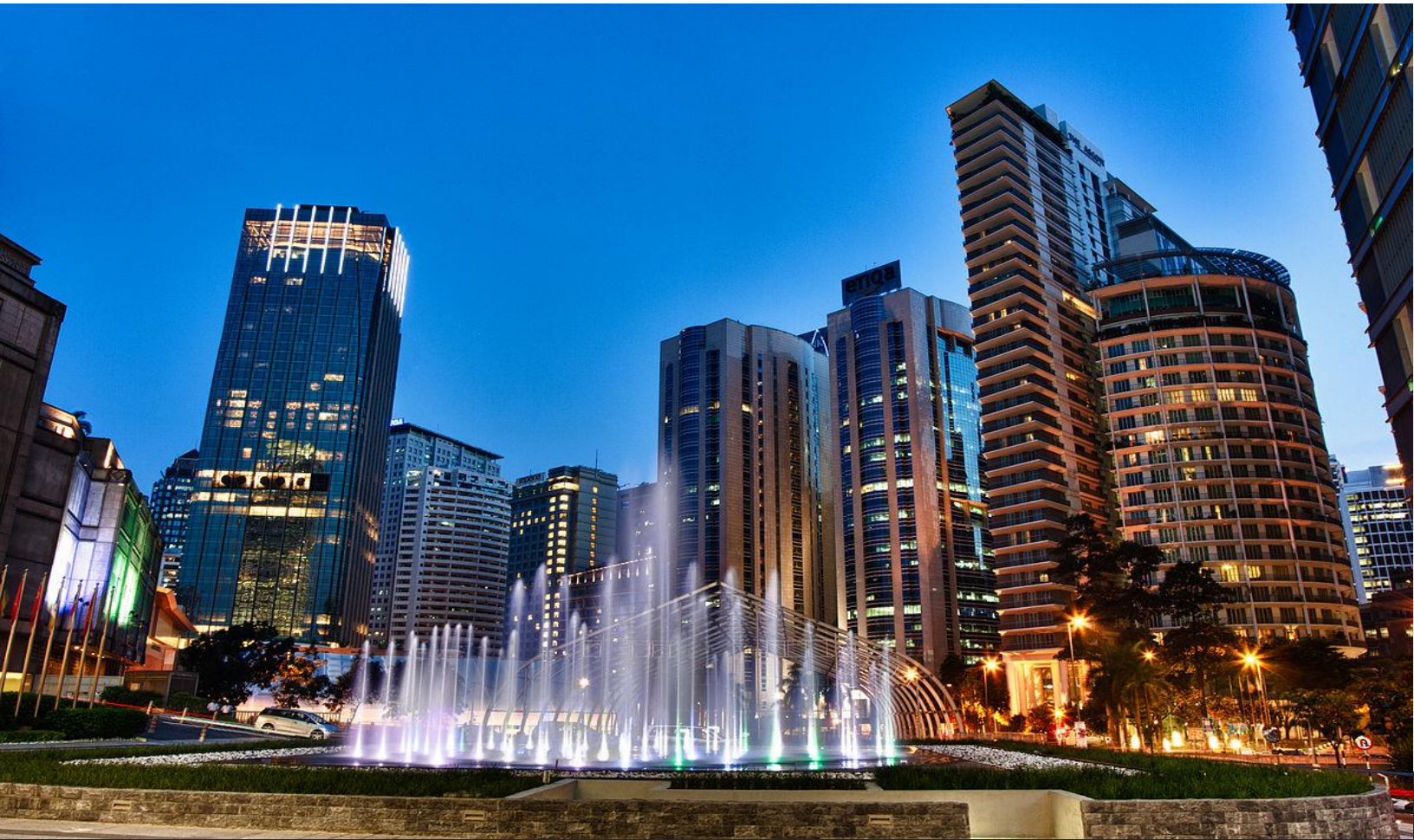


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