

EMPLOYMENT ACT 1955.

(ACT 265)

A Comprehensive Guide to Both, the Employees and the Employers:

Chapter 1: General and Contract of Services

Chapter 2: Working Hours and Shift Work

Chapter 3: Payment of Wages

Chapter 4: Public Holidays and Rest Days

Chapter 5: Payment of Overtime and Allowances

Chapter 6: Annual Leave

Chapter 7: Sick/Medical Leave

Chapter 8: Termination of Contract of Services

Chapter 9: Termination, Lay-off and Retirement Benefits

Chapter 10: Special Relief Allowances

Chapter 11: Annual Increments, Bonus and Promotions

Chapter 12: Transport Allowances

Chapter 13: Probationary Period

Chapter 14: Employment of Children and Young Persons

Chapter 15: Employment of Women and Domestic Servants

Chapter 16: Employment of Foreign Employees

Chapter 17: Maternity Leave and Allowances

Chapter 18: Powers of Inspection and Enquiry into Complaints

Chapter 19: EPF Contributions

Chapter 20: Withdrawal of EPF Contributions – For House Purchase

Chapter 21: SOCSO Contributions

Chapter 22: Workmen's Compensation

The [Employment Act](#) covers all employees in Malaysia, irrespective of wages or occupation. Domestic servants are excluded from the coverage.

However, employees earning above RM4,000 per month are exempted from certain provisions in the Act, such as:

- (a) Overtime rates for employees working on rest days;
- (b) Overtimes rates outsides working hours;
- (c) Allowance for shift-based work;
- (d) Overtime on public holidays;
- (e) Overtime for half working days on holidays; and
- (f) Termination, lay-off, retirement benefits.

EMPLOYMENT ACT 1955.

(ACT 265)

A Comprehensive Guide to Employee and Employer:

Chapter 1

GENERAL AND CONTRACT OF SERVICES

Question 1:

Is it essential for all employers to notify the Labour Department of the existence of their businesses?

If so, what type of information should be submitted?

Answer:

Many employers are not aware of Section 63A of the Employment Act which specifies that:- Any employer who proposes:-

- (a) to operate any agricultural or industrial undertaking or any establishment where any commerce, trade, profession or business of any description is carried on; or
- (b) to take over or commence business in such undertaking or establishment; or
- (c) to change the name or the location of such an undertaking or establishment, in which any employee is employed or is likely to be employed shall, within 90 days of such commencing of operation, taking over or commencing of business, or changing the name or the location of the undertaking or establishment, as the case may be, give notice in writing thereof to the nearest office of the Director of Labour having jurisdiction for the area in which that undertaking or establishment is located, and furnish the following particulars to the Director of Labour —
 - (i) the registered name, address and nature of business of the establishment;
 - (ii) the name of the manager or person in charge of the business; and
 - (iii) a statement outlining the categories and total number of employees employed in the establishment.

Question 2:

What are the consequences if an employer fails to comply with Section 63A?

Answer:

An employer who fails to give notice as required by Section 63A, or who gives such notice containing any false particulars, will be guilty of an offence and is liable, on conviction, to a fine up to a certain specified amount.

Question 3:

Is it mandatory for every employer to keep a register of employees?

What are the consequences if an employer fails to do so?

Answer:

Every employer must maintain a register of employees containing the information prescribed by the regulations as shown in Appendix C.

The employer may purchase a copy of such standard register of employees from any stationery shop.

Such register with recorded particulars of the employees must be preserved and be made available for inspection for a period of not less than 6 years.

If an employer fails to do so, he commits an offence and will be subject to a fine of a certain specified amount.

Section 63A, Employment Act 1955 (Act 265)

Duty to notify the Labour Department within 90 days of formation/ registration or commencement of business, etc.

Failure to give notice under Section 63A

Duty to keep register of employees

Register of employees Section 61(1) & (2)

Sections 97 & 98

Question 4:

Why is it mandatory for an employer to provide a 'safe system of work' for his employees?

Answer:

The Factories And Machinery Act 1967 clearly specifies that an employer should provide a 'safe system of work' for his employees. This is clearly detailed in Part II of the Act.

If the employer fails to do so, he can be made liable either at common law for tort of negligence, or for breach of statutory duty.

Question 5:

To what extent are employees covered by the Employment Act 1955?

Answer:

The Act covers employees under the following categories:—

(i) 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 RM1,500 (Prior to this, RM1,250) per month; or

(ii) any person whose 'wages' exceed RM1,500 per month and if he is engaged in manual labour including such labour as an artisan or apprentice.

However, where a person is employed by one employer partly in manual labour and partly in some other capacity, such a person is not considered as manual labour unless the time he spent on manual labour in any one wage period exceeds one-half of his total working time; or

(iii) any person engaged in operation or maintenance of a mechanically propelled vehicle for the transport of passengers or goods or for commercial purposes; or

(iv) any person supervising or overseeing other employees engaged in manual labour, employed by the same employer; or

(v) any person engaged as a domestic servant; or

(vi) any person engaged in any capacity in any vessel registered in Malaysia and is not an officer certificated under the Merchant Shipping Acts of the United Kingdom (as amended from time to time), or is not the holder of an officer certificated under the local Merchant Shipping Ordinance 1952; or has not entered into an agreement under the Merchant Shipping Ordinance 1952.

For this purpose, "wages" means wages as defined in Section 2 (see below), excluding any payment by way of commission, subsistence allowance and overtime payment.

Question 6:

What is meant by 'wages' under the Employment Act 1955?

Answer:

'Wages' means basic pay and all other payments in cash payable to an employee for work done in respect of his contract of service. However, it does not include:—

(i) the value of any house accommodation or the supply of any food, fuel, light, water, or the provision of medical attention, or of any approved amenity or approved service;

(ii) any contribution paid by an employer to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement scheme, thrift scheme, or any other fund, or scheme established for the benefit or welfare of the employee;

(iii) any travelling allowance, or the value of any travelling concession;

(iv) any sum payable to the employee to defray special expenses incurred by him through the nature of his employment;

(v) any gratuity payable on his discharge or retirement;

(vi) any annual bonus or any part thereof from such annual bonus.

Factories and Machinery Act 1967

Categories of employees

First Schedule Section 2(1)
Effective 1-10-95

Definition of 'wages'

Question 7:

What is meant by 'contract of service' under the Employment Act 1955?

First Schedule Section 2(1)

Answer:

'Contract of service' means a contract executed whether orally or in writing and whether by expressed or implied conditions whereby one person agrees to employ another as an employee and that the other agrees to serve his employer as an employee. This includes an apprenticeship contract. However, the Act does not cover those under the contract for service (i.e. sub-contractors).

Question 8:

What is meant by 'apprenticeship contract' under the Employment Act 1955?

Answer:

"Apprenticeship contract" refers to a written contract entered into by a person with an employer who undertakes to employ the person and train or have him trained systematically for a trade for a specified period which shall not be less than two years in the course of which the apprentice is bound to work in the employer's service.

Question 9:

State the proper form of a contract of service.

Answer:

A contract of service can be either oral or in writing, express, or implied. However, there are certain contracts of service that must be in writing. They are:-

(a) any contract of service for a specified period of time exceeding one month, or for a specified piece of work where the time required for the completion of the work may exceed one month.

(b) an apprenticeship contract entered into by a person with an employer who undertakes to employ the person and train him for a period which is not less than two years.

Though a contract of service may be oral or in writing the following terms must be given to an employee in writing on or before the commencement of his employment, i.e.

(a) Name of employee and National Registration Identification Card No.;

(b) Occupation or appointment;

(c) Wage rates (excluding other allowances);

(d) Other allowances payable and rates;

(e) Rates for overtime work;

(f) Other benefits (including approved amenities and services);

(g) Agreed normal hours of work per day;

(h) Agreed period of notice of termination of employment or wages in lieu;

(i) Number of days of entitlement to holidays and annual leave with pay; and

(j) Duration of wage period.

Question 10:

Is there any prohibition of unfavourable terms to be stipulated in a contract of employment?

Answer:

Any term or condition of employment in a contract of service which is less favourable than the terms or conditions stipulated in the Employment Act or Regulations is null and void.

A contract of service, however, may contain terms or conditions which are more favourable to an employee than the terms and conditions specified by the Employment Act or Regulations.

Meaning of Service

Section 2(1)

Definition of 'apprenticeship contract'

Section 2(1)

Form of contract of service

Section 10(1)

Section 2(1)

Employment Regulations 1957 5(b) & 8

*Prohibition of terms in contract of service
Section 7*

Section 7A

Question 11:

Can a contract of service restrain an employee from joining a registered trade union?

Answer:

A contract of service cannot in any manner restrain an employee from:

- (i) joining a registered trade union;
- (ii) participating in the activities of a registered trade union;
- (iii) associating with any other person or persons for the purpose of organising a trade union in accordance with the Trade Unions Act 1959.

Question 12:

Can a contract of service impose any conditions as to the manner in which the employees are to spend their wages?

Answer:

A contract of service cannot impose any conditions as to the place, the manner in which or the person with whom the employees are to spend their wages.

Question 13:

Is it necessary for an employer to keep a record of paid leave, public holidays, rest days and maternity allowance register?

Answer:

Yes. Every employer must maintain such records and register which must be made available for inspection by the officer of the Labour Department at all times. It is an offence for not keeping such records.

Question 14:

What is the minimum number of working days that should be given to an estate worker in each month?

What implications will there be if the employer fails to provide such worker with the required minimum number of working days?

Answer:

Under Section 16(1), an estate worker with a contract of service must be provided with at least 24 days' work in each month. The duties so assigned must fit his or her capacity and capabilities to enable him/her to be willing to comply accordingly.

The 24 days' work in each month does not include work on rest days and public holidays. The employer must also give the workers four days' additional pay on rest days (i.e. 4 Sundays).

An employer who fails to provide such minimum number of days' work in each month, is obliged to pay such employee whatever wages due as if he or she had performed the entire minimum number of days' work.

Question 15:

What is meant by "part-time employee"?

Answer:

"Part-time employee" means a person included in the First Schedule whose average hours of work as agreed between him and his employer do not exceed seventy per centum of the normal hours of work of a full-time employee employed in a similar capacity in the same enterprise, whether the normal hours of work are calculated with reference to a day, a week, or any other period as may be specified by regulations.

Notwithstanding the provisions of this Act, the Minister may make regulations—

- (a) in respect of the terms and conditions of service of a part-time employee; and
- (b) prescribing the manner in which the hours of work of an employee are to be computed for the purposes of determining whether that employee falls within the definition of a part-time employee.

Restriction of rights from joining trade union

Section 8

Section 26

Maintenance of records of holiday, rest day, etc

Section 61

Minimum working days set for estate workers

Section 16(1)

Part-time employee

Section 2(1)

Question 16:

What is meant by "permanent resident" in the context of the Employment Act, 1955?

Answer:

"Permanent resident" means a person, not being a citizen, who is permitted to reside in Malaysia without any limit of time imposed under any law relating to immigration, or who is certified by the Federal Government to be treated as such in Malaysia.

Question 17:

What is meant by 'domestic servant' under the Employment Act 1955?

Answer:

'Domestic servant' means a person employed in connection with the work carried out in a private dwelling-house for domestic household purposes, such as a cook, a house-servant, a butler, a gardener, a child minder, a valet, a washerman, a watchman, a groom and a driver of any vehicle licensed for private use.

Question 18:

What types of leave are stipulated in the Employment Act 1955?

Answer:

Every employee is entitled to a minimum number of days of leave under his contract of service. The types of leave are:-

(a) Rest days

(b) Public holidays

(Section , 10 days with 4 fixed days)

(c) Sick/Medical leave

(Section 60F(1)(aa) - Standard, 14 days - 18 days -22 days)

(d) Maternity leave

(e) Annual leave

(Section 60E(1)) - 8 days - 12 days -16 days)

Each of the above leave entitlement is described in detail in the following chapters.

Question 19:

Are employees entitled to any marriage or compassionate leave such as funeral attendance upon death of parents, wife leave or husband, grandfather/mother, children or other relatives, etc. under the Employment Act?

Answer:

The Act does not specify such leave.

Therefore, such leave is at the discretion of the individual employer concerned. The employer cannot be compelled to grant leave.

Question 20:

Can the employer refuse to grant any paid leave for medical or specialist examinations to the employee?

Answer:

Employees are not entitled to any paid medical or other special examination leave due to previous medical reports on personal due to previous medical reports on personal given by the doctor.

Question 21:

Under what circumstances can wages in computing the ordinary rate of pay (ORP)?

Answer:

Under the 1998 (Amendments) Act, any incentive payment approved by the Director-General of Labour is excluded from wages in computing the ORP.

Permanent resident

Section 1(1)

Meaning of 'domestic servant'

Type of leave

Marriage and compassionate leave

Medical examination

Illustration

Assuming that the basic wage (if an employee for September 2000 is RM1,700 and his production incentive payment for the same month is RM100.

If the said incentive payment is without prior approval from the Director-General of Labour, the

calculation will be as follows:-

$$(RM1,700 + 100) \div 26 \text{ days} = RM69.23$$

If the approval is obtained, the calculation of ORP will be as follows:

$$RM1,700 \div 26 \text{ days} = RM65.38$$

Question 22:

What are the possible implications if an employee reports for work without first receiving his or her letter of appointment?

Answer:

The Act requires an employer to issue a letter of appointment to his prospective employee, stating the terms and conditions of employment which will become the basis of the contract of service and obligations between the employer and the employee, before such employee commences employment. The contract is deemed to have been accepted by the employee once he reports for work. However, under such circumstances, the employee will be at the extreme disadvantage as specific terms of service are not given in writing. It is important that the employee receives his letter of appointment first before reporting for work.

Such letter of appointment must also be made available for inspection by the officer of the Labour Department, to determine whether the terms and conditions of such appointment are less favourable than the terms specified in the Act.

Here is an example of a **letter of appointment (LOA)**.

21st September, 2024.

Ms Nurfarah Binti Mohd Kassim
C-03A-01, Colonial Loft Empire City Damansara,
Damansara Perdana,
47800 Petaling Jaya.

Dear Ms Nurfarah,

Letter of Appointment
EXECUTIVE SECRETARY

We are pleased to offer you employment as Executive Secretary with effect from 1st October, 2024 on the following terms and conditions:

Commencement Salary

Your salary on commencement shall be **RM4,500.00 (Ringgit Malaysia: Four thousand Five Hundred only)** per month.

Probation Period

You will have to undergo a **probation period of three (3) calendar months** from the date of commencement of employment. At the end of this period, your performance will be reviewed by Management of the company who reserve the right to confirm or terminate your employment, or to extend your probation period.

Term of appointment

Employment Regulation 1967

*-Regulation 5(b)
-Term & Conditions of employment*

Section 67

Sample Letter of Appointment

Notice of Termination

Either party is required to **serve 14 days' notice, or 14 days' salary' in lieu of such notice** during" the probation period. After confirmation, the termination notice period is 30 days, or one month's salary in lieu of such notice is required.

Employees Provident Fund (EPF) and SOCSO

You shall contribute to EPF and SOCSO as per statutory rates and the Company shall make similar contributions.

Annual Leave

Annual leave (*under Section 60E(1) of Employment Act 1955*) with full pay will be granted for each completed year of service. Such leave must be taken at times convenient to the Company and subject to approval from the Management. No leave may be carried forward to the following year without written permission from the Management.

Public Holiday

You shall observe all the gazetted public holidays. If you are requested to work on any such public holidays, you shall be paid in accordance with Section 60D 93) of the Employment Act 1955.

Medical Benefits

The Company will provide you free medical consultation and medicine at the Company-approved clinics and hospitals. The medical benefits except dental do not include obstetrics, general medicine tests and cosmetic surgery.

Working Hours

You shall follow the working hours set by the Management.

Mondays to Friday:

8:30 a.m. to 5.30 p.m.

Lunch Break:

1:00 p.m. to 2.00 p.m.

The above working hours may be revised as and when needed.

Office Secrecy

All information obtained in the course of work with this Company shall be deemed to be **strictly confidential**. No such information shall be divulged to any outside party.

Office Rules

Your employment shall be subject to office rules and regulations and other procedures as may be made known to you from time to time.

Retirement Age

Our company policy on compulsory retirement age will be on reaching **the age of 55**.

We look forward to your full corporation and support.

If you accept our appointment, please sign the duplicate copy of this letter and return it to us within **7 working days**.

Your interest to join us is greatly appreciated.

Thank you.

Yours sincerely,
ABC Sdn. Bhd.

(signature)

LINDA MUSA

Managing Director / Director

I accept the above terms and conditions.

(signature)

NURFARAH BINTI MUSA

NRIC:

Date:

Note:

1. Standard number of WORKING HOURS

Number of Working Hours Permitted	Details
Per day	8 hours
Per week	45 hours

Note: (a) For 5 consecutive hours with a period of rest for at least 30 minutes. (2) If the nature of work requires work to be carried on continuously and continual attendance is essential, then the eight hours must include a period of rest (including meal) of at least 45 minutes.

2. Standard number of ANNUAL LEAVE

Year of completed service with the same employer	Annual Leave Entitlement (No. of Days)
1 year and over but less than 2 years...	8
2 years or more but less than 5 years...	12
5 years and over...	16

3. Standard number of SICK/MEDICAL LEAVE

Length of Service	No. of Days Entitlement per Calendar Year
Less than 2 years...	14
2 years but less than 5 years...	18
5 years and over...	22

4. Standard number of MATERNITY LEAVE

Maternity Leave	No. of Days Entitlement per Calendar Year
Paid Maternity Leave	60

Note: Maternity leave is 60 days including rest days and any public holidays that falls during that time.

5. Standard entitlement for PUBLIC HOLIDAYS

Every employee is entitled to **TEN out of any of the following GAZETTED PUBLIC HOLIDAYS** and any day declared as a public holiday by the Federal/State Government under **Section 8 of the Holidays Act 1951** in any one calendar year:-

Federal Public Holidays:

- (1) Hari Raya Puasa
- (2) Chinese New Year
- (3) Workers' Day

Section 60A(1)(b)
Section 60A(1)(c)
Section 60A(1)(d)

Section 60E(1) of Act 265)

Section 60F(1)(aa) of Act 265)

Section 37(1)(a)
Section 60D(1B)

Section 60D(1)(a) & 60D(1)(b) 2000 amendments

- (4) Wesak Day
- (5) Hari Raya Haji
- (6) Aw al Muharram
- (7) National Day
- (8) Deepavali
- (9) Christmas Day
- (10) Birthday of Prophet Muhammad (11) Birthday of Yang Di-Pertuan Agong

State Public Holidays:

- (1) New Year's Day (except for Johor, Kedah, Kelantan, Perlis & Trengganu)
- (2) Federal Territory Day (Kuala Lumpur & Labitan only)
- (3) Hari Hol Almarhum Sultan Ismail (Johor only)
- (4) Thaipusam (Penang, Perak, Selangor & Negeri Sembilan only)
- (5) Israk dan Mikraj (Kedah & Negeri Sembilan only)
- (6) Awal Ramadhan (Johor only)
- (7) Good Friday (Sabah & Sarawak only)
- (8) Nuzul Quran (Kelantan, Melaka, Perak, Perlis, Selangor, Trengganu & Pahang only)
- (9) Hari Hol Negeri Pahang (Pahang only)
- (10) Pesta Kaamatan (Pesta Menuai) - (Sabah & Labuan only)
- (11) Perayaan Hari Dayak (Sarawak only)
- (12) Hari Raya Haji Yang Kedua (Kedah, Kelantan, Perlis & Trengganu only)
- (13) Birthdays of State's Sultans/Rulers - (for respective states only)

Four out of the ten chosen gazetted public holidays which are compulsory:-

- (1) National Day
- (2) the King's Birthday
- (3) Birthday of Sultan or Head of State or
- (4) Federal Territory Day
- (5) Workers' Day

Specimen Notice on PUBLIC HOLIDAYS.

Date: 1st January, 20XX

Please observe and be informed that our company's ten chosen public holidays for year 20XX are as follows:

Chosen Public Holidays	Number of Day
National Days (Compulsory)	1
King's Birthday (Compulsory)	1
Worker's Day (Compulsory)	1
Sultan of Selangor's Birthday (Compulsory)	1
Hari Raya Puasa (Selected)	2
Chinese New Year (Selected)	2
Deepavali	1
New Year's Day	1
Total	10

Thank you.

For and on behalf of,
ABC Sdn Bhd.

Management

Section 60D(1)